



City of Prescott
Purchasing Services
216 S. Marina St., Suite 202
Prescott, AZ 86303-3929

Bid 10ADM0020
Window, Door and Glass Replacement

The City of Prescott is soliciting bids for the replacement of windows, doors and glass at various City-owned facilities. This project is a federally funded construction project and is subject to compliance with all applicable Federal Labor Standards including Davis-Bacon and American Recovery and Reinvestment Acts. A performance bond in the amount of 100% of the bid amount shall be required upon execution of the contract and prior to beginning work. Sealed bids (one (1) original and two (2) copies) shall be opened on Thursday, December 3, 2009, at the time and place indicated in Section 2.2.

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

- A. Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon and may include other elements.
- B. Domestic preference
 - (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111—5), by requiring that all iron, steel and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.
 - (2) This requirement does not apply to the material listed by the Federal Government as follows: NONE.
 - (3) The award official may add other iron, steel and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—
 - (i) The cost of the domestic iron, steel and/or other manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
- C. Request for determination of inapplicability of Section 1605 of the Recovery Act.
 - (1) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including –
 - (a) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (b) Unit of measure;
 - (c) Quantity
 - (d) Cost;
 - (e) Time of delivery of availability;
 - (f) Location of the project;
 - (g) Name and address of the proposed supplier; and
 - (h) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.
 - (i) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format below:

	Description	Unit of Measure	Quantity	Cost
Item 1:				
	Foreign steel, iron, or manufactured good	_____	_____	_____
	Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:				
	Foreign steel, iron, or manufactured good	_____	_____	_____
	Domestic steel, iron, or manufactured good	_____	_____	_____

- (ii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iii) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

- (2) If the Federal Government determines that funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- (3) Unless the Federal government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- (4) To permit evaluation of requests under paragraph C of this section based on unreasonable cost, the Recipient shall include the information in C(h)(i) above and any applicable supporting data based on the survey of suppliers.

1.0 Solicitation Specifications

1.1 Scope of Work/Description of Item

The contractor shall furnish all labor, supervision, equipment, tools, parts and materials, as necessary, to provide the following requirements: Contractor shall complete and submit all applicable energy savings rebates (ie. APS, Federal, etc.) on behalf of the City.

- Airport Terminal
 - Replace existing glass with 29 insulated glass units with low-e coating and filled with argon gas (existing wood framework)
- Parks and Recreation Administration Bldg
 - Replace (9) existing aluminum frame windows with insulated, low-e and argon filled windows
- City Hall
 - Fabricate and install 16 storefront window frames using clear, anodized, thermally-broke aluminum material. Glazing is to be 1" OA insulated clear glass panels with low-e coating and filled with argon gas.
 - Replace (1) pair and (2) single doors with new doors glazed with insulated tempered glass panels coated in low-e and filled with argon gas. Materials used shall conform to AAMA 611, ASTM E 283, ASTM E 330, ASTM E 33, and ASTM C 236 standards. The doors are to be fabricated with standard push/pull hardware and standard duty closers as described herein.
- All materials shall be used in such a manner as to prevent damage to floors, walls and equipment.
- Bidders are solely responsible for the accuracy of all measurements.
- Selected contractor shall have an organization predominantly and regularly engaged in the performance of the majority of work prescribed in this bid.
- All work performed and material used shall meet the minimum requirements of all applicable Federal regulations, including Davis-Bacon Act, State regulations and local ordinances.

2.0 Solicitation Process Requirements

- 2.1 Communications with the City: Unless authorized by the Purchasing Manager, no other City official or employee is empowered to speak for the City with respect to this solicitation. Bidders are advised that the City shall not be bound by information, clarifications, or interpretations from other City officials or employees. Failure to observe this requirement may be grounds for rejection of Bidder's bid. For this solicitation, bidders may contact the Grants Administrator for Labor and Wage information.

BUYER
 Dawn M. Foster, Purchasing Manager
 Fax: 928-777-1241
 E-mail: purchasing@prescott-az.gov

GRANTS ADMINISTRATOR
 Linda Hartmann
 Phone: 928-777-1143
linda.hartmann@prescott-az.gov

- 2.2 Schedule
- 2.2.1. **Solicitation Advertisement**
Sunday, November 8, 2009
- 2.2.2. **Mandatory Pre-Bid Meeting**
Tuesday, November 17, 2009 at 9:00AM
City of Prescott, City Hall
201 S. Cortez St., Prescott
928-777-1100
- 2.2.3. **Bids Due (one (1) original and two (2) copies)**
Thursday, December 3, 2009 at 2:00 pm
Office of the City Clerk
201 S. Cortez St.
Prescott, AZ 86302
- 2.2.4. **Bid Opening**
Thursday, December 3, 2009 at 2:00 p.m.
City of Prescott
City Council Chambers
201 S. Cortez St.
Prescott, AZ 86302

- 2.3 Addenda and Bid Tabulations
Changes to this solicitation will be made only by formal written addenda issued by the City's Buyer. Any such addenda will be posted on the City's website at www.cityofprescott.net/business/bids. Bidders are responsible for checking the City website for any and all addenda to this solicitation, answers to questions posed by other Bidders, and related information. Changes to this solicitation may be made by the City if, in the sole judgment of the City, the changes will not compromise the City's objectives in this acquisition. All addenda issued by the City shall become a part of the specifications of this solicitation, and will be made part of the resulting agreement. Bid tabulations will be posted on the website with the corresponding solicitation when they become available.

- 2.4 Proprietary Material
A Bidder shall clearly mark any proprietary information contained in its bid with the words "proprietary information." Bidder shall not mark any Solicitation Form as proprietary. Marking all or nearly all of a bid as proprietary may result in rejection of the bid. Bidders should be aware that the City is required by law to make its records available for public inspection. The Bidder, by submission of materials marked proprietary, acknowledges and agrees that the City will have no obligation to advocate for non-disclosure in any forum or any liability to the Bidder in the event that the City must legally disclose these materials.

- 2.5 Multiple Bids
A Bidder may submit multiple bids for any solicitation however, each bid must be submitted separately (in its own complete package) from the others.

- 2.6 Delivery of Bids
Sealed bids (one (1) original and two (2) copies) must be received at the Office of the City Clerk no later than the date and time listed in Section 2.2. The bids will be opened and read publicly in the Council Chambers at that time.

If the bid is delivered by the U.S. Postal Service, the bid should be addressed to:

Dawn M. Foster, Purchasing Manager
City of Prescott
PO Box 2059
Prescott, AZ 86302

If the bid is delivered by an entity other than the U.S. Postal Service, the bid should be addressed to:

Dawn M. Foster, Purchasing Manager
City of Prescott
201 S. Cortez St.
Prescott, AZ 86303

Bidder shall enclose bid (one (1) original and two (2) copies) in a sealed envelope. The envelope should identify the Bidder's name, mailing address, Solicitation and Title, and the time and date of opening. The City shall not consider late bids, telegraphic (fax) or telephone bids. Bidder is solely responsible for ensuring that bids are delivered on time. Delays caused by any delivery service, including the U.S. Postal Service, will not be grounds for an extension of the deadline for receipt of bids. Bids received after the deadline will be returned unopened.

2.7 Cost of Bids

The City shall not be liable for any costs incurred by Bidder in the preparation and submittal of a bid(s) in response to the solicitation or in the participation of any part of the acquisition process.

2.8 Errors in Bids

Bidder is responsible for all errors or omission in their bids, and any such errors or omission will not serve to diminish their obligations to the City.

2.9 Withdrawal of Bids

A bid may be withdrawn by written request of the Bidder prior to the bid due date and time listed in Section 2.2. No bid may be withdrawn for a period of 90 calendar days after the bid due date and time.

Changes in Bids

Prior to the bid due date and time listed in Section 2.2, a Bidder may make changes to its bid provided the change is initialed and dated by the Bidder. Corrections and/or modifications received after the closing time specified will not be accepted.

2.10 Rejection of Bids

The City reserves the right to reject any and all bids and to waive any immaterial defects and irregularities in bids.

2.11 Disposition of Bids

All materials submitted in response to the solicitation, including samples, shall become the property of the City upon delivery to the City.

2.12 Incorporation of Solicitation and Response in Agreement

This solicitation, including all attachments and addenda, and all promises, warranties, commitments and representations in the successful bid shall be binding and shall become obligations of the agreement.

2.12 Protests

Any protest of a notice that a bid is non-responsive must be filed by 5:00 p.m. on the third business day after such notification. All such protests shall be in writing, contain a complete statement of the grounds for protest, and be filed with the Purchasing Manager, PO Box 2059, Prescott, AZ 86302, FAX 928-777-1241. Protesting parties must demonstrate as part of their protest that they made every reasonable effort within the schedule and procedures of this solicitation to resolve the basis or bases of their protest during the solicitation process, including asking questions, seeking clarifications, requesting addenda, and otherwise alerting the City to perceived problems so that corrective action could be taken prior to the selection of the Apparent Successful Bidder(s). The City will not consider any protest based on items which could have been or should have been raised prior to the deadline for submitting questions or requesting addenda. The filing of a protest shall not prevent the City from executing an agreement with any other bidder.

2.13 Bid Submittal

Bid (one (1) original and two (2) copies) must be sealed and the envelope must clearly indicate the information as described in Section 2.9. Bidder must fully complete and submit the following documents:

2.18.1. Bid Form A - Bidder Response Cover Sheet

2.18.2. Bid Form B - Price Sheet

2.18.3. Bid Form C - Bid Certification

2.18.4. Bid Form D - Non-Collusion Certificate

2.18.5. Bid Form E – Contractor Questionnaire

2.18.6. Bid Form F – Certificate of Ownership

2.18.7. Bid Form G – Bidder Optional Information

2.18.8. Bid Form H – Bidder Qualifications, Representations and Warranties

2.18.9. Attachment B – Wage Rate Determination

3.0 General Contract Terms and Conditions

- 3.1. Entire Agreement: This contract, including all attachments referenced herein, constitutes the entire agreement between the City and the Contractor. The City's RFQ/RFP, all addenda to the RFQ/RFP, and the Contractor's response to the RFQ/RFP are explicitly included in this contract. Where there

is any conflict among or between any of these documents, the controlling document shall be the first listed in the following sequence: the most recently issued Contract amendment; the Contract; the most recently issued addendum to the City's RFQ/RFP; the City's RFQ/RFP; and the Contractor's response to the RFQ/RFP.

- 3.2. Term: The term of this Contract shall commence on the date the City's Purchasing Agent signs the same and shall expire as stated within the Contract.
- 3.3. Freight: Prices include freight prepaid and allowed. The Contractor assumes the risk of every increase, and receives the benefit of every decrease, in delivery rates and charges.
- 3.4. Title: Prices are F.O.B. destination. Title to items and risk of loss remain with Contractor until City receives items at the delivery point.
- 3.5. Overages/Undergoes: Shipments shall correspond with the Contract; any unauthorized advance or excess shipment is returnable at Contractor's expense.
- 3.6. Schedule: Unless the City's Purchasing Agent requests a change in schedule, the Contractor shall deliver the items or render the services as stated in the Contract. At the City's option, the Contractor's failure to timely deliver or perform may require expedited shipping at the Contractor's expense, or may be cause for termination of the Contract and the return of all or part of the items at the Contractor's expense. If the Contractor anticipates difficulty in meeting the schedule, the Contractor shall promptly notify the City's Purchasing Agent of such difficulty and the length of the anticipated delay.
- 3.7. Payment: Invoices will be paid within three (3) days after the Bidder's completion and the City's acceptance of the goods or services. Payment periods will be computed from either the date of delivery of all goods ordered, the completion of all services, or the date of receipt of a correct invoice, whichever date is later. This section is not intended to restrict partial payments that are specified in the contract. No payment shall be due prior to the City's receipt and acceptance of the items identified in the invoice therefore.
- 3.8. Unlawful Overcharges: The Contractor assigns to the City all claims for anti-trust violations and overcharges relating to items purchased by the City.
- 3.9. Price Warranty: The Contractor warrants that the prices for the items sold to the City hereunder are not less favorable than those currently extended to any other customer for the same or similar items in similar quantities. The Contractor warrants that prices shown on this Contract are complete, and that no additional charge of any type shall be added without the City's express written consent.
- 3.10. Warranties: The Contractor warrants that all goods are merchantable, comply with the City's latest drawings and specifications, and are fit for the City's intended use; all goods comply with all applicable safety and health standards established for such products; all goods are properly packaged; and all appropriate instructions or warnings are supplied.
- 3.11. Equal Employment Opportunity: During the term of this Contract, the Contractor agrees as follows: The Contractor will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, gender identity, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. 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.
- 3.12. Diversity: The City encourages the Contractor to employ a workforce reflective of the region's diversity.
- 3.13. Discrimination in Contracting: The Contractor shall not create barriers to open and fair opportunities for subcontractors and suppliers in obtaining or competing for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.
- 3.14. Record-Keeping: The Contractor shall maintain, for at least 36 months after expiration or earlier termination of the term of this Contract, relevant records and information necessary to document the Contractor's utilization of other businesses as subcontractors and suppliers in this contract and in its overall public and private business activities. The Contractor shall also maintain all written quotes, bids, estimates, or proposals submitted to the Contractor by all businesses seeking to participate as

subcontractors or suppliers in the contract. The City shall have the right to inspect and copy such records. If this Contract involves federal funds, the Contractor shall comply with all record-keeping requirements set forth in every applicable federal rule, regulation and statute referenced in the contract documents.

- 3.15. Publicity: The Contractor shall not advertise or publish the fact that the City has contracted to purchase items from the Contractor without the City's prior written approval.
- 3.16. Proprietary and Confidential Information: The Contractor acknowledges that the City is required by law to make its records available for public inspection, with certain exceptions. City staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The Contractor, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the City will have no obligation or any liability to the Contractor in the event that the City must disclose these materials by law.
- 3.17. Indemnification: To the extent permitted by law, the Contractor shall protect, defend, indemnify and hold the City harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, judgments, expenses and attorney fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, or trademark, arising out of the work performed or goods provided under this Contract, or the Contractor's violation of any law, ordinance or regulation, except for damages resulting from the sole negligence of the City.
- 3.18. Insurance: The Contractor shall secure and maintain, at all times during the term of this Contract, at its own expense, a policy or policies of insurance known as:
 - 3.18.1. Commercial General Liability written on an insurance industry standard occurrence form (ISO form CG 00 01) or equivalent including premises/operations, products/completed operations, personal/advertising injury, contractual liability, and independent contractors liability;
 - 3.18.2. If any vehicle is used in the performance of this Contract, a policy of Business Automobile Liability written on an insurance industry standard form (ISO form CA 00 01) or equivalent, including coverage for owned, non-owned, leased or hired vehicles; and
 - 3.18.3. If any work under this Contract will be performed by a resident of the state of Arizona, Worker's Compensation ("Industrial Insurance") as required by the State of Arizona. The insurance as provided under items 3.19.1 and 3.19.2 above shall be endorsed to include The City of Prescott, its officers, elected officials, employees, agents and volunteers as an Additional Insured per ISO form CG2010 11/85 or CG2026 or equivalent, and to not permit reduction or cancellation by the insurer without forty-five (45) days prior written notice to the City. The Contractor's insurance shall be primary as respects the City, and any other insurance maintained by the City shall be excess and non-contributing with the Contractor's insurance.
- 3.19. Compliance with Law: The Contractor, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Arizona; the Charter, Municipal Code, and ordinances of The City of Prescott; and rules, regulations, orders, and directives of their respective administrative agencies and officers.
- 3.20. Licenses and Similar Authorizations: The Contractor, at no expense to the City, shall secure and maintain in full force and effect during the term of this Contract all required licenses, permits, and similar legal authorizations, and comply with all related requirements.
- 3.21. Taxes: The Contractor shall pay, before delinquency, all taxes, levies, and assessments arising from its activities and undertakings under this Contract; taxes levied on its property, equipment and improvements; and taxes on the Contractor's interest in this Contract.
- 3.22. Americans with Disabilities Act: The Contractor shall comply with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA) in performing its obligations under this Contract. In particular, if the Contractor is providing services, programs, or activities to City employees or members of the public as part of this Contract, the Contractor shall not deny participation or the benefits of such services, programs, or activities to people with disabilities on the basis of such disability. Failure to comply with the provisions of the ADA shall be a material breach of, and grounds for the immediate termination of, this Contract.
- 3.23. Adjustments: The City's Purchasing Agent at any time may make reasonable changes in the place of delivery, installation or inspection; the method of shipment or packing; labeling and identification; and ancillary matters that Contractor may accommodate without substantial additional expense to the City.

- 3.24. Amendments: Except for adjustments authorized above, modifications or amendments to the Contract may only be made by a change order or by written document signed by or for both parties. Unless Contractor is otherwise notified, the City's Purchasing Agent shall be the City's authorized agent.
- 3.25. Assignment: Neither party shall assign any right or interest nor delegate any obligation owed without the written consent of the other, except Contractor may assign the proceeds of this Contract for the benefit of creditors upon 21 days advance written notice to the City.
- 3.26. Binding Effect: The provisions, covenants and conditions in this Contract apply to bind the parties, their legal heirs, representatives, successors, and assigns.
- 3.27. Waiver: The City's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or the City's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
- 3.28. Applicable Law: This Contract shall be construed under the laws of the State of Arizona. The venue for any action relating to this Contract shall be in the Superior Court for Yavapai County, State of Arizona.
- 3.29. Remedies Cumulative: Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.
- 3.30. Severability: Any invalidity, in whole or in part, of any provision of this Contract shall not affect the validity of any other of its provisions.
- 3.31. Gratuities: The City may, by written notice to the Contractor, terminate Contractor's right to proceed under this Contract upon one (1) calendar day's notice, if the City finds that any gratuity in the form of entertainment, a gift, or otherwise was offered or given by the Contractor or any agent thereof to any City official, officer or employee.
- 3.32. Termination:
- 3.32.1. For Cause: Either party may terminate this Contract in the event the other fails to perform its obligations as described herein, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party.
 - 3.32.2. For Reasons Beyond Reasonable Control of a Party: Either party may terminate this Contract without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such party's reasonable control such as but not limited to an act of nature; war or warlike operations; civil commotion; riot; labor dispute including strike, walkout, or lockout; sabotage; or superior governmental regulation or control.
 - 3.32.3. For Public Convenience: The City may terminate this Contract in whole or in part whenever the City determines that such termination is in its best interest (including but not limited to for lack of continuing appropriations). In such a case the Contractor shall be paid for all items accepted by the City.
 - 3.32.4. Notice: Notice of termination shall be given by the party terminating this Agreement to the other not less than ten (10) working days prior to the effective date of termination.
- 3.33. Contractor Immigration Warranty
 The Contractor understands and acknowledges the applicability to it of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The following is only applicable to construction contracts: The Contractor must also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, as amended, "Residence Requirements for Employees."
- Under the provisions of A.R.S. §41-4401, Contractor hereby warrants to the City that the Contractor and each of its subcontractors ("Subcontractors") will comply with, and are contractually obligated to comply with all Federal Immigration laws and regulations that relate to their employees and A.R.S. §23-214(A) (hereinafter "Contractor Immigration Warranty").
- A breach of the Contractor Immigration Warranty shall constitute a material breach of this Contract and shall subject the Contractor to penalties up to and including termination of this Contract at the sole discretion of the City.
- The City retains the legal right to inspect the papers of any Contractor or Subcontractor's employee who works on this Contract to ensure that the Contractor or Subcontractor is complying with the Contractor Immigration Warranty. Contractor agrees to assist the City in regard to any such inspections.

The City may, at its sole discretion, conduct random verification of the employment records of the Contractor and any of its Subcontractors to ensure compliance with the Contractor's Immigration Warranty. Contractor agrees to assist the City in regard to any random verifications performed.

Neither the Contractor nor any Subcontractor shall be deemed to have materially breached the Contractor Immigration Warranty if the Contractor or Subcontractor establishes that it has complied with the employment verification provisions prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214 Subsection A.

The provisions of this Article must be included in any contract the Contractor enters into with any and all of its subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.

4.0 Standard Bid Information

- 4.1. Default by Bidder: In case of default by the bidder, the City of Prescott may procure the items or service from other sources and may deduct from any monies due or that may thereafter become due to the bidder the difference between the price named in the contract or purchase order and the actual cost thereof to the City of Prescott. Prices paid by the City shall be considered the prevailing market price at the time such purchase is made. Periods of performance may be extended if the facts as to the cause of delay justify such extension in the opinion of the Purchasing Agent.
- 4.2. Cash Discounts: In connection with any cash discount specified on this bid, time will be computed from the date of complete delivery of the supplies, equipment or services as specified or from the date correct invoices are received in the City Finance office if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the City warrant or check.
- 4.3. Warranty: Manufacturer's warranties shall remain in effect. All equipment purchased shall be purchased from one (1) vendor. That one vendor shall be fully responsible for all warranty performance relating to any part of component of the purchased equipment. The vendor's responsibility shall include all warranty involving sub-contractors. The vendor shall supply a warranty on all parts and workmanship from the initial delivery date. The vendor shall guarantee further that the equipment to be supplied complies with all applicable regulations.
- 4.4. Litigation: The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. Neither party shall be entitled to an award of attorneys' fees, either pursuant to the Contract or another other state or federal statute.
- 4.5. Brand Names: Brand names are only used for reference to indicate character or quality desired unless otherwise indicated.

5.0 Instructions for Submittal Forms

- 5.1. Form A - Solicitation Response Cover Sheet: Bidder shall complete, sign, and submit Form A as the first page of the bid package
- 5.2. Form B - Price Sheet: Bidder shall certify that its bid will be valid for 120 days after submission. Bidder may be asked to extend this certification. Bidder shall complete, sign, and submit Form B.
- 5.3. Form C - Bid Certification: Bidder shall complete, sign, and submit Form C
- 5.4. Form D - Non-Collusion Certificate: Bidder shall complete, sign, and submit Form D.
- 5.5. Form E - Contractor Questionnaire: Bidder shall complete, sign, and submit Form E.
- 5.6. Form F - Certificate of Ownership: Bidder shall complete, sign, and submit Form F completely and accurately stating the names and addresses of all persons, firms, corporations, partnerships or other associations having any direct or indirect financial interest in the Bidder's business and the nature and extent of each such interest.
- 5.7. Form G - Bidder Optional Information: Form G is for informational purposes only, is not required to be answered or submitted, and responses will not be taken into consideration in bid evaluation, or in agreement award or administration. Bidder may complete, sign, and submit Form G.
- 5.8. Form H - Bidder Qualifications, Representations and Warranties
 - 5.8.1. Bidder shall complete and submit Solicitation Form H. Bidder shall provide additional information as required.

The City reserves the right to inspect any of Bidder's facilities and equipment after the bid due date and time listed in Section 2.2. The Bidder shall make such facilities and equipment available for the City's inspection within eight business hours of the City's request. The City may require additional information concerning a Bidder's facilities, equipment, personnel, and procedures. The Bidder shall supply such information within the time noted in the City's request.

- 5.8.2. The City shall consider awarding agreements only to responsible Bidders. Responsible Bidders are those that have, in the sole judgment of the City, the financial ability, character, reputation, resources, skills, capability, reliability, and business integrity necessary to perform the requirements of the agreement. In determination of responsibility, the City may consider all information available to the City, whether specifically provided by the Bidder in response to this solicitation or other information otherwise available to the City in evaluating the responsibility of the Bidder. Such information may include, but is not limited to, experience and history of the City with current and/or prior contracts held by the Bidder with the City or with other agencies, references provided by the Bidder to the City, information provided by the Bidder as part of the solicitation responses, and information not specifically provided by the Bidder but is otherwise available to the City and has merit in consideration of responsibility, in the opinion of the City. The evaluation of responsibility shall be determined by the City and shall be in the sole opinion of the City. Such evaluation by the City shall be final and not subject to appeal. Furthermore, no agreement will be awarded to a Bidder if any owner of such Bidder has been convicted within the past ten years of a crime involving dishonesty or false statements, or if the Bidder has unsatisfied tax or judgment liens.
- 5.8.3. Bidder shall provide two (2) references, a sub-contractors list (if applicable) and certify there are no unsatisfied tax liens or judgments on record. Bidder shall complete, sign and submit Form H.
- 5.9. Appendix B – Bidder shall sign, date and submit a copy of Appendix B, Page 4 indicating receipt of said document.

Form A – Solicitation Response Cover Sheet (return with bid)



City of Prescott
Solicitation Response

Solicitation Number: _____

Description: _____

Please note all that apply:

- Total Price.....\$ _____
- Addenda Number(s) Received (if any) _____
- Original Forms A through H plus Appendix 'B' and one (1) photocopy

Business Name: _____

Business Address: _____

Business Phone: (_____) _____

Business Contact: _____

Supplier Comments: _____

Form B – Price Sheet (return with bid)

- Airport Terminal \$ _____
 - Replace existing glass with 29 insulated glass units with low-e coating and filled with argon gas (existing wood framework)

- Parks and Recreation Administration Bldg \$ _____
 - Replace (9) existing aluminum frame windows with insulated, low-e and argon filled windows

- City Hall \$ _____
 - Fabricate and install 16 storefront window frames using clear, anodized, thermally-broke aluminum material. Glazing is to be 1” OA insulated, low-e, argon filled, clear glass panels.
 - Replace (1) pair and (2) single doors with new doors glazed with insulated tempered glass panels coated with low-e and filled with argon gas.
Materials used shall conform to AAMA 611, ASTM E 283, ASTM E 330, ASTM E 33, and ASTM C 236 standards. The doors are to be fabricated with standard push/pull hardware and standard duty closers.

Sub-Total \$ _____

Tax _____ % \$ _____

Total \$ _____

Days Required for Completion Upon Execution of Contract: _____ **days**

Payment Terms: _____

Dated this _____ **day of** _____ **2009.**

Signature

Title

Form C – Bid Certification (return with bid)

Bidder Name: _____

The undersigned Bidder hereby certifies as follows:

C.1 That he/she has read The City of Prescott’s solicitation documents, its appendices and attachments, and the following Addenda, and to the best of his/her knowledge, has complied with the mandatory requirements stated therein.

Addendum	Issue Date
_____	_____
_____	_____

C.2 That he/she has had opportunity to ask questions regarding the solicitation, and that such questions having been asked, have been answered by the City.

C.3 That the Bidder’s bid consists of the following:

1. Form A – Solicitation response package cover sheet
2. Form B – Price Sheet
3. Form C – Bid Certification
4. Form D – Contractor Questionnaire
5. Form E – Optional Bidder Information
6. Form F – Bidder Qualifications, Representations and Warranties; Bidder to provide attachment:
Attachment – Subcontractor’s List
7. Appendix B -

C.4 That to the best of his/her knowledge, the person, firm, association, partnership or corporation herein, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive pricing in the preparation and submission of a bid to The City of Prescott for consideration in the award of this solicitation.

C.5 That to the best of his/her knowledge, the person, firm, association, partnership or corporation herein, are the only person, firms, corporations, partnerships, or other associations having any direct or indirect financial interest in the Bidder’s business as legal or equitable owner, creditor (except current bills for operating expenses), or holder of any security or other evidence of indebtedness.

C.5 That the Bidder’s bid is valid for 90 days.

Dated this _____ day of _____ 2009.

Signature

Title

Form D – Contractor Questionnaire (return with bid)

Yes - No

- 1. Has the City of Prescott or other governmental entity incurred costs as a result of contested change order (s) from the undersigned company?
- 2. Has the City of Prescott or other governmental entity been involved in litigation relative to contract performance with the undersigned company?
- 3. Has the undersigned company failed to meet bid specifications or time limits on other contracts?
- 4. Has the undersigned company abandoned a contract or refused to perform without legal cause after submitting a bid?
- 5. Has the undersigned company had bidding errors or omissions in two or more bid submissions within a thirty-six month period?
- 6. Has the undersigned company failed to perform or performed unsatisfactory of two or more contracts within a thirty-six month period.
- 7. Does the undersigned company have adequate equipment, personnel and expertise to complete the proposed contract?
- 8. Does the undersigned company have a record of safety violations in two or more contracts within a thirty-six month period?
- 9. Does the undersigned have a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such a contract or subcontract within a ten-year period?
- 10. Has the undersigned company been convicted of a criminal offense within a ten-year period of embezzlement, theft, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which might affect responsibility as a municipal contractor?
- 11. Has the undersigned company been convicted of state or federal antitrust statues within a ten-year period arising out of submission of bids or proposals?
- 12. Has the undersigned company been disbarred or a similar proceeding by another governmental entity?

If you answered “yes” to Items 1-6 or 8-12 or answered “no” to Item 7, please attach a full explanation to this questionnaire.

Company: _____

Address: _____

Name: _____ Title: _____
(please print) (please print)

Signature: _____ Date: _____

Form F – Bidder Qualifications, Representations and Warranties (return with bid)

Bidder Name: _____

The undersigned Bidder hereby certifies as follows:

- F1 Taxes and Liens** - Bidder has no unsatisfied tax or judgment lien on record.
- F2 Subcontractors** – Bidder submits as Attachment 4 to this Bid Form A a list of all subcontractors it will use in performing the requirements of the agreement resulting from this solicitation. A subcontractor is any separate legal entity used to perform requirements of the proposed agreement. The list shall include the firm's name, contact person and title, mailing address, telephone number, fax number and a description of the service(s) to be subcontracted. Bidder shall also attach a copy of the letter from the subcontractor stating its commitment to perform the services(s) subcontracted.
- F3 References** – The City will enter into an agreement only with a Bidder(s) having a reputation of satisfactory performance. The Bidder's ability to provide timely service; knowledgeable, conscientious, and courteous staff; reasonable care and skill; invoicing consistent with contract pricing, etc., are important to the City. Bidder provides information for two clients, other than the City of Prescott, that presently contract with Bidder for similar goods or services:

Reference #1

Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Reference #2

Firm Name: _____
Address: _____
Contact Person: _____
Phone Number: _____

Note: The bid evaluators may contact the customer references, as well as any other customers or customer employees including The City of Prescott. A Bidder with unsatisfactory references may have its bid rejected.

- F4 Bidder's Examination** - Bidder has made its own examination, investigation and research regarding the requirements of the solicitation including but not limited to the work to be done, services to be performed, any conditions affecting the work and services, the type and quantity of labor, equipment and facilities necessary to perform. Bidder fully understands the character of the work and services, the manner in which payment is to be made, the terms and conditions of the draft agreement (see Appendix C), and the solicitation. Bidder acknowledges and agrees that it has satisfied itself by its own examination, investigation and research, and that it will make no claim against the City because of erroneous estimates, statements, or interpretations made by City. Bidder hereby proposes to furnish all materials, equipment, and facilities and to perform all labor which may be required to do the work within the time required and upon the terms and conditions provided in the draft agreement and the solicitation, and at the prices as bid.

Dated this _____ day of _____ 2009.

Signature

Title

APPENDIX A - FEDERAL LABOR STANDARDS PROVISIONS

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I (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 29 CFR-5.5(a)(1)(iv); 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 29 CFR Part 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 29 CFR Part 5.5(a)(1)(ii) 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) Any class of laborers or mechanics 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. HUD 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 HUD or its designee 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 HUD or its designee 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 HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, 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 City of Prescott has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The City of Prescott may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee 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, HUD or its designee 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. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work 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 I(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the City of Prescott 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 I(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. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee 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 HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(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 maintained under 29 CFR Part 5.5 (a)(3)(i) 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 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.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3.(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee 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 Part 5.12.

4. (i) Apprentices and Trainees. 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, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, 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 Bureau of Apprenticeship and Training 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 Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, 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 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 will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee 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 Part 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 HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. 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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(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) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of ... influencing in any way the action of such Administration makes, offers or publishes any statement, knowing the same to be false ... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work 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 subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore 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 subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 contract 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 subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54. 83 Stat 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the City of Prescott or the Secretary of Labor shall direct as a means of enforcing such provisions.

APPENDIX B - CERTIFICATIONS

CIVIL RIGHTS - The undersigned is fully aware that this contract is wholly or partially federally funded, and further, agrees to abide by the:

Civil Rights Act of 1964, Title VI, as amended, that provides no person on the basis of Race, Color, or National Origin shall be excluded from participation, denied program benefits, or subjected to discrimination.

And, Civil Rights Act of 1968, Title VIII, as amended, will not discriminate in housing on the basis of Race, Color, Religion, Sex, or National Origin.

And, Rehabilitation Act of 1973, Section 504, as amended, that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation and/or employment, denied program benefits, subjected to discrimination under any program receiving federal funds;

And, Housing and Community Development Act of 1974, Section 109, as amended, that no person shall be excluded from participation (including employment), denied program benefits, or subjected to discrimination on the basis of Race, Color, National Origin, Sex, Age, and Handicap under any program or activity funded in whole or part under Title I (CDBG) of the Act.

And, Age Discrimination Act of 1975, as amended, that no person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age under any program or activity receiving federal funds.

And, Americans with Disabilities Act of 1990, as amended, that there shall be no employment discrimination against "qualified individuals with disabilities."

And, Executive Order 11063, that no person shall, on the basis of race, color, religion, sex, or national origin, be discriminated against in housing and related facilities provided with federal assistance, or lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.

And, Executive Order 11246, as amended, that no person shall be discriminated against, on the basis of race, color, religion, sex, or national origin, in any phase of employment during the performance of federal or federally assisted construction contracts in excess of \$10,000.

EQUAL EMPLOYMENT OPPORTUNITY - During the performance of the contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, familial status, religious affiliation or handicap. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color, national origin, familial status, religious affiliation or handicap. 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. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GRANTEE setting forth the provisions of this non-discrimination clause. 2. The CONTRACTOR will, in all solicitation or advertisements for employees placed by or on behalf of the CONTRACTOR for the GRANTEE, state that all qualified applicants will receive consideration for employment without regard to race, creed, sex, color, national origin, familial status, religious affiliation or handicap.
2. The CONTRACTOR will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
3. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the GRANTEE's Department of Housing and/or Community Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
4. In the event of the CONTRACTOR's non-compliance with any provision of this contract or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole

or in part and the CONTRACTOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

5. The CONTRACTOR will include the provisions of the subparagraphs 12 (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provision will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the GRANTEE's Department of Housing and/or Community Development may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the GRANTEE's Department of Housing and/or Community Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS SECTION 503 (if contract \$25,000 or over)

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The CONTRACTOR agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
2. The CONTRACTOR agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
3. In the event of the CONTRACTOR's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
4. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
5. The CONTRACTOR will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of Section 503 of Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
6. The CONTRACTOR will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

ACCESS TO RECORDS AND RECORDS RETENTION - The undersigned certifies, to the best of his or her knowledge and belief that:

1. The individual, sole proprietor, partnership, corporation, and/or association agrees to permit the CITY of Prescott, U. S. Department of Housing and Urban Development (HUD), and the Office of the Inspector General and/or their designated representatives to have access to all records for review, monitoring, and audit during normal working hours.
2. The individual, sole proprietor, partnership, corporation, and/or association agrees to retain all records for at least five years following the "official US Department of Housing and Urban Development date of the grant or the resolution of all audit findings, whichever is later.

CONFLICT OF INTEREST - The undersigned is fully aware that this contract is wholly or partially federally funded, and further, by submission of the bid or proposal that the individual or firm, certifies that:

1. There is no substantial interest, as defined by Arizona Revised Statute §§38-503 through 505, with any public official, employee, agency, commission, or committee with the CITY of Prescott.
2. Any substantial interest, as defined by Arizona Revised Statute §§38-503 through 505, with any public official, employee, agency, commission, or committee (including members of their immediate family) with the CITY of Prescott that develops at any time during this contract will be immediately disclosed to the CITY of Prescott.

ANTI-LOBBYING CERTIFICATION - The undersigned certifies, to the best of his or her knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this Certification be included in the award documents for all sub-awards to all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

FLY ASH/CONCRETE CERTIFICATION - The bidder/supplier certifies that the percentage of fly ash in the concrete or cement will be:

_____ % and is or will be consistent with the amounts required by the EPA Guidelines for Federal Procurement of Cement and Concrete Containing Fly Ash.

These Certifications (Civil Rights, Equal Employment Opportunity, Affirmative Action for Handicapped Workers - Section 503, Fly Ash, Access to Records and Records Retention, Conflict of Interest, Lobbying) are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of these Certifications is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required Certifications shall be subject to a civil penalty of not less than \$10,000 and not more that \$100,000 for each such failure.

(typed name of official)

(signature of official)

(typed name of firm)

(date)

CERTIFICATIONS SIGNATURE FORM (return with bid)

SAMPLE CONTRACT

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between _____, hereinafter known as the CONTRACTOR, and the CITY OF PRESCOTT, a municipal corporation organized and existing under and by virtue of the laws of the State of Arizona, hereinafter known as the CITY.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged by each party to the other, it is hereby agreed as follows:

ARTICLE I - SCOPE OF WORK

The CONTRACTOR shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities, required to perform all work for the construction of the project described as City of Prescott: _____, and to completely and totally construct the same and install the material therein for the CITY, in a good and workmanlike and substantial manner and to the satisfaction of the CITY through its agents and under the direction and supervision of the _____ Director or his properly authorized agents (hereinafter referred to as the "Project Director") and strictly pursuant to and in conformity with the Plans and Specifications attached hereto as Exhibit "A", and with such modifications of the same and other documents that may be made by the CITY through the Project Director, as provided herein.

ARTICLE II - CONTRACT DOCUMENTS

The Notice Inviting Bids, Plans, Drawings, Project Manual, Specifications, Submittals, Notice of Award, Notice to Proceed, Amendments and Addenda, if any, and other Bid Documents for this project as accepted by the Mayor and Council per Council Minutes of _____, and Change Orders, if any, are by this reference made a part of this Contract to the same extent as if set forth herein in full. In the event of a discrepancy between this Agreement and Exhibits "A", "B" and "C", this Agreement shall control over Exhibits "A", "B" and "C"; and in the event of a discrepancy between Exhibits "A", "B" and "C", Exhibit "A" shall control over Exhibits "B" and "C"; and Exhibit "B" shall control over Exhibit "C".

ARTICLE III - TIME OF COMPLETION

A. The CONTRACTOR hereby agrees to commence work on or before the tenth (10th) day after written notice to do so, and to fully complete the same within _____ (____) calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided herein.

B. It is the CONTRACTOR'S responsibility to establish construction methods and a construction schedule which will facilitate the completion of work required by this Contract within the Contract period and with full consideration for the seasonal weather during which the work is scheduled. Judgment as to hazardous conditions shall be made jointly by the CITY and CONTRACTOR.

C. Any request for extension of time shall be made in writing to the Project Director, stating the reason for said request, and such request shall be received by the CITY immediately following the end of the delay-causing condition. The extension of time allowed shall be as determined by the Project Director and approved by the CITY. An extension of time may be granted by the CITY after the expiration of the time originally fixed in the Contract or as previously extended, and the extension so granted shall be deemed to commence and be effective from the date of such expiration.

D. Any extension of time shall not release the sureties upon any bond required under the Contract. Extensions of time in and of themselves will not be a basis for request for additional compensation by the Contractor.

ARTICLE IV - COMPENSATION

A. For and in consideration of the faithful performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with directions of the CITY, through its agents, and to its satisfaction, the CITY agrees to pay the said CONTRACTOR the sum of _____ (\$_____).

B. CONTRACTOR shall satisfy the CITY by affidavit that all bills for labor and materials incorporated in the work have been paid, and shall complete and submit to the CITY a certification relinquishing any and all claims or right of lien under, in connection with, or as a result of the work under the Contract before final payment shall be made.

C. The intent of the Contract is that maximum payment shall not exceed the agreed total price set forth in Article IV(A) without duly authorized written Change Orders.

D. Once each month the CITY will make a partial payment to the CONTRACTOR on the basis of an estimate prepared by the CONTRACTOR and accepted by the CITY or its duly authorized representative for work completed through the last day of the preceding calendar month, minus retention called for in Title 34, Arizona Revised Statutes. The estimate will cover the work performed by the CONTRACTOR during the preceding calendar month only, until final completion and acceptance of all work covered by this Contract. Partial payments for jobsite delivered material will not be made. The partial payments will only be for installed material complete in place.

E. Prior to the final payment to the CONTRACTOR, the CITY shall deduct therefrom any and all remaining privilege, license and other taxes, fees and any and all other remaining payments or monies due the CITY from the CONTRACTOR, and shall apply those to the appropriate account. CONTRACTOR shall provide to the CITY any information necessary to determine the total amount(s) due.

ARTICLE V - LIQUIDATED DAMAGES

All time limits stated in the Contract Documents are of the essence and should the CONTRACTOR fail to complete the work required to be done on or before the time of completion as set forth in these Contract Documents, including any authorized extension of time, it is mutually agreed and understood by and between the parties that the public will suffer great damages; that such damages, from the nature of the project, will be extremely difficult and impractical to fix; that the parties hereto wish to fix the amount of said damages in advance; and that the sum of _____ Dollars (\$ _____) per day for each and every day's delay in completion and acceptance of the work required to be done by the CONTRACTOR subsequent to the time of completion, including any authorized extensions of time, is the nearest and most exact measure of damages for such breach that can be fixed now or could be fixed at or after such breach and that, therefore, the CITY and CONTRACTOR agree to fix said sum of _____ Dollars (\$ _____) per day for each and every said day's delay as liquidated damages, and not as a penalty or forfeiture for the breach of the agreement to complete and work required to be done by the CONTRACTOR on or before the time of completion and acceptance; and, in the case of such breach, the CITY shall deduct said amount from the amount due the CONTRACTOR under the Contract. In the event the remaining balance due the CONTRACTOR is insufficient to cover the full amount of assessed liquidated damages, then the CONTRACTOR or the surety on the bonds shall pay the difference due the CITY.

ARTICLE VI - CONFLICT OF INTEREST

Pursuant to A.R.S. Section 38-511, the CITY may cancel this contract without penalty or further obligation, if any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the CITY is, at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter of the Contract. In the foregoing event, the CITY further elects to recoup any fee or commission paid or due to any person significantly involved in initiating, negotiation, securing, drafting or creating the Contract on behalf of the CITY from any other party to the Contract, arising as a result of the Contract.

ARTICLE VII - INDEPENDENT CONTRACTOR STATUS

It is expressly agreed and understood by and between the parties that the CONTRACTOR is being retained by the CITY as an independent contractor, and as such the CONTRACTOR shall not become a CITY employee, and is not entitled to payment or compensation from the CITY or to any fringe benefits to which other CITY employees are entitled other than that compensation as set forth in the Compensation Section of the Contract. As an independent contractor, the CONTRACTOR further acknowledges that he is solely responsible for payment of any and all income taxes, FICA, withholding, unemployment insurance, or other taxes due and owing any governmental entity whatsoever as a result of this Contract. As an independent contractor, the CONTRACTOR further agrees that he will not make any claim, demand or application to or for any right or privilege applicable to any officer or employee of the CITY, including but not limited to workmen's compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit.

ARTICLE VIII - NONDISCRIMINATION

The CONTRACTOR, with regard to the work performed by it after award and during its performance of the Contract, will not discriminate on the grounds of race, color, national origin, religion, sex, disability or familial status in the selection and retention of contractors, subcontractors, including procurement of materials and leases of equipment. The CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by or pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Section 109 of the Housing and Community Development Act of 1974, the Age Discrimination Act of 1975, and Executive Order 99-4.

ARTICLE IX - INDEMNIFICATION AND HOLD HARMLESS

The CONTRACTOR hereby agrees to indemnify and hold harmless the CITY, its departments and divisions, its employees and agents, from any and all claims, liabilities, expenses or lawsuits as a result of the CONTRACTOR'S participation specific to Contract, whether said claims, liabilities, expenses or lawsuits arise by the acts or omissions of the CONTRACTOR or his/her agents or employees , CONTRACTOR'S subcontractors, their agents or employees.

ARTICLE X - AMBIGUITY

This Contract is the result of negotiations by and between the parties. Although it has been drafted by the Prescott City Attorney, it is the result of the negotiations between the parties. Therefore, any ambiguity in this Contract is not to be construed against either party.

ARTICLE XI - BONDS

(A) On or before the execution of the Contract, the CONTRACTOR shall obtain in an amount equal to the full Contract price a performance bond pursuant to A.R.S. Section 34-222, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions herein. Such bond shall be solely for the protection of the CITY. A copy of this bond shall be filed with the Prescott City Clerk according to the Bid Documents.

(B) On or before the execution of the Contract, the CONTRACTOR shall also obtain a payment bond, pursuant to the provisions of A.R.S. Section 34-222, in an amount equal to the full Contract price herein, said bond to be solely for the protection of claimants supplying labor or materials to the CONTRACTOR or his subcontractors in the prosecution of the work provided for in the Contract. A copy of this bond shall be filed with the Prescott City Clerk according to the Bid Documents.

(C) All bonds must be written by an insurance company authorized to do business in the State of Arizona, to be evidenced by a Certificate of Authority as defined in A.R.S. Section 20-217, a copy of which certificate is to be attached to the applicable bid bond, payment bond and performance bond.

ARTICLE XII – DISPUTES

The parties hereto expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties hereto waives any right to a trial by jury. In the event of litigation, the parties hereby agree to submit to a trial before the Court. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project which is the subject of this Agreement. The parties hereto further expressly covenant and agree that in the event of litigation arising from this Agreement, neither party shall be entitled to an award of attorneys fees, either pursuant to the Contract, pursuant to ARS Section 12-341.01(A) and (B), or pursuant to any other state or federal statute. The Contractor further agrees that this provision shall be contained in all subcontracts related to the project that is the subject of this Agreement.

DATED this ____ day of _____, 2005.

CONTRACTOR

Name:

Title:

PASSED, APPROVED AND ADOPTED by the Mayor and Council of the City of Prescott

this _____ day of _____, 2009.

Marlin Kuykendal
MAYOR

ATTEST:

APPROVED AS TO FORM:

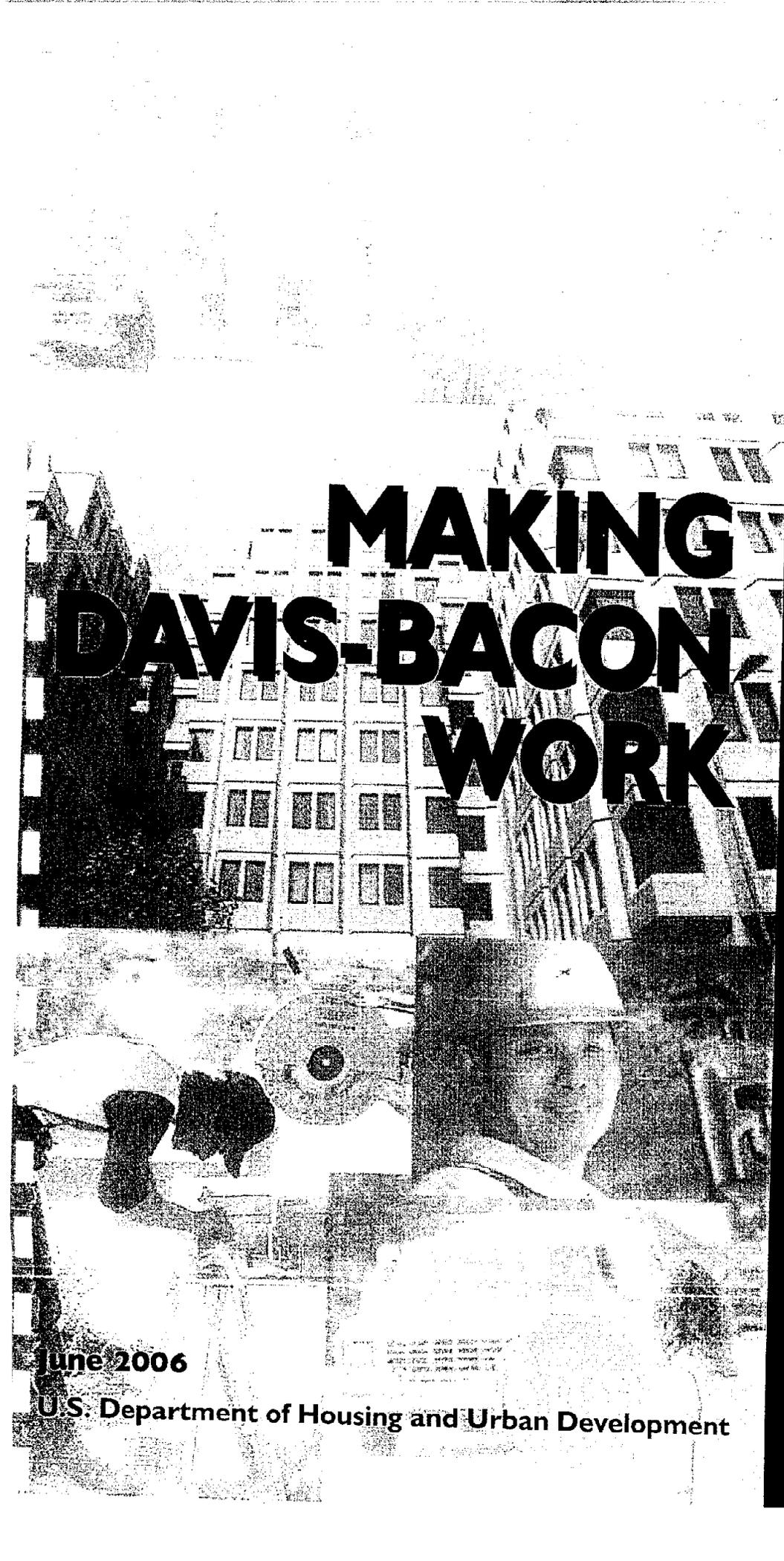
Elizabeth A. Burke
CITY CLERK

Gary D. Kidd
CITY ATTORNEY

Attachment 'A' – Making Davis-Bacon Work – A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects

Attachment 'B' – Wage Rate Determination Sheet for Arizona, Yavapai County (return with bid)

Attachment 'C' – EEO Poster Sample



MAKING DAVIS-BACON WORK

*A Contractor's
Guide to
Prevailing
Wage
Requirements
for
Federally-Assisted
Construction
Projects*

June 2006

U.S. Department of Housing and Urban Development

Introduction

This Guide has been prepared for you as a contractor performing work on construction projects that are *assisted* by the Department of Housing and Urban Development and subject to Davis-Bacon prevailing wage requirements. This Guide *does not* address contractor requirements involved in *direct* Federal contracting where HUD or another Federal agency enters into a procurement contract. In this latter case, the Federal Acquisition Regulations (FAR) are applicable. While the guidance contained in this Guide is generally applicable to *any* Davis-Bacon covered project, specific questions pertaining to direct Federal contracts should be addressed to the Contracting Officer who signed the contract for the Federal agency.

Our objective here is to provide you with a guide which is simple and non-bureaucratic yet comprehensive and which will help you better understand and comply with Davis-Bacon labor standards. HUD's Office of Labor Relations worked closely with the Department of Labor's Wage and Hour Division to make sure that the labor standards provisions in your contract and the specifics of complying with them represent the latest information. It is the Department of Labor which has general administrative oversight of all Federal contracting agencies, such as HUD, which administer the day-to-day responsibilities of enforcing Davis-Bacon provisions in construction contracts they either fund or assist in funding.

There are three chapters in this Guide. The first chapter offers 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 and 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.

Finally, not all HUD construction projects are covered by Davis-Bacon wage rates. For the purpose of this Guide, we are assuming that a determination has already been made that Davis-Bacon wage rates are applicable. Should you wish assistance in determining whether Davis-Bacon wage rates apply to a particular project or if you need other related technical assistance, please consult with the HUD Labor Relations Field staff for your area. If you don't know which staff to contact, a list of Labor Relations field offices and their geographic areas and telephone numbers can be found on HUD's Home Page at the address below.

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

Obtain additional copies of this Guide and other publications at our web site or by telephone from HUD's Customer Service Center at (800) 767-7468.

MAKING DAVIS-BACON WORK

*A Contractor's Guide
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CHAPTER I.

Laws, Regulations, Contracts and Responsibilities

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

I-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 government and District of Columbia construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

Most HUD construction work is not covered by the DBA itself since HUD seldom contracts directly for construction services. Most often, if Davis-Bacon wage rates apply to a HUD project it is because of a labor provision contained in one of HUD's "Related Acts" such as the U.S. Housing Act of 1937, the National Housing Act, the Housing and Community Development Act of 1974, the National Affordable Housing Act of 1990, and the Native American Housing Assistance and Self-Determination Act of 1996. The Related Acts are often referred to as the Davis-Bacon and Related Acts or DBRA.

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 can be considered for Federal criminal prosecution.

CWHSSA does not apply to prime contracts of \$100,000 or less. In addition, some HUD projects are not covered by CWHSSA because some HUD programs only provide loan guarantees or insurance. CWHSSA also does not apply to construction or rehabilitation contracts that are not subject to Federal prevailing wage rates (e.g. Davis-Bacon wage rates or HUD-determined rates for operation of public housing and Indian block grant-assisted housing). However, even though CWHSSA overtime pay is not required, Fair Labor Standards Act (FLSA) overtime pay is probably still applicable. (See also Labor Relations Letter 5-85-01, CWHSSA Coverage threshold for overtime and health and safety provisions, available online at the HUD Labor Relations Library at www.hud.gov/offices/cl/library.cfm)

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A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects

MAKING DAVIS-BACON WORK

c. The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a Federal crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.

d. The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. 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 (DOL) 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 (*aka wage decisions*) 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 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/allcr/Title_29/cogl.htm

1-3 Construction Contract Provisions

Each contract subject to Davis-Bacon labor standards requirements must contain labor standards clauses and a Davis-Bacon wage decision. These documents are often 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-2554, Supplementary Conditions to the Contract for Construction, which is issued primarily for FHA multifamily housing and other construction projects administered by HUD; the HUD-4010, Federal Labor Standards Provisions, which is used for CDBG and HOME projects, and the HUD-5370, General Conditions of the Contract for Construction – Public and Indian Housing Program.

HUD program labor standards forms are available on-line at:
www.hudclips.org/cgi-bin/index.cgi

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b. Davis-Bacon Wage Decisions

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

Davis-Bacon wage decisions are established by the DOL for various types of construction (e.g., residential, heavy, highway) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current. In most cases, when the contract is awarded or when construction begins, the wage decision is "locked-in" and no future modifications are applicable to the contract or project involved.

All current Davis-Bacon wage decisions can be accessed on-line at no cost at:

www.wdol.gov

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, subcontractors generally should communicate with the contract administrator only through the prime contractor. (See *Contract Administrator, below.*)

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* is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. We use this term to represent the person (or persons) who will provide labor standards advice and support to you and other project principals (e.g., the owner, sponsor, architect), including providing the proper Davis-Bacon wage decision (see 12-1, *The Wage Decision*) and ensuring that the wage decision and contract clauses are incorporated into the contract for construction. The contract administrator also monitors labor standards compliance (see 12-6, *Compliance Reviews*) by conducting interviews with construction workers at the job site and reviewing payroll reports, and oversees any enforcement actions that may be required.

The contract administrator could be an employee or agent of HUD, or of a city or county or public housing agency. For HUD projects administered directly by HUD staff, usually FHA-insured multifamily projects, the contract administrator will be the HUD Labor Relations field staff. But many HUD-assisted projects are administered by local contracting agencies such as Public Housing Agencies (PHAs),

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Indian tribes and tribally-designated housing entities (TDHEs), and States, cities and counties under HUD's Community Development Block Grant (CDBG) and HOME programs. In these cases, the *contract administrator* will likely be local agency staff. In either case, the guidance for you remains essentially the same.

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

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 *Item 2, 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.

To make reading lengthy wage decisions easier for you, the contract administrator may prepare a Project Wage Rate Sheet (HUD-4720). This sheet is a one-page transcript that will show only the classifications and wage rates for a particular project. A blank copy of a Project Wage Rate Sheet is provided for you in the appendix. Also, a fillable version of this form is available online at HUD@ips (see web address in the Appendix). Contact the contract administrator monitoring your project for assistance with a Project Wage Rate Sheet.

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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 All Employees* (Form WH-1321) 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 All Employees* poster is available on-line at HUDClips (see address in the Appendix).

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.

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c. HUD Review

The HUD Labor Relations field staff will review the requested classification and wage rate to determine whether the request meets the DOL rules outlined in paragraph 2-2(a), above. If additional information or clarification is needed, the staff will contact the prime contractor (or contract administrator for local agency projects) for more information, etc. If the Labor Relations review finds that the request meets the rules, the staff will give preliminary approval on the request and refer it to the DOL for final approval. The staff will send to you a copy of the preliminary approval/referral letter to the DOL.

If the HUD Labor Relations staff doesn't think the request meets the rules and if agreement can't be reached on the proper classification or wage rate for the work described, the HUD Labor Relations staff will *not* approve the request. In this case, the staff will send your request to the DOL with an explanation why HUD believes that the request shouldn't be approved. The DOL still has final decision authority. You will receive a copy of the disapproval/referral letter to the DOL.

d. DOL Decision

The DOL will respond to HUD Labor Relations in writing about the additional classification and wage rate request. HUD Labor Relations will notify you 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. You will also receive instructions about how to ask for DOL reconsideration if you still want to try to get your recommendation approved.

It's always a good idea to talk to the contract administrator before submitting an additional classification and wage rate request. The contract administrator can offer suggestions and advice that may save you time and increase the likelihood that DOL will approve your request. Usually, the contract administrator can give you an idea about what the DOL will finally decide.

2-3 Certified Payroll Reports

You'll need to submit a weekly certified payroll report (CPR) 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 WH-347, *Payroll*. A sample copy of the WH-347 is included in the back of this Guide. You may access a fillable version of the WH-347 on-line at HUDClips (see web address in the Appendix). Also, the contract administrator can provide a few copies of the WH-347 that you can reproduce.

You are *not* required to use Payroll Form WH-347. 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 WH-347.

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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 reverse side of the WH-347. If you are using another type of payroll format you may attach the certification from the back of the WH-347, or any other format which contains the same certification language on the WH-347 (reverse).

DOL's website has Payroll Instructions, and the Payroll Form WH-347, in a "fillable" PDF format at this address:

www.dol.gov/esa/programs/dbra/forms.htm and at **HUDClips**.

c. "No Work" Payrolls

"No work" payrolls may be submitted whenever there is a temporary break in your work on the project, 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. (See *Tip Box, below, for "no work" payroll exemption!*) 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 submit 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, tax records, evidence of fringe benefit payments,

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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 and other basic records 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 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 and do not meet the exclusions in paragraph 2 below are covered "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.

2) **Exclusions.** People whose duties are primarily administrative, executive or clerical are not laborers or mechanics. Examples include superintendents, 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. Note that there are no exceptions to the prevailing wage requirements for relatives or for self-employed laborers and mechanics.

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

For more information about working subcontractors, ask the contract administrator or your HUD Labor Relations Field Staff for a copy of Labor Relations Letter LR-96-01, *Labor standards compliance requirements for self-employed laborers and mechanics*. Labor Relations Letters and other helpful Labor Relations publications are available at HUD's Labor Relations web site (see the list of web site addresses in the Appendix).

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programs, including *Step-Up* apprenticeship programs designed for Davis-Bacon construction work. Approved programs are those which have been registered with the DOL or a DOL-recognized State Apprenticeship Council (SAC). Apprentices and trainees are paid wage rates in accordance with the wage schedule in the approved program.

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 DOL 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 who hasn't been DOL- 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 can not exceed 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.

- 1) **Piece-work.** Some employees are hired on a piece-work basis, that is, the employee's earnings are determined by a factor of work produced. For example, a Drywall Hanger's earnings may be calculated based upon the square feet of sheetrock actually hung, a Painter's earnings may be based upon the number of units painted. Employers may calculate weekly earnings based upon piece rates **provided** the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. *Accurate time records must be maintained for any piece-work employees.* If the weekly piece rate earnings are not sufficient, the employer must recompute weekly earnings based upon the actual hours worked and the rate on the wage decision for the work classification(s) involved.

e. Fringe Benefits

Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave as well as 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.

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. You can meet this obligation in several ways: you could pay the base wage and fringe benefits as stated in the wage decision, or you could pay \$15 in base wage with no fringe benefits, or you could pay \$12 base plus \$3 fringe benefits. You can also *off-set* the amount of the base wage if you pay more in fringe benefits such as by paying of \$9 base plus \$6 fringe benefits, as long as you meet the total amount. The amount of the base wage that you may off-set with fringe benefits is limited by certain IRS and FLSA requirements.

f. Overtime

Overtime hours are defined as all hours worked on the contract 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.

Referring to our example above where the wage decision requires a \$15 total wage obligation (\$10 basic wage plus \$5 fringe benefits), was met by paying \$9 base wage plus \$6 fringe benefits. Note that overtime rates must be based on one and one-half times the basic rate as stated on the wage decision. In the above example, the employer must pay for overtime: \$15/hr. (\$9 basic + \$6 fringe) plus \$5 (one-half of \$10, the wage decision basic rate) for a total of \$20 per hour.

g. 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" (i.e., give up) any of their earnings. Allowable deductions which do not require prior DOL permission 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.

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h. 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 are apprentices and trainees registered in approved programs.

1) **Split-classification.** If you have employees that perform work in more than one trade during a work week, you can pay the wage rates specified for each work classification in which work was performed **only** if you maintain accurate time records showing the amount of time spent in each classification. 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.

i. 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 virtually adjacent property used by a contractor or subcontractor in the construction of the project, like a fabrication site that is dedicated exclusively, or nearly so, to the project.

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.

You are required to submit certified payrolls to illustrate and document that you have complied with the prevailing wage requirements. The purpose of the contract administrator's review of your payrolls is to verify your compliance. Clearer and complete payroll reports will permit the contract administrator to complete reviews of your payroll reports quickly.

For many contractors the Weekly Certified Payroll is the only Davis-Bacon paper you need to submit!

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a. Project and Contractor/Subcontractor Information

Each payroll must identify the contractor or subcontractor's name and address, the project name and number, and the week ending date. Indicate the week *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 a registered or approved program. A copy of the portions of the registered or approved program pertaining to the wage rates and ratios shall also accompany the first payroll on which the first apprentice or trainee appears.

2) **Split classifications.** For an employee that worked in a split classification, make a separate entry for each classification of work performed distributing the hours of work to each classification, 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.

1) **Piece-work.** For any piece-work employees, the employer **must** compute an *effective hourly rate* for each employee each week based upon the employee's piece-work earnings for that week. To compute the effective hourly rate, divide the piece-work earnings by the total number of hours worked, including consideration for any overtime hours.

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The effective hourly rate must be reflected on the certified payroll and the hourly rate may be no less than the wage rate (including fringe benefits, if any) on the wage decision for the classification of work performed. It does not matter that the effective hourly rate changes from week-to-week, only that the rate is no less than the rate on the wage decision for the classification of work performed.

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 or provided for in a collective bargaining (union) agreement. A short note signed by the employee is all that is needed and should accompany the first payroll on which the other deduction appears.

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 (WH-347). 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).

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.

Only one employee authorization is needed for recording (e.g., weekly) other deductions. Written employee authorization is not required for income tax and Social Security deductions.

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.

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. The DOL may also independently conduct its own reviews (see 11-5). 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 or other agency representative, or 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 HUD-11, *Record of Employee Interview*, and forward the interviews to the contract administrator.

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 or other 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.

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a. Inadequate Payroll Information

If an alternate payroll format used by an employer (such as some computer payrolls) is inadequate, e.g., does not contain all of the necessary information that would be on the optional form WH-347, 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 ¶12-2). If reclassification results in underpayment (i.e., 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 ¶12-8 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 classifications 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 the approved program ratio and wage schedule are 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. 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 contract administrator 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.

HUD does not enforce or attempt to provide advice on employer obligations to make deductions from employee earnings for taxes or Social Security. However, HUD may refer to the IRS or other responsible agency copies of certified payroll reports that show wages paid in gross amounts (net without tax deduction) for its review and appropriate action.

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 Statement of Compliance], 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. If the *Statement of Compliance* is signed by a person who is not a principal of the firm and that person has not been authorized by principal to sign, the employer will be asked to provide an authorization or to resubmit the *Statement(s) of Compliance* bearing the signature(s) of a principal or other signatory.

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 Employer/Prime Contractor

The contract administrator will notify the employer and/or prime contractor in writing of any underpayments that are found during

MAKING DAVIS-BACON WORK

The contract administrator may communicate directly with a subcontractor when the underpayments are plainly evident and the subcontractor is cooperative. It is best to work through the prime contractor when the issues are complex, when there are significant underpayments and/or the subcontractor is not cooperative. In all cases, the subcontractor must ensure that the prime contractor receives a copy of the required corrective documentation.

In most cases, HUD no longer requires employers to submit checks or copies of checks (certified cashiers, canceled or other) to correct underpayments. Restitution payments are reported and certified by the employer on a correction payroll.

payroll or other reviews. The contract administrator will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The employer/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. You may also compute wage restitution by calculating the total amount of Davis-Bacon wages earned and subtracting the total amount of wages paid. The difference is the amount of back wages 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 was paid 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 actually paid. A signed Statement of Compliance must be attached to the correction payroll.

d. Review of Correction CPR

The contract administrator will review the correction certified 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.

e. Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid (i.e., unfound workers) providing their names, Social Security Numbers, last known addresses and the gross amount due. In such 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 attempts 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 HUD.

CHAPTER 3. Labor Standards Disputes, Administrative Reviews, Withholding, Deposits and Escrow Accounts, and Sanctions

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 or 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 in resolving the problem or issue.

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 of the decision on the additional classification request. The request for reconsideration must be made in writing and must thoroughly

MAKING DAVIS-BACON WORK

address the denial reasons identified by the DOL. Employer requests for reconsideration should be made through the contract administrator but may be made directly to the DOL. (See §12-2(d), and also DOL Regulations 29 CFR 1.8.) All requests initiated by or made through the contract administrator or HUD must be submitted through the HUD Headquarters Office of Labor Relations.

- 2) **Administrative Review Board.** Any interested party may request a review of the Administrator's decision on reconsideration by **DOL's Administrative Review 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 follow-up enforcement actions 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 promptly 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 back 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 must be made in writing through the contract administrator and must explain what findings are in dispute and the reasons. In such cases, HUD is required to submit a report to DOL for review and further consideration. All requests for DOL hearing must be submitted through the HUD Headquarters Office of Labor Relations.

- 1) **DOL review.** The DOL will review the contract administrator's report and the arguments against the findings presented in the hearing request. The DOL may affirm or modify the findings based upon the materials presented. You will be notified in writing by the DOL of the results of its review; you will be given an opportunity to correct any underpayments or to request a hearing before a DOL Administrative Law Judge (ALJ). (See DOL Regulations 29 CFR 5.11 (b) and 29 CFR Part 6, *Rules of Practice for Administrative Proceedings*.)
- 2) **Administrative Review Board.** Contractors and/or subcontractors may request a review by the Administrative Review Board of the decision(s) rendered by the DOL ALJ in the administrative hearing process. See DOL regulations 29 CFR Part 7 for more information about this proceeding.

3-3 Withholding

The contract administrator shall 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. DOL may also direct the withholding of contract payments for alleged wage underpayments. Withholding is considered to be serious and is not taken unless warranted. If withholding is deemed necessary, you will be notified in writing. Only the amounts needed to meet the contractor's (and/or subcontractors') 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 ¶11-4, *Responsibility of the Principal Contractor*, and ¶12-8, *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 projects to proceed to final closing 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, e.g., some of the workers have moved and could not be located. The amount of the deposit is equal to the total amount of restitution due to workers lacking payment evidence. As these workers are paid and proper documentation is provided to the contract administrator, amounts corresponding to the documented payments are returned to the depositor. Amounts for any workers who can not be located are held in the deposit/escrow account for three years and disbursed as described in ¶12-8(e) 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 are 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 ¶12-8(e) and 3-4(a)).

If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained in ¶13-4(c), below.

MAKING DAVIS-BACON WORK

- c. Where the parties are waiting for the outcome of an administrative hearing that has been or will be requested 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 Administrative Sanctions

Contractors and/or subcontractors that violate the labor standards provisions may face administrative sanctions imposed by HUD and/or DOL.

a. DOL 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 contract administrator or can be initiated by the DOL. Debarment proceedings are described in DOL regulations 29 CFR 5.12.

b. HUD Sanctions

HUD sanctions may include Limited Denials of Participation (LDPs), debarments and suspensions.

- 1) **LDPs.** HUD may issue to the employer a limited denial of participation (LDP) which prohibits the employer from further participation in HUD programs for a period up to one year. The LDP is usually effective for the HUD program in which the violation occurred and for the geographic jurisdiction of the issuing HUD Office. HUD regulations concerning LDP's are found at 24 CFR 24.700-24.714.
- 2) **Debarment and suspensions.** In certain circumstances, HUD may initiate its own debarment or suspension proceedings against a contractor and/or subcontractor in connection with improper actions regarding Davis-Bacon obligations. For example, HUD may initiate debarment where a contractor has been convicted for making false statements (such as false statements on certified payrolls or other prevailing wage certifications) or may initiate suspension where a contractor has been indicted for making false statements. HUD regulations concerning debarment and suspension are found at 24 CFR Part 24.

Remember, if you have any questions or need assistance concerning labor standards requirements help is always available. Contact the contract administrator for the project you're working on or the HUD Field Labor Relations staff in your area.

3-6 Falsification of Certified Payroll Reports

Contractors and/or subcontractors that are found to have willfully falsified payroll reports (Statements of Compliance), including correction certified payroll reports, may be subject to civil or criminal prosecution. Penalties may be imposed of \$1,000 and/or one year in prison for each false statement (see Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code).

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Acronyms and Symbols

CDBG	– Community Development Block Grant
CFR	– Code of Federal Regulations
CPR	– Certified Payroll Report
CWHSSA	– Contract Work Hours and Safety Standards Act
DBA	– Davis-Bacon Act
DBRA	– Davis-Bacon and Related Acts
DOL	– Department of Labor
FHA	– Federal Housing Administration
FLSA	– Fair Labor Standards Act
HUD	– Housing and Urban Development (Department of)
IHA	– Indian Housing Authority
LCA	– Local Contracting Agency
LDP	– Limited Denial of Participation
O/T	– Overtime
PHA	– Public Housing Agency
S/T	– Straight-time
SAC	– State Apprenticeship Council/Agency
TDHE	– Tribally-Designated Housing Entity
§	– Section
¶	– Paragraph

Davis-Bacon – Related Web Sites*

HUD Office of Labor Relations:
www.hud.gov/offices/olr

HUD Regulations:
www.access.gpo.gov/nara/cfr/cfr-table-search.html

HUDClips (Forms and Publications):
www.hudclips.org/cgi/index.cgi

DOL Davis-Bacon and Related Acts Homepage:
www.dol.gov/esa/programs/dbra/index.htm

DOL Regulations:
www.dol.gov/dol/allcrf/Title_29/toc.htm

Davis-Bacon Wage Decisions:
www.wdol.gov

DOL Forms:
www.dol.gov/esa/programs/dbra/forms.htm

*Web addresses active as of June 2006

Project Wage Rate Sheet

U.S. Department of Housing and Urban Development
Office of Labor Relations

PROJECT NAME:	WAGE DECISION NUMBER/MODIFICATION NUMBER:
---------------	---

PROJECT NUMBER:	PROJECT COUNTY:
-----------------	-----------------

WORK CLASSIFICATION	BASIC HOURLY RATE (BHR)	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	LABORERS FRINGE BENEFITS:		\$ TOTAL WAGE
				GROUP #	BHR	
Bricklayers			\$			
Carpenters			\$			\$
Cement Masons			\$			\$
Drywall Hangers			\$			\$
Electricians			\$			\$
Iron Workers			\$			\$
Painters			\$	OPERATORS FRINGE BENEFITS:		\$
Plumbers			\$	GROUP #	BHR	\$ TOTAL WAGE
Roofers			\$			\$
Sheet Metal Workers			\$			\$
Soft Floor Layers			\$			\$
Tapers			\$			\$
Tile Setters			\$	TRUCK DRIVERS FRINGE BENEFITS:		\$
OTHER CLASSIFICATIONS				GROUP #	BHR	\$ TOTAL WAGE
			\$			\$
			\$			\$
			\$			\$

ADDITIONAL CLASSIFICATIONS (HUD Form 4230-A)

WORK CLASSIFICATION	BASIC HOURLY RATE	FRINGE BENEFITS	TOTAL HOURLY WAGE RATE	DATE OF HUD SUBMISSION TO DOL	DATE OF DOL APPROVAL
			\$		
			\$		
			\$		
			\$		

General Decision Number: AZ080005 08/07/2009 AZ5

Superseded General Decision Number: AZ20070005

State: Arizona

*12 Oct 09
A. Hartman*

Construction Type: Building

Counties: Apache, Cochise, Gila, Graham, Greenlee, La Paz, Navajo, Santa Cruz and Yavapai Counties in Arizona.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	02/08/2008
1	04/04/2008
2	04/18/2008
3	06/20/2008
4	07/11/2008
5	08/08/2008
6	08/15/2008
7	02/13/2009
8	02/27/2009
9	05/29/2009
10	07/03/2009
11	08/07/2009

ELEC0518-004 07/01/2008

APACHE (Area South of Highway 66), GILA, and NAVAJO (South and East of boundary beginning at a point where Clear Creek crosses the Coconino-Navajo County Line, extending North-easterly along Clear Creek and North-easterly to Cottonwood Wash, along Cottonwood Wash North-easterly to intersection with Navajo Reservation, East along Navajo Reservation Boundary line to intersection with Navajo/Apache County lines) COUNTIES

Rates Fringes

~~Electrician/Wireman.....\$ 24.05 128+6.50~~

ELEC0570-006 06/01/2008

COCHISE, GRAHAM, GREENLEE, LA PAZ, SANTA CRUZ

Rates Fringes

Electrician/Wireman.....\$ 21.65 18+4.70

ZONE DEFINITIONS:

Zone 1: 0 to 29 miles radius from City Hall in the following cities: Tucson, Benson, Bisbee, Clifton, Douglas, Morenci, Nogales, Parker, Safford, Sierra Vista & Yuma.

Zone 2: Over 29 miles to 46 miles - add \$1.25 to Zone 1

rate.

Zone 3: Over 46 miles - add \$3.75 to Zone 1 rate.

 ELEC0611-009 11/01/2007

APACHE COUNTY (Area North of Highway 66)

	Rates	Fringes
Electrician/Wireman		
Zone 1.....	\$ 26.80	5%+7.80

ZONE 1: 0 to 10 miles from Gallup, NM

ZONE 2: 10 to 30 miles from Gallup - Add 9% to basic hourly rate.

ZONE 3: 30 to 40 miles from Gallup - Add 15%

ZONE 4: Over 40 miles from Gallup - Add 26%

 ELEC0640-002 06/21/2008

NAVAJO (Remaining Area) and YAVAPAI COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 24.80	3%+7.09

* IRON0075-003 08/01/2009

	Rates	Fringes
IRONWORKER, STRUCTURAL		
Zone 1:.....	\$ 26.52	17.59

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

 PLUM0469-001 07/01/2009

ZONE A: APACHE, LA PAZ, NAVAJO & YAVAPAI COUNTIES

ZONE B: COCHISE, GILA, GRAHAM, GREENLEE, AND SANTA CRUZ COUNTIES

	Rates	Fringes
PLUMBER/PIPEFITTER *		
Zone A.....	\$ 30.55	14.10
Zone B.....	\$ 27.28	13.85

 SFAZ0669-001 01/01/2009

	Rates	Fringes
SPRINKLER (Fire Sprinklers).....	\$ 28.90	16.00

 SUAZ2004-002 03/02/2004

	Rates	Fringes
Carpenter.....	\$ 14.70	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 12.67	1.10
DRYWALL HANGER.....	\$ 14.52	0.00
Laborers:		
Concrete Worker.....	\$ 8.83	0.00
General/Cleanup.....	\$ 9.51	0.00
Landscape.....	\$ 7.50	0.00
Sheet metal worker		
Including Hvac Duct Work....	\$ 18.68	4.91

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

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)).

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

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.

=====

END OF GENERAL DECISION

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

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

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES

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

OVERTIME

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

ENFORCEMENT

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

APPRENTICES

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

PROPER PAY

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

Linda Hartmann
Grants Administrator, City of Prescott
433 North Virginia Street
Prescott, AZ 86301
928-777-1143
linda.hartmann@prescott-az.gov

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



For additional information:

1-866-4-USWAGE

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



WWW.WAGEHOUR.DOL.GOV