



Economic Development & Industrial Corporation of Lynn (EDIC/Lynn)

Request for Proposals
For

Qualified Environmental Professionals for Environmental Site Assessment and
Cleanup Activities
FY' 2017 EPA Brownfields Program

Responses Due: October 27, 2017 - 11:00 a.m.

Bill Bochnak
Project Coordinator
EDIC/Lynn
Lynn City Hall, Room 405
Lynn, Massachusetts 01901



Introduction

The U.S. Environmental Protection Agency (US EPA) has awarded the Economic Development & Industrial Corporation of Lynn (EDIC/ Lynn) a FY'2017 Brownfield Community-Wide Assessment Grant in the sum of \$300,000 to support redevelopment of brownfields impacted by hazardous substances and petroleum in the Downtown and Waterfront of the City of Lynn. EDIC/Lynn was also awarded a FY'2017 Cleanup Grant in the amount of \$200,000 to remediate petroleum hydrocarbons at a former gas and automotive service station site at 870 Western Ave. in Lynn. EDIC/Lynn is requesting proposals from Qualified Environmental Professionals, ("QEP") with at least two Massachusetts Licensed Site Professionals (LSPs) to assist us with implementation of the grant-funded Brownfields environmental assessments and cleanup.

EDIC /Lynn reserves the right to waive any information or minor defects in the RFP or the RFP responses /procedure, or reject any and all responses, or accept any submittal that is most responsive and responsible as exclusively determined by EDIC/ Lynn. Any response may be withdrawn by the respondent prior to the scheduled time for the opening of the response or authorized postponement thereof. No respondent may withdraw a submittal within 60 days after the actual date of opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between EDIC /Lynn and the respondent. Proof of acceptable insurance in accordance with the requirements outlined in this RFP shall accompany the response. No bid bond, payment bond or performance bond is required for this contract. Submission of a signed submittal by the respondent constitutes acknowledgement of and acceptance of all documents and terms and conditions of this RFP and the EPA Cooperative Agreement.

Project Overview

Budgeted funds allocated as "contractual" will be the responsibility of the selected respondent. EDIC /Lynn will use grant funds to complete the following tasks:

1. Community-Wide Assessment

The Brownfields Community-Wide Assessment will focus on the Downtown and Waterfront target area of Lynn. The project's overarching goal is to identify, assess, remediate and redevelop Brownfields properties within the target area.

Task 1: Cooperative Agreement Oversight

The QEP will assist EDIC/ Lynn in preparing EPA quarterly reports, ACRES filings and participation in meetings with the Brownfields task force/steering committee ("Committee").

Task 2: Community Engagement & Site Selection

The QEP will assist EDIC /Lynn in developing public outreach materials, engaging stakeholders and the public and participating in meetings. The Consultant will also support the Committee and provide guidance on site prioritization and eligibility determinations.

Task 3: Phase I & II Environmental Site Assessments (ESAs)

The QEP will conduct Phase I Environmental Site Assessments for each selected site in accordance with the ASTM E 1527-13 and EPA "All Appropriate Inquiry" standards. This process will consist of site



reconnaissance, contact with regulatory agencies, file review, interviews with knowledgeable people regarding the site, and a written report for each site. We anticipate up to 10 Phase I ESAs. EDIC/ Lynn anticipates up to 5 Phase II ESAs will be conducted to assess RECs. The Phase II assessments are expected to include sampling and laboratory analysis of soil, sediment, groundwater, surface water, soil gas and indoor air and potentially building materials.

The QEP will have an EPA Region 1-approved Brownfields Generic Quality Assurance Project Plan (GQAPP) in place prior to the implementation of Phase II ESAs.

Task 4: Cleanup and Reuse Planning

The QEP will assist EDIC/ Lynn in preparing EPA quarterly reports and ACRES filings. The QEP will prepare Cleanup Plans with integrated Analysis of Brownfield Cleanup Alternatives (ABCAs) for identified site, based on the specific or potential reuse scenario(s). The Cleanup Plan will include remedial actions for each identified contaminant that exceeds applicable Massachusetts Contingency Plan (MCP) regulatory criteria.

2. Petroleum Cleanup-870 Western Ave.

The property at 870 Western Avenue ("Site") was assigned Release Tracking Number (RTN) 3-01933 by the Massachusetts Department of Environmental Quality Engineering (DEQE) in 1986 in association with a release of petroleum hydrocarbons to Site soil. The Site was acquired by the City of Lynn as a tax taking. A Revised Phase III Remedial Action Plan (RAP) was prepared by Ransom Consulting, Inc. on behalf of EDIC/ Lynn in May 2017, which addresses proposed cleanup measures for the Site. MCP reports may be accessed at MassDEP's waste site/reportable release file viewer: <http://public.dep.state.ma.us/fileviewer/Rtn.aspx?rtn=3-0001933>

The Site is located at the northeast corner of the intersection of Western Avenue and Murphy Avenue in the City of Lynn, Essex County, Massachusetts, and consists of one parcel of land encompassing a total of approximately 12,288 square feet (SF), and identified by the Lynn Assessor's Office as Tax Map 19, Block 794, Lot 16. The Site is currently developed with one 363 SF building (the "Site building") constructed in 1952. The Site building is abandoned and secured and may potentially contain hazardous building materials. The remainder of the Site not covered by the footprint of the Site building consists of asphalt paved and concrete areas and areas overgrown by vegetation. The Site is located in a mixed commercial and residential area of Lynn.

An area of petroleum contaminated soil is located at the southern portion of the Site and measures approximately 30 feet by 30 feet in area (900 SF), to a depth of 15 feet below ground surface (13,500 cubic feet/500 cubic yards/750 tons). There is evidence of petroleum hydrocarbon impacts to Site groundwater within and beyond the Site property boundary.

The QEP will be expected to perform the following:

1. Prepare all necessary reports required by MassDEP & EPA and coordinate with the EDIC/ Lynn, and EPA personnel. Prepare all documents necessary for the Analysis of Brownfields Cleanup Alternatives (ABCA), Phase IV Remedy Implementation Plan, the Health and Safety Plan.
2. The Consultant will have an EPA Region 1-approved Brownfields Generic Quality Assurance Project Plan (GQAPP) in place prior to the implementation of the Cleanup and will prepare a Site Specific Quality Assurance Plan.



3. Prepare Bid specifications and work with EDIC/ Lynn through the process of soliciting bids, reviewing bids, making appropriate recommendations to EDIC /Lynn with regards to the bids, selecting the clean-up contractor, and executing the necessary contract documents.
4. Conduct public meetings, providing written material to the public to explain the remediation process and the clean-up alternatives and redevelopment plans as necessary to meet EPA and MassDEP regulations.
5. Once a clean-up Contractor has been selected, manage the Site Cleanup and oversee cleanup activities, site inspections, sampling and laboratory analysis. Provide a detailed description of this process including the number of days on site to oversee the work, method of coordinating with the site manager and clean-up contractor etc., frequency of site reports which need to include # of inspections, samples, Davis-Bacon requirements, etc. to ensure compliance. Please refer to Attachment A.
6. Coordinate on-Site and off-Site management of remedial waste, including MCP Bills of Lading (BOLs). Work with Cleanup contractor to ensure that all required permits and local, state and federal requirements are met.
7. Work with EDIC /Lynn to assist in implementing and tracking the 20% EPA cost share for the project.
8. Prepare Phase IV RIP Status report(s) and Completion Report outlining the remedial activities conducted at the Site, in adherence to MCP requirements.
9. Prepare MassDEP and or EPA required cleanup completion/closeout documents, financial documentation necessary for grant payments, and other required documentation to meet all local, state & federal requirements. EDIC/ Lynn assumes that the QEP will prepare a MCP Permanent Solution Statement, subsequent to the completion of remedial and post-remediation monitoring activities.
10. Participate in meetings and teleconferences to report/review progress.
11. Assist EDIC in preparation and submittal of all required State/Federal Reports to the appropriate authority and enter the data into ACRES.

Qualifications Submission Requirements

Qualifying firms with a strong background in Brownfields environmental assessments and cleanup activities should submit a proposal package containing the information outlined below. Proposals are limited to **30 pages** in length. Five (5) hard copies of the proposal must be submitted to EDIC Lynn, along with one electronic copy (stored on a thumb drive). Proposals must be labeled: "**FIRM NAME**: EDIC/ Lynn FY'17 Brownfield Assessment and Cleanup Proposal".



Proposals must sent to:

Bill Bochnak
Project Coordinator
EDIC/ Lynn
3 City Hall Square – Room 405
Lynn, Massachusetts 01901
781-581-9399

1. Proposals are due at the above address on or before **October 27, 2017, at 11:00 a.m.** Late responses to this RFP will not be accepted.
2. EDIC Lynn will not be held responsible for the mishandled, late, or lost qualifications packages.
3. Questions related to this RFP should be emailed to Bill Bochnak no later than **October 12, 2017 – 3:00 p.m.** All questions by consultants will be compiled and Responses will be sent back to all parties that have posed questions. Questions received after the above date and time will not be answered.
4. Respondent shall certify that to the best of its knowledge, all information provided in their response to this RFP is accurate and complete. Any misrepresentation by a respondent may result in disqualification.

Submission Content

Please submit the following information with your proposal package:

1. **Letter of Transmittal:** The Respondent shall include a letter not to exceed 2 pages on company letterhead and signed by (an) individual(s) authorized to bind the prospective QEP contractually. The letter must state that the proposal will remain valid from the date of submission through the date of submission of the RFP response, and thereafter until the prospective QEP withdraws it, a contract is executed, or the procurement is terminated by EDIC Lynn, whichever occurs first.
2. **Firm Background:** Firm name, address and phone number, and a brief description of the firm.
3. **Approaches and Methodologies:** The proposal must describe the prospective Respondent's general understanding of the Scopes of Work (for Assessment and Cleanup) and description of how the allotted grant funds will be fully utilized. Methodologies for Cleanup approaches (i.e., sampling, analysis, etc.) are required.
4. **Funding Experience:** Experience and demonstrated success in assisting municipalities, planning agencies and/or non-profit organizations in securing external funding sources for Brownfield investigation and remediation, such as EPA grants.
5. **Brownfields Experience:** List of Brownfields projects completed in New England over the last ten years, including funding amounts and specifying Assessment or Cleanup. Up to 6 key



Brownfields Project Descriptions shall be provided and include dates of performance, budget and scope of work/activities.

6. **Staffing:** Proposed staff for the work and organizational chart, including designation of Project Manager/LSP. Attach resumes for up to 6 key staff. Identify **Point of Contact:** Name, job title, email and phone number of primary contact person.
7. **References:** Provide 3 references for Brownfields projects performed in New England within the last 6 years. References must include Name, Employer, Title, Address, Telephone number and Email address.
8. **Fee Schedule:** Provide a staff fee schedule for the Project. **Provide as a separate electronic file and provide (hard copy) in a separate sealed envelope, labeled, "FIRM NAME: EDIC Lynn FY'17 Brownfield Assessment and Cleanup Proposal-FEE SCHEDULE".**
9. **Insurance Statement:** Provide a statement that your firm meets the insurance requirements outlined below and is able to comply with all Administrative Conditions and Programmatic Conditions specified in the Cooperative Agreements between EPA and EDIC Lynn. Copies of the Cooperative Agreements may be provided, upon written request.
10. **EPA Fair Share Goals:** The Respondent must demonstrate its ability to assure that minority business enterprises (MBE) and woman business enterprises (WBE) are given the opportunity to participate in contract and procurement for supplies, construction, equipment and services pursuant to 40 CFR, Part 33, Subpart D and negotiated with EPA by MassDEP as MBE (3.4%) and WBE (3.8%).

Insurance Requirements

Contractor shall maintain and provide current proof of the following insurance:

- A. Worker's compensation and Disability: Statutory requirements;
- B. Employer's Liability - \$500,000 each accident
- C. Commercial General Liability – General Aggregate - \$1,000,000
- D. Comprehensive Automobile - \$1,000,000
- E. Excess/Umbrella Liability - \$1,000,000
- F. Errors and Omissions Professional Liability - \$1,000,000
- G. Contractor's Pollution Liability insurance - \$2,000,000

Terms and Conditions

1. EDIC Lynn shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment, because of race, color, religion, sex, sexual orientation, disability, national origin or ancestry.
2. Interviews with some prospective QEP may be scheduled. EDIC Lynn reserves the right to select or not select, in its sole discretion, based on its assessment of each firm's strengths and



qualifications and the objective of best meeting the needs of the EPA Grant project and EDIC Lynn's Brownfields goals.

3. By submitting a response to the RFP, each Respondent waives all rights to protest, or seek remedies whatsoever regarding any aspect of this RFP, the selection of a Respondent or Respondents with whom to negotiate, the rejection of any or all offers to negotiate, or a decision to terminate negotiations.
4. The Respondent shall keep EDIC Lynn free and harmless from the payment of any and all damages, costs, expenses, royalties, patent fees, attorney's fees, or any sum of money whatsoever, by reason of any actions, claims, demands or proceedings, arising out of any infringement or alleged infringement, or use of any patented device, article, system or arrangement that may be used by the Consultant in the execution of its work. The Respondent will be required to indemnify and save harmless EDIC Lynn from all claims or actions of any kind or description brought against the city for or on account of any injuries or damages received or sustained by any persons or any neglect in guarding the same or in any improper materials used, or by or on account of any act of commission or omission of the Contractor or his agents or employees.
5. EDIC Lynn not assume any responsibility or liability for any expenses incurred by a Respondent, or prospective Respondent, in connection with the preparation or delivery of a response, requested interview, or any action related to the process of completing and submitting a response to this RFP.
6. The selected QEP must adhere to EPA's General Terms and Conditions, which may be found here: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-april-27-2017-or-later>

ATTACHMENT A

Davis Bacon Term and Condition **for** **Petroleum Cleanup Grants to Governmental Entities**

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its Davis Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the Regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis Bacon Prevailing Wage Requirements

After consultation with DOL, EPA has determined that for Brownfields grants for cleanups of sites contaminated with petroleum, DB prevailing wage requirement apply when the project includes:

- (a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,
- (b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
- (c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other petroleum site cleanup activities such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if the Recipient encounters a unique situation at a site (e.g. unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the Recipient must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Unless otherwise instructed by EPA on a project specific basis, the Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Recipients must obtain wage determinations for specific localities at www.wdol.gov.

(i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement, the Recipients shall use the "Heavy Construction" Classification.

(ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Building Construction" classification.

(iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Heavy Construction" classification.

Note: Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a Recipient, EPA determines that DB applies to a unique situation (e.g. unusually extensive excavation) the Agency will advise the Recipient which General Wage Classification to use based on the nature of the construction activity at the site.

(b) Recipients shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification

of the wage determination. EPA will provide a report of the Agency's finding to the Recipient.

- (ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the Recipient carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) Recipients shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) The Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work 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 applicable wage determination of the Secretary of Labor which the Recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients shall require that the contractor and subcontractors include the name of the Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification

action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold 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 all or part of the wages required by the contract, EPA may, after written notice to the contractor, or Recipient 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.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Recipient.

(B) Each payroll submitted to the Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(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 the EPA 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, EPA may, after written notice to the contractor, Recipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program

shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA 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 this term and condition.

(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), the Recipient, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **Recipient** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall

require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The *Recipient*, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the Recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The Recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>.