



PART II - TERMS AND CONDITIONS

1. AVAILABILITY OF FUNDS

Payments pursuant to this contract are to be made only from monies made available to the Oklahoma Department of Commerce (ODOC) for weatherization activities by the source identified in Part I. Notwithstanding any other provisions, payments to the Contractor by ODOC are subject to the availability of such funds to ODOC, as determined by Federal and/or State action and/or law. ODOC may take any action necessary in accordance with such determination.

2. MODIFICATION

- a. This contract is subject to such modification as may be required by Federal or State law or regulations. Any such modification may be done unilaterally by ODOC.
- b. Except as otherwise provided in this contract, the total contract amount and the work and services to be performed may be modified only upon written agreement by the contracting parties.
- c. Revisions to the attached budget, which is a part of this contract, must be submitted on the proper Budget Revision form as provided in the Contractors Implementation Manual and must be submitted prior to or at the time the Contractor submits a Monthly Expenditure Report reflecting a budget revision. If applicable, a revised Management Plan should accompany the revision to the budget.
 - (1) Transfer of funds from administration to any other line items is allowable.
 - (2) Transfer of funds from other line items into administration in excess of the amount specified in the Contractor's Notice of Funding is prohibited.
- d. A waiver by ODOC of any provision of this contract must be in writing and signed by the Director of ODOC or designee.

3. ODOC

- a. ODOC will provide funding for the program up to the total contract amount.
- b. ODOC will perform monitoring and evaluation activities to assess the Contractor's financial and programmatic compliance and progress.

4. CONTRACTOR

- a. The Contractor agrees to perform those duties, obligations and representations contained in its application and to be bound by the provisions of its application and all amendments thereto which were submitted to and accepted by ODOC in contemplation of this



contract, said application being incorporated herein and made a part hereof by reference. Any conflict between said application and the provisions of this contract shall be controlled by Part II of this contract.

- b. None of the work and services covered by this contract may be subcontracted without prior written approval of ODOC.
- c. In no event will any subcontractor incur obligation on the part of ODOC.
- d. Contractor shall perform all activities under this contract in accordance with:
 - (1) The ODOC Implementation Manual for Contractors, including 10 CFR 440 contained therein;
 - (2) Contractor's Weatherization Management Plan as approved by ODOC;
 - (3) The Contractor is required to weatherize at least the projected number of dwelling units stated in its current approved Production Schedule and Management Plan.
- e. Contractor performance shall be evaluated by the following:
 - (1) In any given month evaluation of desk monitoring activities, to include the review of expenditure reports and program narratives may require ODOC to recommend corrective action or require a technical assistance visit to subgrantees demonstrating need.
 - (2) If in the next month there continues to be factors that jeopardize the agency's ability to meet production or expenditure goals, ODOC will work with the subgrantee to provide additional technical assistance to include the reevaluation of program goals, outcomes, and the incorporation of a plan of action.
 - (3) If in the month(s) following the agency has not accomplished the recommended plan of action ODOC may recommend a probationary period.
 - (4) Probationary Period: During the probationary period (length to be determined by ODOC and dependent upon need), the agency must submit in writing to ODOC the following:
 - (a) What the problem(s) continue to be.
 - (b) What has been done to correct the problem.
 - (c) The number of units completed to date, and the number remaining to be completed.
 - (d) Description of the agency's plan of action to correct the problems, to include a timeline for each activity.



- (e) A list of identified training and/or technical assistance needs.
- (f) A revised management plan and/or budget (if required).

At the end of probation, if all corrective actions have been accomplished and the production schedule is being met, no further action will be required. ODOC will continue to evaluate through the desk monitoring process.

If, at the end of probation, the corrective actions have not been accomplished funds may be de-obligated and the remaining balance of the subgrantee allocation may be redistributed based on the redistribution policy.

- f. Upon notification of meetings or training sessions scheduled by ODOC, the Contractor shall ensure the attendance of any person performing services under this contract whose presence is requested.

5. WEATHERIZATION PROGRAM REQUIREMENTS

- a. All units weatherized shall receive an audit using no less than version 8.9 of the NEAT/MHEA software. In addition, each unit must be weatherized in accordance with eligible measures resulting from the audit, and only using materials meeting the Standards of Conformance in Appendix A.
- b. Carbon monoxide testing shall be performed on all units before and after the weatherization is completed.
- c. Where structurally feasible, blower door testing shall be performed on all units before and after the weatherization is completed. Pre and post-diagnostic readings shall be documented in the client file.
- d. Local agencies are responsible to insure Asbestos containing materials are not present in the home before blower tests are conducted.
- e. Local agencies are responsible for following Lead Safe Work Practices and must ensure that subcontractors also comply.
- f. A three-tier warning system has been adopted by ODOC to monitor the progress, both financially and programmatically, of the subgrantee. After the third warning, local agencies exhibiting continued difficulty will be subject to a probationary period and the Redistribution Policy as defined in the State Plan.
- g. Local agencies must be an Environmental Protection Agency (EPA) certified firm in accordance with the EPA Renovation, Repair and Paint rule. Local agencies must also comply with all requirements for Certified Renovators as per Department of Energy and EPA requirements.
- h. Release of administrative funds will be based on the following



schedule:

April through October 50% of administrative allocation (or) 10% of Total YTD expenditures. Thereafter, November through March 10% of Total YTD expenditures per month.

Prior to the end of October (reflecting on the November 20th report) weatherization administrative funding request(s) may be made for a maximum of 50% of the total administrative allocation (or) for 10% of the YTD expenditures. Each month thereafter, without exception, administrative payment requests shall not exceed 10% of the Total YTD expenditures.

If in any month (after October) the total allowable administrative amount is not needed to cover the current month expenses, the unused portion may accumulate until the next needed request is made. At that time, the total administrative funding request shall not exceed 10% of the Total YTD expenditures.

- h. To receive redistributed funds, subgrantees must submit written justification to ODOC describing ability to complete additional units and expend funds, upon notification of availability.

6. EMPLOYEE BENEFITS

The Contractor has full responsibility for payment of Workers' Compensation insurance, unemployment insurance, social security tax, State and Federal income tax withholding and any other deductions required by law for its employees.

7. CERTIFICATIONS BY CONTRACTOR

- a. The Contractor expressly agrees to be solely responsible to ensure that the use of monies received under this contract complies with all Federal, State and local statutes, regulations and other legal authority, including ODOC policies and procedures that affect the use of said monies. The Contractor recognizes that it is responsible for assuring financial and programmatic compliance by its subcontractors.

- b. The Contractor specifically certifies and assures:

- (1) Equal Opportunity

No person shall, on the ground of race, color, national origin, or sex, or on the ground of any other factor specified in any Federal law prohibiting discrimination, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program, project or activity supported in whole or in part with financial assistance under the Weatherization Assistance Act 42 USC §6870. Other applicable Federal laws include those that prohibit discrimination on the basis of age (the Age Discrimination Act of 1975, 42 USC §§6101, et seq.) or with respect to an otherwise qualified disabled individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 USC §794).



- (2) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local or privately-funded programs, especially the Community Development Block Grant Program, in order to improve energy efficiency and to conserve energy.
- (3) Funds provided by this contract shall be used to supplement, not supplant, existing State or local funds available to the Contractor for the same purposes as this contract.

- (4) Appeals

The Contractor has access to and will follow procedures which have been designed to guarantee:

- (a) Equal access to program services and resources; and
- (b) Resolution of grievances by persons seeking services through rights of appeal.

- (5) Linkages

The Contractor will establish linkages with other appropriate Federal and State agencies and/or other providers of community-related and human resource services.

- (6) Inspection

The Contractor will supervise and inspect all weatherization activities and work performed on all eligible households and will certify that such activities and work are in compliance with regulations promulgated by the U.S. Department of Energy and ODOC.

- (7) County Allocation and Priority: Deviations from paragraphs (a) and (b) below will require written ODOC approval.

- (a) The Contractor will provide services on a county-by-county basis within its designated geographic area, giving priority to low income, elderly, disabled, and families with children under 12.
- (b) Funds must be used in the counties for which they were allocated and in the amounts allocated per county.

Deviation may occur only if ODOC receives written justification that includes the reason for the county shortage of eligible units, and when the units will be made up.

- (8) Health and Safety: The Contractor will comply with the requirements of Energy Weatherization Program Notice 11-6, and 11-6a Health and Safety Guidance, effective April 28, 2011, or newer guidance if available.



- (9) The Contractor certifies that it is in compliance with 25 O.S.§1313(B)

8. HOLD HARMLESS CLAUSE

Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers and employees from all claims and actions and all expenses defending same that are brought as a result of any injury or damage sustained by any person or property in consequence of any act or omission by Contractor. Contractor shall, within limitations placed on such entities by State law, save harmless the State of Oklahoma, its agents, officers and employees from any claim or amount recovered as a result of infringement of patent, trademark or copyright or from any claim or amounts arising or recovered under Workers' Compensation Law or any other law. In any agreement with any subcontractor or any agent for Contractor, Contractor will specify that such subcontractors or agents shall hold harmless the State of Oklahoma, its agents, officers and employees for all the hereinbefore-described expenses, claims, actions or amounts recovered.

9. POLITICAL ACTIVITY

- a. All employees of the Contractor shall observe the limitations on political activities to which they may be subject under the Hatch Act. 5 USC §§1501, et seq., 18 USC §595.
- b. No contract funds may be used for any political activity or to further the election or defeat of any candidate for public office.
- c. No contract funds may be used to provide voters or prospective voters with transportation to the polls or similar assistance in connection with an election or any voter registration activity in accordance with 42 USC §9904(c)(7).
- d. No portion of the contract funds may be used for lobbying activities.

10. NO-CONFLICT COVENANTS

- a. No members or employees of any governing board of the Contractor and no employees of the Contractor shall accept any form of gratuity nor have any interest, financial or otherwise, or engage in any business transaction or activity of any nature which is in conflict with the proper discharge of their duties.
- b. The Contractor shall establish safeguards to prohibit employees from using their positions for purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.

11. PUBLICATIONS AND OTHER MATERIALS

- a. No material produced in whole or in part under this contract shall be subject to copyright in the United States or any other country. ODOC shall have unrestricted authority to publish, disclose,



distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this contract.

- b. Any publication or other material produced as a result of this contract shall include in a prominent location near its beginning the following statement:

This (type of material) was financed in whole or in part by funds (from source in Part I) as administered by the Oklahoma Department of Commerce.

12. CONTRACT ADMINISTRATION

- a. The Contractor shall comply with Treasury Circular 1075 concerning cash management of Federal funds and with ODOC requirements pursuant thereto.
- b. The Contractor shall comply with 10 CFR 600, as applicable, OMB Circular A-110 and OMB Circular A-122, except as directed otherwise by ODOC as they relate to the application, acceptance and use of Federal funds, and with ODOC requirements pursuant thereto.
- c. The Contractor shall give ODOC immediate notice in writing of any actions or suits filed against the Contractor or any subcontractor in connection with implementation and administration of this contract.
- d. The Contractor shall procure and maintain fidelity bonds, as required by ODOC, to cover losses of funds in case of misuse.

13. COMPENSATION TO CONTRACTOR

- a. Funds made available pursuant to this contract shall be used only for expenses incurred during the period funded as specified in Part I for the purposes and activities approved and agreed to by ODOC. No contract funds may be used for expenses incurred either prior to or after the time period specified.
- b. Funds shall be advanced upon receipt of a properly executed Request for Funds. Contractor shall request only an amount sufficient to cover immediate anticipated expenditures. The contract shall be managed so that funds shall be requested at such times that they will be fully disbursed within three working days from the date of the receipt of the funds in the Contractor's bank account. Requests for Funds may be made at any time funds are needed throughout the month.
- c. At the start of the contract period, ODOC may advance the Contractor an inventory allocation in accordance with the Contractor's approved Production Schedule. Contractor shall request the Inventory Allocation using Request for Funds. Said allocation shall be used only for the purchase of materials to be placed in inventory for use during the term of this contract.
- d. ODOC may change the procedure for payment to a reimbursement



method when the Contractor:

- (1) Does not consistently minimize the time elapsing between the receipt of the funds from ODOC and their expenditure;
- (2) Is out of compliance with the current approved Management Plan for two consecutive months or more.

ODOC will advise the Contractor in writing of the change from advance payment to reimbursement.

- e. If a question arises as to the validity of any claim made under this contract, the General Rules of Practice and Procedure of ODOC, particularly the rules pertaining to show cause hearings, Section 150:1-15-1, et seq., shall apply.
- f. All requests for funds should be submitted to ODOC during the period funded. A final claim may be submitted no later than sixty (60) days after the final date of the period funded. Said claim will be allowed only for reimbursement of actual expenditures. Any claim submitted after the sixty days may be disallowed by ODOC.

14. PROCUREMENT

Procurement, management and disposition of personal property acquired with contract funds shall be governed by ODOC policies, which embody the principles of the Oklahoma Central Purchasing Act, 74 O.S. 85.1, et seq., in accordance with 10 CFR 600, Subpart E, as applicable.

15. VERIFICATION OF MATERIAL SPECIFICATIONS

The State will require that all bid specifications for material purchased comply with the Appendix A, Standards for Conformance. ODOC will randomly check material inventories for compliance with regulations.

16. RECORDS, REPORTS, AND DOCUMENTATION

- a. All records and accounts shall be made available on demand to ODOC, its agents and designees, for inspection and use in carrying out its responsibilities for administration of the funds.
- b. Contractor shall submit a Monthly Expenditure Report and Weatherization Program Narrative by the twentieth (20th) of each month.
- c. The Contractor shall furnish ODOC with other reports related to this contract in the forms and at such times as may be required by ODOC.
- d. The Contractor shall retain all books, documents, papers, records and other materials involving all activities and transactions related to this contract for at least three (3) years from the date of submission of the final expenditure report or until all audit findings have been resolved, whichever is later, or as otherwise stated by law. The Contractor shall permit authorized representatives of the State of Oklahoma and the Federal government to have full access



to all such materials.

- e. The Contractor has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in the procuring of this contract.

17. CLOSING OUT OF PERIOD FUNDED

- a. Contractor shall promptly return to ODOC any funds received under this contract that are not obligated as of the final date of the period funded. Funds shall be considered obligated only if goods and services have been received as of the final date of the period funded; however, funds may be accrued at the end of the contract or audit period for post-contract audit expenditures applicable to previous months of this contract.
- b. The Contractor shall submit a closeout package in accordance with the form in the Contractors Implementation Manual no later than sixty (60) days after the final date of the period funded.
- c. When total actual expenditures are less than the contract amount, the contract will be automatically de-obligated to the actual expenditures as shown in the closeout package.

18. AUDITING, DISALLOWED COSTS

- a. The Contractor shall comply with ODOC's Audit Policies and Audit Procedures, which are incorporated herein and made a part hereof.
- b. The Contractor may pay the costs of auditing this contract as an expense of this contract.
- c. If audit findings result in the determination that the Contractor has expended contract funds on unallowable costs, the Contractor shall reimburse ODOC in full for all such costs.

19. PROGRAM INCOME

The Contractor shall account to ODOC for all program income resulting from this contract. Disposition of program income will be determined by ODOC.

20. TRAVEL AND PER DIEM

All payments for travel-related costs, including per diem, incurred in performing this contract shall be by reimbursement only and shall be in accordance with the State Travel Reimbursement Act, 74 O.S. §§500.1, et seq.

21. INTERPRETATION REMEDIES

- a. In the event the terms or provisions of this contract are breached by either party or in the event that a dispute shall arise between the parties regarding the meaning, requirements or interpretation of the terms and provision of this contract, then such breach or dispute



shall be resolved pursuant to the terms of this contract and the administrative procedures available through ODOC rules promulgated pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§251, et seq.

- b. Neither forbearance nor payment by ODOC shall be construed to constitute waiver of any remedies for any default or breach by the Contractor.

22. TERMINATION OR SUSPENSION

- a. This contract may be terminated or suspended in whole or in part at any time by written agreement by the contracting parties.
- b. This contract may be terminated or suspended by ODOC, in whole or in part, for cause, after notice and an opportunity for Contractor to present reasons why such action should not be taken. Procedures for such a process shall be in accordance with the General Rules of Practice and Procedure of ODOC. Grounds constituting cause include but are not limited to:
 - (1) Failure by Contractor to comply with provisions of this contract or with any applicable laws, regulations, guidelines or procedures, including ODOC policies and issuances, or undue dilatoriness in executing its commitments under this contract.
 - (2) Purposes for the funds have not been or will not be fulfilled or would be illegal to carry out.
 - (3) Submission by Contractor of incorrect or incomplete documentation pertaining to this contract.
 - (4) Undue dilatoriness by Contractor in executing its commitments under a prior contract with ODOC, including, but not limited to, submission of any audits due, resolution of audit findings and monitoring results.
- c. If this contract is terminated or suspended, the Contractor shall be entitled to payment and/or reimbursement for otherwise valid and allowable obligations and reasonable and necessary expenses incurred in good faith prior to notice of such termination or suspension.
- d. The Contractor shall not be relieved of liability to ODOC for damages sustained by ODOC by virtue of any breach of this contract by the Contractor. ODOC may withhold payments due under this contract pending resolution of the damages.

23. SEVERABILITY CLAUSE

If any provision under this contract or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this contract or its application that can be given effect without the invalid provision or application.