

NORTH CAROLINA WEATHERIZATION ASSISTANCE PROGRAM
SUBCONTRACTOR AGREEMENT
Energy Audits

This Agreement is hereby entered into by and between _____ (herein “Contractor”) and _____ (herein “Subcontractor”). The agreement is subject to the availability of funds from the Award Agreement # DE-EE0007939 and Award Agreement # 20B1NCLIEA & 21B1NCLIEA.

WITNESSETH

WHEREAS, the Contractor has entered into a Weatherization Assistance Program Agreement with the North Carolina Department of Environmental Quality (“DEQ”) (the “WAP Contract”), whereby it has agreed to perform certain weatherization activities pursuant to the Weatherization Assistance Program in North Carolina and;

WHEREAS, the Contractor, as a result of the utilization of its agency procurement procedures determined that the subcontractor is a good value and;

WHEREAS, the Subcontractor has agreed to undertake the services set forth in Schedule A to fulfill all responsibilities of this Agreement relating to the Project.

NOW, THEREFORE, in furtherance of the Weatherization Assistance Program, and in consideration and the mutual promises and obligations herein provided, the parties do mutually agree as follows:

1. Use of this Contract Document

The Subcontractor acknowledges and agrees that, unless and until executed by the parties, this contract document is a template that DEQ has provided to the Contractor for guidance purposes only (the “Subcontractor Template”), and that the Subcontractor alone is ultimately responsible for determining whether this or any other contract document used to effect an agreement with the Contractor is legally sufficient for the Subcontractor’s purposes.

The Subcontractor further acknowledges and agrees that adoption of this Subcontractor Template to effect an agreement with the Contractor will not provide safe harbor to either the Contractor or the Subcontractor in the event that either party fails to comply with any of the laws, regulations, rules or policies—whether local, state or federal—applicable to the parties and/or their contractual arrangement. Conversely, the Subcontractor acknowledges and agrees that the Contractor and Subcontractor are under no obligation whatsoever to adopt this Subcontractor Template as the requisite contract document memorializing the parties’ agreement. Rather, the Contractor and Subcontractor may elect to execute a different contract document, including any variation of this Subcontractor Template, so long as such document constitutes a legally binding contract and contains all of the terms, conditions, duties and other contract provisions required under the laws, regulations, rules and policies—whether local, state or federal—applicable to the parties and/or their contractual arrangement.

2. Applicability of WAP Contract

In those instances where services for which the Contractor is responsible under the WAP Contract are to be carried out by the Subcontractor pursuant to the terms of this Agreement, the provisions of the WAP Contract shall be binding on the Subcontractor to the extent applicable under the laws, regulations, rules and policies—whether local, state or federal—governing the parties’ contractual arrangement. Upon request, the Contractor shall provide the Subcontractor with a copy of the WAP Contract within a reasonable period of time.

3. Term of Agreement

This Agreement shall begin on _____ (Commencement Date) and shall terminate on _____ (Termination Date) with the exception of all provisions regarding records retention and guarantees of work which shall survive the termination of this Agreement.

4. Compensation

The Contractor agrees to pay the Subcontractor for services rendered under the terms and conditions of this Contract, subject to the flat fee for service set forth in Schedule B (Price Agreement).

5. Entire Agreement

This Agreement and, to the extent applicable, the WAP Contract, together with any attachments appended prior to the execution of the present Agreement, constitutes the entire Agreement between the parties and shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties.

6. Notices

Any notice to be given pursuant to this Agreement shall be deemed sufficient if given in writing to the address indicated in this Agreement, or such other address as may be specified in writing, and if given by certified mail, return receipt requested, and unless date of receipt is specified herein, such notice shall be deemed given when mailed.

7. Subcontractor's Obligations

The Subcontractor agrees:

- A. To perform the services provided for in Schedule A (Scope of Services) attached. The services provided by the subcontractor may not be further subcontracted to be performed by another organization outside the direct employment of the subcontractor.
- B. To comply with all applicable laws, ordinances, codes and regulations of local, state and federal governments, including the obtaining of all required certifications and the requirements of this Agreement, at no additional cost to the Contractor.
- C. To use lead safe weatherization in all homes older than 1978 where the possibility of generating dust, both indoors and outdoors, exists. There is no de minimums level recognized, however; the preparation area and clean up area should be sized appropriately for the job. Work requiring lead safe weatherization includes, but is not limited to, side wall insulation installation, repair or replacement of windows or doors, and installation of an attic hatch. Pictures of the lead safe set up must be taken and included with the invoice or emailed the agency. Lead safe weatherization does not need to be followed in homes older than 1978 that have been certified as lead safe by third party verification.
- D. To ensure personnel possess adequate training and knowledge to enable them to appropriately handle suspected asbestos containing materials. Personnel shall be required to successfully complete Occupational Safety and Health Administration's Operations and Maintenance 16 hour course. In order maintain compliance, an 8 hour refresher course must be taken every fiscal year.
- E. To indemnify and hold harmless the Contractor and any of its officers, agents and employees, from any claims of third parties arising out of any act or omission of the Subcontractor in connection with the performance of this Agreement.

- F. During the term of the contract, the Subcontractor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. The Subcontractor must list the Contractor as a certificate holder on all relevant policies. At a minimum, the Subcontractor shall provide and maintain the following coverage and limits:
- 1) **Worker's Compensation** – The Subcontractor shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage and minimum limits of \$300,000.00, covering all of Subcontractor's employees who are engaged in any work under the contract. Sole proprietorships and partnerships with less than three (3) employees, in addition to the sole proprietor or partners, are not required to have Worker's Compensation.
 - 2) **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$100,000.00 Combined Single Limit of Limit. (Defense cost shall be in excess of the limit of liability.)
 - 3) **Automobile** – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$2,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Subcontractor and is of the essence of this contract. The Subcontractor may meet its requirements of maintaining specified coverage and limits by demonstrating to the Contractor that there is in force insurance with equivalent coverage and limits that will offer a least the same protection to the Contractor. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Contractor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this contract. The limits of coverage under each insurance policy maintained by the Subcontractor shall not be interpreted as limiting the Subcontractor's liability and obligations under the contract.

- G. The Subcontractor and Subcontractor crew members must attend all subcontractor mandatory Weatherization Training provided by the North Carolina Weatherization Assistance Program for subcontractors and must receive necessary training in order to be proficient at performing contracted weatherization functions. The Subcontractor and Subcontractor crew members must attend at least 40 hours of weatherization training yearly.
- H. To perform the work in a workmanlike manner acceptable to the Contractor. The Subcontractor shall promptly correct all work rejected as defective or non-conforming by the Contractor, by (date), but in no event later than the Termination Date of this Agreement.
- I. To guarantee the work performed for a period of one year from the date of final acceptance of all the work required by this Agreement on the unit, or the building containing the unit, if later. Defective work shall be corrected, at the election of the Contractor, within thirty days of receipt by the Subcontractor of written notice of the defect.
- J. Acceptance of defective work, or failure on the part of the Contractor to discover defects, will not relieve the Subcontractor of responsibility to correct the defects as set forth herein within the guarantee period.

- 1) All work assigned to the Subcontractor will be identified by a Job Number and the Subcontractor shall similarly label all invoices, work change orders, etc. with the same number for purposes of identification.
 - 2) The Subcontractor shall provide all required information on forms supplied by the Contractor, or shall supply to the Contractor the information necessary for the completion of such forms.
- K. To provide all labor, tools and equipment necessary to perform this Agreement in an efficient, workmanlike and expeditious manner.
- L. To ensure employees do not smoke or use other tobacco products (including, but not limited to, pipes, cigars, snuff, or chewing tobacco) on any part of the jobsite. A weatherization jobsite includes the home and the property in which the home is located.
8. Payment Schedule
- A. That the subcontractor shall not be entitled to any partial payment. Payment will be upon completion of all (100%) of weatherization work done to each home. The subcontractor submits the following billing requirements for payment:
- 1) Contractor's Invoice that specifies flat rate for services.
 - 2) Interim Readings Diagnostics
- B. The contractor agrees to make payment within sixty (60) working days after receipt of all billing requirements above.
- C. Assignment
This Agreement is intended to secure the services of the Subcontractor because of its ability and reputation and none of the Subcontractor's services or obligations under this Agreement shall be assigned, subcontracted or transferred.
- D. Records
The Subcontractor shall retain all papers and records in connection with work performed for a minimum of three (3) years and access will be provided to DEQ, the US Department of Energy and any of its authorized agents or representatives, or other Federal or State representatives for the purpose of audit, examination, excerpts or transactions.

9. Contractor's Obligations

The Contractor agrees:

- A. To provide work orders in conformance with the North Carolina Weatherization Assistance Program policies.
- B. To conduct a timely post-inspection to determine the acceptability of the services performed by the Subcontractor no later than ten (10) business days after notification by the Subcontractor of completion.
- C. To pay the Subcontractor promptly as required by 10CFR 600.421 and according to this Agreement.
- D. Not to condition payment under this Agreement on the Division certification or approval.

10. Conduct of Agreement

A. Solicitation

The Subcontractor shall not actively solicit business from the clients during the course of the Subcontractor's performance of this Agreement. This provision shall not prevent Subcontractor from providing additional services to the clients at the request of the clients, which additional services shall be performed at the sole cost of the clients. The Contractor is not obligated to pay for any work not initiated by the Contract and outside the scope of work provided on a work order.

B. Delays

When good cause is shown for delay in the work by the Subcontractor, the Contractor shall make a determination specifying alternative payment procedures and/or an extension of time allocated for performance of this Agreement based on confirmation of the delay. Such delays may include, but are not limited to, any of the following: changes in the work, labor disputes, fire, flood, unavoidable casualty or damage to materials, an act or neglect of the property owner or such cause beyond the control of the Subcontractor.

C. Liquidated Damages

It is understood that actual damages due to delay in the performance of the work are uncertain and difficult to ascertain. The reasonably foreseeable damages due to such delay are agreed to be the sum of one hundred dollars (\$100) per day per dwelling unit. The Contractor may withhold and retain such liquidated damages out of any monies due to the Subcontractor under this Agreement.

D. Termination

1) For Fault

If the Contractor determines that the Subcontractor has failed to perform or will fail to perform all or any part of the Subcontractor's services or obligations required under this Agreement, the Contractor may terminate or suspend this Agreement in whole or in part upon written notice by certified mail to the Subcontractor specifying the portions of this Agreement terminated, suspended or reduced. Such notice shall specify the violation(s) of this Agreement, and, in the case of termination, shall specify a reasonable period of not more than ten (10) days nor less than five (5) days from receipt of the notice, at which time the Agreement shall be deemed terminated. In the event of such termination, any materials, supplies, tools or equipment provided by the Contractor shall be returned forthwith by the Subcontractor.

2) Not for Fault

Whenever the Contractor determines that termination of this Agreement in whole or in part is in the best interest of the Contractor or the Division, or in the event that termination is required by a Federal Subgrantee, the Contractor may terminate this Agreement by written notice to the Subcontractor specifying the services terminated and the effective date of the termination. Upon termination, the Subcontractor shall be entitled to and the Contractor shall pay, the eligible costs incurred in compliance with this Agreement until the date of the termination, plus any costs the Subcontractor incurs directly resulting from such termination, provided however, that the total amount paid to the Subcontractor shall not be more than the amount of Total Compensation specified in this Agreement.

3) Termination for Circumstances Beyond the Control of the Subcontractor

The Subcontractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Subcontractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Subcontractor shall notify the Contractor in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contractor of the cessation of such occurrence.”

- 4) In the event of termination of this Agreement, the Contractor shall simultaneously forward to the North Carolina Weatherization Assistance Program a copy of the required notice.

New Subcontractor Onsite Training Addendum

Contractors are required to provide onsite training for no less than five site built houses and no less than two mobile homes for Subcontractors who have not previously worked with the Weatherization Assistance Program. The Contractor must provide a representative to be onsite during the entire weatherization process in order to technical assistance to the Subcontractor. The contract may extend this monitoring if needed. This Subcontractor Agreement shall:

Not be subject to the Training Addendum.

Be subject to the Training Addendum.

SCHEDULE A

Scope of Services

The Subcontractor agrees to provide the services as described on the Scope of Work document provided by the Contractor:

1. Perform an energy audit for identified housing units according to the audit requirement guidelines (WAP On-Site Audit Forms) required by the Standard Weatherization Assistance Program including use of the blower door and pressure pan, and other diagnostic tests, monitoring of refrigerator, combustion analysis, etc.; auditor will provide own diagnostic tools that meet the specifications of the program. The Contractor will use the Residential Energy Assessment Tool (REAT) and provide an actual work order for each completed audit
2. Discuss with Contractor Audit Staff any concerns about units audited.
3. Provide the Contractor with proof of certifications and other specific training that applies to knowledge to complete WAP Energy Audits.
4. Provide the Contractor with copies of general liability insurance and business identification numbers required for payment.

IN WITNESS THEREOF, the parties have executed this Agreement
SUBCONTRACTOR – To be signed before submission to the Contractor

SIGNED: _____ DATE: _____

NAME (PRINTED): _____ TITLE: _____

BUSINESS: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

TELEPHONE _____

EMAIL: _____

FAX: _____

CONTRACTOR – To be signed after State review

SIGNED: _____ DATE: _____

NAME (PRINTED): _____ TITLE: _____

BUSINESS: _____