

**NYS HOMES & COMMUNITY RENEWAL
WEATHERIZATION ASSISTANCE PROGRAM - ARPA
FORM #33
SUBCONTRACTOR AGREEMENT**

This Agreement, made and entered, by and between: (Contractor Name and Address)

and (Subcontractor Name and Address)

WITNESSETH:

WHEREAS, the Contractor has entered into an American Revitalization Program Act (ARPA) Agreement (Contract Number _____), whose budget period ends on _____, with the New York State Housing and Trust Fund Corporation (HTFC), whereby it has agreed to perform certain weatherization related activities pursuant to the ARPA in New York State and;

WHEREAS, HTFC has, pursuant to the provisions of §138 of the New York Finance Law, consented in writing to the Contractor's subcontracting a portion of the scope of services (the Project) of the ARPA agreement and;

WHEREAS, the Subcontractor, at the public opening of bids relating to the Project on _____ was determined to be the lowest responsible bidder and;

WHEREAS, the Subcontractor has agreed to undertake the services set forth in Exhibit B (Scope of Services) of this Agreement and to fulfill all responsibilities of this Agreement relating to the Project, and to be bound by the terms of the ARPA Agreement between the Contractor and HTFC for the conduct of the ARPA Project, a copy of which is available upon request from the Contractor.;

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

1. Term of Agreement

This Agreement shall begin on _____ (Commencement Date) and shall terminate _____ (Termination Date).

2. Compensation

The Contractor agrees to pay the Subcontractor the sum of \$ _____, as set forth in Exhibit A, attached, for the satisfactory performance of the Subcontractor's services.

3. Entire Agreement

This Agreement, together with any attachments appended prior to the execution of the 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.

4. 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.

5. Subcontractor's Obligations

The Subcontractor agrees:

- A. To perform the services provided for in Exhibit B (Scope of Services), attached.
- 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, at no additional cost to the Contractor.
- C. To perform the work in a manner consistent with the National Renewable Energy Laboratory (NREL) Standard Work Specifications for Home Energy Upgrades (SWS), the HCR Weatherization Assistance Program Small Buildings Field Guide, and any other applicable guidance or standards issued by HCR and provided by the Contractor to the Subcontractor prior to commencement of work. The Subcontractor shall promptly correct all work rejected by the Contractor as defective or non-conforming to ARPA standards, by _____, but in no event later than the Termination Date of this Agreement.
- D. To repair all surfaces and work damaged by the Subcontractor resulting from work under this Agreement at no additional cost to the Contractor. Repair of existing work means that the item shall be restored to equal condition by patching or replacing and finished work shall match adjacent work in design and dimension.
- E. To keep the work premises broom-clean and orderly during the course of the work and remove all debris upon completion of the work.
- F. 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. The Contractor will issue, on its letterhead, the date of final acceptance to the Subcontractor. Defective work or materials shall be repaired or replaced, at the election of the Contractor, within thirty (30) days of receipt by the Subcontractor of written notice of the defect.
- G. 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.
- H. Where applicable, to provide quality materials in accordance with Contractor's specifications and use them in accordance with generally accepted construction practices.
- I. To fully cooperate with the Contractor in promptly completing all necessary forms and progress reports as may be required for the proper administration of the project.
 - i. 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.
 - ii. 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.
- J. To provide all labor, tools and equipment necessary to perform this Agreement in an efficient, workmanlike and expeditious manner.
- K. To maintain work force composition as specified in bid solicitation where minority and/or low-income hiring was part of the bid consideration.
 - i. The Subcontractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status; will undertake or continue existing Equal Employment Opportunity (EEO) programs to ensure that minority group

members and women are afforded equal employment opportunities without discrimination; and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

- ii. The Subcontractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status.
 - iii. The Subcontractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status, and that such union or representative will affirmatively cooperate in the implementation of the Subcontractor's obligations herein.
 - iv. The Subcontractor shall comply with the provisions of the Human Rights Law and all other State and Federal statutory and constitutional non-discrimination provisions. The Subcontractor shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
- L. That where work change orders are allowed:
- i. Any deviation from the work specified in the work order and specifications shall be authorized only by written work change order, signed by both parties.
 - ii. No additional payment shall be made to the Subcontractor because of a work change order unless so specified by the order.
 - iii. Work change orders will be granted only for work necessitated by conditions which could not reasonably have been foreseen by the Subcontractor at the time of submission of bids.
- M. That if the Contractor provides the materials necessary for the weatherization work to be performed, the Subcontractor shall:
- i. Sign for all materials supplied by the Contractor and assume responsibility for all such materials.
 - ii. Submit a written requisition for any additional materials needed to complete the job.
 - iii. Replace any materials damaged or misused by the Subcontractor or through the Subcontractor's failure to provide proper control or safekeeping.
 - iv. Upon completion of all work, but before final approval, return any unused materials to the Contractor.
- N. That time is of the essence in the performance of this Agreement. The services of the Subcontractor shall be undertaken and completed in such sequence as to assure their expeditious completion in accordance with the time schedule submitted by the Subcontractor as part of the bid package, and in light of the purposes of this Agreement, but in any event, all of the services required shall be completed no later than _____, and within _____ days, the Subcontractor shall notify the Contractor of such completion.

6. General Conditions

A. Interest of the Subcontractor

The Subcontractor represents that its officers and employees have no interest and covenants that they will not acquire any interest, direct or indirect, which would conflict or appear to conflict in any manner or degree with the performance of the Subcontractor's services or obligations under this Agreement.

The Subcontractor further covenants that, in the performance of this Agreement, no person having any such interest shall be employed.

B. Independent Contractor

With respect to any activities carried out in connection with this Agreement, the Subcontractor shall not be the agent of the Federal Government, a Federal Subgrantee, HCR, or the Contractor, nor shall the Subcontractor represent to any person, foundation, group, organization, or governmental entity that it is acting as an agent for the Federal Government, a Federal Subgrantee, HCR, or the Contractor, or that it is entitled in any way to act on behalf of, or incur obligations on behalf of, the Federal Government, a Federal Subgrantee, HCR, or the Contractor.

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 without the prior written consent of the Contractor.

D. Indemnification

- i. The Subcontractor agrees to indemnify and hold harmless the Contractor and its employees, the unit owner and occupants from and against all suits, actions or claims of any character, time, and description brought for or on account of any damages, losses, or expenses including legal fees, arising out of performance of the work herein, caused in whole or in part by the Subcontractor's negligent act or omission, or that of anyone employed by them for whose acts the Subcontractor may be liable.
- ii. The Subcontractor agrees to indemnify and hold harmless any unit owner or occupant from any liability for non-payment to, or any disputes as to payment with, any subcontractor or vendor and to immediately bond and secure the release of any lien obtained against the unit or building containing the unit for work performed pursuant to this Agreement.
- iii. The Contractor shall have the right to withhold from any payments due, or becoming due, to the Subcontractor, an amount which it deems to be sufficient to cover any expenses, cost, damages, or loss that may be incurred by it as a result of such events as those referenced above.
- iv. The Subcontractor shall indemnify the "Housing Trust Fund Corporation (HTFC)" as a certificate holder and additional insured, and must include a provision that the insured shall give notice that the coverage afforded under the policies will not be canceled or that HTFC's interest will not be otherwise affected until at least thirty (30) days prior notice has been given to HTFC.

E. Political Activity

No funds subject to this Agreement may be used for any partisan political activity, or to further the election or defeat of any candidate for public office. All officials and employees of the Subcontractor shall observe any restrictions on political activities to which they may be subject under any statute, rule, or regulation.

F. Records

The Subcontractor shall retain all papers and records in connection with work performed for a minimum of three (3) years following the Termination Date, and access will be provided to HCR, the US Department of Health and Human Services, Federal or State Comptroller or any of their representatives for the purpose of audit, examination, excerpts, or transactions.

7. Contractor's Obligations

The Contractor agrees:

- A. To provide work orders in conformance with HCR policies.
- B. To conduct a timely post-inspection to determine the acceptability of the services performed by the Subcontractor no later than _____ days after notification by the Subcontractor of completion.
- C. To pay the Subcontractor promptly as required by 10 CFR 600.221 and according to Exhibit A attached.

- D. Not to condition payment under this Agreement on HCR certification or approval.
- E. For projects located in the City of New York, a copy of the notice of commencement shall be posted at the work site in accordance with New York City Local Law 1 of 2004, §27-2-56.11(2)(ii)(e).

8. Conduct of the Agreement

A. 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.

B. 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 twenty-five dollars (\$25) 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.

C. Termination

- i. 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, adjust the size of services, or reduce the Total Compensation of this Agreement 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 or 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.
- ii. 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 HCR, 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.
- iii. In the event of termination of this Agreement, the Contractor shall simultaneously forward to HCR a copy of the required notice.

IN WITNESS THEREOF, the parties have executed this Agreement.

Contractor Name

Title

Contractor Signature

Date

Subcontractor Name

Title

Subcontractor Signature

Date

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EXHIBIT A – PAYMENT FOR SERVICES

For the services detailed in Exhibit B, the Contractor agrees to pay the Subcontractor the sum of _____, to be paid as follows:

Payment Number	Description and/or Qualifying Criteria for Payment	Date	Amount
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
Total for all Subcontractor Services:			

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EXHIBIT B – SCOPE OF SERVICES

The Subcontractor agrees to provide the services and/or materials described in detail below or on their attached approved bid sheet.

	Job Scope	Labor Cost	Materials Cost	Total Cost for Job Item
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
	Totals:			

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EXHIBIT C – SUBCONTRACT WORK CHANGE ORDER

Subcontractor: _____ Date Bid Awarded: _____ Building Number: _____

Building Address: _____ Applicant's Name: _____

Date of job bid	Bid opening date	Date job completed	Original cost	Advance	New cost

	Job Scope	Bid Labor Cost	Bid Mat'ls Cost	New Labor Cost	New Mat'ls Cost	(+/-) Cost Difference
1.						
2.						
3.						
4.						
5.						
Totals:						

Include any **special instructions** related to changed job items on an attached sheet.

Owner Signature: _____	Date: _____
Subcontractor Signature: _____	Date: _____
Contractor Signature: _____	Date: _____