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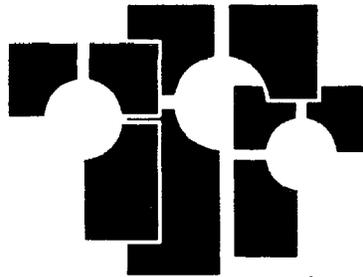
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**PROJECT SPECIFICATIONS AND  
CONTRACT DOCUMENTS**

**PROJECT NO. 121305**

**TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS**

**JUNE, 2013**



**GLENDALE**



**CITY OF GLENDALE**

**ENGINEERING DEPARTMENT**

**5850 W. Glendale Avenue, Glendale, Arizona 85301 (623) 930-3630**



# Engineering Department

# Memorandum

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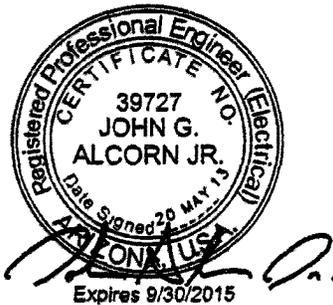
DATE: May 20, 2013  
TO: All Plan and Specification Holders  
FROM: Engineering  
SUBJECT: PROJECT NO. 121305 – TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS

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## ADDENDUM NO. 1

In accordance with the contract documents "Information for Bidders," Page 4, Paragraph 12 CHANGES TO PLANS AND DOCUMENTS, the following revisions to the plans and specifications shall become a part of the contract documents and the bidder shall acknowledge receipt thereof as directed in Paragraph 13 of the Information for Bidders.

Information regarding DBE and Davis Bacon requirements will be stated at the mandatory pre-bid meeting. **Due to the nature of the federal requirements of this project, bids will not be accepted from the bidders/contractors who do not attend the mandatory pre-bid meeting on May 30, 2013 at 9:00 am.**



**THIS ADDENDUM CONSISTS OF 1 PAGE INCLUDING THE COVER PAGE**

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# **PROJECT SPECIFICATIONS AND CONTRACT DOCUMENTS**

## **MAYOR**

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Manuel D. Martinez

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## **ACTING CITY MANAGER**

Richard Bowers

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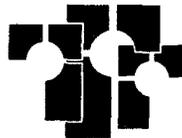
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**GLEND~~A~~LE**  
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## TABLE OF CONTENTS

|  |    |
|--|----|
| NOTICE TO CONTRACTORS .....  | 1  |
| INFORMATION FOR BIDDERS .....  | 2  |
| 1. ELIGIBILITY OF CONTRACTORS .....  | 2  |
| 2. PROPOSAL .....  | 2  |
| 3. BID SECURITY .....  | 2  |
| 4. WITHDRAWAL OF BID .....   | 3  |
| 5. LATE BIDS .....   | 3  |
| 6. AWARD OR REJECTION OF BIDS .....  | 3  |
| 7. BIDDERS INTERESTED IN MORE THAN ONE BID .....                             | 3  |
| 8. CONTRACT AND BONDS .....  | 3  |
| 9. INSURANCE REQUIREMENTS .....  | 3  |
| 10. SUBCONTRACTORS' LISTING AND CERTIFICATION OF CONTRACT<br>COMPLIANCE..... | 4  |
| 11. INTERPRETATION OF PLANS AND DOCUMENTS.....                               | 4  |
| 12. CHANGES TO PLANS AND DOCUMENTS .....                                     | 4  |
| 13. ADDENDUM .....   | 4  |
| 14. ASSIGNMENT OF CONTRACT .....   | 4  |
| 15. PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER.....                       | 5  |
| 16. TIME OF COMPLETION .....   | 5  |
| 17. CITY OF GLENDALE TRANSACTION PRIVILEGE TAX .....                         | 5  |
| 18. PRE-BID CONFERENCE.....  | 5  |
| 19. ALTERNATES.....  | 5  |
| 20. APPROVAL OF SUBSTITUTIONS....  | 5  |
| 21. USE OF "EQUALS".....   | 5  |
| 22. EXAMINATION OF CONTRACT DOCUMENTS AND VISIT SITE.....                    | 6  |
| 23. BIDDERS IN DEFAULT .....   | 6  |
| PROPOSAL .....   | 7  |
| BID BOND .....   | 13 |
| SUBCONTRACTOR LISTING AND CERTIFICATION OF CONTRACT COMPLIANCE .....         | 14 |
| CONSTRUCTION AGREEMENT .....   | 15 |
| PERFORMANCE BOND.....  | 29 |
| PAYMENT BOND.....  | 30 |
| CERTIFICATE OF INSURANCE .....   | 31 |
| CONTRACTOR'S AFFIDAVIT/LIEN WAIVER.....                                      | 33 |
| SUPPLEMENTAL GENERAL CONDITIONS.....   | 34 |
| 1. GENERAL.....  | 34 |
| 2. DEFINITIONS.....  | 34 |
| 3. PROPOSAL QUANTITIES.....  | 34 |
| 4. WITHDRAWAL OF PROPOSALS.....  | 35 |
| 5. LOSSES AND DAMAGES.....   | 35 |
| 6. DUST PREVENTION .....   | 35 |
| 7. EXCESS MATERIAL .....   | 35 |

|     |  |    |
|-----|--|----|
| 8.  | STOCKPILE OF MATERIALS .....                               | 35 |
| 9.  | REFUSE COLLECTION ACCESS.....                              | 35 |
| 10. | CLEAN-UP .....   | 35 |
| 11. | SHOP DRAWINGS.....   | 35 |
| 12. | PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK.....     | 36 |
| 13. | STATUS OF EMPLOYEES.....                                   | 36 |
| 14. | LAWS AND REGULATIONS.....                                  | 36 |
| 15. | PERMITS.....   | 36 |
| 16. | ELECTRIC POWER AND WATER.....                              | 36 |
| 17. | SURVEY CONTROL POINTS AND MONUMENTS .....                  | 36 |
| 18. | EXISTING UTILITIES.....                                    | 36 |
| 19. | MAINTENANCE OF IRRIGATION FACILITIES .....                 | 37 |
| 20. | OVERHEAD UTILITY LINES AND POLES .....                     | 37 |
| 21. | SOUTHWEST GAS FACILITIES EXPOSED DURING CONSTRUCTION ..... | 37 |
| 22. | UNDERGROUND UTILITIES' BEDDING.....                        | 37 |
| 23. | SEWER SERVICE LINES .....                                  | 37 |
| 24. | RIGHTS-OF-WAY .....  | 37 |
| 25. | SUBCONTRACTS .....   | 37 |
| 26. | PRE-CONSTRUCTION CONFERENCE.....                           | 38 |
| 27. | OVERTIME .....   | 38 |
| 28. | CONTRACTOR'S CONSTRUCTION SCHEDULE.....                    | 38 |
| 29. | CHARACTER OF WORKMEN .....                                 | 39 |
| 30. | HINDRANCES AND DELAYS.....                                 | 39 |
| 31. | LIQUIDATED DAMAGES.....                                    | 39 |
| 32. | PAYMENTS TO CONTRACTOR.....                                | 40 |
| 33. | WARRANTY .....   | 40 |

SPECIAL PROVISIONS .....

|    |  |    |
|----|--|----|
| 1. | SCOPE OF WORK.....                               | 41 |
| 2. | DEFINITIONS .....                                | 41 |
| 3. | SUSPENSION OF WORK.....                          | 41 |
| 4. | COMPLIANCE WITH MANUFACTURER'S INSTRUCTIONS..... | 41 |
| 5. | TRAFFIC REGULATIONS .....                        | 41 |
| 6. | ENERGIZED AERIAL ELECTRICAL POWER LINES .....    | 43 |
| 7. | RECORD DRAWINGS.....                             | 43 |
| 8. | CASH FLOW REPORT .....                           | 43 |
| 9. | ALLOWANCE FOR CONSTRUCTION CONTINGENCIES .....   | 43 |

CASH FLOW SCHEDULE.....

FEDERAL FUNDING REQUIREMENTS

TECHNICAL SPECIFICATIONS

NOTICE TO CONTRACTORS

Sealed bids shall be either mailed to the City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona, 85301, or hand-delivered to the Engineering Department office, third floor, 5850 West Glendale Avenue, Glendale, Arizona, for furnishing all plant, material, equipment and labor, and to complete construction of: **PROJECT NO. 121305 TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS**. As specified in the technical specifications, provide labor and materials to repair/replace the solar lighting systems for approx. 49 bus shelters designated throughout the City

Bids must be received by the Engineering Department of the City of Glendale no later than 10:00 AM, JUNE 6, 2013. Any bid received after that time will not be considered and will be returned to the bidder. At that time, the bids will be publicly opened and read aloud in the Engineering Department Conference Room, 5850 West Glendale Avenue, Glendale, Arizona

A pre-bid conference will be held on MAY 30, 2013, at 9:00 AM, in the Engineering Department Conference Room, 5850 West Glendale Avenue, Glendale, Arizona. Bidders, contractors, and other interested parties are invited to attend this conference which will be conducted by the Owner and Engineer to answer any questions

Plans, specifications and contract documents may be examined, and copies may be obtained at City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona. A non-refundable charge of \$20.00 shall be paid for each set of plans and specifications issued from this office.

Each bid shall be in accordance with the plans, specifications and contract documents, and shall be set forth and submitted on the BID DOCUMENTS included with the project specifications book. The BID DOCUMENTS may be removed from the project specifications book and submitted independently of such book. Each bid shall be accompanied by a proposal guarantee, in the form of a certified or cashier's check or bid bond for ten percent (10%) of the amount of bid, made payable to the order of the City of Glendale, Arizona, to insure that the successful bidder will enter into the contract if awarded to him and submit the required Certificate of Insurance, Payment Bond and Performance Bond. All proposal guarantees, except those of the three lowest qualified bidders, will be returned immediately following the opening and checking of proposals. The proposal guarantees of the three lowest qualified bidders will be returned immediately after the contract documents have been executed by the successful bidder. The proposal guarantee shall be declared forfeited as liquidated damages if the successful bidder refuses to enter into said contract or submit the Certificate of Insurance, Payment Bond and Performance Bond after being requested to do so by the City of Glendale, Arizona.

The City of Glendale reserves the right to reject any or all bids or waive any informality or irregularity in a bid. No bidder may withdraw his bid for a period of fifty (50) days after opening and reading of the bids.

The City of Glendale is an equal opportunity employer and minority business enterprises and women's business enterprises are encouraged to submit bids.

**This is a federally-funded project. Prevailing wage rates and fringe benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act, shall be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the contract. General Decision Number AZ130008 is included in the bid documents. Contractor monthly reporting of employment, payroll, DBE and labor compliance is mandatory.**

CITY OF GLENDALE, ARIZONA

INFORMATION FOR BIDDERS

1. **ELIGIBILITY OF CONTRACTORS:** When calling for bids for contracts for public work to be performed on behalf of the State or any political subdivision thereof, which will be paid for from public funds, no bid shall be considered for performance of a contract, including construction work which is not submitted by a bidder duly licensed as a contractor in this State. No bid shall be awarded to any contractor or entity not authorized to do business in the State of Arizona by the Arizona Corporation Commission, as required by statute.

2. **PROPOSAL:** Bids to receive consideration shall be made in accordance with the following instructions:

(a) Before submitting a bid, bidders shall carefully examine the plans and specifications and contract documents, visit the site of the work, fully inform themselves as to all existing conditions and limitations.

(b) Bids shall be submitted on the "PROPOSAL" forms provided and delivered to the City of Glendale Engineering Department on or before the day and hour set in the "NOTICE TO CONTRACTORS," as published. Bids shall be enclosed in a sealed envelope marked on the outside lower right-hand corner indicating:

1. The bidder's name and address.
2. The project number.
3. The title of the project.
4. The time and date the bids are to be received.

(c) It is the sole responsibility of the bidder to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

(d) The signatures of all persons shall be in longhand. Any interlineations, alterations, or erasures must be initialed by the signer of the bid.

(e) Bids shall not contain any recapitulations of the work to be done. No oral, telegraphic, telephonic, or modified proposals will be considered.

3. **BID SECURITY:** Each proposal shall be accompanied by a proposal guarantee in the form of a certified or cashier's check or bid bond, with a properly executed Power of Attorney attached, in an amount equal at least to ten percent (10%) of the proposal payable without condition to the City. If a bid bond is submitted with the bid it shall be issued by a company licensed with the Arizona Department of Insurance and authorized to issue such bonds in this state. **NO BONDS ISSUED BY INDIVIDUAL SURETIES WILL BE ACCEPTED. The company issuing the bid bond shall have a rating of not less than A- in the BEST rating available at the time this project was let to bid.** The proposal guarantee shall guarantee that the bidder, if awarded the contract, will, within ten (10) working days after the award, execute such contract in accordance with the proposal and in manner and form required by the contract documents, and will furnish good and sufficient bond for the faithful performance of the same, a payment bond and a certificate of insurance. The bid securities of the three (3) lowest bidders will be retained until the contract is awarded, or other disposition made thereof. The bid securities of all bidders, except the three (3) lowest, will be returned promptly after the canvass of bids. In the event the Contractor fails, within ten (10)

working days after the award, to execute said Contract and deliver the Performance and Labor and Material Payment Bonds and the Certificate of Insurance, the Bid Security shall become the property of the City.

4. **WITHDRAWAL OF BID:** Any bidder may withdraw his bid, either personally, by telegram or by written request, at any time prior to the scheduled closing time for receipt of bids. No bid may be withdrawn by telephone. Any bid withdrawn will not be opened and will be returned to the bidder. After opening and reading of the bids, no bidder may withdraw his bid for a period of fifty (50) days from the date of opening and reading.

5. **LATE BIDS:** Bids received after the scheduled closing time for receipt of bids, as contained in the "Notice to Contractors," will not be considered and will be returned to the bidder.

6. **AWARD OR REJECTION OF BIDS:** The contract will be awarded to the lowest and best qualified responsive bidder complying with these instructions and with the "NOTICE TO CONTRACTORS." The City of Glendale, Arizona, however, reserves the right to accept or reject any or all bids or to waive any or all informalities or irregularities in the bid. Alternates may be accepted depending upon the availability of City funds. Accepted alternates will be considered in determining the lowest responsive and responsible bidder.

7. **BIDDERS INTERESTED IN MORE THAN ONE BID:** No person, firm or corporation shall be allowed to make, file, or be interested in more than one (1) bid for the same work unless alternate bids are called for in the specifications or any addenda. A person, firm, or corporation who has submitted a sub-proposal to a bidder, or who has quoted prices on materials to a bidder is not thereby disqualified from submitting a sub-proposal or quoting prices to other bidders.

8. **CONTRACT AND BONDS:** The form of contract, which the successful bidder as Contractor will be required to execute and the forms of bonds which he shall be required to furnish are included in the contract documents and should be carefully examined by the bidder. The successful bidder shall use the forms provided or such other forms as are acceptable by the City. The Contract and Performance and Labor and Material Payment Bonds will be executed in three (3) original counterparts. All bonds shall be issued by companies licensed with the Arizona Department of Insurance and authorized to issue such bonds in this state. **NO BONDS ISSUED BY INDIVIDUAL SURETIES WILL BE ACCEPTED. The company issuing any bond shall have a rating of not less than A- in the BEST rating available at the time this project was let to bid.**

9. **INSURANCE REQUIREMENTS:** Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described (collectively, "Contractor's Policies"), until each Parties' obligations under this Agreement are completed. Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate. **Contracts in excess of \$250,000 shall require \$2,000,000 single occurrence/\$5,000,000 annual aggregate.**

Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence.

This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU

hazards if requested by the City, and a separation of insurance provision.

These limits may be met through a combination of primary and excess liability coverage.

Auto. A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and \$1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles.

Workers' Compensation and Employer's Liability. A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law.

Equipment Insurance. Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors.

10. **SUBCONTRACTORS LISTING AND CERTIFICATION OF CONTRACT COMPLIANCE:** The contractor will be required to furnish the form of subcontractors listing and certification of contract compliance with the executed contract documents. This information is requested for tracking and insurance purposes only.

11. **INTERPRETATION OF PLANS AND DOCUMENTS:** If any person contemplating a bid for proposed contract is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, or finds discrepancies in or omissions from the plans and specifications, he may submit to the Engineering Department, a written request for an interpretation or correction thereof. The person submitting the request will be responsible for its prompt delivery. Questions received less than ninety-six (96) hours before the bid opening time may not be answered. Any interpretation or correction of the documents will be made only by Addendum, duly issued and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents. The City of Glendale will not be responsible for any other explanations or interpretations of the proposed documents.

12. **CHANGES TO PLANS AND DOCUMENTS:** Any changes to the plans and documents shall be made only by Addendum. No verbal or other changes to the plans and documents will be valid. A copy of each Addendum will be mailed or delivered as provided in Section 13 below.

13. **ADDENDUM:** Any addenda will be faxed, mailed or delivered to all who are known by the City to have received a complete set of bid documents, and to offices where bid documents have been filed for review purposes. It is the responsibility of each bidder to ascertain that he has received all addenda issued by telephoning the office identified in the NOTICE TO CONTRACTORS as the location where bid documents are available prior to submitting his bid.

Bidders shall acknowledge all addenda in the appropriate location on the "PROPOSAL" form. Failure to acknowledge receipt of Addenda shall render the bid proposal non-responsive and it will be rejected.

14. **ASSIGNMENT OF CONTRACT:** No assignment by the Contractor of any contract to be entered into hereunder, or any part thereof, or of funds to be received thereunder by the Contractor, will be recognized by the Owner by the Owner unless such assignment has had prior approval of the Owner, and the Surety has been given due notice of such assignment in writing and has consented

thereto in writing.

15. **PLANS AND SPECIFICATIONS TO SUCCESSFUL BIDDER:** The successful bidder may obtain five (5) sets of plans and specifications for this project from the City.

16. **TIME OF COMPLETION:** The Contractor shall commence work under this project on or before the tenth day following receipt of the Notice to Proceed for that project from the City of Glendale and shall fully complete all work under the project within forty-five (45) consecutive calendar days from and including the date of receipt of such Notice to Proceed. Time is of the essence in the completion of all work required under this contract. The Contractor shall, at all times, during the continuance of the contract, prosecute the work with such force and equipment as is sufficient to complete all work within the time specified.

17. **CITY OF GLENDALE TRANSACTION PRIVILEGE TAX:** The City of Glendale transaction privilege tax shall **NOT** be waived under the provisions of this contract. The current privilege tax rate can be obtained from the City of Glendale Sales Tax and Licenses Department. The Contractor shall be responsible for reporting and payment of all city, county, state or federal taxes.

18. **PRE-BID CONFERENCE:** A **mandatory** pre-bid conference will be held on MAY 30, 2013, at 9:00 AM, in the Engineering Department Conference Room, 5850 West Glendale Avenue, Glendale, Arizona. Bidders, contractors, and other interested parties are invited to attend this conference which will be conducted by the Owner and Engineer to answer any questions.

19. **ALTERNATES:** Alternate proposals will not be considered unless called for in the documents or any addenda thereto. When alternates are requested, all requested alternates or alternate bid items, unless otherwise stated, shall be bid. If no change in the base bid will occur with the alternate, enter "No Change."

20. **APPROVAL OF SUBSTITUTIONS:** The materials, products and equipment described in the Documents and Addenda establish a standard or required function, dimension, appearance and quality to be met by any proposed substitution. No substitute will be considered, before bid opening, unless written request for approval has been received by the City Engineer at least ten (10) working days prior to the scheduled closing time for receipt of bids. Each such request shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitute including any drawings, cuts, performance and test data and any other information necessary for evaluation of the substitute. Bidder shall not be entitled to approval of a substitute.

If a substitute is approved, the approval shall be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

21. **USE OF "EQUALS":** When the specifications for materials, articles, products and equipment state "or equal," contractor may bid upon, and use materials, articles, products and equipment which will perform equally the duties imposed by the general design. The City Engineering Department will have the final approval of all materials, articles, products and equipment proposed to be used as an "equal." It shall not be purchased or installed without the prior written approval from the City Engineering Department.

Approvals for "equals," before bid opening, may be requested in writing to the City Engineering

Department for approval. Requests must be received at least ten (10) days prior to the date set for opening the Bid Proposals. The request shall state the name of the material, article, product or equipment for which the item is sought to be considered an equal and a complete description of the proposed equal including any drawings, cuts, performance and test data and any other information necessary for approval of the equal. All approvals will be issued in the form of an addendum.

22. EXAMINATION OF CONTRACT DOCUMENTS AND VISIT SITE: Before submitting a Bid Proposal, bidders should carefully examine the Contract Documents, visit the site of the work, fully inform themselves as to all existing conditions and limitations. No consideration will be granted for any alleged misunderstanding of the material, articles or piece of equipment to be furnished or work to be done. It is understood that the tender of the Bid Proposal carries with it the agreement to all items and conditions referred to herein or indicated in the Contract Documents.

23. BIDDERS IN DEFAULT: No bid will be awarded to any person, firm or corporation that is not authorized by the Arizona Corporation Commission to do business in the State of Arizona, in arrears or is in default to the City of Glendale upon any debt or contract, or that is a defaulter as surety or otherwise upon any obligation to the City of Glendale, or has failed to faithfully perform any previous contract with the City of Glendale.

\*\*\*END OF INFORMATION FOR BIDDERS\*\*\*

PROPOSAL

Place \_\_\_\_\_

Date June 6, 2013

Proposal of Photovoltaic Systems Manufacturing, a Corporation organized and existing under the laws of the State of Arizona.

TO THE HONORABLE MAYOR AND COUNCIL  
CITY OF GLENDALE  
GLENDALE, ARIZONA

Gentlemen:

The undersigned hereby proposes and agrees to furnish any and all required labor, materials, construction equipment, transportation and services for the construction of: **PROJECT 121305 - TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS**, in strict conformity with the plans and specifications for the following unit prices:

(Extension of these unit prices on the basis of estimated quantities and the totaling of these extensions are for the purpose of comparing bids only. The mathematics of such extensions and totaling will be checked and corrected by the Engineering Department, before evaluating the bids, and the lowest of such corrected and checked totals will determine the lowest bids.)

**BID SCHEDULE**

Photovoltaic Systems Mfg. LLC 6-6-13

**PROJECT: GLENDALE TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS  
PROJECT NO. 121305**

| ITEM NO. | STREET DIRECTION \ INTERSECTING STREET | Wiring Unit Cost | Battery Unit Cost | Solar Panel Unit Cost | Controller Unit Cost | Light Fixture Unit Cost | Light Bulb Unit Cost | Battery Box Unit Cost | TOTAL COST FOR EACH SITE  |
|----------|--|------------------|-------------------|-----------------------|----------------------|-------------------------|----------------------|-----------------------|---------------------------|
| 1        | SB 43rd Ave FS El Caminito             | \$ 102.08        | \$ 274.68         | \$ 302.08             |                      | \$ 302.08               |                      | \$ 178.96             | \$ 1159.89 <i>1152.88</i> |
| 2        | SB 43rd Ave FS Friar                   | \$ 102.08        |                   |                       |                      |                         |                      |                       | \$ 102.08                 |
| 3        | SB 43rd Ave NS Nicolet                 | \$ 102.08        |                   | \$ 302.08             |                      | \$ 302.08               |                      |                       | \$ 706.25 <i>706.25</i>   |
| 4        | NB 51st Ave FS Myrtle                  | \$ 102.08        | \$ 274.68         | \$ 302.08             | \$ 188.75            | \$ 302.08               | \$ 12.00             | \$ 178.96             | \$ 1360.64 <i>1360.64</i> |
| 5        | SB 51st Ave FS Olive                   | \$ 102.08        |                   | \$ 302.08             |                      |                         |                      |                       | \$ 404.16 <i>404.16</i>   |
| 6        | SB 51st Ave FS Cactus                  |                  |                   |                       | \$ 188.75            |                         |                      |                       | \$ 188.75                 |
| 7        | SB 52nd Ave FS Glendale                |                  |                   |                       |                      |                         |                      | \$ 178.96             | \$ 178.96                 |
| 8        | NB 59th Ave FS Missouri                | \$ 102.08        | \$ 274.68         |                       |                      |                         |                      |                       | \$ 376.77 <i>376.77</i>   |
| 9        | NB 59th Ave FS Hayward                 | \$ 102.08        | \$ 274.68         |                       |                      | \$ 302.08               |                      |                       | \$ 678.85 <i>678.85</i>   |
| 10       | NB 59th Ave FS Northern                |                  |                   |                       |                      | \$ 302.08               |                      |                       | \$ 302.08                 |
| 11       | SB 59th Ave FS Cactus                  |                  |                   |                       |                      |                         |                      | \$ 178.96             | \$ 178.96                 |
| 12       | SB 59th Ave FS Sunnyside               | \$ 102.08        | \$ 274.68         | \$ 302.08             | \$ 188.75            | \$ 302.08               | \$ 12.00             | \$ 178.96             | \$ 1360.64 <i>1360.64</i> |
| 13       | SB 59th Ave FS Cholla                  | \$ 102.08        | \$ 274.68         | \$ 302.08             | \$ 188.75            | \$ 302.08               | \$ 12.00             | \$ 178.96             | \$ 1360.64 <i>1360.64</i> |
| 14       | SB 59th Ave FS Seldon                  |                  | \$ 274.68         |                       |                      |                         |                      |                       | \$ 274.68                 |
| 15       | SB 59th Ave FS Myrtle                  | \$ 102.08        | \$ 274.68         |                       |                      |                         |                      | \$ 178.96             | \$ 555.73 <i>555.73</i>   |
| 16       | SB 59th Ave FS Missouri                |                  | \$ 274.68         |                       |                      |                         |                      |                       | \$ 274.68                 |
| 17       | NB 67th Ave FS Bethany Home            |                  |                   |                       |                      | \$ 302.08               |                      | \$ 178.96             | \$ 481.04                 |
| 18       | NB 67th Ave FS Myrtle                  | \$ 102.08        | \$ 274.68         |                       | \$ 188.75            | \$ 302.08               |                      | \$ 178.96             | \$ 1046.56 <i>1046.56</i> |

|    |                               |           |           |           |           |          |           |            |         |
|----|-------------------------------|-----------|-----------|-----------|-----------|----------|-----------|------------|---------|
| 19 | NB 67th Ave FS Alice          | \$ 102.08 | \$ 274.68 | \$ 302.08 |           |          |           | \$ 678.85  | 678.85  |
| 20 | NB 67th Ave FS Sunnyslope     | \$ 102.08 | \$ 274.68 | \$ 302.08 | \$ 302.08 | \$ 12.00 |           | \$ 992.93  | 992.93  |
| 21 | NB 67th Ave FS Mountain View  | \$ 102.08 | \$ 274.68 | \$ 302.08 | \$ 302.08 | \$ 12.00 | \$ 178.96 | \$ 1171.89 | 1171.89 |
| 22 | NB 67th Ave FS Greenway       | \$ 102.08 | \$ 274.68 |           |           |          |           | \$ 376.77  | 376.77  |
| 23 | SB 67th Ave FS Greenway       | \$ 102.08 | \$ 274.68 |           | \$ 188.75 |          | \$ 178.96 | \$ 744.48  | 744.48  |
| 24 | SB 67th Ave NS Diana          |           |           |           |           |          | \$ 178.96 | \$ 178.96  |         |
| 25 | SB 67th Ave FS Butler         |           | \$ 274.68 |           |           |          |           | \$ 274.68  |         |
| 26 | SB 67th Ave FS Rose Ln        |           | \$ 274.68 |           |           |          |           | \$ 274.68  |         |
| 27 | SB 67th Ave FS Missouri       |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08  |         |
| 28 | SB 75th Ave NS Joy Ln         |           |           |           |           |          | \$ 178.96 | \$ 178.96  |         |
| 29 | SB 79th Ave FS Union Hills Dr |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08  |         |
| 30 | WB Camelback FS 55th Ave      |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08  |         |
| 31 | WB Camelback FS 43rd Ave      |           | \$ 274.68 |           |           |          |           | \$ 274.68  |         |
| 32 | EB Bethany Home FS 51st Ave   |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08  |         |
| 33 | WB Glendale NS 48th Ave       |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08  |         |
| 34 | WB Glendale FS 71st Ave       |           | \$ 274.68 |           | \$ 302.08 | \$ 12.00 | \$ 178.96 | \$ 767.73  | 767.73  |
| 35 | WB Glendale NS 99th Ave       |           |           |           |           | \$ 12.00 |           | \$ 12.00   |         |
| 36 | EB Glendale NS 76th Dr        | \$ 102.08 | \$ 274.68 |           | \$ 302.08 | \$ 12.00 |           | \$ 690.85  | 690.85  |
| 37 | EB Glendale FS 75th Ave       | \$ 102.08 | \$ 274.68 |           |           |          | \$ 178.96 | \$ 555.73  | 555.73  |
| 38 | EB Glendale FS 64th Ave       | \$ 102.08 | \$ 274.68 |           | \$ 302.08 | \$ 12.00 | \$ 178.96 | \$ 869.81  | 869.81  |
| 39 | EB Glendale FS 54th Ave       |           |           |           |           | \$ 12.00 |           | \$ 12.00   |         |
| 40 | EB Northern FS 56 Ln          | \$ 102.08 | \$ 274.68 |           | \$ 302.08 | \$ 12.00 |           | \$ 690.85  | 690.85  |
| 41 | EB Northern FS 55th Ave       | \$ 102.08 | \$ 274.68 |           | \$ 302.08 | \$ 12.00 |           | \$ 690.85  | 690.85  |
| 42 | WB Northern FS 47th Ave       | \$ 102.08 | \$ 274.68 |           | \$ 302.08 | \$ 12.00 | \$ 178.96 | \$ 869.81  | 869.81  |

|                             |                            |           |           |           |           |          |           |  |
|-----------------------------|----------------------------|-----------|-----------|-----------|-----------|----------|-----------|--|
| 43                          | EB Alice FS 66th Dr        | \$ 102.08 | \$ 274.68 | \$ 302.08 | \$ 302.08 | \$ 12.00 | \$ 178.96 | \$ 1171.89 <i>1171.99</i>                |
| 44                          | EB Olive FS 51st Ave       | \$ 102.08 | \$ 274.68 | \$ 302.08 | \$ 302.08 | \$ 12.00 |           | \$ 992.93 <i>992.72</i>                  |
| 45                          | EB Peoria FS 63rd Ave      | \$ 102.08 |           |           |           |          | \$ 178.96 | \$ 281.04                                |
| 46                          | WB Peoria FS 63rd Ave      |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08                                |
| 47                          | WB Bell FS 57th Ave        |           |           |           |           | \$ 12.00 |           | \$ 12.00                                 |
| 48                          | EB Union Hills FS 79th Ave |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08                                |
| 49                          | EB Union Hills FS 57th Ave |           |           |           | \$ 302.08 | \$ 12.00 |           | \$ 314.08                                |
| <b>OWNER'S CONTINGENCY</b>  |                            |           |           |           |           |          |           | <b>\$4,000.00</b>                        |
| <b>BASE BID TOTAL COST:</b> |                            |           |           |           |           |          |           | <b>\$30,268.4130</b><br><i>30,268.14</i> |

| ITEMS  | DESCRIPTION   | NO. OF UNITS | UNIT COST | TOTAL UNIT COST                        |
|--|---|--------------|-----------|--|
| ALTERNATE NO. 1  | Provide Labor & Materials to replace existing fluorescent light bulbs with an approved equal of a new fluorescent light bulb at the designated sites.   | 30           | \$ 12.00  | \$ 360.00                              |
| ALTERNATE NO. 2  | Provide Labor & Materials to replace the complete light fixture with a new LED Lighting fixture including LED light bulb at the designated Sites. New LED lighting fixture and bulb shall be an approved equal. | 30           | \$ 302.08 | \$ 9,062.50                            |
| <b>TOTAL COST INCL. BASE BID, ALT. NO.1 &amp; ALT. NO.2:</b> |   |              |           | <b>\$39,690.91</b><br><i>39,690.64</i> |

The undersigned hereby declares that he has visited the site(s) and has carefully examined the contract documents relating to the work covered by the above bid or bids.

Upon receipt of notice of the acceptance of this bid, we will execute the formal contract attached within ten (10) days, and will deliver a one hundred percent (100%) Performance Bond for the faithful performance of this Contract, together with a one hundred percent (100%) Payment Bond and Certificate of Insurance.

The bid security attached, with endorsement, in the sum of ten percent (10%) of the total bid, is to become the property of the City of Glendale, Arizona, in the event the Contract and Bonds are not executed within the time set forth, as liquidated damages for the delay and additional work caused thereby.

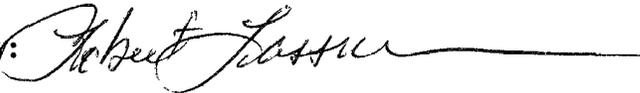
The undersigned has checked carefully all the above figures and understands that the City of Glendale, Arizona, will not be responsible for any errors or omissions on the part of the undersigned in making up this bid.

The undersigned understands that the Mayor and Council of the City of Glendale, Arizona, reserves the right to reject any or all bids or to waive any informalities or irregularities in the bid.

Arizona Contractor's  
Classification and  
License No.  
**K-11 ROC278355**

Respectfully submitted,

Photovoltaic Systems Manufacturing LLC  
Contractor

By: 

**Robert Lassner/ Member**

**1440 W. Meseto Ave  
Mesa AZ 85202**

**Telephone Number: 480-345-1686  
Fax Number: 480-393-0940**

Bidder shall signify receipt of all Addenda here (if any): Addendum No. 1 received.

Failure to acknowledge receipt of all Addenda shall render the bid proposal non-responsive and will be rejected.

Acknowledged by: 

**ATTACHMENT A1**  
NEGOTIATIONS WITH SMALL BUSINESSES

|  |  |  |                     |  |                         |
|--|--|--|---------------------|--|-------------------------|
| Project Title/Number:<br><b>Transit Solar Bus stops &amp; Improvements - CO19 - 121305</b> |  |  |                     |  |                         |
| Successful Submitter's Name:<br><b>Photovoltaic Systems MFG</b>                            |  | Phone Number:<br><b>602-448-7149</b>         |                     | Point of Contact Name:<br><b>Bob Lassner</b> |                         |
| Mailing Address:<br><b>1440 W. Mesito</b>  |  | City:<br><b>Mesa</b>                         | State:<br><b>AZ</b> | Zip:<br><b>852</b>                           | Title:<br><b>member</b> |
| Telephone Number:<br><b>602-448-7149</b>   |  | E-mail Address:<br><b>lassnerb@yahoo.com</b> |                     |  |                         |

**Summary of Bidder's negotiation with the small business considered for this contract.**

| (A)<br>Small Business Contact Information   | (B)<br>Business Status  | (C)<br>Scope of Work/Services to be Performed       | (D)<br>Type of Agreement   | (E)<br>Agreement Amount   | (F)<br>Communication of Selection Outcome   |
|---|---|---|--|---|---|
| Name: <b>Dakota Distributing</b><br>Address: <b>1111 N Roosevelt Ave # 122</b><br>City: <b>Chandler</b> State: <b>AZ</b> Zip: <b>85226</b><br>Phone Number: <b>480-628-0401</b> E-Mail or Fax: <b>480-607-9091</b><br>Annual Gross Receipt sales: _____ Number of Years in Business: _____    | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown | <b>electrical supplies</b>                          | <input type="checkbox"/> Subcontract <b>TBD</b><br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br>As a Percent of Total Contract Award: %<br>Other: _____<br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm selected and will not be p contract?<br><br>When was this firm notified selection outcome? |
| Name: <b>Vale Electric West</b><br>Address: <b>8711 E. Pinnacle Peak # 3412</b><br>City: <b>Scottsdale</b> State: <b>AZ</b> Zip: <b>85255</b><br>Phone Number: <b>480-473-4668</b> E-Mail or Fax: <b>480-473-0625</b><br>Annual Gross Receipt sales: _____ Number of Years in Business: _____ | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown | <b>Distributor of elec. supplies &amp; lighting</b> | <input type="checkbox"/> Subcontract <b>TBD</b><br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br>As a Percent of Total Contract Award: %<br>Other: _____<br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm selected and will not be p contract?<br><br>When was this firm notified selection outcome? |
| Name: _____<br>Address: _____<br>City: _____ State: _____ Zip: _____<br>Phone Number: _____ E-Mail or Fax: _____<br>Annual Gross Receipt sales: _____ Number of Years in Business: _____  | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected            | \$<br>As a Percent of Total Contract Award: %<br>Other: _____<br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm selected and will not be p contract?<br><br>When was this firm notified selection outcome? |

*To be completed by 6/9/13 KLassner*

**ATTACHMENT A1**  
NEGOTIATIONS WITH SMALL BUSINESSES

CE-10-11-09-06

|  |  |                                     |                    |   |   |
|--|--|-------------------------------------|--------------------|---|---|
| Project Title/Number<br><i>Transit Solar Bus stops &amp; Improvements - COG - 121305</i> |  |                                     |                    |   |   |
| Successful Submitter's Name<br><i>Photovoltaic Systems MFG</i>                           |  | Phone Number<br><i>602-448-7149</i> |                    | Point of Contact Name<br><i>Bob Lassner</i> |   |
| Mailing Address<br><i>1440 W. Mesquite</i>   |  | City<br><i>Mesa</i>                 | State<br><i>AZ</i> | Zip<br><i>852</i>                           | E-mail Address<br><i>lassnerb@yahoo.com</i> |

**Summary of Bidder's negotiation with the small business considered for this contract.**

| (A) Small Business Contact Information   | (B) Business Status  | (C) Scope of Work/Services to be Performed          | (D) Type of Agreement  | (E) Agreement Amount   | (F) Communication of Final Selection Outcome <sup>1</sup>  |
|--|--|---|--|--|--|
| Name: <i>Dakota Distributing</i><br>Address: <i>1116 N Roosevelt Ave # 122</i><br>City: <i>Chandler</i> State: <i>AZ</i> Zip: <i>85226</i><br>Phone Number: <i>480-628-0401</i> E-Mail or Fax: <i>480-607-9091</i><br>Annual Gross Receipt sales: _____ Number of Years in Business: _____   | <input checked="" type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown | <i>electrical supplies</i>                          | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input checked="" type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br><br>As a Percent of Total Contract Award: %<br><br>Other: <i>TBD</i><br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br><i>As long as in business</i><br><br>When was this firm notified of the selection outcome?<br><br><i>still negotiating</i> |
| Name: <i>Vale Electric West</i><br>Address: <i>8711 E. Pinnacle Peak # 346</i><br>City: <i>Scottsdale</i> State: <i>AZ</i> Zip: <i>85255</i><br>Phone Number: <i>480-473-4668</i> E-Mail or Fax: <i>480-473-0626</i><br>Annual Gross Receipt sales: _____ Number of Years in Business: _____ | <input checked="" type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown | <i>Distributor of elec. supplies &amp; lighting</i> | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected            | \$<br><br>As a Percent of Total Contract Award: %<br><br>Other:<br><input checked="" type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br><i>no return call</i><br><br>When was this firm notified of the selection outcome?   |
| Name: _____<br>Address: _____<br>City: _____ State: _____ Zip: _____<br>Phone Number: _____ E-Mail or Fax: _____<br>Annual Gross Receipt sales: _____ Number of Years in Business: _____   | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown            |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected            | \$<br><br>As a Percent of Total Contract Award: %<br><br>Other:<br><input type="checkbox"/> Firm not Selected            | Provide explanation, if firm was not selected and will not be part of this contract?<br><br>When was this firm notified of the selection outcome?  |

**ATTACHMENT A2  
SMALL BUSINESS UTILIZATION COMMITMENT  
(NON-NEGOTIATED CONTRACTS)**

On behalf of the Competitive Range Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

- 1) The firms indicated as "selected" in **Attachment A1, Negotiations with Small Businesses**, will participate in this contract;
- 2) The Submitter will comply with the Outreach Requirements for Race- and Gender-Neutral Contracts for substitutions;
- 3) I understand and agree that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- 4) The following statement is true and correct:

The proposed total participation of DBE, SBC, and SBE firms on this contract will be:

0 %

AT THIS TIME

Signed By:

*Robert Lasswell*

(signature)

Print Name:

Robert Lasswell

Title:

member

Name of Company:

Photovoltaic Systems MFG, LLC

Date:

6/1/13



### CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is entered into and effective between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and Photovoltaic Systems Manufacturing, L L C , an Arizona limited liability company, authorized to do business in Arizona ("Contractor") as of the 26 day of July, 2013.

#### RECITALS

- A City intends to undertake a project for the benefit of the public and with public funds that is more fully set forth in the **Notice to Contractors** and the attached **Exhibit A** ("Project"),
- B City desires to retain the services of Contractor to perform those specific duties and produce the specific work as set forth in the Project, the plans and specifications, the **Information for Bidders**, and the **Maricopa Association of Governments ("MAG") General and Supplemental Conditions and Provisions**,
- C City and Contractor desire to memorialize their agreement with this document

#### AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Contractor agree as follows

#### 1. Project.

- 1.1 **Scope.** Contractor will provide all services and material necessary to assure the Project is completed timely and efficiently consistent with Project requirements, including, but not limited to, working in close interaction and interfacing with City and its designated employees, and working closely with others, including other contractors, providers or consultants retained by City
- 1.2 **Documents.** The following documents are, by this reference, entirely incorporated into this Agreement and attached Exhibits as though fully set forth herein
  - (A) Notice to Contractors,
  - (B) Information for Bidders,
  - (C) MAG General Conditions, Supplemental General Conditions, Special and Technical Provisions,
  - (D) Proposal,
  - (E) Bid Bond,
  - (F) Payment Bond,
  - (G) Performance Bond,
  - (H) Certificate of Insurance,
  - (I) Appendix; and
  - (J) Plans and Addenda thereto.

Should a conflict exist between this Agreement (and its attachments), and any of the incorporated documents as listed above, the provisions of this Agreement shall govern

#### 1.3 Project Team.

- (A) Project Manager Contractor will designate an employee as Project Manager with sufficient training, knowledge, and experience to, in the City's opinion, to complete the project and handle all aspects of the Project such that the work produced by Contractor is consistent with applicable standards as detailed in this Agreement
- (B) Project Team
  - (1) The Project manager and all other employees assigned to the project by Contractor will comprise the "Project Team "
  - (2) Project Manager will have responsibility for and will supervise all other employees assigned to the project by Contractor

(C) Sub-contractors

- (1) Contractor may engage specific technical contractor (each a "Sub-contractor") to furnish certain service functions
- (2) Contractor will remain fully responsible for Sub-contractor's services
- (3) Sub-contractors must be approved by the City, unless the Sub-contractor was previously mentioned in the response to the solicitation
- (4) Contractor shall certify by letter that contracts with Sub-contractors have been executed incorporating requirements and standards as set forth in this Agreement

2. **Schedule.** The Project will be undertaken in a manner that ensures it is completed in a timely and efficient manner. If not otherwise stated in **Exhibit A**, the Project shall be completed by no later than within forty-five (45) consecutive calendar days from and including the date of receipt of the Notice to Proceed

3. **Contractor's Work.**

3.1 **Standard.** Contractor must perform services in accordance with the standards of due diligence, care, and quality prevailing among contractors having substantial experience with the successful furnishing of services and materials for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement

3.2 **Licensing.** Contractor warrants that

- (A) Contractor and Sub-contractors will hold all appropriate and required licenses, registrations and other approvals necessary for the lawful furnishing of services ("Approvals"), and
- (B) Neither Contractor nor any Sub-contractor has been debarred or otherwise legally excluded from contracting with any federal, state, or local governmental entity ("Debarment")
  - (1) City is under no obligation to ascertain or confirm the existence or issuance of any Approvals or Debarments or to examine Contractor's contracting ability
  - (2) Contractor must notify City immediately if any Approvals or Debarment changes during the Agreement's duration and the failure of the Contractor to notify City as required will constitute a material default of this Agreement

3.3 **Compliance.** Services and materials will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, building codes, life safety codes, or other standards and criteria designated by City.

3.4 **Coordination; Interaction.**

- (A) If the City determines that the Project requires the coordination of professional services or other providers, Contractor will work in close consultation with City to proactively interact with any other contractors retained by City on the Project ("Coordinating Entities")
- (B) Subject to any limitations expressly stated in the budget, Contractor will meet to review the Project, schedules, budget, and in-progress work with Coordinating Entities and the City as often and for durations as City reasonably considers necessary in order to ensure the timely work delivery and Project completion
- (C) If the Project does not involve Coordinating Entities, Contractor will proactively interact with any other contractors when directed by City to obtain or disseminate timely information for the proper execution of the Project

3.5 **Hazardous Substances.** Contractor is responsible for the appropriate handling, disposal of, and if necessary, any remediation and all losses and damages to the City, associated with the use or release of hazardous substances by Contractor in connection with completion of the Project

3.6 **Warranties.** At any time within two years after completion of the Project, Contractor must, at Contractor's sole expense and within 20 days of written notice from the City, uncover, correct and remedy all defects in Contractor's work. City will accept a manufacturer's warranty on approved equipment as satisfaction of the Contractor's warranty under this subsection.

3.7. **Bonds.** Upon execution of this Agreement, and if applicable, Contractor must furnish Payment and Performance bonds as required under A R S § 34-608.

#### 4. **Compensation for the Project.**

4.1 **Compensation.** Contractor's compensation for the Project, including those furnished by its Sub-contractors will not exceed \$39,330.64, as specifically detailed in the Contractor's bid and set forth in **Exhibit B** ("Compensation").

4.2 **Change in Scope of Project.** The Compensation may be equitably adjusted if the originally contemplated scope of services as outlined in the Project is significantly modified by the City.

(A) Adjustments to the Scope or Compensation require a written amendment to this Agreement and may require City Council approval.

(B) Additional services which are outside the scope of the Project and not contained in this Agreement may not be performed by the Contractor without prior written authorization from the City.

#### 5. **Billings and Payment.**

##### 5.1 **Applications.**

(A) The Contractor will submit monthly invoices (each, a "Payment Application") to City's Project Manager and City will remit payments based upon the Payment Application as stated below.

(B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.

##### 5.2 **Payment.**

(A) After a full and complete Payment Application is received, City will process and remit payment within 30 days.

(B) Payment may be subject to or conditioned upon City's receipt of

(1) Completed work generated by Contractor and its Sub-contractors, and

(2) Unconditional waivers and releases on final payment from Sub-contractors as City may reasonably request to assure the Project will be free of claims arising from required performances under this Agreement.

5.3 **Review and Withholding.** City's Project Manager will timely review and certify Payment Applications.

(A) If the Payment Application is rejected, the Project Manager will issue a written listing of the items not approved for payment.

(B) City may withhold an amount sufficient to pay expenses that City reasonably expects to incur in correcting the deficiency or deficiencies rejected for payment.

(C) Contractor will provide, by separate cover, and concurrent with the execution of this Agreement, all required financial information to the City, including City of Glendale Transaction Privilege License and Federal Taxpayer identification numbers.

(D) City will temporarily withhold Compensation amounts as required by A R S 34-221(C).

**6. Termination.**

- 6.1 For Convenience.** City may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 15 days following the date of delivery
- (A) Contractor will be equitably compensated any services and materials furnished prior to receipt of the termination notice and for reasonable costs incurred
  - (B) Contractor will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.
- 6.2 For Cause.** City may terminate this Agreement for cause if Contractor fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach
- (A) Contractor will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Contractor for Service and Repair furnished, City will pay the amount due to Contractor, less City's damages
  - (B) If City's direct damages exceed amounts otherwise due to Contractor, Contractor must pay the difference to City immediately upon demand, however, Contractor will not be subject to consequential damages more than \$1,000,000 or the amount of this Agreement, whichever is greater

**7. Insurance.**

- 7.1 Requirements.** Contractor must obtain and maintain the following insurance ("Required Insurance")
- (A) Contractor and Sub-contractors Contractor, and each Sub-contractor performing work or providing materials related to this Agreement must procure and maintain the insurance coverages described below (collectively, "Contractor's Policies"), until each Parties' obligations under this Agreement are completed
  - (B) General Liability
    - (1) Contractor must at all times relevant hereto carry a commercial general liability policy with a combined single limit of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate
    - (2) Sub-contractors must at all times relevant hereto carry a general commercial liability policy with a combined single limit of at least \$1,000,000 per occurrence
    - (3) This commercial general liability insurance must include independent contractors' liability, contractual liability, broad form property coverage, products and completed operations, XCU hazards if requested by the City, and a separation of insurance provision
    - (4) These limits may be met through a combination of primary and excess liability coverage
  - (C) Auto A business auto policy providing a liability limit of at least \$1,000,000 per accident for Contractor and 1,000,000 per accident for Sub-contractors and covering owned, non-owned and hired automobiles
  - (D) Workers' Compensation and Employer's Liability A workers' compensation and employer's liability policy providing at least the minimum benefits required by Arizona law
  - (E) Equipment Insurance Contractor must secure, pay for, and maintain all-risk insurance as necessary to protect the City against loss of owned, non-owned, rented or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Contractor or its Sub-contractors

- (F) Notice of Changes Contractor's Policies must provide for not less than 30 days' advance written notice to City Representative of
- (1) Cancellation or termination of Contractor or Sub-contractor's Policies,
  - (2) Reduction of the coverage limits of any of Contractor or and Sub-contractor's Policies, and
  - (3) Any other material modification of Contractor or Sub-contractor's Policies related to this Agreement
- (G) Certificates of Insurance
- (1) Within 10 business days after the execution of the Agreement, Contractor must deliver to City Representative certificates of insurance for each of Contractor and Sub-contractor's Policies, which will confirm the existence or issuance of Contractor and Sub-contractor's Policies in accordance with the provisions of this section, and copies of the endorsements of Contractor and Sub-contractor's Policies in accordance with the provisions of this section
  - (2) City is and will be under no obligation either to ascertain or confirm the existence or issuance of Contractor and Sub-contractor's Policies, or to examine Contractor and Sub-contractor's Policies, or to inform Contractor or Sub-contractor in the event that any coverage does not comply with the requirements of this section
  - (3) Contractor's failure to secure and maintain Contractor Policies and to assure Sub-contractor policies as required will constitute a material default under this Agreement
- (H) Other Contractors or Vendors
- (1) Other contractors or vendors that may be contracted by Contractor with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular agreement
  - (2) This insurance coverage must comply with the requirements set forth above for Contractor's Policies (e g , the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance)
- (I) Policies Except with respect to workers' compensation and employer's liability coverages, the City must be named and properly endorsed as additional insureds on all liability policies required by this section
- (1) The coverage extended to additional insureds must be primary and must not contribute with any insurance or self insurance policies or programs maintained by the additional insureds
  - (2) All insurance policies obtained pursuant to this section must be with companies legally authorized to do business in the State of Arizona and acceptable to all parties

## 7.2 Sub-contractors.

- (A) Contractor must also cause its Sub-contractors to obtain and maintain the Required Insurance
- (B) City may consider waiving these insurance requirements for a specific Sub-contractor if City is satisfied the amounts required are not commercially available to the Sub-contractor and the insurance the Sub-contractor does have is appropriate for the Sub-contractor's work under this Agreement
- (C) Contractor and Sub-contractors must provide to the City proof of Required Insurance whenever requested

## 7.3 Indemnification.

- (A) To the fullest extent permitted by law, Contractor must defend, indemnify, and hold harmless City and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the

"Indemnified Parties"), for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense", collectively, "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Contractor) and that arises out of or results from the breach of this Agreement by the Contractor or the Contractor's negligent actions, errors or omissions (including any Sub-contractor or other person or firm employed by Contractor), whether sustained before or after completion of the Project

- (B) This indemnity and hold harmless policy applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this Agreement, but in that event, Contractor shall be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Contractor or of any person or entity for whom Contractor is responsible
- (C) Contractor is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole negligence or other fault solely attributable to the Indemnified Party

7.4 **Waiver of Subrogation.** Contractor waives, and will require any Subcontractor to waive, all rights of subrogation against the City to the extent of all losses or damages covered by any policy of insurance

## 8. Immigration Law Compliance.

- 8 1 Contractor, and on behalf any subcontractor, warrants, to the extent applicable under A R S § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A R S § 23-214(A) which requires registration and participation with the E-Verify Program
- 8 2 Any breach of warranty under subsection 8 1 above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement
- 8 3 City retains the legal right to inspect the papers of any Contractor or subcontractor employee who performs work under this Agreement to ensure that the Contractor or any subcontractor is compliant with the warranty under subsection 8 1 above
- 8 4 City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 8 1 above Contractor agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this section 8
- 8 5 Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City Contractor also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City
- 8 6 Contractor's warranty and obligations under this section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement
- 8 7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program

9. **Conflict.** Contractor acknowledges this Agreement is subject to A R S § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement

10. **Prohibitions.** Contractor certifies under A R S §§ 35-391 *et seq* and 35-393 *et seq*, that it does not have, and during the term of this Agreement will not have "scrutinized" business operations, as defined in the preceding statutes, in the countries of Sudan or Iran

11. **Non-Discrimination Policies.** Contractor must not discriminate against any employee or applicant for employment on the basis of race, religion, color sex or national origin Contractor must develop, implement and maintain non-discrimination policies and post the policies in conspicuous places visible to employees and applicants for employment Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section

12. **Notices.**

12.1 A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if

- (A) The Notice is in writing, and
- (B) Delivered in person or by private express overnight delivery service (delivery charges prepaid), certified or registered mail (return receipt requested)
- (C) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if
  - (1) Received on a business day, or before 5 00 p m , at the address for Notices identified for the Party in this Agreement by U S Mail, hand delivery, or overnight courier on or before 5 00 p m , or
  - (2) As of the next business day after receipt, if received after 5 00 p m
- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures

12.2 **Representatives.**

- (A) Contractor. Contractor's representative ("Contractor's Representative") authorized to act on Contractor's behalf with respect to the Project, and his or her address for Notice delivery is

Photovoltaic Systems Manufacturing, L L C  
 Attn Robert Lassner  
 1440 W Meseto Avenue  
 Mesa, AZ 85202

- (B) City. City's representative ("City's Representative") authorized to act on City's behalf, and his or her address for Notice delivery is

City of Glendale  
 Attn Mike Johnson  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

With required copies to:

City of Glendale  
 City Manager  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

City of Glendale  
 City Attorney  
 5850 West Glendale Avenue  
 Glendale, Arizona 85301

- (C) Concurrent Notices.
  - (1) All notices to City's representative must be given concurrently to City Manager and City Attorney
  - (2) A notice will not be considered to have been received by City's representative until the time that it has also been received by City Manager and City Attorney.

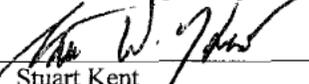
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices
  - (D) **Changes.** Contractor or City may change its representative or information on Notice, by giving Notice of the change in accordance with this section at least ten days prior to the change
- 13. **Financing Assignment.** City may assign this Agreement to any City-affiliated entity, including a non-profit corporation or other entity whose primary purpose is to own or manage the Project
- 14. **Entire Agreement; Survival; Counterparts; Signatures.**
  - 14.1 **Integration.** This Agreement contains, except as stated below, the entire agreement between City and Contractor and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement
    - (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter
    - (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties
    - (C) Any solicitation, addendums and responses submitted by the Contractor are incorporated fully into this Agreement as Exhibit A. Any inconsistency between Exhibit A and this Agreement will be resolved by the terms and conditions stated in this Agreement
  - 14.2 **Interpretation.**
    - (A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
    - (B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement
    - (C) The Agreement will be interpreted in accordance with the laws of the State of Arizona
  - 14.3 **Survival.** Except as specifically provided otherwise in this Agreement each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement
  - 14.4 **Amendment.** No amendment to this Agreement will be binding unless in writing and executed by the parties. Any amendment may be subject to City Council approval
  - 14.5 **Remedies.** All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law
  - 14.6 **Severability.** If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.
  - 14.7 **Counterparts.** This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument
- 15. **Dispute Resolution.** Each claim, controversy and dispute ("Dispute") between Contractor and City will be resolved in accordance with Exhibit C. The final determination will be made by the City

16. **Exhibits.** The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference

|           |                    |
|-----------|--------------------|
| Exhibit A | Project            |
| Exhibit B | Compensation       |
| Exhibit C | Dispute Resolution |

The parties enter into this Agreement as of the date shown above

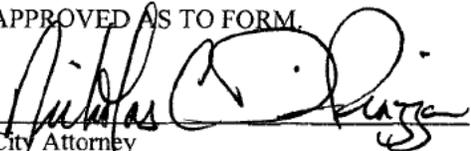
City of Glendale,  
an Arizona municipal corporation

  
By Stuart Kent  
Its Executive Director

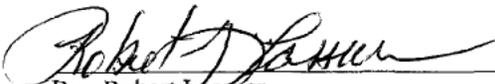
ATTEST

  
City Clerk (SEAL)

APPROVED AS TO FORM.

  
City Attorney

Photovoltaic Systems Manufacturing, L L C  
an Arizona limited liability company

  
By Robert Lassner  
Its Member

WOMEN-OWNED/MINORITY BUSINESS [ ] YES [X] NO  
CITY OF GLENDALE TRANSACTION PRIVILEGE TAX NO [REDACTED]  
FEDERAL TAXPAYER IDENTIFICATION NO [REDACTED]

**EXHIBIT A  
CONSTRUCTION AGREEMENT**

**PROJECT**

Provide labor and materials to repair/replace the solar lighting systems for approximately 49 bus shelters designated throughout the City

**EXHIBIT B  
CONSTRUCTION AGREEMENT**

**COMPENSATION**

**METHOD AND AMOUNT OF COMPENSATION**

By bid, including all services, materials and costs

**NOT-TO-EXCEED AMOUNT**

The total amount of compensation paid to Contractor for full completion of all work required by the Project during the entire term of the Project must not exceed \$39,330.64

**DETAILED PROJECT COMPENSATION**

Per the Bid Schedule  
Base Bid           \$30,268.14  
Alternate No 2   \$ 9,062.50  
**Total:           \$39,330.64**

## EXHIBIT C

## CONSTRUCTION AGREEMENT

## DISPUTE RESOLUTION

## 1. Disputes.

- 1 1 Commitment The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner
- 1 2 Application The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement
- 1 3 Initiation A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement
- 1 4 Informal Resolution When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute
- (A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible,
- (B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
- (C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute

## 2. Arbitration.

- 2 1 Rules If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Construction Industry Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently
- (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator
- (B) The arbitrator selected must be an attorney with at least 15 years experience with commercial construction legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years
- 2 2 Discovery The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute
- 2 3 Hearing The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs
- 2 4 Award At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought

by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

2.5 Final Decision The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.

2.6 Costs The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party shall pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.

3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Contractor must continue to perform and maintain progress of required services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Contractor in accordance with this Agreement.

4. **Exceptions.**

4.1 Third Party Claims City and Contractor are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Contractor.

4.2 Liens City or Contractor may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.

4.3 Governmental Actions This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.

**INDIVIDUAL SURETIES WILL NOT BE ACCEPTED**  
STATUTORY PERFORMANCE BOND PURSUANT TO TITLE 34,  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract Amount) Bond # 2131943

KNOW ALL MEN BY THESE PRESENTS:

That Photovoltaic Systems Manufacturing LLC (hereinafter called the Principal), as Principal, and Old Republic Surety, a corporation organized and existing under the laws of the State of Wisconsin, with its principal office in the City of Brookfield, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Glendale, a municipal corporation, (hereinafter called the Obligee), in the amount of Thirty nine thousand three hundred thirty dollars and 64/100s Dollars (\$39,330.64), for the payment whereof; the said Principal and Surety bind themselves, and their heirs, administrators, 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 23rd day of July, 2013, to construct **PROJECT 121305 - TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the contract and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

Witness our hands this 23rd day of July, 2013.

Photovoltaic Systems Manufacturing LLC

Principal Seal

By Robert J. Lawrence

Jean A. Dennis  
Surety Jean A Dennis, Attorney-in-Fact Seal

AEGIS Insurance Associates LLC  
Agency of Record

16573 N 92<sup>nd</sup> St, # 140, Scottsdale, AZ 85260

Agency Address

Telephone Number: 480-991-0308



# OLD REPUBLIC SURETY COMPANY

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint

JEAN A DENNIS, BEVERLY MC COY, OF GLENDALE, AZ

its true and lawful Attorney(s)-in-Fact, with full power and authority, not exceeding \$20,000,000, for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds), as follows

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed This document is not valid unless printed on colored background and is multi-colored This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982 This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982

RESOLVED that, the president, any vice-president, or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company  
(i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary, or  
(ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent, or  
(iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company, and such signature and seal when so used shall have the same force and effect as though manually affixed

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 11TH day of JUNE, 2013

OLD REPUBLIC SURETY COMPANY

Phyllis M Johnson  
Assistant Secretary



Alan Pavlic  
President

STATE OF WISCONSIN, COUNTY OF WAUKESHA-SS

On this 11TH day of JUNE, 2013, personally came before me, Alan Pavlic and Phyllis M Johnson, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say, that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation



Kathryn R. Pearson  
Notary Public  
My commission expires 9/28/2014

### CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked, and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force

52-0001

Signed and sealed at the City of Brookfield, WI this 23rd day of July, 2013



Jean A. Dennis  
Assistant Secretary

OLD REPUBLIC SURETY COMPANY

**THIS DOCUMENT HAS A COLORED BACKGROUND AND IS MULTICOLORED ON THE FACE. THE COMPANY LOGO APPEARS ON THE BACK OF THIS DOCUMENT AS A WATERMARK. IF THESE FEATURES ARE ABSENT, THIS DOCUMENT IS VOID.**

**INDIVIDUAL SURETIES WILL NOT BE ACCEPTED**  
STATUTORY PAYMENT BOND PURSUANT TO TITLE 34,  
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract Amount) Bond # 2131943

KNOW ALL MEN BY THESE PRESENTS:

That, Photovoltaic Systems Manufacturing LLC (hereinafter called the Principal), as Principal, and Old Republic Surety, a corporation organized and existing under the laws of the State of Wisconsin with its principal office in the City of Brookfield, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Glendale, a municipal corporation, (hereinafter called the Oblige), in the amount of Thirty nine thousand three hundred thirty dollars and 64/100s Dollars (\$39,330.64), for the payment whereof; the said Principal and Surety bind themselves, and their heirs, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has entered into a certain written contract with the Oblige, dated the 23rd day of July, 2013, to construct **PROJECT 121305 - TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall promptly pay all monies due to all persons supplying labor or materials to him or his subcontractors in the prosecution of the work provided for in said Contract, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond having been required of the said Principal in order to comply with the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, all rights and remedies on this bond shall inure solely to such persons and shall be determined in accordance with the provisions, conditions, and limitations of said Title, Chapter and Article, to the same extent as if they were copied at length herein.

The prevailing party or any party which recovers judgment on this bond shall be entitled to such reasonable attorney's fees as may be fixed by the court or a judge thereof.

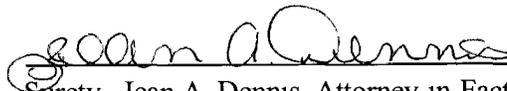
Witness our hands this 23rd day of July, 2013.

Photovoltaic Systems Manufacturing LLC

Principal

Seal

By \_\_\_\_\_

  
\_\_\_\_\_  
Surety Jean A Dennis, Attorney-in-Fact Seal

AEGIS Insurance Associates LLC  
Agency of Record

16573 N 92<sup>nd</sup> St # 140, Scottsdale, AZ 85260

Agency Address

Telephone Number. 480-991-0308



# OLD REPUBLIC SURETY COMPANY

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint

JEAN A DENNIS, BEVERLY MC COY, OF GLENDALE, AZ

its true and lawful Attorney(s)-in-Fact, with full power and authority, not exceeding \$20,000,000, for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds), as follows

ALL WRITTEN INSTRUMENTS

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed This document is not valid unless printed on colored background and is multi-colored. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982 This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982

RESOLVED that, the president, any vice-president, or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds, and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company

- (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary, or
- (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent, or
- (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company, and such signature and seal when so used shall have the same force and effect as though manually affixed

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 11TH day of JUNE, 2013

OLD REPUBLIC SURETY COMPANY

*Phyllis M Johnson*  
Assistant Secretary



*Alan Pavlic*  
President

STATE OF WISCONSIN, COUNTY OF WAUKESHA-SS

On this 11TH day of JUNE, 2013, personally came before me, Alan Pavlic and Phyllis M Johnson, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say, that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation



*Kathryn R. Pearson*  
Notary Public  
My commission expires 9/28/2014

### CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked, and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force

52-0001



Signed and sealed at the City of Brookfield, WI this 23<sup>rd</sup> day of July, 2013

*Jean A. Dennis*  
Assistant Secretary

OLD REPUBLIC SURETY COMPANY

THIS DOCUMENT HAS A COLORED BACKGROUND AND IS MULTICOLORED ON THE FACE. THE COMPANY LOGO APPEARS ON THE BACK OF THIS DOCUMENT AS A WATERMARK. IF THESE FEATURES ARE ABSENT, THIS DOCUMENT IS VOID.



CITY OF GLENDALE, ARIZONA  
PUBLIC WORKS/ENGINEERING DEPARTMENT

CONTRACTOR'S AFFIDAVIT  
REGARDING  
SETTLEMENT OF CLAIMS

**PROJECT 121305 - TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS**

To the City of Glendale, Arizona

Gentlemen:

This is to certify that all lawful claims for materials, rental of equipment and labor used in connection with the construction of the above project, whether by subcontractor or claimant in person, have been duly discharged.

The undersigned, for the consideration of \$ \_\_\_\_\_, as set out in the final pay estimate, as full and complete payment under the terms of the contract, hereby waives and relinquishes any and all further claims or right of lien under, in connection with, or as a result of the above described project. The undersigned further agrees to indemnify and save harmless the City of Glendale against any and all liens, claims of liens, suits, actions, damages, charges, costs, litigation expenses, attorneys' fees and any other and expenses whatsoever, which said City may suffer arising out of the failure of the undersigned to pay for all labor performance and materials furnished for the performance of said installation.

Signed and dated at \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA        )

The foregoing instrument was subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

SUPPLEMENTAL GENERAL CONDITIONS

1. GENERAL: By Ordinance No. 1110 New Series, the City of Glendale adopted the "Uniform Standard Specifications for Public Works Construction," which are sponsored and distributed by the Maricopa Association of Governments. Copies of these documents, with revisions, are on file in the office of the City Engineer of the City of Glendale, and are hereby made a part of these Contract Documents.

Whenever in the Uniform Standard Specifications, the words "The Contracting Agency" are used, the meaning shall be the City of Glendale.

In all cases where ASTM, AASHTO, AWWA, USAG, Federal, City of Phoenix, MAG Specifications, Maricopa County, Arizona State Highway, City of Glendale or other standard specifications are referred to, unless otherwise stated, revisions, supplements or addenda issued on or before the date of this contract, shall prevail. In the event of any conflict between these project specifications and the requirements of the plans, detail drawings, MAG Standard Details and Specifications, these project specifications shall prevail.

2. DEFINITIONS: The following terms, as used in or pertaining to the Contract Documents, are defined as follows:

CITY: The word "City" refers to the City of Glendale, Arizona. The official representative of said City in these proceedings shall be the City Engineer.

CONTRACTOR: The word "Contractor" means the person, firm, or corporation with whom the Contract is made by the City.

MATERIALS: The term "Materials" includes, in addition to materials incorporated in the project, equipment and other material used and/or consumed in the performance of the work.

SUBCONTRACTOR: The word "Subcontractor" includes those having a direct contract with the Contractor and those who furnish material worked to a special design according to the plans and/or specifications for this work, but does not include those who merely furnish materials not so worked.

ENGINEER: The word "Engineer" means a person, firm or corporation duly authorized by the City, to act for the City in staking out the work, inspecting materials and construction, and interpreting plans and specifications.

CONTRACT DOCUMENTS: The words "Contract Documents" mean the Notice to Contractors, Information for Bidders, "Uniform Standard Specifications for Public Works Construction," MAG General Conditions, Supplemental General Conditions, Special Provisions, Supplemental Specifications, Proposal, Contract, Payment Bond, Performance Bond, Certificates of Insurance, Plans and Addenda thereto.

3. PROPOSAL QUANTITIES: It is expressly understood and agreed by the parties hereto that the quantities of the various classes of work to be done and material to be furnished under this Contract, which have been estimated as stated in the Proposal, are only approximate and are to be used SOLELY for the purpose of comparing, on a consistent basis, the proposals offered for the work under this Contract; and the Contractor further agrees that the City will not be held responsible if any of the quantities shall be found incorrect; and the Contractor will not make any claim for damages or for loss of profits because of a difference between the quantities of the various classes of work as estimated and the work actually done. If any error, omission, or mis-statement is found to occur in the estimated quantities, the same shall not invalidate this Contract or release the Contractor from the execution and completion of the whole or any part of the work in accordance with the specifications and the plans herein mentioned, or for the prices herein agreed upon and fixed therefore, or excuse him from any of the obligations or liabilities hereunder, or entitle him to any damages or compensation except as may be provided for in this Contract.

4. WITHDRAWAL OF PROPOSALS: No proposal shall be withdrawn following the opening and reading of the bids for a period of 50 days from the date of opening without the consent of the contracting agency through the body or agent duly authorized to accept or reject the proposal.

5. LOSSES AND DAMAGES: All loss or damage arising out of the nature of the work to be done or from the action of the elements, or from any unforeseen circumstances in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in and/or during the prosecution of the work, or from any casualty whatsoever of every description, shall be sustained and borne by the Contractor at his own cost and expense except as otherwise provided by the contract documents or the laws of the State of Arizona.

6. DUST PREVENTION: The Contractor shall take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this contract. The dust control measures shall be maintained at all times during construction of the project, to the satisfaction of the Engineer, in accordance with the requirements of the "Maricopa County Health Department Air Pollution Control Regulations" which have been adopted pursuant to A.R.S. § 36-779.

The Contractor shall be required to obtain the necessary permit from the Maricopa County Air Pollution Control Bureau, 1001 N. Central Ave., Phoenix, Arizona 85004 - telephone (602) 506-6727.

7. EXCESS MATERIAL: Excess material shall be removed from the work site and wasted at a location approved by the Engineer. Broken concrete and asphalt may be delivered to the Glendale Sanitary Landfill located at 115th Avenue and Glendale Avenue. The prevailing regulations and fee schedule will not be waived for work under this project. All materials, to be disposed of at the landfill, shall be weighed and disposed of at the prevailing rate.

8. STOCKPILE OF MATERIALS: The Contractor may place or stockpile materials in the public right-of-way, if approved by the Engineer, provided they do not prevent access to adjacent properties or prevent compliance with traffic regulations.

Traffic shall not be required to travel over stockpiled materials, and proper dust control shall be maintained.

9. REFUSE COLLECTION ACCESS: At any time the project construction shall require the closure or disruption of traffic in any roadway, alley, or refuse collection easement such that normal refuse collection will be interfered with, the Contractor shall, at least 48 hours prior to causing such closure or disruption, make arrangements with the Field Operations Department in order that refuse collection service can be maintained.

10. CLEAN-UP: After all work under this contract is completed, the Contractor shall remove all loose concrete, lumber, wire, reinforcing, debris, and other materials not incorporated in the work, from the site of the work. Clean-up shall include the removal of all excess pointing mortar materials within pipes and removal of over-size rocks and boulders left after finish grading. The contractor shall provide for the legal disposal of all waste products, debris, etc., and shall make necessary arrangements for such disposal.

11. SHOP DRAWINGS: The Contractor shall provide shop drawings as may be necessary for the prosecution of the work as required by the contract documents. The Engineer shall promptly review all shop drawings. The Engineer's approval of any shop drawing shall not release the Contractor from responsibility for deviations from the contract documents. The approval of any shop drawing which substantially deviates from the requirements of the contract documents shall be evidenced by a change order.

When submitted for the Engineer's review, shop drawings shall bear the contractor's certification that he has reviewed, checked, and approved the shop drawings and that they are in conformance with the requirements of the contract documents.

Portions of the work requiring a shop drawing or sample submission shall not begin until the shop drawing or sample submission has been approved by the Engineer. A copy of each approved shop drawing and each approved sample shall be kept in good order by the Contractor at the site and shall be available to the Engineer.

12. PROTECTION OF FINISHED OR PARTIALLY FINISHED WORK: The Contractor shall properly guard and protect all finished or partially finished work, and shall be responsible for the same until the entire contract is completed and accepted, in writing, by the City. The Contractor shall turn over the entire work in full accordance with the specifications before final settlement shall be made.

13. STATUS OF EMPLOYEES: Contractor shall be responsible for assuring the legal working status of its employees and its subcontractor's employees.

14. LAWS AND REGULATIONS: This Contract shall be governed by and constructed in accordance with the laws of the State of Arizona. The Contractor shall keep himself fully informed of all existing and future City and County Ordinances and Regulations and State and Federal Laws and Occupational Safety and Health Standards (OSHA) in any manner affecting the work herein specified. He shall at all times observe and comply with said Ordinances, Regulations, or Laws.

15. PERMITS: The City has obtained certain required permits which are included in the project specifications, but it will be the duty of the Contractor to determine that all the necessary permits have been obtained. The Contractor shall, at his own expense, obtain all required permits which have not been furnished by the City. A no-fee permit will be issued for work in the City of Glendale right-of-way and easement. (Also see Paragraph 7. Dust Prevention.)

16. ELECTRIC POWER AND WATER: The Contractor shall make his own arrangements for electric power and water. Subject to the convenience of the City, he may be permitted to connect to existing facilities where available, but he shall meter and bear the cost of such power or water. Fire hydrant meters may be obtained from the City of Glendale. Installation and removal of meters should be scheduled through the City's Water Services/Utilities Division at 930-2700. For details and current rates, please visit <http://www.glendaleaz.com/CrossConnection/firehydrantmeterprogram.cfm>.

17. SURVEY CONTROL POINTS AND MONUMENTS: Existing survey monuments indicated on the plans or found during construction shall be protected by the Contractor, and in the event removal is necessary, removal and replacement shall be performed by permission of the Engineer, under direct supervision of the Engineer or his authorized representative. Survey monuments shall be constructed to conform to the requirements of MAG Specifications, Section 405, and Standard Details.

18. EXISTING UTILITIES: The Contractor is hereby advised that the location of all utilities, as shown on the plans, may not be complete nor exact and the Contractor shall satisfy himself as to the exact location of the utilities by contacting Blue Stake or the utility companies before proceeding with the work. After the underground utilities are located by Blue Stake or the utility company, the contractor shall excavate in a careful and prudent manner to prevent unwillful damage to the underground utilities.

In the event the Contractor or its Subcontractor damages an existing, properly identified underground City of Glendale water or sewer line, the Contractor shall be responsible for the repairs at its expense.

The exact location of all existing underground service utilities, whether or not indicated on the plans, shall be determined by the Contractor at no expense to the City, and he shall conduct his work so as to prevent interruption of service or damage to them.

The Contractor shall protect existing utility services and be responsible for their replacement if damaged by him, or to make necessary adjustment in their location, if required, in order to complete the work for his Contract.

Utility companies and other interested parties have been provided with construction plans and the

construction schedule for this project. The Contractor shall comply with MAG Specifications 105.6 to cooperate with the utility companies.

19. MAINTENANCE OF IRRIGATION FACILITIES: Where irrigation facilities interfere with construction, the Contractor shall remove and replace the affected irrigation facilities to its original condition. Final acceptance of replaced facilities will depend upon final approval of the Engineer.

20. OVERHEAD UTILITY LINES AND POLES: Contractor is advised that when work around overhead lines and poles is required on a project the Contractor is required to coordinate with Utility Companies who own and operate overhead lines and poles. The coordination may include, but not be limited to the following activities: pole bracing, de-energizing of lines, and temporary relocations. Contractor is responsible to contact the applicable Utility Company representative and discuss his proposed construction methods; in order to determine what actions the Utility Company must take and the costs related to those actions. The Contractor shall include these costs in the applicable bid items for this project.

The primary and the backup representatives for this review and cost determinations are as follows:

|                         |                  |              |
|-------------------------|------------------|--------------|
| Arizona Public Service: | Mr. Bobby Garza  | 602-371-7989 |
| Qwest:                  | Mr. Ron Floyd    | 602-630-1932 |
| Salt River Project:     | Mr. Tim Rinn     | 602-236-8694 |
| Salt River Project:     | Ms. Mariann Ward | 602-236-6389 |
| Cox Communications:     | Mr. Ron Pint     | 623-328-3529 |
| Cox Communications:     | Ms. Linda Facio  | 623-328-3500 |

21. SOUTHWEST GAS FACILITIES EXPOSED DURING CONSTRUCTION: The Contractor, upon exposing a gas line during construction, shall call SOUTHWEST GAS at 602-271-4277. The Southwest Gas patrolman will respond, usually within an hour, to inspect the line. Minor cuts or abrasions to the pipe coating will be rewrapped and tracer wire will be reconnected at no cost to the City.

22. UNDERGROUND UTILITIES' BEDDING: All water, sewer, storm drain, irrigation and other conduits installed within the City of Glendale shall be bedded from bottom of excavation to one foot above the pipe with granular bedding material meeting the requirements of Section 601.4.6 of MAG Uniform Standard Specifications. The initial bedding under the pipe shall follow City of Glendale Detail G-690.

23. SEWER SERVICE LINES: The Contractor shall be responsible for locating, and protecting from damage during construction, all sewer service lines within the project which are not owned by the City. Contractor will be permitted to review the "as-builts" to assist Contractor in locating the non-City owned sewer service lines. These "as-builts" were prepared, and supplied to the City, by private developers or contractors who installed the non-City owned sewer service lines. Therefore, the City does not guarantee or warranty the accuracy of such "as-builts" and the contractor, as a condition for being allowed to review such "as-builts", hereby agrees to hold the City harmless for any and all damages or other expenses contractor may incur as a result of any inaccuracies or incorrect information in these "as-builts".

24. RIGHTS-OF-WAY: The City will provide rights-of-way and easements for all work specified in this Contract, and the Contractor shall not enter or occupy with man, tools, equipment or materials any private ground outside the property of the City of Glendale, Maricopa County, Arizona, without the consent of the property owner.

25. SUBCONTRACTS: Subcontracts shall be in accordance with, and the Contractor shall be bound by, the following provisions:

All subcontracts shall be subject to the approval of the City.

All subcontracts shall be in writing and shall provide that all work to be performed thereunder shall be performed in accordance with the terms of the Contract.

Certified copies of any and all subcontracts shall be furnished to the City Engineering Department; however, prices may be omitted.

Subcontracts shall conform to the regulations governing employment of labor.

The subcontracting of any part of the work will in no way relieve the Contractor of his responsibility under the Contract.

26. **PRE-CONSTRUCTION CONFERENCE:** After completion of the Contract Documents, to include bonds, insurance and signatures, and prior to the commencement of any work on the project, the Engineer will schedule a Pre-Construction Conference. This will be held at the City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona.

The purpose of this Conference is to establish a working relationship between the Contractor, Utility Companies, and the Engineer. The agenda will include critical elements of the construction schedule, procedures for handling shop drawings and other submittals, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility companies, emergency telephone numbers for all representatives involved in the course of construction, and establishment of the Notice to Proceed date.

Minimum attendance by the Contractor shall be a responsible official of the company/corporation, who is authorized to execute and sign documents on behalf of the company/corporation.

27. **OVERTIME:**

Regular Work Hours: The work required to be performed by the Plans and Specifications for the Project shall be performed only during regular working hours, unless the City has authorized overtime work in accordance with the procedures set forth below. Regular working hours shall be defined as one 8-1/2 hour shift per day, Monday through Friday, or, upon prior approval of the City, one 10-1/2 hour shift per day on a compressed four day work week during Monday through Friday. Regular working hours shall not include Saturdays, Sundays or City recognized legal holidays.

Authorization and Costs: If the Contractor desires to schedule work for times other than regular work hours (overtime), the Contractor shall make a written request to the City at least two business days prior to the scheduled overtime. The City reserves the right to deny the request to work overtime based on the best interest and needs of the City. If an overtime request is denied, the City may, at its sole discretion, extend the contract time at no additional costs to the City.

In the event the Contractor does perform work overtime, with or without the prior approval of the City, the Contractor shall be responsible to the City for all additional costs that may be incurred by the City as a result of the Contractor's overtime work, including costs for engineering, inspections, testing, surveying and construction administration, all in accordance with MAG Section 108.5. However, the Contractor shall not be responsible for City's costs incurred as a result of overtime work requested by the City or overtime work resulting from an emergency which is not the responsibility of the Contractor or its employees, subcontractors or suppliers. The City's cost will be billed directly to the Contractor or may, at the City's option, be deducted from monies due the Contractor.

28. **CONTRACTOR'S CONSTRUCTION SCHEDULE:** Concurrently, with the execution of the contract and prior to the pre construction conference, the Contractor shall submit a preliminary schedule for the Engineer's review and acceptance. The schedule shall be in sufficient detail to allow the Engineer to determine if the proposed schedule will conform to an acceptable program of construction operations, as determined by the contracting agency. Within ten calendar days after the preliminary schedule, described above, has been accepted by the Engineer, the Contractor shall submit a progress schedule, utilizing the critical path method scheduling technique, showing the order in which he proposes to carry out the work, the dates on which he will start each phase of the work, and the contemplated date for completion of each phase. The Contractor shall not be permitted to commence construction until the schedule complying with this paragraph has been submitted to the

City. The Contractor will not be granted any extension to the contract time or compensation for any damages as a result of the City's refusal to allow Contractor to commence construction until the critical path method progress schedule has been submitted and accepted by the Engineer.

The critical path method (CPM) scheduling technique requires a breakdown of the entire work into individual tasks and an analysis of the number of days required to perform each task. The schedule submitted to the City should highlight and identify the critical path for the project. After the work is in progress, the Contractor shall submit supplementary progress schedules, using the critical path method technique, of the progress to date and projection for completion. The supplementary progress schedules shall be submitted with each pay request in accordance with the paragraph, "Payments to Contractors," of these Supplemental General Conditions. The progress schedules shall be subject to the acceptance of the Engineer. In the event the Contractor fails to submit a supplementary progress schedule acceptable to the Engineer, the City may withhold further progress payments to the Contractor until the Contractor submits an acceptable supplementary progress schedule, which is accepted by the Engineer, to the City. Schedule changes requiring an increase in the City's engineering personnel on the project shall not be put into effect until the Engineer has approved such increase and made arrangements for the required additional personnel.

29. CHARACTER OF WORKMEN: None but skilled foremen and workmen shall be employed on work requiring special qualifications. When required by the Engineer, the Contractor shall discharge any person who is, in the opinion of the Engineer, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. The Contractor shall keep the City harmless from damages or claims for compensation that may occur in the enforcement of this section of the specifications.

30. HINDRANCES AND DELAYS: Except as otherwise provided herein, no charge shall be made by the Contractor for hindrances or delays from any cause during the progress of the work embraced in this Contract; but such delays, if due to no fault or neglect of the Contractor, shall entitle the Contractor to an extension of time allowed for completing the work, sufficient to compensate for the delay, the amount of the delay to be determined by the Engineer, provided the Contractor shall give said Engineer immediate notice in writing of the cause of such delay.

30.1 Delay: In the event of a delay for which the City is solely responsible, which is unreasonable under the circumstances and which was not within the contemplation of City and Contractor at the time this Contract is executed, City and Contractor shall negotiate, in good faith, a payment by the City to Contractor for the expenses incurred by Contractor as a result of such delay, in accordance with the City of Glendale Engineering Department's POLICY STATEMENT FOR CALCULATING DELAYS AND DAMAGES. This provision shall not be construed to void any provision in the contract which requires notice of delay or provides for liquidated damages. However, if the delay is the result of any act or neglect of a third party, including the architect, engineer or other contractor employed by the City, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably foreseeable, unavoidable casualties, or any causes beyond the Contractor's control, the Contractor shall not be entitled to any payments or compensation for expenses incurred as a result of such delay, but the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine. No extension or compensation will be granted for any delay which is the result, wholly or partially, of any act or neglect of Contractor or any Subcontractor hired by Contractor.

31. LIQUIDATED DAMAGES:

31.1 Should the contractor fail to substantially complete the work under this contract within the time for completion stated in the paragraph "Time of Completion," in the Information for Bidders, then the contractor shall pay the City of Glendale, Arizona, liquidated damages, pursuant to the provisions of Section 108.9, Standard Specifications for Public Works Construction, Maricopa Association of Governments, until the work is substantially complete.

31.2 Should the contractor fail to fully and finally complete the work under this contract within the time for completion set forth in the paragraph "Time of Completion," in the Information for Bidders, even though the contractor has achieved substantial completion of the work within such time, then the

contractor shall pay the City of Glendale, liquidated damages (pursuant to the provisions of Section 108.9, Standard Specifications for Public Works Construction, Maricopa Association of Governments), in an amount equal to 100% of the applicable liquidated damage rate set forth in MAG Section 108.9 for each and every calendar day of delay until the work is fully and finally complete and accepted.

31.3 The date of substantial completion shall be the date when the work is sufficiently complete, in accordance with the contract documents, so the owner can fully occupy and utilize the work or designated portion thereof for the use for which it is intended, with all the project's parts and systems operable as required by the contract documents and all the work is complete, accessible, operable, and usable by the owner for its intended purpose(s), and all parts, systems and sitework are 100% complete and cleaned for the owner's use. Only incidental corrective work and final cleaning (if required), beyond cleaning needed for the owner's full use, may remain for final completion.

31.4 Full and final completion shall be that date when all work under the project, including incidental corrective work under punch list and final cleaning, has been completed and the entire project is accepted by the owner.

32. PAYMENTS TO CONTRACTOR: The measurements of quantities and the payments to the Contractor shall be in accordance with MAG Uniform Standard Specifications for Public Works Construction, Part 100 - General Conditions, Section 109 - Measurements and Payments.

Payments will be made on the basis of itemized, monthly statements prepared by the City and signed by the Contractor. The Contractor shall submit an itemized, duly certified and approved estimate for work completed through the last day of the preceding month in accordance with MAG Specifications, as amended by these Supplemental General Conditions. Upon approval of the pay estimate, the City will mail the check directly to the Contractor.

The pay estimate shall be accompanied by an updated progress schedule as required by these Supplemental General Conditions and a cash flow report when required by the Special Provisions. Approval of progress payments shall be conditional upon submittal of progress schedules and cash flow reports, when required, which are acceptable to the Engineer.

Upon 100% completion and acceptance of the project, and with the request for final payment, the Contractor shall complete and submit the "Contractor's Affidavit Regarding Settlement of Claims" form which is included in these specifications. Before final payment and release of retention, Contractor must arrange for its Surety to provide the City with a fully executed AIA Consent of Surety form. To avoid delays in the final payment, the Surety may send the Consent of Surety directly to the City via fax at (623) 915-2861, and mail the original to the City of Glendale Engineering Department, 5850 West Glendale Avenue, Glendale, Arizona 85301. Should any ambiguity arise between the Contract and these Conditions, the provisions of the Contract shall prevail.

33. WARRANTY: This project shall have a 2 year warranty. The warranty period shall begin upon final acceptance of the work by the City of Glendale.

\*\*\*END OF SUPPLEMENTAL GENERAL CONDITIONS\*\*\*

SPECIAL PROVISIONS

1. **SCOPE OF WORK:** As specified in the technical specifications, provide labor and materials to repair/replace the solar lighting systems for approx. 49 bus shelters designated throughout the City.
2. **DEFINITIONS:**
  - A. **Section:** Reference to a Section on the plans or in these Specifications shall mean a Section of the Uniform Standard Specifications for Public Works Construction, sponsored and distributed by Maricopa Association of Governments (MAG), latest revision. The provisions of MAG Uniform Standard Specifications and Details for Public Works Construction, which are not altered or modified by the drawings or by these Special Provisions or by any subsequently issued Addendum, shall apply to the contract even though the Contractor's attention is not specifically drawn to such provisions.
  - B. **Standard Detail:** Reference to a MAG Standard Detail (MAG S.D.) on the plans or in these specifications shall mean a standard detail drawing in the latest revision of the Uniform Standard Specifications for Public Works Construction, sponsored and distributed by Maricopa Association of Governments. City of Glendale Standard Detail (C.O.G. S.D.) shall mean a standard detail drawing in the City of Glendale's Engineering Design and Construction Standards, latest revision. City of Phoenix Standard Detail (C.O.P. S.D.) shall mean a standard detail drawing in the Phoenix Supplemental Standard Details for Public Works Construction, latest revision.
3. **SUSPENSION OF WORK:** The Engineer reserves the right to suspend the work wholly or in part if deemed necessary for the best interest of the City. This suspension will be without compensation to the Contractor, other than to adjust the contract time in accordance with MAG Section 108.
4. **COMPLIANCE WITH MANUFACTURER'S INSTRUCTIONS:** In all instances wherein the item and/or specifications require installation or construction in accordance with either manufacturer's or supplier's recommendations and/or instructions, said recommendations and/or instructions shall be submitted with the applicable portions clearly marked for approval prior to the commencement of work on that item or portion of the contract.
5. **TRAFFIC REGULATIONS:**
  - 5.1 All traffic affected by this construction shall be regulated in accordance with the City of Phoenix "Traffic Barricade Manual," the "Manual of Uniform Traffic Control Devices" and these Special Provisions. The following traffic restrictions are minimum requirements throughout the construction period:
    - 5.1.1 All references in the City of Phoenix "Traffic Barricade Manual" and the "Manual of Uniform Traffic Control Devices" to "arterial" and/or "collector" streets shall mean "arterial and/or major arterial" streets and are referred to as "major" streets in the following sections.
    - 5.1.2 A minimum of two travel lanes (one for each direction) shall be maintained open to traffic at all times on all major streets. All work that enters or crosses a major street must be done at times other than 6:00 a.m. to 8:30 a.m., and 4:00 p.m. to 6:00 p.m. unless approved by the Transportation Director or Designee.
    - 5.1.3 A travel lane shall be defined as ten (10) feet of roadway not obstructed by traffic control devices with a safe motor vehicle operating speed of twenty-five (25) miles per hour.
    - 5.1.4 A travel lane will not be considered as open to traffic until it has been graded reasonably smooth and is paved with a minimum of two (2) inches of asphalt. This shall be considered temporary pavement and shall be removed completely before proceeding with final surfacing.
    - 5.1.5 The Contractor shall provide and maintain all required and requested traffic control

devices to protect and guide traffic for all work in the construction area.

5.1.6 Intersection area shall be defined as all of the area within the right-of-way of intersecting streets, plus two-hundred fifty (250) feet beyond the center of the intersected streets on all legs of the intersection.

5.1.7 The Contractor shall maintain all existing traffic signs erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If any signs interfere with construction, the Contractor shall notify the Transportation Department at least 48 hours in advance before covering or removing said signage. The Contractor shall be responsible for reinstalling all signs removed or covered and verifying they are correctly placed. The Transportation Department will inspect all signage prior to completion of the project.

5.1.8 Local access to all properties on the subject project shall be maintained at all possible times in the form of a safe and reasonable direct route to at least one of the above defined major streets. Whenever local access cannot be maintained, the Contractor shall notify the affected property owner or user and the Engineer at least Seventy-Two (72) hours in advance.

5.1.9 The Contractor shall be required to provide a uniformed off-duty City of Glendale police officer to assist with traffic control whenever traffic in any one direction is restricted to one lane at a signalized major intersection or at other locations if it should become necessary in the opinion of the Transportation Director or Designee. If the Contractor chooses to use a police officer at other locations during peak traffic hours or to assist with his other traffic control operations, the cost shall be included in the lump sum for "Traffic Control" and not paid out of the hours allowed for "Off Duty Glendale Police Officer." All requests for off-duty officers will be made through the Glendale Police Department, Off-Duty Work Administrator. The Contractor must provide evidence of workmen's compensation coverage before any officer will be permitted to work.

Measurement for payment of the uniformed off-duty Glendale police officer hours will be made by the actual number of man-hours used for traffic control at signalized major intersections or as approved by the Engineer. Because the quantity of hours is dependent on the Contractors schedule of activities, the unit price bid for this item will be administered as a contingency bid item and any adjustment in hours will not be subject to the 20 percent limitation.

Payment for the off-duty Glendale police officer will be made at the contract unit price bid per hour for OFF DUTY GLENDALE POLICE OFFICER and shall include the net hourly rate of \$35.00 per police officer with a three (3) hour minimum. The net hourly rate shall be increased to include withholding for Federal, State, FICA, Medicare, Workmen's Compensation insurance and any payroll administrative costs.

5.1.10 The Contractor shall prepare a traffic control plan for the project and submit it to the City Transportation Director or Designee for review and approval at least fifteen (15) working days prior to the start of construction. The traffic control plan must be submitted through the City of Glendale on-Line Traffic Control Plan application process at [www.glendaleaz.com/transportation/TrafficControlForm.cfm](http://www.glendaleaz.com/transportation/TrafficControlForm.cfm). The traffic control plan shall include message boards installed a minimum of seven (7) working days prior to restrictions when requested by the Transportation Director or Designee, additional public notification shall be required for major restrictions that impact adjacent stakeholders. Any changes to the traffic control plan during construction shall be submitted to the City Transportation Director or Designee for approval at least seventy-two (72) hours before implementation.

Payment for this item shall be made at the contract lump sum price for TRAFFIC CONTROL.

- 5.1.11 It is the City's desire to maintain one lane of traffic in each direction on minor streets whenever possible. Should it become imperative for the Contractor to close off a portion of any minor street or reduce the travel way to a single lane, he/she must obtain approval from the City Transportation Director or Designee Seventy-Two (72) hours prior to implementing a traffic control change. He/she must provide all the necessary signs to detour traffic and/or flag person to control traffic for a single lane. The maximum amount of time that the street may be closed is from 9:00 a.m. until 4:00 p.m.
- 5.1.12 Flagger Requirements: All flaggers shall be properly trained and certified by a recognized source, such as the American Traffic Safety Services Association (ATSSA) or National Safety Council, and shall carry with them at all times proof that training and certification requirements have been completed within the last two years.
6. **ENERGIZED AERIAL ELECTRICAL POWER LINES:** The utility company maintains energized aerial electrical power lines in the immediate vicinity of this project. Do not consider these lines to be insulated. Construction personnel working in proximity to these lines are exposed to an extreme hazard from electrical shock. Contractors, their employees, and all other construction personnel working on this project must be warned of the danger and instructed to take adequate protective measures, including maintaining a minimum ten (10) feet clearance between the lines and all construction equipment and personnel. (See: OSHA Standard 1926.550(a)15.) As an additional safety precaution, Contractors should also be instructed to call the utility company to arrange, if possible, to have these lines de-energized or relocated when the work reaches their immediate vicinity. The cost of such temporary arrangements would be borne by the Contractor. The utility company can often respond to such requests if two days advance notice is given, but some situations may require up to sixty (60) days lead time for relocation or other arrangements.
7. **RECORD DRAWINGS:** The Contractor shall maintain one set of contract drawings with all changes, deviations, additions and deletions clearly marked thereon. Upon completion of the work, this set of drawings, shall be marked "RECORD DRAWINGS," dated, and delivered to the Engineer prior to approval of the Contractor's final payment request.
8. **CASH FLOW REPORT:** The Contractor shall prepare a Cash Flow Report for projected monthly project cash flow on a City provided form and submit it for approval prior to issuance of the Notice to Proceed. The accumulation of monthly pay estimate costs shall be plotted versus time in accordance with the proposed construction schedule. After approval, the Contractor shall submit an updated Cash Flow Report prior to the receipt of each Progress Payment. Each updated Cash Flow Report shall reflect the Contractor's actual monthly payment versus the actual elapsed contract time.

At the City's request, if the projected quarterly project cash flow varies by more than ten percent of the total contract price, the Contractor shall prepare a revised Cash Flow Report. Each revised Cash Flow Report is subject to approval by the City prior to issuance of the progress payment.

Revisions to the report resulting from Contractor initiated delays or work schedule changes shall be at no cost to the City. Any revisions required by City initiated delays or changes to the work shall be paid as an integral part of the approved Change Order.

9. **ALLOWANCE FOR CONSTRUCTION CONTINGENCIES:** Bid schedule includes a lump sum contingency allowance. This allowance is at all times the property of the City and is for the sole purpose of reimbursing Contractor for any unforeseen work not apparent at the time of bidding or additional work requested by the CITY OF GLENDALE.

No work anticipated for reimbursement under this Bid Item shall be initiated by Contractor until Contractor, City of Glendale Representative and City of Glendale agree on the scope and cost to perform the additional work. The Contractor shall prepare and submit to City of Glendale Representative a cost itemization and summary for the additional work. City of Glendale Representative and City of Glendale shall review and approve prior to Contractor proceeding with any additional work. Any portion of the stated sum not expended remains the property of the City of Glendale.

Work under this section shall consist of any additional work identified by the owner and contractor due to construction activity. All work under this item shall be itemized as per MAG requirements and deducted from the set amount of \$4,000.00. All work under this section shall include but is not limited to all necessary materials, tools, layout, survey and labor required to complete each task.

Measurement and payment for this item shall be made on an individual basis per task and as described above. Limit for this item is set at \$4,000.00 on the bid form, under line item ALLOWANCE FOR CONSTRUCTION CONTINGENCY.

\*\*\*END OF SPECIAL PROVISIONS\*\*\*



# Project Life Cycle Cash Flow Schedule

Project No 121305 Date \_\_\_\_\_

Project Name TRANSIT SOLAR BUS STOPS AND IMPROVEMENTS

Company Name \_\_\_\_\_

Project Start Date  Project Completion Date

Original  Updated  Revised

|        |               | Estimated |       | Actual |       |
|--------|---------------|-----------|-------|--------|-------|
| Qtr    | Fiscal Yr     | Amount    | Accum | Amount | Accum |
| 1st    | 07/11 - 09/11 |           |       |        |       |
| 2nd    | 10/11 - 12/11 |           |       |        |       |
| 3rd    | 01/12 - 03-12 |           |       |        |       |
| 4th    | 04/12 - 06/12 |           |       |        |       |
| 1st    | 07/12 - 09/12 |           |       |        |       |
| 2nd    | 10/12 - 12/12 |           |       |        |       |
| 3rd    | 01/13 - 03/13 |           |       |        |       |
| 4th    | 04/13 - 06/13 |           |       |        |       |
| 1st    | 07/13 - 09/13 |           |       |        |       |
| 2nd    | 10/13 - 12/13 |           |       |        |       |
| 3rd    | 01/14 - 03/14 |           |       |        |       |
| 4th    | 04/14 - 06/14 |           |       |        |       |
| 1st    | 07/14 - 09/14 |           |       |        |       |
| 2nd    | 10/14 - 12/14 |           |       |        |       |
| 3rd    | 01/15 - 03/15 |           |       |        |       |
| 4th    | 04/15 06/15   |           |       |        |       |
| 1st    | 07/15 - 09/15 |           |       |        |       |
| 2nd    | 10/15 - 12/15 |           |       |        |       |
| 3rd    | 01/16- 03/16  |           |       |        |       |
| 4th    | 04/16- 06/16  |           |       |        |       |
| Totals |               | \$ -      | \$ -  | \$ -   | \$ -  |

\* COG's fiscal year is July 1, (current year) through June 30, (following year)

|                                  |             |
|----------------------------------|-------------|
| <b>For Engineering Use Only:</b> |             |
| Account No: _____                | PO No _____ |

**DAVIS BACON FEDERAL WAGE DECISION**

**HEAVY**

General Decision Number: AZ130018 04/19/2013 AZ18

Superseded General Decision Number: AZ20120023

State: Arizona

Construction Type: Heavy  
 HEAVY CONSTRUCTION, Includes Water and Sewer Lines, Heavy  
 Construction on Treatment Plant Sites and Pipeline Construction

County: Maricopa County in Arizona.

HEAVY CONSTRUCTION PROJECTS (DOES NOT INCLUDE DAM CONSTRUCTION)

| Modification Number | Publication Date |
|---------------------|------------------|
| 0                   | 01/04/2013       |
| 1                   | 01/11/2013       |
| 2                   | 04/19/2013       |

BOIL0627-004 01/01/2012

|                  | Rates    | Fringes |
|------------------|----------|---------|
| BOILERMAKER..... | \$ 31.39 | 25.46   |

BRAZ0003-010 07/01/2010

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| BRICKLAYER..... | \$ 24.62 | 4.57    |

ELEC0640-006 09/01/2012

|                  | Rates    | Fringes |
|------------------|----------|---------|
| ELECTRICIAN..... | \$ 25.64 | 3%+7.71 |

ELEC0769-002 05/01/2012

|                                    | Rates    | Fringes  |
|------------------------------------|----------|----------|
| Line Construction:<br>Lineman..... | \$ 39.63 | 19%+5.00 |

ENGI0428-008 01/01/2012

|                          | Rates    | Fringes |
|--------------------------|----------|---------|
| Power Equipment Operator |          |         |
| Group 1.....             | \$ 19.89 | 9.34    |
| Group 2.....             | \$ 23.16 | 9.34    |
| Group 3.....             | \$ 24.24 | 9.34    |
| Group 4.....             | \$ 25.27 | 9.34    |

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Small Self-Propelled Compactor (with blade),  
 Bobcat/Skidsteer/Skid Loader, Oiler

GROUP 2: Self-Propelled Compactor (with blade), Grader/Blade (rough), Scraper, Tractor, Crane (less than 15 tons)

GROUP 3: Grade/Blade (Finish), Crawler-Type Tractor, Crane (over 15 tons & less than 100 ton), Tower Crane

GROUP 4: Crane (100 ton)

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ENGI0428-015 02/01/2012

|   | Rates    | Fringes |
|---|----------|---------|
| POWER EQUIPMENT OPERATOR:<br>(PIPELINE) |          |         |
| Group 1.....                            | \$ 36.20 | 15.01   |
| Group 3.....                            | \$ 18.52 | 15.01   |

Group 1: Backhoe, Boring Machine, Boom Operator, Bulldozer, Trackhoe

Group 3: Oiler

-----  
IRON0075-009 01/01/2013

|                             | Rates    | Fringes |
|-----------------------------|----------|---------|
| IRONWORKER, STRUCTURAL..... | \$ 26.52 | 20.65   |

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson  
 Zone 2: 050 to 100 miles - Add \$4.00  
 Zone 3: 100 to 150 miles - Add \$5.00  
 Zone 4: 150 miles & over - Add \$6.50

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PAIN0086-002 04/01/2012

|                           | Rates    | Fringes |
|---------------------------|----------|---------|
| PAINTER (Brush Only)..... | \$ 19.35 | 4.75    |

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\* PLUM0469-004 07/01/2012

|             | Rates    | Fringes |
|-------------|----------|---------|
| PLUMBER     |          |         |
| Zone A..... | \$ 33.00 | 15.30   |

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SUAZ2012-006 05/17/2012

|                                   | Rates    | Fringes |
|-----------------------------------|----------|---------|
| CARPENTER (Form Work Only).....   | \$ 20.80 | 4.07    |
| CARPENTER, Excludes Form Work.... | \$ 21.98 | 5.38    |
| CEMENT MASON/CONCRETE FINISHER... | \$ 18.76 | 2.12    |
| INSTALLER - SIGN.....             | \$ 25.42 | 0.00    |
| IRONWORKER, REINFORCING.....      | \$ 20.66 | 13.59   |

|  |          |      |
|--|----------|------|
| LABORER: Asphalt<br>Raker/Shoveler/Spreader.....           | \$ 15.76 | 4.42 |
| LABORER: Common or General.....                            | \$ 14.36 | 3.97 |
| LABORER: Concrete Saw (Hand<br>Held/Walk Behind).....      | \$ 17.00 | 4.55 |
| LABORER: Fence Erection.....                               | \$ 10.32 | 2.24 |
| LABORER: Grade Checker.....                                | \$ 18.14 | 4.55 |
| LABORER: Landscape &<br>Irrigation.....                    | \$ 11.01 | 0.37 |
| LABORER: Mason Tender - Brick...                           | \$ 14.55 | 4.20 |
| LABORER: Mason Tender -<br>Cement/Concrete.....            | \$ 15.34 | 4.20 |
| LABORER: Pipelayer.....                                    | \$ 14.94 | 3.51 |
| LABORER: Power Tool Operator....                           | \$ 16.57 | 4.20 |
| LABORER: Railroad<br>Construction Laborer.....             | \$ 16.80 | 4.20 |
| OPERATOR:<br>Backhoe/Excavator/Trackhoe.....               | \$ 19.37 | 3.59 |
| OPERATOR: Bulldozer.....                                   | \$ 20.57 | 6.16 |
| OPERATOR: Drill.....                                       | \$ 20.57 | 4.78 |
| OPERATOR: Forklift.....                                    | \$ 20.38 | 4.75 |
| OPERATOR: Grade Checker.....                               | \$ 21.68 | 6.31 |
| OPERATOR: Loader (Front End)....                           | \$ 20.31 | 3.84 |
| OPERATOR: Mechanic.....                                    | \$ 22.23 | 5.78 |
| OPERATOR: Paver (Asphalt,<br>Aggregate, and Concrete)..... | \$ 17.07 | 3.20 |
| OPERATOR: Roller.....                                      | \$ 21.34 | 8.36 |
| OPERATOR: Rotomill.....                                    | \$ 21.88 | 6.39 |
| OPERATOR: Screed.....                                      | \$ 16.82 | 2.52 |
| OPERATOR: Trencher.....                                    | \$ 14.21 | 0.94 |
| OPERATOR: Broom/Sweeper.....                               | \$ 15.40 | 2.45 |
| PAINTER: Pavement<br>Marking/Parking Lot Striping.....     | \$ 19.94 | 4.10 |
| PAINTER: Roller and Spray.....                             | \$ 20.65 | 4.45 |

|                                  |          |      |
|----------------------------------|----------|------|
| PIPEFITTER.....                  | \$ 23.97 | 6.78 |
| TRUCK DRIVER: 3 Axle Truck.....  | \$ 27.53 | 1.16 |
| TRUCK DRIVER: Dump Truck.....    | \$ 14.37 | 1.16 |
| TRUCK DRIVER: Flatbed Truck..... | \$ 12.50 | 1.48 |
| TRUCK DRIVER: Hydroseeder.....   | \$ 17.32 | 0.00 |
| TRUCK DRIVER: Water Truck.....   | \$ 16.46 | 3.42 |

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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 (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the 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.

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END OF GENERAL DECISION

# Federal Transit Administration (FTA) Clauses

## 1. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## 2. Cargo Preference

The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## 3. Energy Conservation Requirements

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## 4. Access to Records and Reports

The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

FTA does not require the inclusion of these requirements in subcontracts.

## 5. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## 6. No Government Obligation to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any

other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## 7. Program Fraud and False or Fraudulent Statements and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## 8. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## 9. Civil Rights Requirements

Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract: (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue. (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## 10. Disadvantaged Business Enterprise

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. A separate contract goal of **0 % DBE participation** has been established for this procurement.

The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Glendale deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

## 11. ADA Access (Access for Individuals with Disabilities)

The contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities, with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the contractor agrees to comply with applicable implementing Federal regulations, and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing.

## 12. Prompt Payment

The Contractor is required to pay all Subcontractors for all work that the Subcontractor has satisfactorily completed, no later than thirty (30) business days after the Contractor has received payment from the City of Glendale.

## 13. Recycled Products

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## 15. Government-Wide Debarment and Suspension (non procurement)

In accordance with the U.S. Office of Management and Budget (OMB) "Guidelines on Government-wide Debarment and Suspension (Nonprocurement)" 2 C.F.R. Part 180 and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, Contractor must provide certification that neither it nor its "principals" are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency. Contractor shall submit with their bid submittal a completed "Debarment and Suspension" form, which is located in the IFB. Contractor shall also include these requirements in each subcontract exceeding \$25,000 financed in whole or part with federal assistance provided by FTA.

## 16. Contract Work Hours and Safety Standards

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.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph (i) 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 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 (i) 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 (i) of this section.

Withholding for unpaid wages and liquidated damages - The City of Glendale 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 (i) of this section.

Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (i) through (iv) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (i) through (iv) of this section.

### 17. Seismic Safety Requirements

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

### 18. Davis-Bacon and Copeland Anti-Kickback Acts

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18 36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3 11) enumerated at 29 CFR 5.5(a) and reproduced below. The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts' requirements are satisfied.

### 19. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**Federal  
Regulations:  
Part 3**

**Labor Standards Provisions  
Applicable to Contracts  
Covering Federally Financed  
and Assisted Construction**

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**Title 29, Part 3 of the  
Code of Federal Regulations**

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

**WH – 1244  
(Revised December 2008)**

**PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES**

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**Section Contents**

§ 3.1 Purpose and scope.

§ 3.2 Definitions.

§ 3.3 Weekly statement with respect to payment of wages.

§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

§ 3.7 Applications for the approval of the Secretary of Labor.

§ 3.8 Action by the Secretary of Labor upon applications.

§ 3.9 Prohibited payroll deductions.

§ 3.10 Methods of payment of wages.

§ 3.11 Regulations part of contract.

**Authority:** R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01-2008, and Employment Standards Order No. 2001-01.

**Source:** 29 FR 97, Jan. 4, 1964, unless otherwise noted.

**§ 3.1 Purpose and scope.**

This part prescribes "anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

**§ 3.2 Definitions.**

As used in the regulations in this part:

(a) The terms *building* or *work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping

stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building or work* within the meaning of the regulations in this part.

(b) The terms *construction, prosecution, completion, or repair* mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms *public building or public work* include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term *building or work financed in whole or in part by loans or grants from the United States* includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is *employed and receiving wages*, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term *any affiliated person* includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term *Federal agency* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov 27, 1973]

### **§ 3.3 Weekly statement with respect to payment of wages.**

(a) As used in this section, the term *employee* shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the

wages paid each of its employees engaged on work covered by this part 3 and part 5 of this title during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on the back of Form WH 347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of Form WH 347 may be obtained from the Government contracting or sponsoring agency or from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(c) The requirements of this section shall not apply to any contract of \$2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982; 73 FR 77511, Dec. 19, 2008]

**§ 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.**

(a) Each weekly statement required under §3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

[29 FR 97, Jan 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

**§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.**

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A *bona fide prepayment of wages* is

considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: *Provided, however,* That the following standards are met:

(1) The deduction is not otherwise prohibited by law,

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended,

and part 531 of this title. When such a deduction is made the additional records required under §516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

### **§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.**

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under §3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

### **§ 3.7 Applications for the approval of the Secretary of Labor.**

Any application for the making of payroll deductions under §3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of §3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of §3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan 4, 1964, as amended at 36 FR 9771, May 28, 1971]

**§ 3.8 Action by the Secretary of Labor upon applications.**

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of §3.6; and shall notify the applicant in writing of his decision

**§ 3.9 Prohibited payroll deductions.**

Deductions not elsewhere provided for by this part and which are not found to be permissible under §3.6 are prohibited.

**§ 3.10 Methods of payment of wages.**

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

**§ 3.11 Regulations part of contract.**

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see §5.5(a) of this subtitle.

# **Federal Regulations: Part 5**

**Labor Standards Provisions**

**Applicable To Contracts**

**Covering Federally Financed  
and Assisted Construction**

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**Title 29, Part 5 of the  
Code of Federal Regulations**

**U.S. Department of Labor  
Wage and Hour Division**

**WH Publication 1244  
(Revised May 2011)**

1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).

8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 3550(a)(4), as amended).

9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).

10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).

11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.

12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).

13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).

14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).

15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).

16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).

17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).

18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).

19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).

20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).

21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

22. Appalachian Regional Development Act of 1965 (sec. 402,

79 Stat. 21; 40 U.S.C. App. 402).

23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).

26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).

27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 3000-3(b)(1)(H)).

30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slim clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b),

79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4)). *Note.* Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

#### § 5.2 Definitions.

(a) The term *Secretary* includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term *Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term *Federal agency* means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in §5.1.

(d) The term *Agency Head* means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term *Contracting Officer* means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term *labor standards* as used in this part means the

requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in §5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term *United States or the District of Columbia* means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term *contract* means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in §5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms *building or work* generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as 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, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a *building or work* within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms *construction, prosecution, completion, or repair* mean the following:

(1) All types of work done on a particular building or work at

the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of paragraph (i) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation—

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

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (i)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (i)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (i)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not "construction, prosecution, completion, or repair" (see *Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.)*, 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term *public building or public work* includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term *site of the work* is defined as follows:

(1) *The site of the work* is the physical place or places where the building or work called for in the contract will remain; and 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 contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the *site of the work*, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the *site of the work* as defined in paragraph (l)(1) of this section;

(3) Not included in the *site of the work* are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool 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 site of the work as stated in paragraph (l)(1) of this section, are not included in the *site of the work*. Such permanent, previously established facilities are not part of the *site of the work*, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term *laborer or mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term *laborer or mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms *apprentice*, *trainee*, and *helper* are defined as follows:

(1) *Apprentice* means (i) a person employed 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 Bureau, or (ii) a person in the 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;

(2) *Trainee* means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to *apprentices* and *trainees* employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of "helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A "helper" classification will be added to wage determinations pursuant to §5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is *employed* regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term *wages* means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was

communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term *wage determination* includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of §1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55 FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20, 2000; 65 FR 80278, Dec. 20, 2000]

#### §§ 5.3-5.4 [Reserved]

#### § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in §5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(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 rebates 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; and

(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, 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 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 (write in name of Federal Agency or the loan or grant recipient) 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 (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 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 (write in name of appropriate federal agency) 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 applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). 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 (write in name of appropriate federal agency) 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 applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), 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 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 231 of title 31 of the United States Code.

(ii) 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 (write the name of the agency) 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) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1)

through (10) and such other clauses as the (writes in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(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 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.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or 4.6 of part 4 of this title. 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 (write in the name of the Federal agency or the loan or grant recipient) 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) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts 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 prime contractor 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.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that 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. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that 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 (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

| Paragraph     | OMB Control Number |
|---------------|--------------------|
| (a)(1)(ii)(B) | 1215-0140          |
| (a)(1)(ii)(C) | 1215-0140          |
| (a)(1)(iv)    | 1215-0140          |
| (a)(3)(i)     | 1215-0140;         |
|               | 1215-0017          |
| (a)(3)(ii)(A) | 1215-0149          |
| (c)           | 1215-0140,         |
|               | 1215-0017          |

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

#### § 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by §5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in §5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of §5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by §5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment,

advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of §5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to §5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by §5.5 and the applicable statutes listed in §5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the "Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such

investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in §5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in §5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total \$1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

#### § 5.7 Reports to the Secretary of Labor.

(a) *Enforcement reports.* (1) Where underpayments by a contractor or subcontractor total less than \$1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under §5.8.

(2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) *Semi-annual enforcement reports.* To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) *Additional information.* Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) *Contract termination.* Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in §5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

#### § 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) *Findings and recommendations of the Agency Head.* The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order

affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986]

### § 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

### § 5.10 Restitution, criminal action.

(a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in §5.5 and the applicable statutes listed in §5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

### § 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to §5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or §5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall

request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under §5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute.

(2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the

Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with §5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

#### § 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in §5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in §5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in §5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to §5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in §5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of

this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in §5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under §5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in §5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the

applicable statutes listed in §5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to "any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in §5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to "any firm, corporation, partnership, or association" in which such contractor or subcontractor has a "substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed

statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in §5.1. No particular form is prescribed for the submission of a request under this section.

(4) *Referral to the Chief Administrative Law Judge.* The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) *Referral to the Administrative Review Board.* If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

### § 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in §5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

### § 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in §5.1 unless the statute specifically provides such authority.

### § 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) *General.* Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) *Exemptions.* Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental

Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) *Tolerances.* (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and §778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See §5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in §5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) *Variations.* (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety

Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1 1/2 times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work:

(A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the

contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215-0140 and 1215-0017, Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215-0017)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996]

§ 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of §5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of §5.5(a)(4)(ii)—including those relating to registration of trainees, permissible ratios, and wage rates to be paid—shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to §5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for

the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

#### § 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

#### Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

#### § 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in §5.12.

#### § 5.21 [Reserved]

#### § 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in §1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of §1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms "wages", "scale of wages", "wage rates", "minimum wages" and "prevailing wages", as used in the Davis-Bacon Act.

#### § 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term "wages", "scale of wages", "wage rates", "minimum wages", and "prevailing wages" shall include—

(1) The basic hourly rate of pay; and

(2) The amount of—

(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,

for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits \* \* \*.

**§ 5.24 The basic hourly rate of pay.**

"The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

**§ 5.25 Rate of contribution or cost for fringe benefits.**

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.

(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

**§ 5.26 " \* \* \* contribution irrevocably made \* \* \* to a trustee or to a third person".**

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The "third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the

contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

**§ 5.27 " \* \* \* fund, plan, or program".**

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase "fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

**§ 5.28 Unfunded plans.**

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B) of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

- (1) It could be reasonably anticipated to provide benefits described in the act;
  - (2) It represents a commitment that can be legally enforced;
  - (3) It is carried out under a financially responsible plan or program; and
  - (4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)
- (c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding

prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words "reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be "bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by §5.5(a)(1)(iv).

#### § 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits,

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term "other bona fide fringe benefits" is the so-called "open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the

qualification was included that such fringe benefits must be "bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is "bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under §5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are "bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under §5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

#### § 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

| Classes      | Basic hourly rates | Fringe benefits payments |          |           |                        |        |
|--------------|--------------------|--------------------------|----------|-----------|------------------------|--------|
|              |                    | Health and welfare       | Pensions | Vacations | Apprenticeship program | Others |
| Laborers     | \$3.25             |                          |          |           |                        |        |
| Carpenters   | 4.00               | \$0.15                   |          |           |                        |        |
| Painters     | 3.90               | .15                      | \$0.10   | \$0.20    |                        |        |
| Electricians | 4.85               | .10                      | .15      |           |                        |        |
| Plumbers     | 4.95               | .15                      | .20      |           | \$0.05                 |        |
| Ironworkers  | 4.60               |                          |          | .10       |                        |        |

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

§ 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for "bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of §5.30, the obligations for "painters" will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for "bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for "painters" in the illustration in paragraph (c) of §5.30 will be met by the payment of a straight time hourly rate of not less than \$3.90 and by contributions of not less than a total of 45 cents an hour for "bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for "painters" in the illustration in paragraph (c) of §5.30, by paying directly to the painters a straight time hourly rate of not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for "painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$4.35 (\$3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be \$4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be \$3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

§ 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the

Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

## **Davis Bacon Act Requirements**

- **SECTION 1606 PREVAILING WAGES – DAVIS BACON ACT AND REQUIREMENTS**

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 Recovery Act Funds shall be paid wages at rates not less than those prevailing on projects of a similar character 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 U.S. 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.

- Post the required Poster (WH 1321) and applicable wage rates at the construction site:  
<http://www.dol.gov/esa/whd/programs/dbra/wh1321.htm>
- Use either the DOL Payroll Form WH 347 and weekly Statement of Compliance or a payroll form with all of the same data elements as the DOL Payroll Form WH347 and a separate Statement of Compliance. Payroll Form WH347:  
<http://www.dol.gov/esa/whd/programs/dbra/wh347.htm>

# NOTICE TO ALL EMPLOYEES



## Working on Federal or Federally Financed Construction Projects

### MINIMUM WAGES

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

### OVERTIME

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

### APPRENTICES

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

### PROPER PAY

If you do not receive proper pay, contact the Contracting Officer listed below:

#### City of Glendale



**Michael A. Johnson**  
Engineering Project Manager  
Engineering Department

5850 W. Glendale Ave., Suite 315 • Glendale, AZ 85301-2533  
623-630-9630 • (toll) 623-764-7863 • (fax) 623-915-2861  
mjohnson@glendaleaz.com • www.glendaleaz.com

or you may contact the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government section of most telephone directories under:  
**U.S. Department of Labor  
Employment Standards Administration**







# **A Contractor's Guide to Davis-Bacon Wage Requirements & Certified Payroll Reports**

**(As edited by the Arizona Department of Housing, CDBG Program, 2/98)**

***(Prevailing Wage Requirements for Federal  
and Federally-assisted Construction Projects)***

**March 1997**

## INTRODUCTION

The purpose of this Guide is to explain in simple and non-bureaucratic terms exactly what is required of contractors and subcontractors working on construction projects covered by Federal Davis-Bacon prevailing wage and reporting requirements. HUD's Office of Labor Relations is providing this Guide as a service to assist you in better understanding your labor standards and compliance responsibilities. This Guide has been developed in consultation with the Department of Labor's Wage and Hour Division. **This guide has also been edited by the State of Arizona Department of Housing, CDBG Program, for applicability to the state's program requirements.**

There are three chapters in this Guide. The first chapter provides a brief description of the laws and regulations associated with Federal labor standards administration and enforcement and discusses both what's in your contract that requires Davis-Bacon compliance as well as your responsibilities. The second chapter deals with labor standards and payroll reporting requirements. The third chapter discusses what can happen in the event there is a dispute about the wage rates that should be (or have been) paid and any back wages that may be due.

This Guide is focused primarily on the requirements and responsibilities associated with HUD-assisted construction work subject to Davis-Bacon wage rates, but the guidance is also generally applicable to Davis-Bacon covered projects administered by other Federal agencies.

Not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we shall assume that a determination has already been made that Davis-Bacon wage rates are applicable.

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① Look for these boxes throughout this Guide for time saving tips, cross references, and other helpful information.

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Visit the Office of Labor Relations on the World Wide Web HUD Home Page at <http://www.hud.gov/>

and

Arizona Department of Housing  
CDBG Program  
1700 West Washington Street  
Phoenix, AZ 85007  
Phone: 602/ 771-1000  
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Email: joyj@housingaz.com

## TABLE OF CONTENTS

### **CHAPTER 1. LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES**

- 1-1 Davis-Bacon and Other Labor Laws
  - a. The Davis-Bacon Act (DBA)
  - b. The Contract Work Hours and Safety Standards Act (CWHSSA)
  - c. The Copeland Act (Anti-Kickback Act)
  - d. The Fair Labor Standards Act (FLSA)
- 1-2 Davis-Bacon Regulations
- 1-3 Construction Contract Provisions
- 1-4 Responsibility of the Principal Contractor
- 1-5 Responsibility of the Contract Administrator

### **CHAPTER 2. HOW TO COMPLY WITH LABOR STANDARDS AND PAYROLL REPORTING REQUIREMENTS**

#### **SECTION I THE BASICS**

- 2-1 The Wage Decision
  - a. The work classifications and wage rates.
  - b. Posting the wage decision.
- 2-2 Additional "Trade" Classifications and Wage Rates
  - a. Additional classification rules.
  - b. Making the request.
  - c. HUD review.
  - d. DOL decision.
- 2-3 Certified Payroll Reports
  - a. Payroll formats.
  - b. Payroll certifications.
  - c. "No work" payrolls.
  - d. Payroll review and submission.
  - e. Payroll retention.
  - f. Payroll inspection.
- 2-4 Davis-Bacon Definitions
  - a. Laborer or mechanic.
  - b. Employee.
  - c. Apprentices and trainees.
  - d. Prevailing wages or wage rates.
  - e. Fringe benefits.
  - f. Site of work.
  - g. Overtime.
  - h. Deductions.
  - i. Proper designation of trade.

## **SECTION II REPORTING REQUIREMENTS**

### **2-5 Completing a Payroll Report**

- a. Project and contractor/subcontractor information.
- b. Employee information.
- c. Work classification.
- d. Hours worked.
- e. Rate of pay.
- f. Gross wages earned.
- g. Deductions.
- h. Net pay.
- i. Statement of compliance.
- j. Signature.

## **SECTION III PAYROLL REVIEWS AND CORRECTIONS**

### **2-6 Compliance Reviews**

- a. On-site interviews.
- b. Project payroll reviews.

### **2-7 Typical Payroll Errors and Required Corrections.**

- a. Inadequate payroll information.
- b. Missing addresses and Social Security Numbers.
- c. Incomplete payrolls.
- d. Classifications.
- e. Wage rates.
- f. Apprentices and trainees.
- g. Overtime.
- h. Computations.
- i. Deductions.
- j. Fringe benefits.
- k. Signature.
- l. On-site interview comparisons.

### **2-8 Restitution for Underpayment of Wages**

- a. Notification to the prime contractor.
- b. Computing wage restitution.
- c. Correction payrolls.
- d. Employee signature.
- e. Review of correction CPR.
- f. Unfound workers.

## **CHAPTER 3. LABOR STANDARDS DISPUTES, ADMINISTRATIVE REVIEWS, WITHHOLDING AND DEPOSITS AND ESCROW ACCOUNTS**

### **3-1 Introduction**

3-2 Administrative Review on Labor Standards Disputes

- a. Additional classifications and wage rates.
- b. Findings of underpayment.

3-3 Withholding.

3-4 Deposits and Escrow Accounts

3-5 Debarment.

**EXHIBITS**

LS-4, Payroll Form

LS-5, Statement of Compliance

## CHAPTER 1 LAWS, REGULATIONS, CONTRACTS AND RESPONSIBILITIES

The following paragraphs describe what the labor standards laws and regulations actually say and what it means to you on HUD projects:

### 1-1 DAVIS-BACON AND OTHER LABOR LAWS.

a. **The Davis-Bacon Act (DBA).** The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

b. **The Contract Work Hours and Safety Standards Act (CWHSSA).** CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 in any workweek) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts **except** where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

Ⓢ The CWHSSA does not apply to *contracts* of \$100,000 or less. Even though CWHSSA overtime pay is not required. Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter SL-95-01, *CWHSSA Coverage threshold for overtime and health and safety provisions.*)

c. **The Copeland Act (Anti-Kickback Act).** The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to ***kickback*** any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

d. **The Fair Labor Standards Act (FLSA).** The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be ***pre-empted*** by other Federal standards such as the DBRA prevailing wage requirements and CWHSSA O/T provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations that are found on HUD projects.

1-2 **DAVIS-BACON REGULATIONS.** The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). These regulations can be found in ***Title 29 CFR Parts 1, 3, 5, 6 and 7.*** *Part 1* explains how the DOL establishes and publishes DBA wage determinations and provides instructions on how to use the determinations *Part 3* describes Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. *Part 5* covers the labor standards provisions that are in your contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. *Part 6* provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Last, *Part 7* sets parameters for practice before the Wage Appeals Board (*renamed Administrative Review Board*). These regulations are used as the basis for administering and enforcing the laws.

Ⓢ DOL Regulations are available on-line on the World Wide Web:  
<http://www.dol.gov/dol/esa/public/regs/cfr/whdcfr.htm>.

**1-3 CONSTRUCTION CONTRACT PROVISIONS.** Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon wage decision. These documents are normally bound into the contract specifications.

a. **The labor standards clauses.** The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project. HUD has standard forms that contain contract clauses. For example, the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects.

b. **Davis-Bacon Wage Decisions.** The Davis-Bacon wage decision is a listing of various construction work classifications such as Carpenter, Plumber, and Electrician, for example, and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid.

**1-4 RESPONSIBILITY OF THE PRINCIPAL CONTRACTOR.** The principal contractor (also referred to as the *prime or general contractor*) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. Because of the contractual relationship between a prime contractor and his/her subcontractors, questions to, or from, or about subcontractors should always be channeled through the prime contractor.

⌚ To make this Guide easier to understand, the term "*prime contractor*" will mean the principal contractor; "*subcontractor*" will mean all subcontractors including lower-tier subcontractors; and the term "*employer*" will mean all contractors as a group, including the prime contractor and any subcontractors and lower-tier subcontractors.

**1-5 RESPONSIBILITY OF THE CONTRACT ADMINISTRATOR.** The *contract administrator(s)* is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements and will likely be local grantee staff or under contract to the local government. We use this term to represent the person (or persons) who will provide labor standards preconstruction advice and support to you and other project principals (for example, the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see paragraph 2-1, *The Wage Decision*) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction.

The DOL also has a role in monitoring Davis-Bacon administration and enforcement. A DOL investigator or other DOL representative may visit Davis-Bacon construction sites to interview construction workers or review payroll information.

⌚ All communications to or from the prime contractor concerning the labor standards applicable to a particular contract, or concerning compliance with those standards should go through the contract administrator.

## CHAPTER 2 HOW TO COMPLY WITH LABOR STANDARDS AND PAYROLL REPORTING REQUIREMENTS

**WHERE TO START?** Now that you know you're on a Davis-Bacon project and you know some of the legal and practical implications, what's next?

### SECTION I THE BASICS

**2-1 THE WAGE DECISION.** Davis-Bacon labor standards stipulate the wage payment requirements for *Carpenters, Electricians, Plumbers, Roofers, Laborers, and other construction work classifications* that may be needed for the project. The **Davis-Bacon wage decision** that applies to the project contains a schedule of work classifications and wage rates that must be followed. If you don't have it already (and by now you should), you'll want to get a copy of the applicable **Davis-Bacon wage decision**.

⌚ Remember, the wage decision is contained in the contract specifications along with the labor standards clauses. See ¶1-3, *Construction Contract Provisions*.

a. **The work classifications and wage rates.** A Davis-Bacon wage decision is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications. You'll want to make sure that the work classification(s) you need are contained in the wage decision and make certain you know exactly what wage rate(s) you will need to pay. Some wage decisions cover several counties and/or types of construction work (for example, residential and commercial work) and can be lengthy and difficult to read. Contact the *contract administrator* (HUD Labor Relations field staff or local agency staff) if you have any trouble reading the wage decision or finding the work classification(s) you need.

b. **Posting the wage decision.** If you are the prime contractor, you will be responsible for posting a copy of the wage decision (or the Project Wage Rate Sheet) and a copy of a DOL poster called *Notice to Employees* at the job site in a place that is easily accessible to all of the construction workers employed at the project and where the wage decision and poster won't be destroyed by wind or rain, etc. The *Notice to Employees* poster is also available with Spanish text.

**2-2 ADDITIONAL "TRADE" CLASSIFICATIONS AND WAGE RATES.** What if the work classification you need isn't on the wage decision? If the work classification(s) that you need doesn't appear on the wage decision, you will need to request an **additional classification and wage rate**. This process is usually very simple and you'll want to start the request right away. Basically, you identify the classification you need and recommend a wage rate for DOL to approve for the project. There are a few rules about additional classifications; you'll find these rules in the DOL regulations, Part 5, and in the labor clauses in your contract. The rules are summarized for you here:

- a. **Additional classification rules.** Additional classifications and wage rates can be approved if:
- 1) The requested classification is used by construction contractors in the area of the project. (The area is usually defined as the *county* where the project is located).
  - 2) The work that will be performed by the requested classification is not already performed by another classification that is already on the wage decision. (In other words, if there already is an Electrician classification and wage rate on the wage decision you can't request another Electrician classification and rate.)
  - 3) The proposed wage rate for the requested classification "fits" with the other wage rates already on the wage decision. (For example, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision.) And,

4) The workers that will be employed in the added classification (if it is known who the workers are/will be), or the workers' representatives, must agree with the proposed wage rate.

b. **Making the request** A request for additional classification and wage rate must be made in writing through the contract administrator. (If the contract administrator is a local agency, the agency will send the request to the HUD Labor Relations staff.) If you are a subcontractor, your request should also go through the prime contractor. All you need to do is identify the work classification that is missing and recommend a wage rate (usually the rate that employer is already paying to the employees performing the work) for that classification. You may also need to describe the work that the new classification will perform.

c. **DOL review and decision** The contract administrator will then send the request to the Department of Housing, CDBG Program. The request is then forwarded the Department of Labor for approval. The DOL will respond to Housing in writing about the additional classification and wage rate request. Housing will notify the contract administrator of the DOL decision in writing. If the DOL approves the request, the prime contractor must post the approval notice on the job site with the wage decision.

If the DOL *does not* approve the request, you will be notified about what classification and wage rate should be used for the work in question.

**2-3 CERTIFIED PAYROLL REPORTS.** You'll need to submit a weekly certified payroll report beginning with the first week that your company works on the project and for every week afterward until your firm has completed its work. It's always a good idea to number the payroll reports beginning with #1 and to clearly mark your last payroll for the project "Final."

a. **Payroll formats**. The easiest form to use is DOL's LS-4, *Payroll*. A sample copy of the LS-4 is included in the back of this Guide. Also, the contract administrator can provide a few copies of the LS-4 that you can reproduce.

Ⓢ You are *not required* to use Payroll Form LS-4. You are welcome to use any other type of payroll, such as computerized formats, as long as it contains all of the information that is required on the LS-4

b. **Payroll certifications**. The weekly payrolls are called *certified* because each payroll is signed and contains language certifying that the information is true and correct. The payroll *certification* language is on the LS-5 **Statement of Compliance**. If you are using another type of payroll format you may attach the certification. A copy of the LS-5 is included in the back of this Guide. Copies of the LS-5 are also available from the contract administrator.

c. **"No work" payrolls**. "No work" payrolls may be submitted whenever there is a temporary break in your work on the project. (*See Tip Box, below, for "no work" payroll exemption!*) For example, if your firm is not needed on the project right now but you will be returning to the job in a couple of weeks. However, if you know that your firm will not be working on the project for an extended period of time, you may wish to send a short note to the contract administrator to let them know about the break in work and to give an approximate date when your firm will return to the project. If you send a note, you *do not* need to send "no work" payrolls.

Ⓢ If you number your payroll reports consecutively, you *do not* need to submit "no work" payrolls!

d. **Payroll review and submission.** The prime contractor should **review** each subcontractor's payroll reports for compliance *prior* to submitting the reports to the contract administrator. Remember, the prime contractor is responsible for the full compliance of all subcontractors on the contract and will be held accountable for any wage restitution that may be found due to any laborer or mechanic that is underpaid *and* for any liquidated damages that may be assessed for overtime violations. All of the payroll reports for any project must be submitted to the contract administrator *through* the prime contractor.

☉ An alert prime contractor that reviews subcontractor payroll submissions can detect any misunderstandings early, prevent costly underpayments and protect itself from financial loss should underpayments occur.

e. **Payroll retention.** Every contractor (including every subcontractor) must keep a complete set of their own payrolls and other basic records such as time cards, for a Davis-Bacon project for at least 3 years after the project is completed. The prime contractor must keep a complete set of all of the payrolls for every contractor (including subcontractors) for at least 3 years after completion of the project.

f. **Payroll inspection.** In addition to submitting payrolls to the contract administrator, every contractor (including subcontractors) must make their *own* copy of the payrolls available for review or copying to any authorized representative from HUD or from DOL.

2-4 **DAVIS-BACON DEFINITIONS.** Before we discuss how to complete the weekly payroll forms, we need to review a couple of definitions. These definitions can help you understand what will be required of you:

a. **Laborer or mechanic.** "Laborers" and "mechanics" mean anyone who is performing construction work on the project, including labor trade journeymen (carpenters, plumbers, sheet metal workers, etc.), apprentices, trainees and, for CWHSSA purposes, watchmen and guards. "Laborers" and "mechanics" are the two groups of workers that must be paid not less than Davis-Bacon wage rates.

1) **Working foremen.** Foremen or supervisors that regularly spend **more** than 20% of their time performing construction work are covered "laborers" and "mechanics" for labor standards purposes.

2) **Exclusions.** People whose duties are primarily administrative, managerial or clerical are not laborers or mechanics. For example, office staff, timekeepers, messengers, etc. (Contact the contract administrator if you have any questions about whether a particular employee is excluded.)

b. **Employee.** Every person who performs the work of a laborer or mechanic is "*employed*" regardless of any contractual relationship which may be alleged to exist between a contractor or subcontractor and such person. This means that even if there is a contract between a contractor and a worker, the contractor must make sure that the worker is paid at least as much as the wage rate on the wage decision for the classification of work they perform.

☉ Labor Relations Letters and other helpful Labor relations publications are available at HUD's website (see *Introduction* at the beginning of this Guide).

c. **Apprentices and trainees.** The only workers who can be paid less than the wage rate on the wage decision for their work classification are "apprentices" and "trainees" registered in approved apprenticeship or training programs, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work. Approved programs are those which have been registered with the DOL, Bureau of Apprenticeship and Training (BAT) or with a BAT-recognized State Apprenticeship

Agency (SAC). Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

① Most often, the apprentice/trainee wage rate is expressed as a series of percentages tied to the amount of time spent in the program. For example, 0-6 months: 65%; 6 months - 1 year: 70%; etc. The percentage is applied to the journeyman's wage rate. On Davis-Bacon projects, the percentage must be applied to the journeyman's wage rate *on the applicable wage decision* for that craft.

1) **Probationary apprentice.** A "probationary apprentice" can be paid as an apprentice (less than the rate on the wage decision) if the BAT or SAC has certified that the person is eligible for probationary employment as an apprentice.

2) **Pre-apprentice.** A "pre-apprentice", that is, someone who is not registered in a program and that hasn't been BAT- or SAC-certified for probationary apprenticeship is *not* considered to be an "apprentice" and must be paid the full journeyman's rate on the wage decision for the classification of work they perform.

3) **Ratio of apprentices and trainees to journeymen.** The maximum number of apprentices or trainees that you can use on the job site cannot be more than the ratio of apprentices or trainees to journeymen allowed in the approved program.

d. **Prevailing wages or wage rates.** Prevailing wage rates are the wage rates listed on the wage decision for the project. The wage decision will list a minimum basic hourly rate of pay for each work classification. Some wage decisions include fringe benefits, which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate *unless* you provide bona fide fringe benefits for your employees.

✍ **Note** that the *total* hourly wage rate paid to any laborer or mechanic (basic wage or basic wage plus fringe benefits) may be no less than the total wage rate (basic wage or basic wage plus fringe benefits) on the wage decision for their craft. If the value of the fringe benefit(s) you provide is less than the fringe benefit rate on the wage decision, you will need to add the balance of the wage decision fringe benefit rate to the basic rate paid to the employee. For example, if the wage decision requires \$10/hour basic rate plus \$5/hour fringe benefits, you must pay no less than that total (\$15/hour) in the basic rate *or* basic rate plus whatever fringe benefit you may provide.

e. **Fringe benefits** include health insurance, retirement, life insurance, vacation and some contributions to training funds. Fringe benefits *do not* include employer payments or contributions required by other Federal, State or local laws, such as the employer's contribution to Social Security or some disability insurance payments.

f. **Site of work.** The "site of work" is where the Davis-Bacon wage rates apply. Usually, this means the boundaries of the project. "Site of work" can also include other adjacent or nearby property used by a contractor or subcontractor in the construction of the project, like a fabrication site.

g. **Overtime.** Overtime hours are defined as all hours worked on the site of the work in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits.

h. **Deductions.** You may make payroll deductions as permitted by DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Allowable deductions include employee obligations for income taxes, Social Security

payments, insurance premiums, retirement, savings accounts, and any other legally-permissible deduction authorized by the employee. Deductions may also be made for payments on judgements and other financial obligations legally imposed against the employee.

i. **Proper designation of trade.** You must select a work classification on the wage decision for each worker based on the actual type of work he/she performed and you must pay each worker no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters *even* if they aren't considered by you to be fully trained as a Carpenter. **Remember**, the only people who can be paid less than the rate for their craft is apprentices and trainees registered in approved programs.

1) **Split-classification.** If you have employees that perform work in more than one classification, you can pay the wage rates specified for each classification **only** if you maintain accurate time records showing the amount of time spent in each classification of work. If you do not maintain accurate time records, you must pay these employees the *highest* wage rate of all of the classifications of work performed.

## SECTION II REPORTING REQUIREMENTS

**2-5 COMPLETING A PAYROLL REPORT.** What information has to be reported on the payroll form? The weekly payroll form doesn't ask for any information that you don't already need to keep for wage payment and tax purposes. For example, you need to know each employee's *name, address* and *social security number*, his or her *work classification* (who is working for you and what do they do?), the *hours worked* during the week, his or her *rate of pay*, the *gross amount earned* (how much did they earn?), the amounts of any *deductions* for taxes, etc., and the *net amount paid* (how much should the paycheck be made out for?). No more information than you need to know in order to manage your work crew and make certain they are paid properly. And, certainly, no more information than you need to keep for IRS, Social Security and other tax and employment purposes.

**⌚ FOR MOST CONTRACTORS, THE WEEKLY CERTIFIED PAYROLL IS ALL THE PAPERWORK THAT IS REQUIRED FOR A DAVIS-BACON PROJECT!**

a. **Project and contractor/subcontractor information.** Each payroll should show the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the *dates* in the spaces provided. Numbering payrolls is optional but strongly recommended.

b. **Employee information.** The first payroll on which each employee appears must contain the employee's name, address and Social Security Number. Afterward, the address and Social Security Number only need to be reported if there is a change in this information.

c. **Work Classification.** Each employee must be classified in accordance with the wage decision based on the type of work they actually perform.

1) **Apprentices or Trainees.** The first payroll on which any apprentice or trainee appears must be accompanied by a copy of that apprentice's or trainee's registration in an approved program. A copy of the portions of the approved program pertaining to the wage rates and ratios shall also accompany the first LS-4 on which the first apprentice or trainee appears.

2) **Split classifications.** For employees in split classifications, list the employees once for each classification, distributing the hours of work accordingly, and reflecting the rate of pay and gross earnings for each classification. Deductions and net pay may be based upon the total gross amount earned for all classifications.

d. **Hours Worked.** The payroll should show *ONLY* the regular and overtime hours worked on this project. Show both the daily and total weekly hours for each employee. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" hours *should not* be reported on the payroll. In these cases, you should list the employee's name, classification, hours for this project only, the rate of pay and gross earnings for this project, and the gross earned for *all projects*. Deductions and net pay may be based upon the employee's total earnings (for all projects) for the week.

e. **Rate of Pay.** Show the basic hourly rate of pay for each employee for this project. If the wage decision includes a fringe benefit and you *do not* participate in approved fringe benefit programs, *add* the fringe benefit rate to the basic hourly rate of pay. Also list the overtime rate if overtime hours were worked.

**✍ Remember, the overtime rate is computed at one and one-half times the *basic* rate of pay plus any fringe benefits. For example, if the wage decision requires \$10/hour basic plus \$5/hour fringe benefits, the overtime rate would be:  $(\$10 \times 1\frac{1}{2}) + \$5 = \$20/\text{hour}$ .**

f. **Gross Wages Earned.** Show the gross amount of wages earned for work performed on this project. *Note:* For employees with work hours and earnings on other projects, you may show gross wages for this project over gross earnings all projects (for example, \$425.40/\$764.85) and base deductions and net pay on the "all projects" earnings.

g. **Deductions.** Show the amounts of any deductions from the gross earnings. "Other" deductions should be identified (for example, Savings Account or Loan Repayment). Any voluntary deduction (that is, not required by law or by an order of a proper authority) must be authorized in writing by the employee. A LS-15 signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

Ⓢ Only one employee authorization is needed for recurring (e.g., weekly) other deductions. Written employee authorization is not required for income tax and Social Security deductions.

h. **Net Pay.** Show the net amount of wages paid.

i. **Statement of Compliance.** The Statement of Compliance is the certification. It is located on the reverse side of a standard payroll form (LS-4) or on form LS-5. Be sure to complete the identifying information at the top, particularly if you are attaching the Statement of Compliance to an alternate payroll form such as a computer payroll. **Also, you must check either 4(a) or 4(b) if the wage decision contains a fringe benefit.** Checking 4(a) indicates that you are paying required fringe benefits to approved plans or programs; and 4(b) indicates that you are paying any required fringe benefit amounts directly to the employee by adding the fringe benefit rate to the basic hourly rate of pay. If you are paying a portion of the required fringe benefit to programs and the balance directly to the employee, explain those differences in box 4(c).

j. **Signature.** Make sure the payroll is signed with an original signature. The payroll must be signed by a principal of the firm (owner or officer such as the President, Treasurer or Payroll Administrator) or by an authorized agent (a person authorized by a principal in writing to sign the payroll reports). Signature authorization (for persons other than a principal) should be submitted with the first payroll signed by such an agent.

Ⓢ Only one Statement of Compliance is required for each employer's weekly payroll no matter how many pages are needed to report the employee data.

### SECTION III PAYROLL REVIEWS AND CORRECTIONS

2-6 **COMPLIANCE REVIEWS.** The contract administrator or other inspector may visit the project site and interview some of the workers concerning their employment on the project. In addition, the contract administrator will periodically review payrolls and related submissions, comparing the interview information to the payrolls, to ensure that the labor standards requirements have been met. You will be notified by the contract administrator if these reviews find any discrepancies or errors. You will be given instructions about what steps must be taken to correct any problems.

a. **On-site Interviews.** Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the contract administrator, other local government, Department of Housing, HUD or DOL representative. The interviews are confidential and the employee will be asked about the kind of work they perform and their rate of pay. Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. The interviewer will record the interview information, usually on a form LS-9, *Employee Interview*.

b. **Project payroll reviews.** The contract administrator will compare the information on the interview forms to the corresponding payrolls to ensure that the workers are properly listed on the payrolls for the days, work classification and rate of pay. The contract administrator will also review the payroll submissions to make certain that the payrolls are complete and signed; that employees are paid no less than the wage rate for the work classification shown; apprentice and trainee certifications are submitted (where needed); employee authorizations for other deductions are submitted (where needed); etc.

2-7 **TYPICAL PAYROLL ERRORS AND REQUIRED CORRECTIONS.** The following paragraphs describe common payroll errors and the corrective steps you must take.

a. **Inadequate payroll information.** If the alternate payroll (such as a computer payroll) does not contain all of the information that would be on the optional form LS-4, the employer will be asked to resubmit the payrolls on an acceptable form.

b. **Missing addresses and Social Security Numbers.** If the first payroll on which an employee appears does not contain the employee's address and Social Security Number, the employer will be asked to supply the missing information. A short note providing the information is all that is needed.

c. **Incomplete payrolls.** If the information on the payroll is not complete, for example, if work classifications or rates of pay are missing, the employer will be asked to send a corrected payroll.

d. **Classifications.** If the payrolls show work classifications that do not appear on the wage decision, the employer will be asked to reclassify the employees in accordance with the wage decision *or* the employer may request an ***additional classification and wage rate*** (See paragraph 2-2). If reclassification results in underpayment (the wage rate paid on the payroll is less than the rate required for the new classification, the employer will be asked to pay ***wage restitution*** to all affected reclassified employees. (See paragraph 2-8 for instructions about wage restitution.)

e. **Wage Rates.** If the wage rates on the payroll are less than the wage rates on the wage decision for the work classification reported, the employer will be asked to pay wage restitution to all affected employees.

f. **Apprentices and trainees.** If a copy of the employee(s) registration or approved program ratio and wage schedule is not submitted with the first payroll on which an apprentice or trainee appears, the employer will be asked to submit a copy of each apprentice's or trainee's registration and/or the approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer will be asked to pay wage restitution to any excess apprentices or trainees. Also, any apprentice or trainee that is *not*

registered in an approved program must receive the journeyman's wage rate for the classification of work they performed.

g. **Overtime.** If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

1) If the project is subject to CWHSSA overtime requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project (overtime hours worked at other projects are not subject to CWHSSA). The employer may also be liable to the United States for liquidated damages computed at \$10 per day per violation. Or,

2) If the project is *not* subject to CWHSSA, the employer will be notified of the possible FLSA overtime violations. Also, the Labor Relations staff may refer the violations to the DOL for further review.

h. **Computations.** If the payroll computations (hours worked times rate of pay) or extensions (deductions, net pay) show frequent errors, the employer will be asked to take greater care. Wage restitution may be required if underpayments resulted from the errors.

i. **Deductions.** If there are any "Other" deductions that are not identified, or if employee authorization isn't provided, or if there is any unusual (very high, or large number) deduction activity, the employer will be asked to identify the deductions, provide employee authorization or explain unusual deductions, as necessary.

j. **Fringe benefits.** If the wage decision contains fringe benefits but the payroll does not indicate how fringe benefits were paid [neither 4(a) nor 4(b) is marked on the payroll form], the employer may be asked to submit corrected payrolls *and* will be required to pay wage restitution if underpayments occurred. *However*, if the basic hourly rates for the employees are at least as much as the total wage rate on the wage decision (basic hourly rate *plus* the fringe benefit rate), no correction is necessary.

k. **Signature.** If the payroll *Statement of Compliance* is not signed or is missing, the employer will be asked to submit a signed *Statement of Compliance* for each payroll affected.

l. **On-site interview comparisons.** If the comparison of on-site interviews to the payrolls indicates any discrepancies (for example, the employee does not appear on the payroll for the date of the interview), the employer will be asked to submit a corrected payroll report.

**2-8 RESTITUTION FOR UNDERPAYMENT OF WAGES.** Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

a. **Notification to the prime contractor.** The contract administrator will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. Note that the prime contractor is responsible to the contract administrator for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

b. **Computing wage restitution.** Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the *adjustment*

*rate*. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

c. **Correction payrolls.** The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A signed Statement of Compliance must be attached to the corrected payroll.

d. **Employee signature.** Each employee who has received restitution signs the correction payroll as evidence of their receipt of the payment.

e. **Review of correction CPR.** The contractor administrator will review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, documented on a supplemental correction payroll within 30 days.

f. **Unfound workers.** Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located.

In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The contract administrator will continue to attempt to locate the unfound workers for 3 years after the completion of the project. After 3 years, any amount remaining in the account for unfound workers will be credited and/or forwarded by the contract administrator to Housing which shall send it to HUD.

## CHAPTER 3      LABOR STANDARDS DISPUTES, ADMINISTRATIVE REVIEWS, WITHHOLDING AND DEPOSITS AND ESCROW ACCOUNTS

### WHAT HAPPENS WHEN THINGS GO WRONG?

3-1 **INTRODUCTION.** Even in the best of circumstances, things can go wrong. In a Davis-Bacon context, "things going wrong" usually means there's a difference of opinion - a dispute - about whether and to what extent underpayments have occurred. These disputes are usually between the contract administrator and one or more employers (the prime contractor and/or a subcontractor). The dispute may involve something simple such as an additional classification request that is pending before the DOL; or something as significant as investigative findings following a complaint of underpayment. This chapter discusses some of what you may expect and what you can do to make your views known and to lessen any delays.

3-2 **ADMINISTRATIVE REVIEW ON LABOR STANDARDS DISPUTES.** As mentioned in the Introduction, above, a dispute about labor standards and compliance can arise for a number of reasons. The labor standards clauses in your contract and DOL regulations provide for administrative review of issues where there is a difference of views between the contract administrator and any employer. The most common circumstances include:

a. **Additional classifications and wage rates.** Additional classification and wage rate requests are sometimes denied by the DOL. An employer that is dissatisfied with the denial can request reconsideration by the DOL Wage and Hour Administrator. The employer may continue to pay the wage rate, as requested, until a final decision is rendered on the matter. When the final decision is known, the employer will be required to pay any additional wages that may be necessary to satisfy the wage rate that is established.

1) **Reconsideration.** The DOL normally identifies the reasons for denial in its response to the request. Any interested person (*for example*, the contract administrator, employer, representatives of the employees) may request reconsideration on the decision on the additional classification request. The request for reconsideration should be made in writing and should thoroughly address the denial reasons identified by the DOL. Requests for reconsideration should be made through the contract administrator. (See ¶12-2(d), and also DOL Regulations 29 CFR 1.8.)

2) **Administrative Review Board.** Any interested party may request a review of the Administrator's decision on reconsideration by the **Administrative Review Board** (*formerly, Wage Appeals Board*). DOL regulations 29 CFR Part 7 explain the procedures for such reviews. (See also 29 CFR 1.9.)

b. **Findings of underpayment.** Compliance reviews and other investigations may result in findings of underpayment. The primary goal in every case and at every step in this process is to reach agreements about who may have been underpaid and how much wage restitution may be due and, of course, to deliver restitution to any underpaid workers. The contract administrator will usually work informally with you to reach such agreements. You will have an opportunity to provide additional information to the contract administrator that may explain apparent inconsistencies and/or resolve the discrepancies.

If informal exchanges do not result in agreement, the final determination and schedule of wages due will be presented to you in writing and you will be permitted 30 days in which to correct the underpayment(s) or to request a hearing on the matter before the DOL. The request for hearing should be made in writing and should explain what findings are in dispute and the reasons. The

request should be made through the contract administrator. The contract administrator will submit a report of the findings and the hearing request to the DOL for review and further consideration.

**3-3 WITHHOLDING.** The contract administrator may cause withholding from payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor. Withholding is considered to be serious and is not taken unless warranted. Very often, the amount kept in retention is sufficient to cover any back wage liability so withholding from payments is not considered necessary. However, if withholding is deemed necessary, you will be notified in writing. Only the amounts necessary to meet the contractor's (and/or subcontractor's) liability shall be withheld.

Ⓢ Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors. See ¶1-4, *Responsibility of the Principal Contractor*, and ¶2-8(a), *Restitution for underpayment of wages*.

**3-4 DEPOSITS AND ESCROWS.** In every case, we attempt to complete compliance actions and resolve any disputes before the project is completed and final payments are made. Sometimes, corrective actions or disputes continue after completion and provisions must be made to ensure that funds are available to pay any wage restitution that is ultimately found due. In these cases, we allow the project to proceed to final closings and payments *provided* the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the contract administrator. When a final decision is rendered, the contract administrator makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

a. Where the parties have agreed to amounts of wage restitution that are due *but* the employer hasn't furnished evidence yet that all of the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers lacking payment evidence. As proper documentation is received, amounts corresponding to the documentation is returned to the depositor. Amounts for any workers who can not be located are held in the escrow account for three years and disbursed as described in ¶2-8(f) of this Guide.

b. Where underpayments are suspected or alleged and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the depositor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above (See ¶2-8(f) and 3-4(a)).

If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained in ¶3-4(c), below.

c. Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

3-5 **DEBARMENT.** Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the Davis-Bacon and Related Acts (DBRA) will be ineligible (*debarred*) to participate in any DBRA or Davis-Bacon Act contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the contractor administrator or can be initiated by the DOL on its motion. Debarment proceedings are described in DOL regulations 29 CFR 5.12.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
RACE- AND GENDER-NEUTRAL DBE CONTRACT CLAUSE  
For Non-Negotiated Contracts**

***APPLICABILITY*** – *For the purposes of this contract clause, a “Non-Negotiated Contract” is a contract that is procured as an Invitation for Bid (low-bid) or a Two-Step Design-Build project. This contract clause shall be included in both the solicitation and contract documents for these projects.*

**SECTION I. DEFINITIONS**

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 CFR Part 26. The official DBE database containing eligible DBE firms certified by the AZUCP can be accessed at: <http://www.azdbe.org>.

Bidder is an individual, partnership, joint venture, corporation or firm submitting a submittal to the City to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative.

Broker, Packager, Manufacturers' Representative, or Jobber means a firm that is not a manufacturer or regular dealer as defined herein.

Commercially Useful Function means that a DBE firm is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. A DBE must perform at least 30 percent of the total cost of its contract with its own work force in order to be determined to be performing a commercially useful function on the contract.

Contract is a written agreement obligating the seller or business enterprise to furnish goods or services as submitted and the Purchaser or Buyer to pay for such goods or services.

DBE Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold DBE status with the City of Phoenix (City) or AZUCP. The joint venture is limited in scope and duration to this contract. The resources, assets and labor of the partnering participants must be combined in an effort to accrue profit.

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed the DBE certification process and been granted DBE status by the City's Equal Opportunity Department (EOD) or another member of the Arizona Unified Certification Program (AZUCP) pursuant to the criteria contained in 49 Code of Federal Regulation (CFR) Part 26.

Economically Disadvantaged Individuals means those individuals who have a personal net worth of less than \$1,320,000, not including the value of the equity interest in their personal residence or the value of their ownership interest in the firm seeking certification as a DBE.

Joint Venture (JV) is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this contract. The resources, assets and labor of the participants must be combined in an effort to accrue profit.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

Outreach Efforts means the demonstrated efforts to solicit participation from interested and qualified DBEs and small businesses. Each Bidder must document their identification of potential opportunities, the solicitations, negotiations, and communications of their selections relative to Outreach.

Purchaser for purposes of this contract means the City.

Race- and Gender-Neutral (RGN) Measures – Steps taken that result in DBE utilization absent a Race- and Gender-Conscious Goal.

Race- and Gender-Neutral (RGN) Participation - DBE utilization that occurs on a project with RGN measures.

Regular Dealer or Supplier means a business that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Small Business Concern means a small business with gross receipts or number of employees consistent with the U.S. Small Business Administration's definition of a small business, subject to further limitations as defined in 49 CFR Part 26.

Socially Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status by the City or AZUCP shall be considered socially and economically disadvantaged individuals for the purpose of this contract.

Subcontract is a contract at any tier below the prime contract, including purchase orders.

Subcontractor is an individual, partnership, joint venture, corporation or firm that holds a contract at any tier below the prime contract, including purchase orders.

Successful Bidder is a Bidder who has been selected to perform services requested by a solicitation or procurement.

## **SECTION II. GENERAL REQUIREMENTS**

- A. **DBE Participation** – For this business opportunity, the City of Phoenix (City) has not established a race- and gender-conscious DBE participation goal. The City/Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City/Agency supports the use of race- and gender-neutral measures to facilitate participation by DBEs and other small businesses, and encourages Submitters to subcontract portions of work that they might otherwise perform with their own forces.
- B. **Applicable Federal Regulations** – This contract is subject to the DBE Program requirements issued by the U.S. Department of Transportation (USDOT) as set forth in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this contract, the City is required to track and report DBE participation that occurs as a result of any procurement, JV, goods/services or other arrangement involving a DBE, creating an obligation for the Successful Bidder to provide all relevant information to allow such reporting to occur.
- C. **DBE Certification** - ONLY firms certified by the City of Phoenix (City) or another member of the AZUCP are eligible for counting toward the DBE utilization on this contract.
- D. **Nondiscrimination Clause** - The City, as a recipient of federal U.S. Department of Transportation (USDOT) funding, has agreed to abide by the assurance found in 49 CFR Part 26.13(a). As a condition of this agreement, the City shall require each contract signed by the City with the

Successful Bidder, and each subcontract signed by the Successful Bidder with a subcontractor, to include the following assurance:

"The contractor, subcontractor, or sub-recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26, in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract and/or any other such remedy as the City deems appropriate."

Note: For the purposes of the required contract and subcontract language above, the Successful Bidder is the "contractor", and the City is the "sub-recipient."

### SECTION III. BID REQUIREMENTS

A. **Responsiveness to DBE Requirements** – Any Bidder wishing to remain in competition for contract award shall provide the minimum required information within 3 days of the **bid submittal deadline**. This minimum requirement is the submission of **Attachments A1 and A2 with accompanying supporting documentation**, as detailed in Part B below. Failure to submit this documentation in a timely manner as herein set forth will result in a determination by the City that the Bidder is non-responsive to the DBE Requirements of this section.

B. **The following documents are required from the Bidder within three (3) days of the bid submittal deadline:**

1. A completed copy of **Attachment A1**
2. A completed copy of **Attachment A2**
3. Supporting documentation for Attachment A1

1. **A completed copy of Attachment A1 - Negotiations with Small Businesses:** The information contained in this attachment serves to document the following factors and shall be illustrative of the matters EOD will consider in determining whether the Bidder negotiated in good faith with those small businesses it considered subcontracting for this contracting opportunity.

- a) Identification of business;
- b) Business status;
- c) Scope of work to be performed;
- d) Type of agreement;
- e) Agreement amount; and
- f) Communication of final selection outcomes to participants

Bidder must fill all appropriate boxes to indicate the firms that the Bidder has negotiated with, including firms that will perform on the contract and whose participation is being proposed. The Bidder must ensure that the small business participation percentages proposed on **Attachment A1** sum to the total percentage being proposed in **Attachment A2**.

2. **Attachment A2, Small Business Utilization Commitment** Bidders must provide a signed affidavit indicating that the information submitted is true and correct as to the following:

- a) The firms indicated as "selected" in **Attachment A1** will participate in the contract;
- b) The Bidder will comply with Requirements for RGN Contracts for substitution;
- c) The Bidder understands and agrees that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- d) The proposed total small business participation percentage is true and correct.

In the event the City requests clarification of submitted materials from a Bidder, the Bidder must acknowledge the request within 24 hours and provide clarification to the City within three business days to remain responsive to the DBE Requirements.

**Administrative Reconsideration** – In the event City determines the Bidder failed to submit required documentation to meet the stated DBE Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification on documentation submitted. Requests for reconsideration must be submitted in writing and within three (3) days of the City's notification of non-responsiveness to the Bidder. The request for reconsideration should be made to:

City of Phoenix Equal Opportunity Department  
Business Relations Division-Contract Compliance Section  
251 West Washington Street, Seventh Floor  
Phoenix, AZ 85003

#### SECTION IV. POST-AWARD COMPLIANCE REQUIREMENTS

- A. **Subcontracting Commitment** – Copies of any executed contracts, procurements, purchase orders, subleases, JV, goods/services or other arrangement legalizing the agreement between the Successful Bidder and any DBE or small business will be required.
- DBE Subcontracts shall not be terminated, nor shall the scope of work be altered, without prior written notice and the approval of EOD. The amount of the subcontract shall also not be revised to a lower amount than was stated in the submitted documents without prior written approval of EOD. Any petition to alter the original committed subcontract with a DBE must be submitted in writing to EOD prior to such change occurring. Failure to do so may result in the Successful Bidder being declared in breach of the contract and noncompliant.
- B. **Relief From Proposed DBE Utilization** – After contract award, no relief from the proposed DBE utilization will be granted except in exceptional circumstances. Requests for relief from any or all of the DBE participation must be in writing to EOD. EOD has the final authority to determine if the request will be granted.
- The written request must contain the amount of the relief being sought, the evidence that demonstrates why the relief is necessary, and any additional relevant information to be considered by EOD. All records of the Successful Bidder's attempts to Subcontract with the DBE firm and any other actions taken to locate and solicit a replacement DBE must be included with the request.
- If an approved DBE allows their DBE status to expire or their DBE certification is removed during the course of the subcontract, the City will consider all work performed by the DBE under the original contract to count towards meeting the DBE RGN efforts. No increased scopes of work negotiated after removal/expiration of the DBE firm's certification will be counted nor will any work performed under a contract extension granted by the City be counted towards meeting the DBE RGN efforts.
- C. **DBE Substitutions** – In instances where the subcontractor was approved as a bona fide DBE by the City, and the firm subsequently loses its DBE status prior to the execution of a contract, EOD will consider whether or not good faith efforts were made to find and substitute the firm with a certified DBE. The Successful Bidder must notify EOD in writing of the necessity to substitute a DBE and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE must not occur before EOD's written approval is obtained.
- D. **Prompt Payment of Subcontractors** – In accordance with the Arizona Revised Statutes, Section 34-221(G), the City's solicitation and/or contract documents, the Successful Bidder is required to promptly pay its subcontractors, subconsultants, or suppliers within seven calendar days of receipt

of each progress payment from the City. No contract terms and conditions between the Successful Bidder and its subcontractors, subconsultants, or suppliers may alter the rights of any Subcontractor, subconsultant, or supplier to receive prompt and timely payment as provided herein.

Any reduction of retention by the City to the Successful Bidder shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The prompt payment provisions of 49 CFR Part 26 also require the Successful Bidder to ensure the prompt and full payment of retainage monies to subcontractors or subconsultants at such time as the work of the subcontractor or subconsultant is complete and the City has accepted the work and paid the Successful Bidder for the work performed and accepted. Retention shall be paid no later than 30 days after such payment is issued by the City.

Any diversion by the Successful Bidder of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the City. If the Successful Bidder fails to make payments in accordance with these provisions, the City may take any one or more of the following actions, and the Successful Bidder agrees that the City may take such actions:

- Hold the Successful Bidder in default under this contract
- Withhold future payments, including retention, until proper payment has been made to Subcontractors or suppliers in accordance with these provisions
- Reject all future bids from the Successful Bidder for a period not to exceed one year from substantial completion date of this contract
- Terminate the contract

Nothing in this section negates the rights of the Successful Bidder to carry out the terms and conditions of its contract with the subcontractor or sub-consultant as it relates to monies owed by the subcontractor or sub-consultant for late performance, claims, and other conditions that may exist.

## SECTION V. RECORD & REPORTING REQUIREMENTS

- A. During the performance of the contract, the Successful Bidder shall keep such records as are necessary to document its subcontracting participation. The records shall be provided to EOD within three business days of notification by the City and at the completion of the contract. Reports shall be in such form, manner, and content as prescribed by the City. These record requests include, but are not limited to:
1. A complete listing of all subcontractors and suppliers on the project
  2. The scopes of work being performed by each subcontractor
  3. The dollar value of all subcontracting work, services, and procurements
  4. Copies of all executed subcontracts or invoices
- B. **Monthly Reporting** – During the course of the contract, an up-to-date “Procurement Report for All Subcontractors/Subconsultants” (**Attachment B**) must be submitted to the City with each Request for Payment submitted by the Successful Bidder.
- C. **Closeout Reporting** – Nearing completion of the contract, the Successful Bidder shall submit a final “Procurement Report for All Subcontractors/Subconsultants” (**Attachment B**) and “Certification of Payment to DBE Firms” (**Attachment C**) to EOD. These forms are to be completed and signed by a duly authorized agent of the Successful Bidder, and all DBE firms must verify they have received payment in full from the Successful Bidder. The Equal Opportunity Department will authorize the processing of the Final Payment once all documents are received and verified.

**ATTACHMENT A1**  
**NEGOTIATIONS WITH SMALL BUSINESSES**  
**(CONTINUED)**

| (A)<br>Small Business Contact Information   | (B)<br>Business Status  | (C)<br>Scope of Work/Services to be Performed | (D)<br>Type of Agreement  | (E)<br>Agreement Amount  | (F)<br>Communication of Final Selection Outcome <sup>1</sup>  |
|---|---|---|---|--|---|
| Name<br>Address<br>City State Zip<br>Phone Number E-Mail or Fax<br>Annual Gross Receipt sales: Number of Years in Business: | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br><br>As a Percent of Total Contract Award:<br>%<br><br>Other:<br><br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br><br>When was this firm notified of the selection outcome? |
| Name<br>Address<br>City State Zip<br>Phone Number E-Mail or Fax<br>Annual Gross Receipt sales: Number of Years in Business: | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br><br>As a Percent of Total Contract Award:<br>%<br><br>Other:<br><br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br><br>When was this firm notified of the selection outcome? |
| Name<br>Address<br>City State Zip<br>Phone Number E-Mail or Fax<br>Annual Gross Receipt sales: Number of Years in Business: | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br><br>As a Percent of Total Contract Award:<br>%<br><br>Other:<br><br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br><br>When was this firm notified of the selection outcome? |

Attachment A1, Attachment A2, and supporting documentation of the Communication of Final Selection Outcome<sup>1</sup> are required within 3 calendar days of the bid submittal deadline. If additional space is required, please copy and submit multiple pages of this attachment.

Communication of FINAL Selection Outcome<sup>1</sup> Documentation of notification of final selection outcome to all small businesses can include copies of e-mails, letters, faxes or contact logs depicting the date and the name of the person contacted.

**ATTACHMENT A1**  
**NEGOTIATIONS WITH SMALL BUSINESSES**

|                              |  |               |        |                        |                 |
|------------------------------|--|---------------|--------|------------------------|-----------------|
| Project Title/Number.        |  |               |        |                        |                 |
| Successful Submitter's Name: |  | Phone Number: |        | Point of Contact Name: |                 |
| Mailing Address:             |  | City:         | State: | Zip:                   | Title:          |
|                              |  |               |        | Telephone Number.      | E-mail Address. |

**Summary of Bidder's negotiation with the small business considered for this contract.**

| (A)<br>Small Business Contact Information  | (B)<br>Business Status  | (C)<br>Scope of Work/Services to be Performed | (D)<br>Type of Agreement  | (E)<br>Agreement Amount  | (F)<br>Communication of Final Selection Outcome <sup>1</sup>  |
|--|---|---|---|--|---|
| Name<br>Address<br>City State Zip<br>Phone Number E-Mail or Fax:<br>Annual Gross Receipt sales Number of Years in Business | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br>As a Percent of Total Contract Award:<br>%<br>Other:<br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br>When was this firm notified of the selection outcome? |
| Name<br>Address<br>City State Zip<br>Phone Number E-Mail or Fax:<br>Annual Gross Receipt sales Number of Years in Business | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br>As a Percent of Total Contract Award:<br>%<br>Other:<br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br>When was this firm notified of the selection outcome? |
| Name<br>Address<br>City State Zip<br>Phone Number E-Mail or Fax:<br>Annual Gross Receipt sales Number of Years in Business | <input type="checkbox"/> DBE<br><input type="checkbox"/> SBC - Small Business Concern<br><input type="checkbox"/> SBE - City of Phoenix Certified<br><input type="checkbox"/> Unknown |   | <input type="checkbox"/> Subcontract<br><input type="checkbox"/> Joint Venture<br><input type="checkbox"/> Purchase Order<br><input type="checkbox"/> Service Agreement<br><input type="checkbox"/> Firm was not Selected | \$<br>As a Percent of Total Contract Award:<br>%<br>Other:<br><input type="checkbox"/> Firm not Selected | Provide explanation, if firm was not selected and will not be part of this contract?<br><br>When was this firm notified of the selection outcome? |

**ATTACHMENT A2**  
**SMALL BUSINESS UTILIZATION COMMITMENT**  
**(NON-NEGOTIATED CONTRACTS)**

On behalf of the Competitive Range Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

- 1) The firms indicated as "selected" in **Attachment A1, *Negotiations with Small Businesses***, will participate in this contract;
- 2) The Submitter will comply with the Outreach Requirements for Race- and Gender-Neutral Contracts for substitutions;
- 3) I understand and agree that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- 4) The following statement is true and correct:

The proposed total participation of DBE, SBC, and SBE firms on this contract will be:

\_\_\_\_\_ %

Signed By:

(signature)

Print Name:

Title:

Name of Company:

Date:



**ATTACHMENT C**

**CERTIFICATION OF PAYMENT TO DBE FIRMS**

**(TO BE COMPLETED BY THE SUCCESSFUL BIDDER AND DBE FIRM UPON COMPLETION OF WORK)**

**Successful Bidder AFFIDAVIT:**

The undersigned, having contracted as the Successful Bidder on Project # \_\_\_\_\_, hereby certifies that full payment (*including all retention*) has been made to the DBE firm cited below. The total value of all payments made to the DBE firm for materials and/or work performed on this project contract is as follows:

**DBE Firm:** \_\_\_\_\_ **Total Amount Paid: \$** \_\_\_\_\_

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three (3) years from the project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the Successful Bidder, all documentation supporting the Successful Bidder's position with regards to delayed or withheld payment(s) should be submitted.

**I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.**

By: \_\_\_\_\_  
Authorized Agent for Successful Bidder (Print Name and Title)

Date: \_\_\_\_\_

---

**DBE FIRM AFFIDAVIT:**

The undersigned DBE firm hereby certifies that a contract was entered into with the above named Successful Bidder to perform work or provide materials on the project cited in this document. I further certify that the total amount of payments received as provided herein by the prime contract is accurate and unchallenged.

**I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OF FEDERAL LAWS, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.**

By: \_\_\_\_\_  
Authorized Agent for DBE Firm (Print Name and Title)

Date: \_\_\_\_\_

**Debarment and Suspension Certification for Prospective Contractors**

Primary covered transactions must be completed by Contractor for contract value over \$25,000.

Choose one alternative:

- The Contractor certifies to the best of its knowledge and belief that it and its principals:
  1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  2. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
  4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

**OR**

- The Contractor is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.)

The Contractor certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

**Executed in** [insert city and state].

**Name:**

\_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

**Disadvantaged Business Enterprise (DBE)**

**DBE Requirements for Transit Vehicle Manufacturers**

Pursuant to Title 49, Code of Federal Regulations, Part 26.49, a Proposer, as a condition of being authorized to respond to this solicitation, must certify by completing the form DBE Approval Certification that it has on file with the Federal Transportation Administration (FTA) an approved or not disapproved annual disadvantaged business enterprise (DBE) subcontracting participation goal.

**Disadvantaged Business Enterprise (DBE)**

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

Contractor shall maintain compliance with "DBE Approval Certification" throughout the period of Contract performance.

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as City deems appropriate.

Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

**DBE Approval Certification**

I hereby certify that the Proposer has complied with the requirements of 49 CFR 26, Participation by Disadvantaged Business Enterprises in DOT Programs, and that its goals have not been disapproved by the Federal Transit Administration.

**Name and title of the proposer's authorized official:**

---

Authorized signature

## The Contract Work Hours and Safety Standards Act (CWHSSA)

- [Overview](#)
  - [Compliance Assistance Materials](#)
    - [Basic Information](#)
    - [Fact Sheets](#)
  - [Recordkeeping](#)
  - [Applicable Laws and Regulations](#)
  - [Related Topics and Links](#)
  - [DOL Contacts](#)
  - [Return to By Law Menu](#)
- 

### OVERVIEW

The Contract Work Hours and Safety Standards Act (CWHSSA) applies to federal service contracts and federal and federally assisted construction contracts over \$100,000. It requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. This Act also prohibits unsanitary, hazardous, or dangerous working conditions on federal and federally financed and assisted construction projects.

The Wage and Hour Division (WHD) within the U.S. Department of Labor (DOL) enforces the compensation requirements of this Act, while DOL's Occupational Safety and Health Administration (OSHA) enforces the safety and health requirements.

### COMPLIANCE ASSISTANCE MATERIALS

#### BASIC INFORMATION

- [Employment Law Guide: Hours and Safety Standards in Construction Contracts](#)

#### FACT SHEETS

- [Occupational Safety and Health Administration \(OSHA\) Compliance Assistance Fact Sheet \(PDF\)](#)

#### RECORDKEEPING

Depending on the type of federal procurement contract involved, the recordkeeping requirements the [Copeland Act](#) or the [McNamara-O'Hara Service Contract Act](#) apply to contracts subject to the Contract Work Hours and Safety Standards Act (CWHSSA).

#### APPLICABLE LAWS AND REGULATIONS

- [Title I - Contract Work Hours and Safety Standards Act](#)

- [29 CFR Part 4](#) - Regulations describing the labor standards for federal service contracts.
- [29 CFR Part 6](#) - Regulations describing the Rules of Practice for administrative proceedings enforcing labor standards in federal and federally assisted construction contracts and federal service contracts.
- [29 CFR Part 8](#) - Regulations describing practice before the Administrative Review Board with regard to federal service contracts.
- [29 CFR Part 5](#) - Regulations regarding the labor standards provisions applicable to contracts covering federally financed and assisted construction, as well as the labor standards applicable to nonconstruction contracts subject to the Contract Work Hours and Safety Standards Act.
- [The Occupational Safety and Health \(OSH\) Act of 1970 \(PDF\)](#)
- [29 CFR Parts 70 to 240](#) - Regulations issued by the Occupational Safety and Health Administration (OSHA) that cover a broad array of subjects, including procedures for state agreements; standards applicable to specific industries, such as shipyards, marine terminals, and agriculture; recording and reporting occupational injuries and illness; safety standards; health standards; and criteria for assessment of penalties.

#### **RELATED TOPICS AND LINKS**

- [Employment Law Guide - "Kickbacks" in Federally Funded Construction \(Copeland Act\)](#) - Prohibits a contractor or subcontractor from in any way inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract and requires contractors and subcontractors on certain federally funded construction contracts to submit weekly statements of compliance. **See also Compliance Assistance By Law - [The Copeland "Anti-Kickback" Act](#).**
- [Davis-Bacon and Related Acts Compliance Assistance Web Page](#)
- [McNamara-O'Hara Service Contracts Act Compliance Assistance Web Page](#)
- [Wage Determinations OnLine](#) - This Web site provides a single location for federal contracting officers and the public to use in obtaining appropriate Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) for each official contract action.
- [State Occupational Safety and Health Plans](#)
- [OSHA Industry-Specific Resources](#)

#### **DOL CONTACTS\***

##### **Wage and Hour Division**

200 Constitution Avenue, NW

Room S-3502

Washington, DC 20210

Contact WHD

Tel: 1-866-4USWAGE (1-866-487-9243)

TTY: 1-877-889-5627

Local Offices

- **Occupational Safety and Health Administration (OSHA)**  
200 Constitution Avenue, NW  
Washington, DC 20210
- **Contact OSHA**  
Tel.: 1-800-321-OSHA (1-800-321-6742)  
TTY: 1-877-889-5627
- **Local Offices**
- **For questions on other DOL laws,**  
please call DOL's Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365). Live assistance is available in English and Spanish, Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern Time. Additional service is available in more than 140 languages through a translation service. Tel: 1-866-4-USA-DOL (1-866-487-2365)  
TTY: 1-877-889-5627

***\*Pursuant to the U.S. Department of Labor's Confidentiality Protocol for Compliance Assistance Inquiries, information provided by a telephone caller will be kept confidential within the bounds of the law. Compliance assistance inquiries will not trigger an inspection, audit, investigation, etc.***

# The Copeland "Anti-Kickback" Act

## OVERVIEW

The Copeland "Anti-Kickback" Act generally prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract and requires such contractors and subcontractors to submit weekly statements of compliance.

## COMPLIANCE ASSISTANCE MATERIALS

### BASIC INFORMATION

- Employment Law Guide - "Kickbacks" in Federally Funded Construction (Copeland Act) - Describes the basic provisions of the Copeland "Anti-Kickback" Act.
- Copeland "Anti-Kickback" Act Compliance Assistance Web Page

## RECORDKEEPING

Each covered contractor or subcontractor must provide a weekly statement of the wages paid to each of its employees engaged in covered work. The statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages and shall be on the "Statement of Compliance" form on the back of WH-347 "Payroll (For Contractors Optional Use)" or on any form with identical wording. Within seven days after the regular pay date for the pay period the statement shall be delivered to a representative of the federal or state agency in charge.

## APPLICABLE LAWS AND REGULATIONS

- The Copeland "Anti-Kickback" Act, 40 USC §276c and 18 USC §874 - The "Anti-Kickback" section of the Act precludes a contractor or subcontractor from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her contract of employment. The Act also require the contractor and subcontractor to submit a weekly statement of the wages paid to each employee performing on covered work during the preceding payroll period.
- 29 CFR Part 3 - Regulations implementing the requirements of the "anti-kickback" section of the Copeland Act.

## RELATED TOPICS AND LINKS

- Employment Law Guide - Prevailing Wages in Construction Contracts - Describes the coverage and basic requirements of prevailing wages in construction contracts. **See also Compliance Assistance By Law - The Davis-Bacon and Related Acts (DBRA).**
- Employment Law Guide - Hours and Safety Standards in Construction Contracts - Describes the Contract Work Hours and Safety Standards Act (CWHSSA) which requires contractors and subcontractors with covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek. **See also Compliance Assistance By Law - The Contract Work Hours and Safety Standards Act (CWHSSA).**

## DOL CONTACTS\*

### Wage and Hour Division

200 Constitution Avenue, NW

Room S-3502

Washington, DC 20210

Contact WHD

Tel: 1-866-4USWAGE (1-866-487-9243)

TTY: 1-877-889-5627

Local Offices

### **For questions on other DOL laws,**

please call DOL's Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365). Live assistance is available in English and Spanish, Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern Time. Additional service is available in more than 140 languages through a translation service.

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## **CONSTRUCTION SCOPE OF WORK**

### **Purpose:**

To establish a sequence of repairing the solar lighting for bus shelters for the City of Glendale.

### **Scope of Work:**

The Scope of Work for this project consists of repairing the solar lighting of City of Glendale bus shelters. Designated bus shelters in need of repair will be provided and it is the Contractor's responsibility that each shelter will have a complete working solar lighting system. The Contractor shall utilize the Bid Schedule along with other available associated documents to establish their bid price for the project. The Contractor's bid price shall also include any labor and materials needed for the work to adhere to the National Electrical Code (NEC) as well as the Specifications for the project.

Theft has been a problem with the operation of the lighting for the bus shelters. Project documents mention to use tamper proof security screws for all installations, existing and future, to limit theft. Costs associated with theft shall also be a part of the Contractor's cost for the project.

Contractor's costs should consist of the Base Bid, Alternate Bid No.1 and Alternate Bid No.2.

The Base Bid consists of all the costs for labor and materials designated on the Base Bid Schedule. Alternate Bid No.1 consists of the labor and materials of replacing existing bus shelter lights with new LED light bulbs. Alternate Bid No. 2 consists of the labor and materials of replacing existing bus shelter lighting fixtures with new LED lighting fixtures that includes the LED light bulbs.

### **References:**

1. City of Glendale Bus Shelter Solar/Electrical Assessment Report
2. Electrical Specifications
3. Bus Shelter Solar Lighting System for equipment specifics

### **Responsibilities:**

The Contractor shall work together with the City of Glendale and CR Engineers for a complete working solar lighting system for the designated bus shelters. An agreeable schedule of repair shall be established between the City of Glendale and the Contractor. Involvement with CR Engineers will be continuous throughout the repair for the bus shelters until a complete workable installation is provided. CR Engineers will be available for a construction meeting, RFI responses and submittal reviews.

**Procedures:**

After the Contractor becomes familiar with the aforementioned references, the Contractor along with CR Engineers shall come up with a process to repair all designated bus shelters within the agreeable schedule. Many of the bus shelters can be repaired simply by replacing the battery or the light. However since time has elapsed there may be another aspect of the solar lighting that may now be in need of repair. CR Engineers recommends to the Contractor to use the Glendale Bus Shelter Inspection Report (Attachment A within the City of Glendale Bus Shelter Solar/Electrical Assessment Report) as a guideline only for repairing the lighting for the shelters. Other repairs not listed in the Report may be needed for a complete working bus shelter lighting system.

As mentioned in the Report, theft has been a problem with the operation of the lighting for the bus shelters. CR Engineers recommends using tamper proof security screws for all installations (existing and future) to limit theft. Page 7 of the Report lists a type of security screw that may be used. The Contractor must inform the City of Glendale on type of security screw that will be used for the purpose of maintenance and future installations.

## BUS SHELTER SOLAR LIGHTING SYSTEM

### Solar Lighting Controller

The controller for the solar lighting system for the bus shelters must come equipped with a microcontroller for various automatic lighting control functions. The solar lighting controller must provide precise lighting control and be reliable.

#### Operation:

1. Digital switch that selects among 10 lighting options minimum
2. LED confirmation as to showing correct switch selection
3. Test button that will turn on the lights for 5 minutes minimum for testing purposes
4. Lighting timer overriding capabilities
5. Sunrise overrides lighting timer
6. Timer accuracy must be accurate to within 2 seconds
7. Microcontroller digital accuracy
8. Fully automatic operation
9. Ten field adjustable lighting control options
10. Special on/off/on functions
11. Manual test capability
12. Detects day and night using the PV array
13. Suitable for 12 VDC lamps
14. Sealed/Flooded battery selection
15. Temperature compensation
16. Battery charging circuit

#### Version:

1. 12 Volt with 10 and 20 amp ratings – Sunlight Solar Lighting Controller – 10
2. Or an approved equal

### Photovoltaic Panels

Photovoltaic (PV) panels shall be IEEE 1262 and listed to UL Standard 1703. PV panels must also be compliant with 2400 and 5400 mechanical load testing per IEC 61215. PV panel manufacturer must be able to provide field data for a minimum of 10 years. PV panels must come with a 10 year performance warranty. Panel manufacturer must have a minimum of 10 years experience in commercial solar manufacturing.

**Operation:**

1. Highly efficient even under low lighting conditions
2. Hardened front glass that protects the module against environmental conditions
3. Laminated solar cells to protect against moisture and ensures electrical insulation
4. Torsion resistant module frame that provides high mechanical strength
5. Power rating of 40W minimum
6. 12V operation
7. Tempered glass for high impact resistance from storms
8. Uniform appearance appeal for aesthetics
9. Temperature tolerable
10. Stable output power

**Version:**

1. Siemens SM 46
2. Shell 40W
3. Or an approved equal

**Batteries**

Batteries for the bus shelter solar lighting system shall be sealed lead acid batteries that are maintenance free. The batteries must be able to be used close to people and sensitive equipment. Batteries shall be housed in tamper proof and weather proof enclosures.

**Operation:**

1. Rechargeable
2. Non-spillable
3. Maintenance free
4. Rugged and economical
5. Needs no water additions
6. Operational in any position
7. Deep cycle
8. No corrosion terminals
9. Brand new 12V battery
10. 50 AH minimum

**Version:**

1. Universal 12V
2. Centennial 12V
3. Power Source 12V

4. Or an approved equal

**Bus Shelter Light**

The bus shelter light shall be LED in type that operated at 12V. The LED light shall come equipped with full cut-off optics as well as optical grade epoxy for optimal vandal resistivity. The LED light shall have reliable operations in high temperatures.

**Operation:**

1. LED light suitable for a bus shelter
2. 12V operation
3. Passive cooling
4. Low power multichip LED's
5. Vandal resistant
6. Full cut-off
7. Finished in polyester powder coat paint
8. 5 year warranty minimum

**Version:**

1. Ember LED Model VSH-MC-D-C503-D5-PG-V4
2. Or an approved equal

**Electrical Specifications  
For  
City of Glendale  
Bus Shelter Solar Lighting**

| Index | Description                     |
|-------|---------------------------------|
| 16000 | General Electrical Requirements |
| 16050 | Basic Materials & Methods       |
| 16060 | Electrical Demolition           |



## SECTION 16000

### GENERAL ELECTRICAL REQUIREMENTS

#### PART 1 - GENERAL

##### 1.01 SCOPE OF WORK

- A. It is the intent of this part of the Contract Documents to cover the work and materials necessary for erecting a complete electrical system, tested and ready for continuous use. The system shall be constructed in accordance with the Contract Documents, and Federal, State, and Local codes and regulations.

##### 1.02 RELATED SECTIONS

- A. The Contractor shall coordinate the work with other trades, and furnish and install the equipment in accordance with the manufacturers' requirements.

##### 1.03 GENERAL PROVISIONS

- A. Installation of systems and equipment is subject to clarifications as indicated in reviewed shop drawings and field coordination.
- B. The alignment of equipment and conduit shall be adjusted to provide a working system.
- C. The Contractor shall furnish and install the parts and pieces necessary to the installation of equipment, in accordance with the best practice of the trade, and in conformance with the requirements of equipment manufacture's recommendations.
- D. Items not specifically mentioned in these Contract Documents but which are necessary to make a complete working installation, shall be deemed to be included herein.
- E. If any contradictions, nonhomogeneity, or inconsistency appears, the most strict criteria noted and the collective requirements in any and all of the project documents shall apply.
- F. The Contractor shall perform necessary excavating, removal, and other work required for the proper installation of conduits, whether inside, or outside of the structures. The Contractor shall repair and patch where demolition has taken place in a manner to match existing original structure.

##### 1.04 REGULATIONS, CODES, AND STANDARDS

- A. Electrical work shall be performed in accordance with the latest published regulations, codes, and standards, of the following:

1. National Electrical Code (NEC)
2. State and local codes
3. Institute of Electrical and Electronic Engineers (IEEE)
4. American National Standards Institute (ANSI)
5. American Society for Testing and Materials (ASTM)
6. Insulated Cable Engineers Association (ICEA)
7. National Electrical Manufacturers Association (NEMA) Standards
8. Federal Occupational Safety and Health Act (OSHA)
9. National Fire Protection Association (NFPA)

- B. When applicable, the material used in the performance of the electrical work shall be listed by the Underwriters' Laboratories, Inc. (UL) for the class of service for which they are intended.

#### 1.05 SUBMITTALS

- A. It is the obligation of the Contractor to organize his/her work, so that a complete electrical and control system for the shelters will be provided.
- B. The submittals shall be neatly grouped and organized. Information shall be highlighted, and the specific product shall be indicated. All submittals shall be complete, and presented in one package. Incomplete submittals will be returned without review. If a portion of the project requires a fast track schedule, that portion only may be submitted earlier under a separate cover letter after securing the Engineer's written permission. The following shall be submitted to the Engineer and returned, reviewed to the Contractor before fabrication is started.
1. A complete list of the equipment and materials, including the manufacturer's name, product specification, descriptive data, technical literature, performance charts, catalog cuts, installation instructions, and spare part recommendations for each different item of equipment specified. The above shall clearly show all the specified requirements as described in the Specifications including but not limited to specific U.L. and NEMA rating, technical capabilities, test result verifications, and acceptance letters.

### PART 2 - PRODUCTS

#### 2.01 GENERAL MATERIALS AND METHODS

- A. Materials, equipment, and parts comprising any unit, or part thereof, specified shall be new and unused, of current manufacture, and of highest grade consistent with the state of the art. Damaged materials, equipment, and parts, are not considered to be new and unused, and will not be accepted.

### PART 3 - EXECUTION

### 3.01 INSTALLATION OF ELECTRICAL EQUIPMENT

- A. Coordinate the installation of electrical equipment with the City of Glendale.
- B. Equipment Dimensions and Clearances:
  - 1. Do not use equipment that exceeds the indicated dimensions. Except as approved in writing by the Engineer.
  - 2. Do not use equipment or arrangements of equipment that reduce required clearances or exceed the space allocation.
- C. Install equipment in accordance with the manufacturer's instructions.
- D. Equipment Access:
  - 1. Install equipment so it is readily accessible for operation and maintenance.
  - 2. Equipment shall not be blocked or concealed.
  - 3. Do not install electrical equipment such that it interferes with normal maintenance requirements of other equipment.
- E. Equipment shall be installed plumb, square and true with the shelter construction, and shall be securely fastened.
- F. Provide all necessary anchoring devices and supports.
  - 1. Use supports.
  - 2. Supports and anchoring devices shall be rated and sized based on dimensions and weights verified from approved equipment submittals.
  - 3. Hardware shall be stainless steel.
  - 4. Do not cut, or weld to, building structural members.
  - 5. Do not mount safety switches and external equipment to other equipment enclosures, unless enclosure mounting surface is properly braced to accept mounting of external equipment.

### 3.02 CUTTING AND REPAIRING

- A. Where it becomes necessary to cut into existing work for the purpose of making electrical installations, core drills shall be used for making circular holes. Other demolition methods for cutting or removing shall be reviewed by the Engineer prior to starting the work.
- B. The Contractor shall repair damage caused by construction, or demolition work, and restore damaged areas to original condition.

End of Section

SECTION 16050

BASIC MATERIALS AND METHODS

PART 1 - GENERAL

1.01 DESCRIPTION

- A. This section consists of general electrical materials and methods.

1.02 SUBMITTALS

- A. Submit manufacturer's literature for all installed equipment.

1.03 QUALITY ASSURANCE

- A. Refer to Section 16000.

1.04 SPARE PARTS

- A. Provide spare components as agreed upon with the City of Glendale.

PART 2 - PRODUCTS

2.01 BASIC MATERIALS

- A. Electrical equipment shall be rated for heavy duty service.

PART 3 - EXECUTION

3.01 BASIC MATERIALS

- A. The completed installation shall conform to all applicable federal, state, and local code ordinances and regulations. Contractor shall obtain necessary permits and inspections required by the governing authorities. Work shall be done in a neat, workmanlike, finished and safe manner, according to the latest published N.E.C.A. standards of installation, under competent supervision. Install grounding as required by the National Electrical Code.

End of Section

## SECTION 16060

### ELECTRICAL DEMOLITION

#### PART 1 - GENERAL

##### 1.01 SCOPE OF WORK

- A. Demolition of existing electrical equipment shall occur on these non-working items. Non-working equipment shall be returned to the City of Glendale.
- B. The Contractor shall be liable for any other damage he may inflict to the existing installations.

#### PART 2 - PRODUCTS

##### 2.01 MATERIALS AND EQUIPMENT

- A. Care shall be taken in demolition or removal of items as being returned to the Owner.
- B. The Contractor shall provide patching material to fill voids where demolition has taken place. Patching materials shall match, as nearly as practical, the existing original structure material for each surface being patched.

#### PART 3 - EXECUTION

##### 3.01 COORDINATION

- A. The Contractor shall verify existing field conditions, measurement, circuitry etc. prior to performing any demolition.
- B. Demolition shall not be performed without coordinating with new construction to limit down time and ease of switchover. The Contractor must coordinate with the Engineer and the City of Glendale for scheduling purposes.

##### 3.02 PERFORMANCE

- A. General: The means and methods of performing electrical demolition and removal operations are the sole responsibility of the Contractor. However, equipment used, and methods of demolition and removal will be subject to approval of the Engineer.
  - 1. Extend existing installations using materials and methods compatible with existing electrical installations, and as specified elsewhere herein.

- B. Unless otherwise indicated existing, electrical equipment, conduit, wire, etc. indicated for demolition shall be removed and disposed of in a lawful manner, off Site.
- C. The Contractor shall move existing electrical equipment required to be returned to the City of Glendale, to locations as directed by the City of Glendale. Care shall be taken to ensure existing electrical equipment being returned to the City of Glendale does not become damaged. The Contractor shall provide a means for storing and or stacking of the returned equipment prior to moving to final location, if necessary.

End of Section

**City of Glendale Bus Shelter Solar/Electrical Assessment**

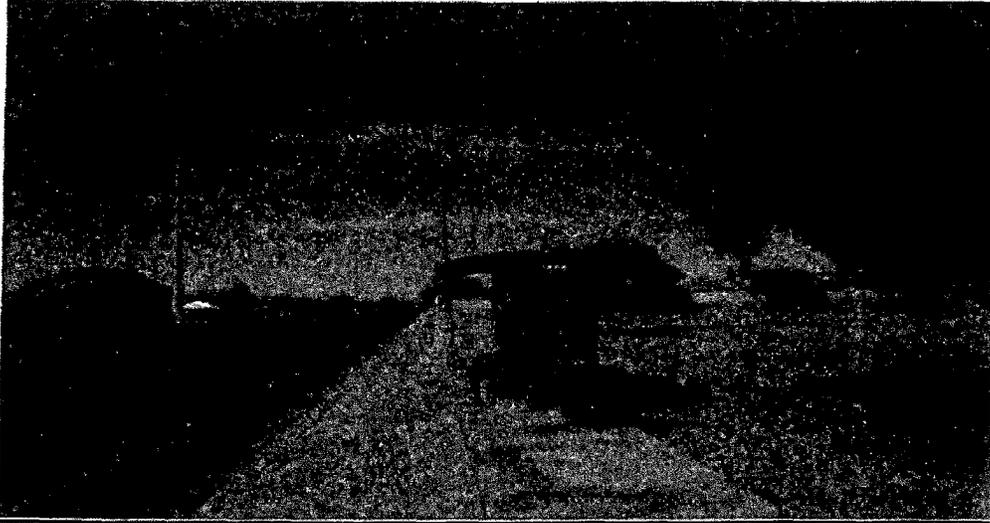
**TABLE OF CONTENTS**

|  |                  |
|--|------------------|
| <b>SECTION 1: EXECUTIVE SUMMARY.....</b>             | <b>Page 2</b>    |
| <b>SECTION 2: OVERALL SUMMARY.....</b>               | <b>Page 3</b>    |
| <b>SECTION 3: EQUIPMENT AND RECOMMENDATIONS.....</b> | <b>Page 4</b>    |
| <b>SECTION 4: OVERALL RECOMMENDATIONS.....</b>       | <b>Page 7, 8</b> |

**City of Glendale Bus Shelter Solar/Electrical Assessment**

**Section 1: EXECUTIVE SUMMARY**

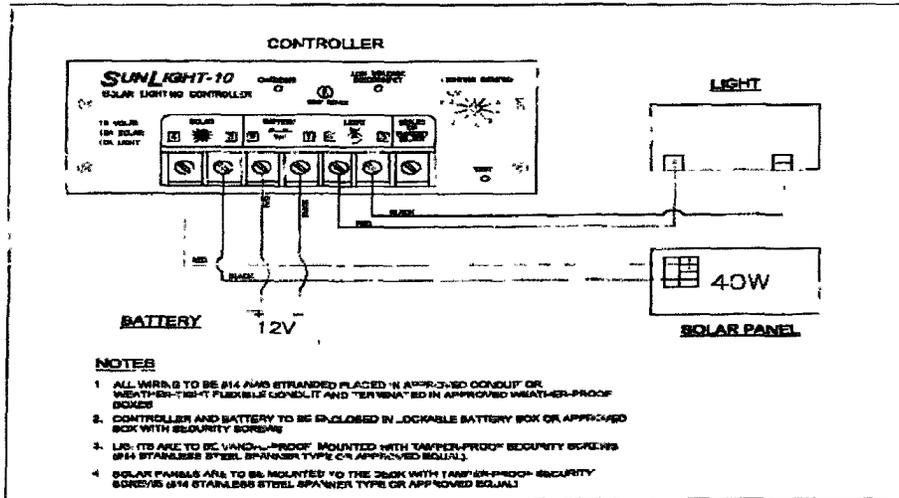
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CR Engineers Inc. (CRE) has conducted an overall evaluation of the electrical/solar system of the City of Glendale Bus Shelters and has prepared this report to highlight their findings. This report summarizes our findings as well as provides specifics for each assigned bus shelter. We evaluated each bus shelter taking an inventory of equipment and noted what equipment was not present. As part of the overall assessment and functionality report, CRE made recommendations based upon the need at each bus shelter along with associated costs.

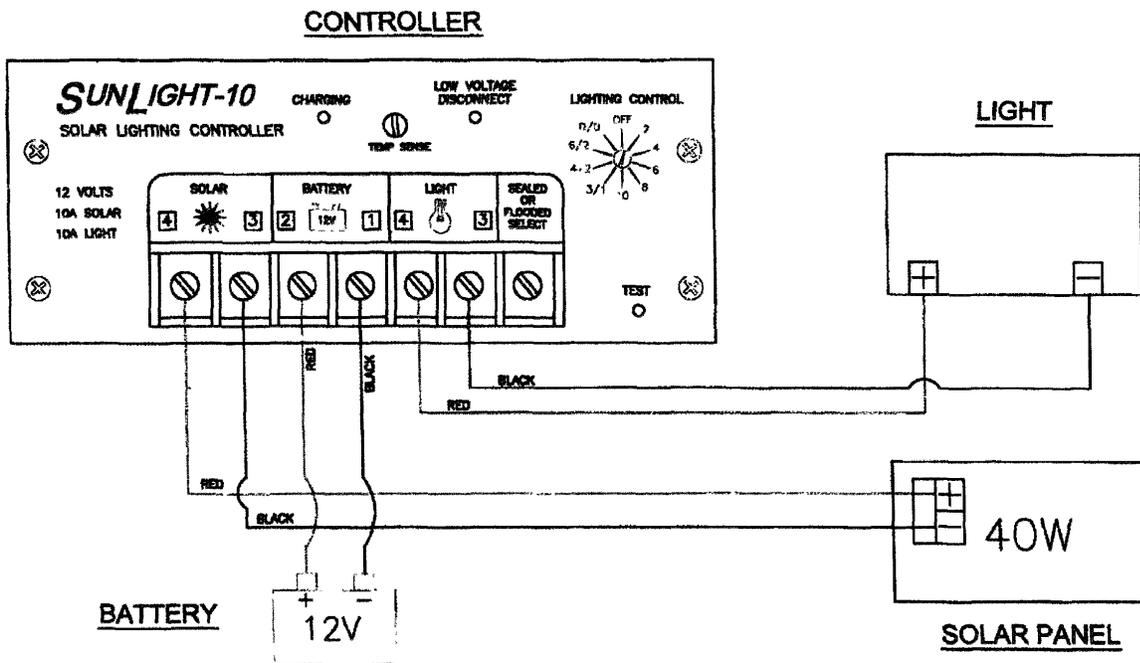
## City of Glendale Bus Shelter Solar/Electrical Assessment

### Section 2: OVERALL SUMMARY



The bus shelter assessment consisted of visiting each assigned site and taking an inventory of electrical and solar related equipment. It was through this inventory list that CRE was able to better evaluate the City of Glendale Bus Shelters as a whole with needed equipment, longevity of equipment and costs in mind. Evaluations between obtaining "off the shelf" solar and lighting kits as opposed to individual pieces of equipment can be made. Using certain manufacturers of equipment for all of the bus shelters as opposed to using different standards of a particular piece of equipment can reduce maintenance costs. An overall assessment can also be made regarding missing pieces of equipment at the bus shelters (due to theft) along with possible solutions. See Attachment A for CRE's Inspection Report that includes for each bus shelter the date it was inspected along with each shelter's wiring, battery, solar panel, solar controller, light fixture, light bulb and battery box assessment along with respective *manufacturers* and inspection notes. Attachment B consists of respective costs associated with the Inspection Report.

# ATTACHMENT E



## NOTES

1. ALL WIRING TO BE #14 AWG STRANDED PLACED IN APPROVED CONDUIT OR WEATHER-TIGHT FLEXIBLE CONDUIT AND TERMINATED IN APPROVED WEATHER-PROOF BOXES.
2. CONTROLLER AND BATTERY TO BE ENCLOSED IN LOCKABLE BATTERY BOX OR APPROVED BOX WITH SECURITY SCREWS
3. LIGHTS ARE TO BE VANDAL-PROOF, MOUNTED WITH TAMPER-PROOF SECURITY SCREWS (#14 STAINLESS STEEL SPANNER TYPE OR APPROVED EQUAL).
4. SOLAR PANELS ARE TO BE MOUNTED TO THE DECK WITH TAMPER-PROOF SECURITY SCREWS (#14 STAINLESS STEEL SPANNER TYPE OR APPROVED EQUAL).

## Section 3: Equipment and Recommendations

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### 3.01 – Solar Controller

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The most reliable piece of equipment for the bus shelters are the solar controllers. When present they all appear to be in working order. Solar controllers were missing from some bus shelters either due to theft or the bus shelter at the assigned location was never present (See Attachment A). Given the reliability of these existing solar controllers we do not see the need to upgrade them to the latest available. The most abundant on site solar controllers were the SunLight -10 Solar Lighting Controller (See Attachment C). This controller cost approximately \$150.00 and is all that is needed for a bus shelter. Any other controller with more “bells and whistles” is not needed for a bus shelter application and only will cost more.

# ATTACHMENT C



Morningstar's advanced **SunLight** solar lighting controller combines the **SunSaver** design with a microcontroller for automatic lighting control functions.

#### *This technology provides:*

- Proven Reliability
- Precise Lighting Control
- PWM Battery Charging

#### *Operation:*

- Rotary digital switch to select among 10 lighting options (see back)
- Test button flashes red LED to confirm correct rotary switch selection
- Test button turns lights on for 5 minutes (in LVD limited to 3 times)
- LVD overrides lighting timer
- Sunrise overrides lighting timer
- Timer accuracy is within 2 seconds

#### *Four Versions Available:*

- 12 Volt: 10 and 20 amp ratings
- 24 Volt: 10 and 20 amp ratings

#### *Features:*

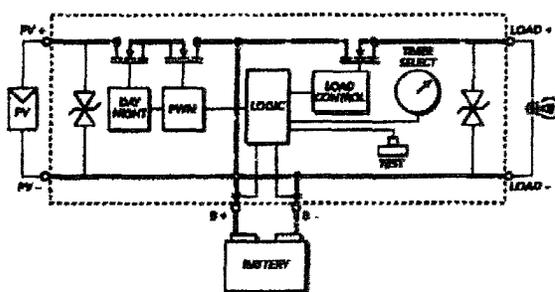
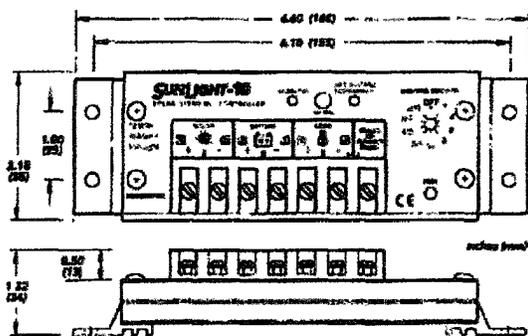
- Microcontroller digital accuracy
- Fully automatic operation
- Ten field adjustable lighting control options
- Special on/off/on functions
- Manual test capability
- LVD override protection
- Detects day and night using the PV array
- Suitable for all 12/24 Vdc lamps
- Sealed/Flooded battery select
- Temperature compensation
- Parallel with a SunSaver for 40 amps solar
- Includes SunSaver battery charging circuit

# SUNLIGHT™

## TECHNICAL SPECIFICATIONS

### Lighting Control Options

|                | SUNSET            | NIGHT             | SUNRISE           |
|----------------|-------------------|-------------------|-------------------|
| • OFF          | [Solid black bar] |                   |                   |
| • 2 HOURS ON   | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 4 HOURS ON   | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 6 HOURS ON   | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 8 HOURS ON   | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 10 HOURS ON  | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 3 / OFF / 1  | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 4 / OFF / 2  | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • 6 / OFF / 2  | [Patterned bar]   | [Solid black bar] | [Solid black bar] |
| • DUSK-to-DAWN | [Patterned bar]   | [Solid black bar] | [Solid black bar] |



### Mechanical Specifications

- Wire size #10 AWG (5.2 mm<sup>2</sup>)
- Anodized aluminum case
- Marine rated terminals
- Epoxy encapsulated
- Weight is 9 oz (0.26 kg)

### Electrical Specifications

|                      | 12 Volt      | 24 Volt |
|----------------------|--------------|---------|
| Rated Solar Input    | 10/20 A      | 10/20 A |
| Rated Load           | 10/20 A      | 10/20 A |
| 25% Current Overload | 5 min.       | 5 min.  |
| Regulation Voltage:  |              |         |
| Sealed Battery       | 14.1 V       | 28.2 V  |
| Flooded Battery      | 14.4 V       | 28.8 V  |
| Load Disconnect      | 11.7 V       | 23.4 V  |
| LVD Reconnect        | 12.8 V       | 25.6 V  |
| Temp. Comp (mV/°C)   | -27          | -54     |
| Self-consumption     | 8 mA         | 9 mA    |
| Operating Temp.      | -40 to +85°C |         |

**WARRANTY:** Five year warranty period. Contact Morningstar or your authorized distributor for complete terms.

**AUTHORIZED MORNINGSTAR DISTRIBUTOR:**



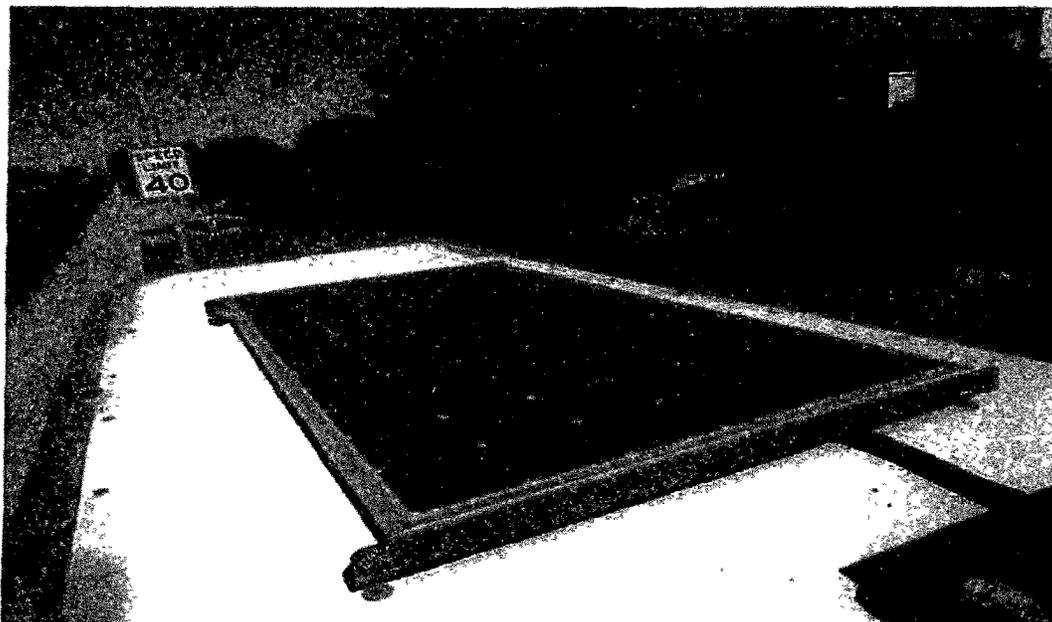
8 Pleasant Run  
Newtown, PA 18940 USA  
Tel: +1 215-321-4467 Fax: +1 215-321-4458  
E-mail: info@morningstarcorp.com  
Website: www.morningstarcorp.com

CE

## City of Glendale Bus Shelter Solar/Electrical Assessment

### 3.02 – Solar Panel

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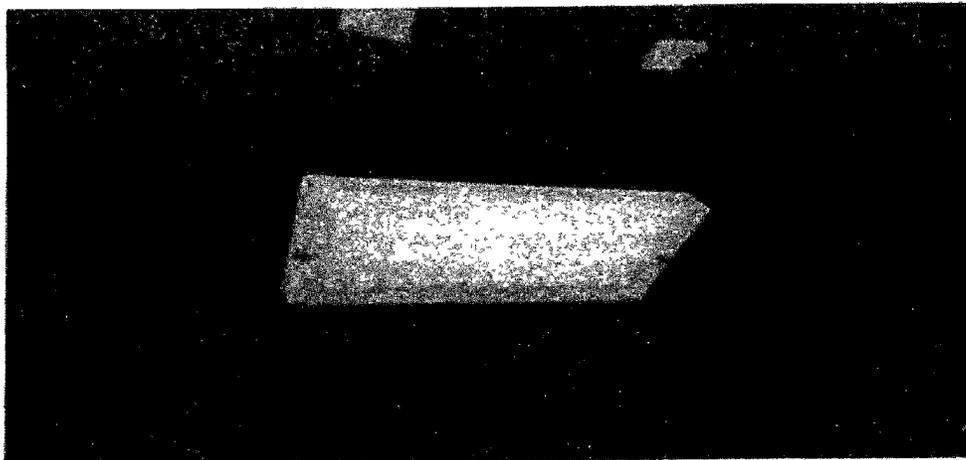


Solar panels for the bus shelters are 40W with varying manufacturers (See Attachment A). For the most part the solar panels are in working order. The bus shelter at Southbound on 43<sup>rd</sup> Ave. and Frier intersection was the only solar panel found that was not in working order. This is probably due to age of the solar panel. Two solar panels (one at Southbound 79<sup>th</sup> Ave. and Union Hills and another at Eastbound Northern and 55<sup>th</sup> Ave.) did not have adequate charge as they are not getting the required sunlight due to tree coverage on top of them. Replacement of any 40W solar panels for bus shelters should be done on what cost you are paying for the best warranty. Some solar manufacturers are now offering 20 year warranties for their solar equipment. 40W solar panels from Siemens or Kyocera have 20 year warranties and approximately cost \$312.00.

## City of Glendale Bus Shelter Solar/Electrical Assessment

### 3.03 – Lighting

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Our assessment showed that many light bulbs were burnt out (See Attachment A). Lighting for the bus shelters vary greatly. Some currently have LED lighting and others have florescent type lighting. Consideration should be made to spend extra money is upgrading any florescent fixtures to LED lighting type. Obviously the least cost effective solution would be to replace any burnt out bulbs at those effected shelters (cost from \$2.60 to \$11.00). However changing the entire fixture to LED would be more cost effective in the long run given their reliability as well as provide a standard in lighting for maintenance and aesthetic purposes. Attachment D consists of a cost effective, vandal resistant LED lighting fixture made by EmberLED that fits the bus shelter application. This fixture costs approximately \$140.00.

100 Washington Street, Suite 500  
 Boston, MA 02108  
 Tel: 617.552.1111

100 Washington Street, Suite 500  
 Boston, MA 02108

# ATTACHMENT D

## General Information

### Construction

Die-cast aluminum body with a low profile 0.86" surface mounted lamp which comes in 3, 5 and 7 watts at 12 volts DC. Our unique construction allows passive cooling of the LED system. The system utilizes low power multi-chip CREE LEDs which run much cooler than high output LEDs. They have a reliable operation in ambient temperatures up to 45°C. All systems come with eSHINE OGE (Optical Grade Epoxy) for optimal vandal resistance and light transmission.

### Optics

Full Cut Type V Optics have been precisely designed to shape the distribution thereby maximizing efficiency and application spacing. All systems come in a variety of optical performances with 15, 45, 75, and 120 degree optical performance.

### LEDs

CREE LED type C535A and C503D.

### Electrical

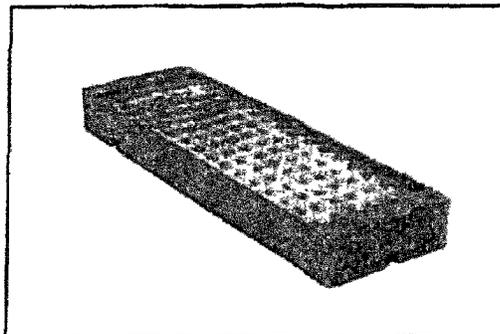
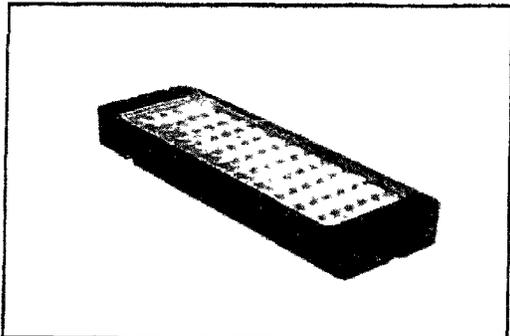
All systems are 12 VDC with 90-250 VAC drivers available. LED luminaire is suitable for operation in -30°C to 45°C ambient environments and features an IP67 enclosure rating.

### Mounting

M6 type screws or bolts.

### Finish

Cast components and arm finished in polyester powder coat paint. Standard colors include grey and white - Other RAL colors are available including color match services.



## Standard Model Details

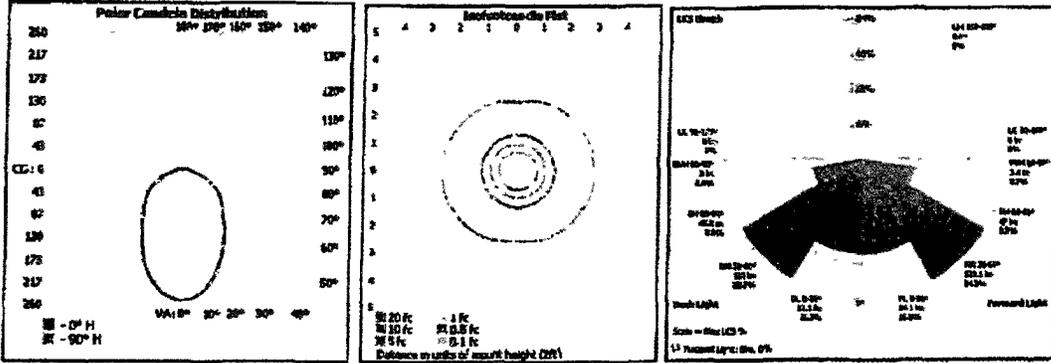
| Model                  | Wattage | Initial Lumens | Optic | 5   | 10  | 15  | IP Rating | Warranty |
|------------------------|---------|----------------|-------|-----|-----|-----|-----------|----------|
| VSH-MC-D-C503-D5-P6-V4 | 3.50    | 250-375        | V     | N/A | N/A | N/A | IP66      | 5 Yrs    |
| VSH-MC-D-C503-D5-P6-V4 | 5.55    | 450-590        | V     | N/A | N/A | N/A | IP66      | 5 Yrs    |
| VSH-MC-D-C503-D5-P6-V4 | 7.50    | 590-750        | V     | N/A | N/A | N/A | IP66      | 5 Yrs    |



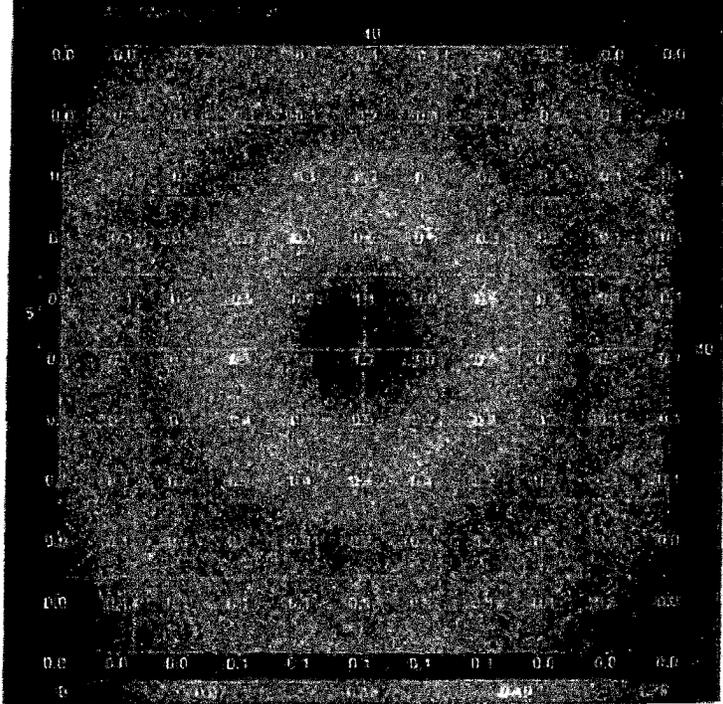
Part # VSH-MC-7W  
 Base # 77-0011  
 www.ember-led.com

Sub-Mainmounting height: 30.2"  
 Reference # 177070

**Photometric Detail**



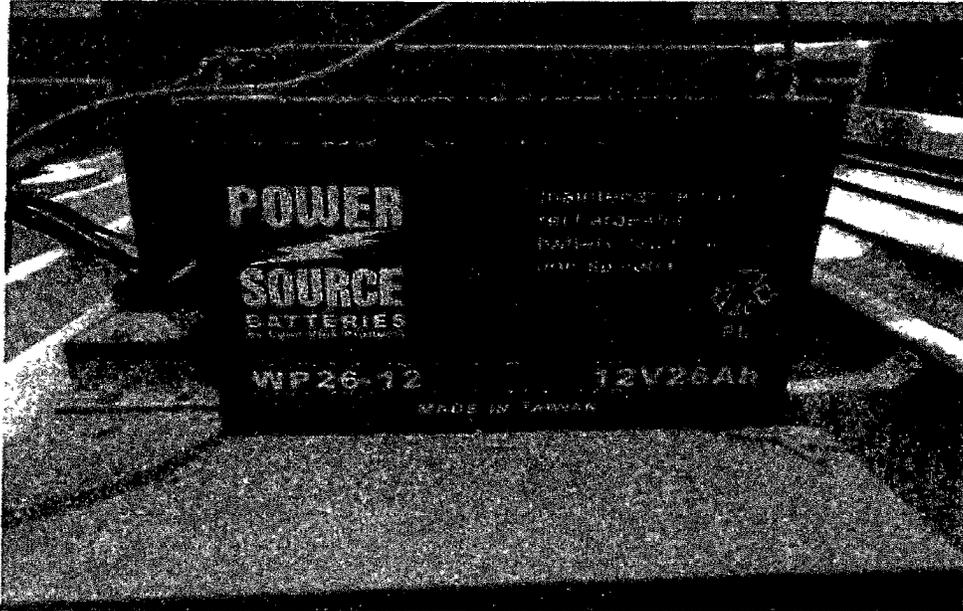
**VSH-MC-7W - 14 Ft Mounting Height**



| BUG RATING            | 80 - 100 - 60 |          |
|-----------------------|---------------|----------|
| <b>FORWARD LIGHT</b>  | LUMENS        | LUMENS % |
| LOW(0-30):            | 84.1          | 16.5%    |
| MEDIUM(30-60):        | 123.1         | 24.2%    |
| HIGH(60-80):          | 47.0          | 9.2%     |
| VERY HIGH(80-90):     | 3.4           | 0.7%     |
| <b>BACK LIGHT</b>     |               |          |
| LOW(0-30):            | 83.1          | 16.3%    |
| MEDIUM(30-60):        | 121.0         | 23.7%    |
| HIGH(60-80):          | 45.1          | 8.8%     |
| VERY HIGH(80-90):     | 3.0           | 0.6%     |
| <b>UPLIGHT</b>        |               |          |
| LOW(90-100):          | 0             | 0%       |
| HIGH(100-180):        | 0             | 0%       |
| <b>TRAPPED LIGHT:</b> | 0             | 0%       |

## City of Glendale Bus Shelter Solar/Electrical Assessment

### 3.04 – Battery and Battery Box



Due to the heat it was expected to see some battery failure at some of the bus shelters. Replacement of batteries should be similar to one for the solar panels that compares warranty with associated cost given that 12V batteries are the standard for bus shelter solar lighting applications.

## Section 4: Overall Recommendations

The first priority that we recommend for the bus shelters is to do whatever possible to prohibit theft of bus shelter electrical and solar equipment. There appears many solar and electrical equipment have been stolen from multiple sites. It is understandable that theft will never entirely stop, but there are methods (stated in Attachment E) that can slow down stealing of equipment. Tamper proof security screws (#14 Stainless Steel Spanner Type or Equal since these are not regularly found in typical hardware stores) should be used for all lighting, controller, battery boxes and solar panels. Our assessment revealed that if bus shelters had a particular type of security screw, the associated equipment at that shelter for the most part was still present. Equipment was more frequently stolen from shelters that did not use security type screws.

CRE contacted multiple solar lighting manufacturers and found out that there is not a solar lighting kit made for bus shelter applications. It seems that the solar lighting manufacturers are all providing “packages”, as they did for these existing bus shelters at the time of their installation that consists of individual equipment. Given that kits are not

## **City of Glendale Bus Shelter Solar/Electrical Assessment**

available for this application, a decision for the bus shelter fixes on an individual basis with costs in mind.

The obvious most cost effective fix would be to simply change out those burnt out light bulbs and bad batteries that are addressed in the Inspection Report. There will be other type of fixes (all are addressed along with their respective costs in the attached Engineers Estimate) that will be needed to get the bus shelters working again, but for the most part a bulb and/or battery change will fix most problems.

If finances permit, standardization of all equipment will, in the long run, will be most cost effective. This includes using LED lighting (when existing florescent bulbs are burnt out), batteries, solar panels, solar controllers and battery boxes all of the same respective manufacturer and type.

### Attachment A - Glendale Bus Shelter Inspection Report

| STREET DIRECTION INTERSECTING STREET | Date Inspected | Wiring Complete  | Battery         | Solar Panel    | Controller  | Light Fixture     | Light Bulb     | Battery Box | Notes   |
|--------------------------------------|----------------|--|-----------------|----------------|-------------|-------------------|----------------|-------------|---|
| 1 88 43rd Ave FB El Cerrito          | 10/23/2012     | none   | none            | none           | Sunlight 10 | Broken 12x12      | none           | No Lid      | Needs total system other than controller  |
| 2 88 43rd Ave FB Friar               | 10/23/2012     | none   | none            | none           | Sunlight 10 | LED               | ILED           | OK          | No power from solar panel   |
| 3 88 43rd Ave FB Nicolet             | 10/23/2012     | Partial  | Power Source    | none           | Sunlight 10 | none              | none           | OK          | Solar panel, light fixture and wiring missing                                       |
| 4 88 51st Ave FB Myrtle              | 10/23/2012     | none   | none            | none           | none        | none              | none           | none        | Needs total system (Stolen)   |
| 5 88 51st Ave FB Friar               | 10/23/2012     | No Shelter   | Power Source    | none           | none        | none              | none           | none        | No shelter at this location   |
| 6 88 51st Ave FB Olive               | 10/23/2012     | OK   | Universal 12500 | Siemens        | PBRT        | LED               | LED            | OK          | No voltage from solar panel   |
| 7 88 51st Ave FB Northern            | 10/23/2012     | OK   | Universal 12500 | Siemens        | Shell 40W   | Sunlight 10       | Thin Light     | GE FRT5CW   | Panel is in shade and bulb burnt out  |
| 8 88 51st Ave FB Myrtle              | 10/23/2012     | OK   | Universal 12500 | Siemens        | Shell 40W   | Sunlight 10       | Thin Light     | GE FRT5CW   | Bulb burnt out  |
| 9 88 51st Ave FB Olive               | 10/23/2012     | Retired  | none            | none           | none        | none              | none           | none        |   |
| 10 88 51st Ave FB Cactus             | 10/23/2012     | OK   | Centennial 12V  | Siemens        | Trace C12   | Electrodex 28912  | SU CF-8-9W41   | OK          | No Voltage - most likely bad controller   |
| 11 88 52nd Ave FB Glendale           | 10/23/2012     | OK   | Trojan 9G70     | Siemens        | Sunlight 10 | Fluorescent 12x12 | Greenlight 13W | No Lid      | Light bulb burnt out voltage readings OK  |
| 12 88 57th Ave NB Utopia (Library)   | 10/30/2012     | OK   | Universal 12500 | Avocora        | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Light bulb burnt out voltage readings OK  |
| 13 88 59th Ave FB Missouri           | 10/30/2012     | Partial  | Power Source    | Shell 40W      | Sunlight 10 | LED               | LED            | OK          | No power from panel (wiring) battery no charge                                      |
| 14 88 59th Ave FB Rose Ln            | 10/30/2012     | OK   | Centennial 12V  | Shell 40W      | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Light fixture - bad bulb  |
| 15 88 59th Ave FB Hayward            | 10/30/2012     | Partial  | Universal 12500 | Shell 40W      | Sunlight 10 | none              | none           | OK          | Needs light fixture and battery has no charge also needs battery box screw          |
| 16 88 59th Ave FB Northern           | 10/30/2012     | OK   | Centennial 12V  | Siemens        | Sunlight 10 | LED               | LED            | OK          | LED only flashes no constant light bad light power seems ok.                        |
| 17 88 59th Ave FB Brown              | 10/30/2012     | none   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 18 88 59th Ave FB Peoria             | 10/30/2012     | none   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 19 88 59th Ave FB Cactus             | 10/30/2012     | none   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 20 88 59th Ave FB Sweetwater         | 10/30/2012     | ok   | No Label 12V    | Siemens        | Sunlight 10 | Thin Light        | GE FRT5CW      | ok          | Bulb burnt out voltage readings are good  |
| 21 88 59th Ave FB Thunderbird        | 10/30/2012     | none   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 22 88 59th Ave FB Country Estates    | 10/30/2012     | none   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 23 88 59th Ave FB Sweetwater         | 10/30/2012     | none   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 24 88 59th Ave FB Eagle              | 10/30/2012     | None   | None            | None           | None        | None              | None           | None        | No Shelter at this location has been removed or destroyed                           |
| 25 88 59th Ave FB Sweetwater         | 10/30/2012     | None   | None            | None           | None        | None              | None           | None        | No Shelter at this location has been removed or destroyed                           |
| 26 88 59th Ave FB Cactus             | 10/30/2012     | OK   | Universal 12500 | Siemens        | Sunlight 10 | Fluorescent 12x12 | Greenlight 13W | None        | Shelter does not look like it ever had a system installed on it.                    |
| 27 88 59th Ave FB Sunnyside          | 10/30/2012     | none   | none            | none           | none        | LED               | LED            | None        | Bulb burnt out no lid on battery box voltage ok                                     |
| 28 88 59th Ave FB Cholla             | 10/30/2012     | Partial  | No Label 12V    | Siemens        | Trace C12   | Thin Light        | LED            | None        | LED light system all other equipment stolen/missing                                 |
| 29 88 59th Ave FB Brown              | 10/30/2012     | OK   | UPS 12 200FR    | Siemens        | Sunlight 10 | Fluorescent 12x12 | Greenlight 13W | OK          | Screen stripped could not get full access   |
| 30 88 59th Ave NB Seldon             | 10/30/2012     | OK   | Universal 12500 | Siemens        | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Bulb burnt out emergency stop works   |
| 31 88 59th Ave FB Myrtle             | 10/30/2012     | Partial  | None            | Siemens        | Sunlight 10 | Thin Light        | GE FRT5CW      | No Lid      | Bulb burnt out battery is not showing charge solar working                          |
| 32 88 59th Ave FB Glenn Dr           | 10/30/2012     | OK   | Trojan 9G70     | Siemens        | Sunlight 10 | Fluorescent 12x12 | Greenlight 13W | OK          | Battery stolen, bulb burnt out no lid on battery box                                |
| 33 88 59th Ave FB Missouri           | 10/30/2012     | OK   | GP800-12 12V    | Shell 40W      | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Bulb burnt out voltage readings are good  |
| 34 88 59th Ave NB Cotter             | 10/31/2012     | OK   | Universal 12500 | Shell 40W      | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Bulb burnt out battery not holding a charge   |
| 35 88 59th Ave FB Missouri           | 10/31/2012     | OK   | Centennial 12V  | Shell 40W      | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Bulb burnt out voltage readings are good  |
| 36 88 59th Ave FB Bethany Home       | 10/31/2012     | OK   | No Label 12V    | Shell 40W      | Sunlight 10 | LED               | LED            | OK          | Bulb burnt out voltage readings are good  |
| 37 88 59th Ave FB Myrtle             | 10/31/2012     | Partial  | None            | Siemens        | none        | LED Damaged       | LED            | No Lid      | Too small Battery does not fit in box No screws to secure it LED does not work      |
| 38 88 59th Ave FB Montebello         | 10/31/2012     | OK   | GP800-12 12V    | Shell 40W      | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | No Battery, Controller, Wiring, and LED Damaged                                     |
| 39 88 59th Ave FB Butler             | 10/31/2012     | None   | none            | none           | none        | none              | none           | None        | Bulb burnt out Voltage Readings Are good  |
| 40 88 59th Ave FB Alice              | 10/31/2012     | None   | none            | none           | none        | none              | none           | None        | Shelter does not look like it ever had a system installed on it.                    |
| 41 88 59th Ave FB Sunnyside          | 10/31/2012     | Partial  | None            | Siemens        | Sunlight 10 | Greenlight 13W    | Greenlight 13W | OK          | Solar Panel Stolen other equipment ok but battery has no charge bulb burnt out      |
| 42 88 59th Ave FB Mountain View      | 10/31/2012     | Partial  | None            | Siemens        | Sunlight 10 | LED               | LED            | OK          | Solar Panel, Battery Stolen Light fixture rusted out wire damaged.                  |
| 43 88 59th Ave FB Greenway           | 10/31/2012     | OK   | Shell 40W       | Sunlight 10    | LED         | LED               | LED            | No Cover    | Battery stolen, LED damaged wiring damaged Battery box cover missing.               |
| 44 88 59th Ave FB Kings              | 10/31/2012     | OK   | Universal 12500 | Siemens        | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Battery box screws stolen light works on test mode.                                 |
| 45 88 59th Ave FB Bell               | 10/31/2012     | none   | none            | none           | none        | none              | none           | None        | Bulb burnt out Voltage Readings Are Good  |
| 46 88 59th Ave NB Paradise Ln        | 11/1/2012      | OK   | Universal 12500 | Siemens        | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Shelter does not look like it ever had a system installed on it.                    |
| 47 88 59th Ave FB Greenway           | 11/1/2012      | Partial  | None            | Siemens        | none        | LED               | LED            | No Cover    | Bulb burnt out voltage readings OK Battery box needs security screws                |
| 48 88 59th Ave NB Diane              | 11/1/2012      | Battery box installed with security screws that can not be removed could not test. | none            | none           | none        | none              | none           | None        | No Battery, Controller, Wiring, and no cover for battery box                        |
| 49 88 59th Ave FB Butler             | 11/1/2012      | OK   | GP800-12 12V    | Shell 40W      | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Light bulb is burnt out and battery is split up one side voltage at controller good |
| 50 88 59th Ave FB Ocotillo           | 11/1/2012      | OK   | Centennial 12V  | Siemens        | Sunlight 10 | Thin Light        | GE FRT5CW      | OK          | Bulb is burnt out due to panel low voltage at 8.5V battery not getting full charge  |
| 51 88 59th Ave FB Maryland           | 11/1/2012      | OK   | Universal 12500 | Shell 40W/PBRT | Thin Light  | Thin Light        | GE FRT5CW      | OK          | Panel is in shade all day due to tree bulb burnt out.                               |

|    |                               |           |         |                 |           |                              |                   |                |          |  |
|----|-------------------------------|-----------|---------|-----------------|-----------|------------------------------|-------------------|----------------|----------|--|
| 52 | BB 87th Ave FS Rose Ln        | 11/1/2012 | OK      | Power Source    | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Battery has no charge Bulb burnt out   |
| 53 | BB 87th Ave FS Missouri       | 11/1/2012 | OK      | UPS 12 200PR    | Shall 40W | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Bulb Broken and glass on fixture broken  |
| 54 | BB 79th Ave NS Joy Ln         | 11/1/2012 | OK      | Carranast       | A793      | system appears to be working |                   |                |          |  |
| 55 | BB 79th Ave FS Union Hills Dr | 11/1/2012 | OK      | Power Source    | Siemens   | P8RT                         | LED               | LED            | OK       | Solar panel is shaded by tree limbs only reads 4.7v LED lens broken                      |
| 57 | WB Carletonck FS 55th Ave     | 11/1/2012 | OK      | Centennial 12V  | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Bulb burnt out Voltage Readings Are good   |
| 58 | WB Carletonck FS 43rd Ave     | 11/1/2012 | OK      | GP680-12-12V    | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Bulb burnt out Battery is not showing Charge Solar working                               |
| 59 | WB Barbary Home FS 59 Ave     | 11/1/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | LED               | LED            | OK       | Everything works on Test   |
| 60 | WB Barbary Home FS 81st Ave   | 11/1/2012 | OK      | Centennial 12V  | Siemens   | Sunlight 10                  | Fluorescent 12x12 | Greenlight 15W | OK       | Needs new light fixture damaged and not working  |
| 61 | WB Glendale NS 68th Ave       | 11/5/2012 | OK      | UPS 12 200PR    | Siemens   | Sunlight 10                  | Fluorescent 12x12 | Greenlight 12W | OK       | System is working light cover is full of bugs and dirt                                   |
| 61 | WB Glendale FS 71st Ave       | 11/5/2012 | OK      | none            | Siemens   | Sunlight 10                  | Fluorescent 12x12 | Greenlight 12W | OK       | Battery missing, Light fixture damaged, Battery box lid damaged                          |
| 62 | WB Glendale NS 69th Ave       | 11/5/2012 | OK      | Carranast       | A7263     | system appears to be working |                   |                |          |  |
| 63 | BB Glendale NS 70th Dr        | 11/5/2012 | Partial | none            | Siemens   | P8RT                         | LED               | LED            | OK       | Needs new Battery and Light fixture  |
| 64 | BB Glendale FS 70th Ave       | 11/5/2012 | Partial | Universal 12580 | Shall 40W | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Top lens Needs new battery and light fixture and battery box lid repaired                |
| 65 | BB Glendale FS 54th Ave       | 11/5/2012 | Partial | none            | Siemens   | P8RT                         | LED               | LED            | Lid Off  | Needs new Battery, light fixture, battery box lid, and wiring repaired                   |
| 66 | BB Glendale FS 54th Ave       | 11/5/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | Fluorescent 12x12 | Greenlight 15W | OK       | Everything works on Test light cover dirty and full of bugs                              |
| 67 | BB Northern FS 88 Ln          | 11/5/2012 | Partial | Centennial 12V  | Shall 40W | Sunlight 10                  | LED               | LED            | OK       | Reconnect battery leads, LED flickers on test fixture may be bad                         |
| 68 | BB Northern FS 89th Ave       | 11/5/2012 | Partial | Power Source    | Shall 40W | Sunlight 10                  | none              | none           | OK       | Solar panel covered by tree limbs, light fixture stolen, Battery has no charge           |
| 69 | BB Northern FS 63rd Ave       | 11/5/2012 | none    | none            | none      | none                         | none              | none           | OK       | Shelter does not look like it ever had a system installed on it.                         |
| 70 | WB Northern FS 47th Ave       | 11/5/2012 | Partial | none            | Siemens   | P8RT                         | LED               | LED            | No Cover | Needs new battery, no power on wire from module may be bad wiring or bad module          |
| 71 | WB Northern FS 66th Dr        | 11/5/2012 | Partial | Trojan 9C70     | none      | Sunlight 10                  | none              | none           | OK       | No solar panel, wiring gone, no light fixture, battery not charged                       |
| 72 | BB Olive FS 81st Ave          | 11/5/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Bulb burnt out no voltage on solar panel, battery not charged                            |
| 73 | BB Olive FS 81st Ave          | 11/5/2012 | OK      | Power Source    | Shall 40W | P8RT                         | Thin Light        | GE F8T5CW      | OK       | Bulb burnt out Voltage Readings Are good   |
| 74 | WB Olive FS 61st Ave          | 11/5/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Bulb burnt out Voltage works under test  |
| 75 | BB Peoria FS 67th Ave         | 11/5/2012 | OK      | none            | none      | none                         | none              | none           | None     | System is working light works under test   |
| 76 | BB Peoria FS 63rd Ave         | 11/5/2012 | Partial | Universal 12580 | Shall 40W | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Shelter does not look like it ever had a system installed on it.                         |
| 77 | WB Peoria FS 63rd Ave         | 11/5/2012 | OK      | Centennial 12V  | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Screw gone Some of the wiring is cut and damaged bulb burnt out, battery box needs screw |
| 78 | BB Thunderbird NS 59th Ave    | 11/5/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Needs new light fixture has been stolen  |
| 79 | BB Bull FS 59th Ave           | 11/5/2012 | OK      | Centennial 12V  | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Light bulb burnt out   |
| 80 | WB Bull FS 57th Ave           | 11/5/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | LED               | LED            | OK       | Light bulb burnt out   |
| 81 | BB Union Hills FS 70th Ave    | 11/5/2012 | OK      | Centennial 12V  | Siemens   | P8RT                         | none              | LED            | OK       | Everything works   |
| 82 | BB Union Hills FS 68th Ave    | 11/5/2012 | OK      | Universal 12580 | Siemens   | Sunlight 10                  | Thin Light        | GE F8T5CW      | OK       | Needs new light fixture  |
| 83 | BB Union Hills FS 67th Ave    | 11/5/2012 | OK      | Universal 12580 | Siemens   | P8RT                         | LED               | LED            | OK       | Light bulb burnt out   |
| 84 | BB Union Hills FS 57th Ave    | 11/5/2012 | OK      | Centennial 12V  | Siemens   | P8RT                         | LED               | LED            | OK       | Light does not come on Light fixture could be bad  |

### GLENDALE BUS SHELTER ELECTRICAL LIST OF NEEDS

The following is a list of needed equipment that was a result of the inspection date listed  
 Needed electrical equipment at each shelter is designated with an "X"

|    | STREET DIRECTION<br>INTERSECTING STREET | Date<br>Inspected | Wiring | Battery | Solar<br>Panel | Controller | Light<br>Fixture | Light<br>Bulb | Battery<br>Box |
|----|---|-------------------|--------|---------|----------------|------------|------------------|---------------|----------------|
| 1  | SB 43rd Ave FS El Caminito              | 10/23/2012        | X      | X       | X              |            | X                |               | X              |
| 2  | SB 43rd Ave FS Friar                    | 10/23/2012        | X      |         |                |            |                  |               |                |
| 3  | SB 43rd Ave NS Nicolet                  | 10/23/2012        | X      |         | X              |            | X                |               |                |
| 4  | NB 51st Ave FS Myrtle                   | 10/23/2012        | X      | X       | X              | X          | X                |               | X              |
| 5  | NB 51st Ave NS Friar                    | 10/23/2012        |        |         |                |            |                  |               |                |
| 6  | SB 51st Ave FS Olive                    | 10/23/2012        | X      |         | X              |            |                  |               |                |
| 7  | SB 51st Ave FS Northern                 | 10/23/2012        |        |         |                |            |                  | X             |                |
| 8  | SB 51st Ave FS Myrtle                   | 10/23/2012        |        |         |                |            |                  | X             |                |
| 9  | SB 51st Ave FS Olive                    | 10/23/2012        |        |         |                |            |                  |               |                |
| 10 | SB 51st Ave FS Cactus                   | 10/23/2012        |        |         |                | X          |                  |               |                |
| 11 | SB 52nd Ave FS Glendale                 | 10/23/2012        |        |         |                |            |                  | X             | X              |
| 12 | NB 57th Ave NS Utopia (Library)         | 10/30/2012        |        |         |                |            |                  | X             |                |
| 13 | NB 59th Ave FS Missouri                 | 10/30/2012        | X      | X       |                |            |                  |               |                |
| 14 | NB 59th Ave FS Rose Ln                  | 10/30/2012        |        |         |                |            |                  | X             |                |
| 15 | NB 59th Ave FS Hayward                  | 10/30/2012        | X      |         |                |            | X                |               |                |
| 16 | NB 59th Ave FS Northern                 | 10/30/2012        |        |         |                |            | X                |               |                |
| 17 | NB 59th Ave FS Brown                    | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 18 | NB 59th Ave FS Peoria                   | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 19 | NB 59th Ave FS Cactus                   | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 20 | NB 59th Ave FS Sweetwater               | 10/30/2012        |        |         |                |            |                  | X             |                |
| 21 | NB 59th Ave FS Thunderbird              | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 22 | NB 59th Ave FS Country Gables           | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 23 | NB 59th Ave FS Beardsley                | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 24 | SB 59th Ave FS Eugie                    | 10/30/2012        |        |         |                |            |                  |               |                |
| 25 | SB 59th Ave FS Sweetwater               | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 26 | SB 59th Ave FS Cactus                   | 10/30/2012        |        |         |                |            |                  | X             | X              |
| 27 | SB 59th Ave FS Sunnyside                | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 28 | SB 59th Ave FS Cholla                   | 10/30/2012        | X      | X       | X              | X          | X                |               | X              |
| 29 | SB 59th Ave FS Brown                    | 10/30/2012        |        |         |                |            |                  | X             |                |
| 30 | SB 59th Ave NS Seldon                   | 10/30/2012        |        |         |                |            |                  | X             |                |
| 31 | SB 59th Ave FS Myrtle                   | 10/30/2012        | X      | X       |                |            |                  | X             | X              |
| 32 | SB 59th Ave FS Glenn Dr                 | 10/30/2012        |        |         |                |            |                  | X             |                |
| 33 | SB 59th Ave FS Missouri                 | 10/30/2012        |        | X       |                |            |                  | X             |                |
| 34 | SB 59th Ave NS Colter                   | 10/31/2012        |        |         |                |            |                  | X             |                |
| 35 | NB 67th Ave FS Missouri                 | 10/31/2012        |        |         |                |            |                  | X             |                |
| 36 | NB 67th Ave FS Bethany Home             | 10/31/2012        |        |         |                |            | X                |               | X              |
| 37 | NB 67th Ave FS Myrtle                   | 10/31/2012        | X      | X       |                | X          | X                |               | X              |
| 38 | NB 67th Ave FS Montebello               | 10/31/2012        |        |         |                |            |                  | X             |                |
| 39 | NB 67th Ave FS Butler                   | 10/31/2012        | X      | X       | X              | X          | X                |               | X              |

|    |                               |            |   |   |   |   |   |   |   |
|----|-------------------------------|------------|---|---|---|---|---|---|---|
| 40 | NB 67th Ave FS Alice          | 10/31/2012 |   |   | X |   |   | X |   |
| 41 | NB 67th Ave FS Sunnyslope     | 10/31/2012 | X | X | X |   | X | X |   |
| 42 | NB 67th Ave FS Mountain View  | 10/31/2012 | X | X | X |   | X |   | X |
| 43 | NB 67th Ave FS Greenway       | 10/31/2012 | X | X |   |   |   |   |   |
| 44 | NB 67th Ave FS Kings          | 10/31/2012 |   |   |   |   |   | X |   |
| 45 | SB 67th Ave FS Bell           | 11/1/2012  | X | X | X | X | X |   | X |
| 46 | SB 67th Ave NS Paradise Ln    | 11/1/2012  |   |   |   |   |   | X |   |
| 47 | SB 67th Ave FS Greenway       | 11/1/2012  | X | X |   | X |   |   | X |
| 48 | SB 67th Ave NS Diana          | 11/1/2012  |   |   |   |   |   |   |   |
| 49 | SB 67th Ave FS Butler         | 11/1/2012  |   | X |   |   |   | X |   |
| 50 | SB 67th Ave FS Ocotillo       | 11/1/2012  |   |   |   |   |   | X |   |
| 51 | SB 67th Ave FS Maryland       | 11/1/2012  |   |   |   |   |   | X |   |
| 52 | SB 67th Ave FS Rose Ln        | 11/1/2012  |   | X |   |   |   | X |   |
| 53 | SB 67th Ave FS Missouri       | 11/1/2012  |   |   |   |   | X |   |   |
| 54 | SB 75th Ave NS Joy Ln         | 11/1/2012  |   |   |   |   |   |   |   |
| 55 | SB 79th Ave FS Union Hills Dr | 11/1/2012  |   |   |   |   |   |   |   |
| 56 | WB Camelback FS 55th Ave      | 11/1/2012  |   |   |   |   | X | X |   |
| 57 | WB Camelback FS 43rd Ave      | 11/1/2012  |   | X |   |   |   | X |   |
| 58 | EB Bethany Home FS 59 Ave     | 11/1/2012  |   |   |   |   |   |   |   |
| 59 | EB Bethany Home FS 51st Ave   | 11/1/2012  |   |   |   |   | X | X |   |
| 60 | WB Glendale NS 48th Ave       | 11/5/2012  |   |   |   |   |   |   |   |
| 61 | WB Glendale FS 71st Ave       | 11/5/2012  |   | X |   |   | X | X | X |
| 62 | WB Glendale NS 99th Ave       | 11/5/2012  |   |   |   |   |   |   |   |
| 63 | EB Glendale NS 78th Dr        | 11/5/2012  | X | X |   |   | X |   |   |
| 64 | EB Glendale FS 75th Ave       | 11/5/2012  | X | X |   |   |   | X | X |
| 65 | EB Glendale FS 64th Ave       | 11/5/2012  | X | X |   |   | X |   | X |
| 66 | EB Glendale FS 54th Ave       | 11/5/2012  |   |   |   |   |   |   |   |
| 67 | EB Northern FS 56 Ln          | 11/5/2012  | X | X |   |   | X |   |   |
| 68 | EB Northern FS 55th Ave       | 11/5/2012  | X | X |   |   | X |   |   |
| 69 | EB Northern FS 53rd Ave       | 11/5/2012  | X | X | X | X | X |   | X |
| 70 | WB Northern FS 47th Ave       | 11/5/2012  | X | X |   |   | X |   | X |
| 71 | EB Alice FS 66th Dr           | 11/5/2012  | X |   | X |   | X |   |   |
| 72 | EB Olive FS 51st Ave          | 11/5/2012  |   | X | X |   | X | X |   |
| 73 | EB Olive FS 61st Ave          | 11/5/2012  |   |   |   |   |   | X |   |
| 74 | WB Olive FS 51st Ave          | 11/5/2012  |   |   |   |   |   |   |   |
| 75 | EB Peoria FS 67th Ave         | 11/5/2012  | X | X | X | X | X |   | X |
| 76 | EB Peoria FS 63rd Ave         | 11/5/2012  | X |   |   |   |   | X | X |
| 77 | WB Peoria FS 63rd Ave         | 11/5/2012  |   |   |   |   | X |   |   |
| 78 | EB Thunderbird NS 56th Ave    | 11/5/2012  |   |   |   |   |   | X |   |
| 79 | EB Bell FS 55th Ave           | 11/5/2012  |   |   |   |   |   | X |   |
| 80 | WB Bell FS 57th Ave           | 11/5/2012  |   |   |   |   |   |   |   |
| 81 | EB Union Hills FS 79th Ave    | 11/6/2012  |   |   |   |   | X |   |   |
| 82 | EB Union Hills FS 59th Ave    | 11/6/2012  |   |   |   |   |   | X |   |
| 83 | EB Union Hills FS 57th Ave    | 11/6/2012  |   |   |   |   | X |   |   |
| 84 | EB Union Hills FS 57th Ave    | 11/6/2012  |   |   |   |   |   |   |   |