

NORTH CAROLINA WEATHERIZATION ASSISTANCE PROGRAM
SUBCONTRACTOR AGREEMENT - SHELL

This Agreement is hereby entered into by and between (Sub-grantee) (herein “Contractor”) and (Subcontractor) (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 the lowest responsible bidder 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 “Guidance 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 Guidance 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 legal obligation whatsoever to adopt this Guidance 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 substantive variation of this Guidance 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 any additions and deductions, the reimbursement of the actual cost of materials and labor hours 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 contracted out to any other organization or company.
- B. To comply with all applicable laws, ordinances, codes and regulations of local, state and federal governments, including the obtaining of all required permits and licenses and the requirements of this Agreement, at no additional cost to the Contractor, except that that actual permit and license fees specific to a site of work may be charged 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 minimus 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 \$500,000.00, covering all of Subcontractor's employees who are engaged in any work under the contract.

2. **Commercial General Liability** – General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 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 \$1,000.00 medical payment.
 4. **Pollution Occurrence Insurance** – Liability insurance to protect against incidental disturbances of environmental pollutants like lead-based paint dust. The policy must provide three basic limits - \$500,000 per occurrence; \$500,000 aggregate for the policy term; and \$2,500 deductible per occurrence. 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 and materials supplied to be free from defects 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 or materials shall be repaired or replaced, at the election of the Contractor, within thirty days of receipt by the Subcontractor of written notice of the defect.
- J. Acceptance of faulty 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 measure labor, actual material costs (number of insulation bags used must be included), and sales tax.
 - a. If the Subcontractor Invoice does not separate sales tax, then a certified statement of sales taxes paid must accompany the invoice.
 - 2. Interim Readings Diagnostics
 - 3. Lead Renovate Right Post Work Certification that indicates if Renovate Right procedures were required, Job Number and Renovator of Record with a copy of his/her certification.
- 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 DEMLR, 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 and materials referenced below. The price listed in Schedule B for these services must include all standard support and finishing materials referenced in the descriptions. All services must be in accordance with the *North Carolina Weatherization Installation Standard Work Specifications*.

1. After gross air leakage (and ducts) are sealed, use the blower door and digital manometer to guide air sealing measures. Interim Readings Diagnostics must be used and submitted with the invoice when performing the following measures:
 - a. Air sealing plumbing, electrical, and HVAC penetrations through ceilings, flooring and exterior walls with polyurethane foam;
 - b. Patch sheet rock on exterior wall to include tape and mud to a ready to paint finish;
 - c. Patch holes in flooring and ceilings using existing type materials if possible;
2. Wrap water heater tanks with external insulation blanket in accordance with the NC Weatherization Installation Standards;
3. Use blower machine to add insulation up to a R38 value (or R30 value if Weatherization Assistant justified) in attics using the manufacturer's bag estimation method. The number of bags used must be included on the invoice submitted to the agency. Attics must contain depth makers, junction box flags, wind baffles, and an MSDS for the product;
4. Use insulation blower machine to add fiberglass insulation to the roof cavities of mobile homes. Roof cavities with bowstring, flat, or cathedral styles shall be filled with insulation to capacity. Any access holes created must be sealed in accordance to the NC Weatherization Installation Standards;
5. Use insulation blower machine (rated at to output at least 2.9 pound per square inch) that is capable to dense pack sidewall insulation to a minimum density of 3.5 pounds per cubic foot of volume;
6. Seal accessible ducts, returns, plenums, connections, and boots with mastic and mesh tape resulting in a reading of no more than one Pascal;
7. Insulate ducts located outside the condition space with R-8, foil-faced duct insulation;
8. Install low-flow showerheads, aerators, and compact florescent lamps;
9. Replace broken window panes;
10. Install opaque, 6-millimeter polyethylene vapor barriers in crawl spaces of site built of modular homes. The seams of each piece must be overlapped 12 inches. The vapor barrier must extend 6 inches up the foundation wall, mechanically fastened;
11. Insulate floors with fiberglass batt insulation to R-19 value. The insulation must be supported by insulation staves or nylon thread no less than 28 inches;
12. Insulate the belly of mobile homes by filling belly to capacity with fiberglass insulation. The belly shall hang no more than 24 inches from the bottom of mobile home subfloor. Any access holes created must be sealed in accordance to the NC Weatherization Installation Standards. Minor rips and tears shall be patched to ensure that the insulation is properly secured;
13. Replace the belly of the mobile home then insulate the belly of mobile homes by filling belly to capacity with fiberglass insulation. The belly shall hang no more than 24 inches from the bottom of mobile home subfloor. Any access holes created must be sealed in accordance to the NC Weatherization Installation Standards; and
14. Install windows, storm windows and doors and instructed by the work order.

SCHEDULE B Subcontractor Compensation

_____ (Subcontractor) will be compensated a labor rate of _____ Dollars and ___ Cents (\$ _____) per man-hour. The labor rate* quoted must include all overhead cost including travel, worker compensation, equipment, maintenance, and administrative expenses. Typical crew size is _____ persons.

Blown Cellulose, Site Built Attic	R-38 (from R-0)			\$0.00
Blown Cellulose, Site Built Attic	R-30			\$0.00
Blown Cellulose, Site Built Attic	R-19			\$0.00
Blown Cellulose, Site Built Attic	R-11			\$0.00
Blown Fiberglass, Site Built Attic	R-38 (from R-0)			\$0.00
Blown Fiberglass, Site Built Attic	R-30			\$0.00
Blown Fiberglass, Site Built Attic	R-19			\$0.00
Blown Fiberglass, Site Built Attic	R-11			\$0.00
Blown Fiberglass, Roof	Mobile Home			\$0.00
Elastomeric Reflective Roof Coating	Mobile Home			\$0.00
Dense-Packed Cellulose, Sidewall	Exterior Blow			\$0.00
Dense-Packed Cellulose, Sidewall	Exterior Blow Brick			\$0.00
Dense-Packed Cellulose, Sidewall	Interior Blow			\$0.00
Kneewall Insulation	3 1/2" Studs			\$0.00
Fiberglass Placement Sidewall	Mobile Home			\$0.00
Batt Fiberglass, Floor 16" O.C	R-19			\$0.00
Batt Fiberglass, Floor 24" O.C	R-19			\$0.00
Blown Fiberglass, Mobile Belly	R-7			\$0.00
Blown Fiberglass, Mobile Belly	R-11			\$0.00
Blown Fiberglass, Mobile Belly	R-19			\$0.00
Replacement, Mobile Belly	Mobile Home**			\$0.00
Dual Pane, Low-E, White Vinyl Window	Site Built			\$0.00
Pre-hung, Insulated Metal Door	Site Built			\$0.00
Pre-hung Solid Core Wood Door	Site Built			\$0.00
Glass Storm Window	Mobile Home			\$0.00
Dual Pane, Low-E, White Vinyl Window	Mobile Home			\$0.00
Pre-hung, Insulated Metal Door	Mobile Home			\$0.00
Health & Safety Expense				
Vapor Barrier, Crawlspace	6 mil poly			\$0.00

Record the prices for installing measures in the chart above. The total per square foot price must be equal to the sum of the labor price and the material price. These price categories should be adequate for installing in most weatherization situations. Please avoid adding unnecessary price categories.

*Hourly labor rate cannot be charged for time spent installing insulation, windows, doors or vapor barriers.

**Must be charged only on square footage of belly needing replacement as specified on work order.

Subcontractor Initials _____

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: _____

CERTIFIED LEAD RENOVATOR FIRM # & EXPIRATION DATE: _____

GENERAL CONTRACTING LICENSE #: _____

CHECK ONE: INVOICE SHALL SEPARATE SALES TAX CERTIFIED STATEMENT SHALL BE USED

CONTRACTOR – To be signed after state review

SIGNED: _____ DATE: _____

NAME (PRINTED): _____ TITLE: _____

BUSINESS: _____