

# ATTACHMENT "F"

## ADJUSTABLE BLOCK PROGRAM MINIMUM EQUITY STANDARD REQUIREMENTS

### ABP Diversity, Equity, and Inclusion Requirements

Subcontractor acknowledges that the work and this Subcontract Agreement is subject to the Illinois Adjustable Block Program, "ABP", shall mean the program administered by the IPA and governed by the Illinois Power Agency Act, the IPA's Long-Term Renewable Resources Procurement Plan dated August 23, 2022, the IPA's Consumer Protection Handbook, the IPA's Adjustable Block Program Guidebook dated October 18, 2022, and other relevant IPA program documentation and guidance, including amendments or revisions to any of the foregoing and including any successors in function to any of the foregoing.

The ABP requires that the Minimum Equity Standards, "MES" for the 2023-24 Program Year is 10% Equity Eligible Persons, "EEP", for an entity's (Subcontractor's) work force. The EEPs for the 2024-25 Program year is 12% EEPs for an entity's (Subcontractor's) work force.

Equity Eligible Persons are:

1. Graduates of, or current or former participants in the Clean Jobs Workforce Network Program, Clean Energy Contractor Incubator Program, Illinois Climate Works Pre-apprentice Program, Returning Residents Clean Jobs Training Program, or the Clean Energy Primes Contractor Accelerator Program, and the Solar Pipeline Training Program and Multi-Cultural Job Training Program
2. People who are graduates of or currently enrolled in the foster care system
3. People who were formerly incarcerated
4. People whose primary residence is in an equity investment eligible community

An Equity Eligible Person may meet more than one of the above criteria, but for the purposes of workforce calculations under the Equity Accountability System, "EAS", in compliance with the MES, an EEP that qualifies under more than one criteria will only be counted once.

It is Subcontractor sole responsibility to familiarize itself with and adhere to all ABP Diversity, Equity, and Inclusion Requirements, as applicable to this Project and this Subcontract.

Without limiting anything herein concerning Subcontractor's obligation to perform the Work in accordance with all Applicable Laws, Subcontractor specifically acknowledges and agrees that the Project is participating in the ABP and, as such, the Project and thereby the Subcontractor is subject to:

(i) the ABP's diversity, equity, and inclusion requirements.

(a) Subcontractor shall utilize, and/or require its Subcontractors to utilize, a project workforce that is in compliance with the minimum equity standard established in Section 1-75(c-10)(1) of the IPA Act, IPA guidance, and other ABP program documentation.

(b) Subcontractor shall promptly provide Contractor with all documents and information necessary for Contractor and Owner to (i) make certain filings with the IPA or the ABP program administrator, including without limitation, Contractor and/or Owner's minimum equity standard compliance plan, and (ii) promptly respond to any inquiries from the IPA or the ABP program administrator.

AND

(ii) the prevailing wage and apprenticeship requirements, which requires:

Subcontractor to provide all labor and personnel required in connection with the Work, all of whom shall be properly licensed and qualified to perform those portions of the Work each will perform on the Project, and shall be responsible for payment of prevailing or union wages, if any, required under applicable Law. Without limiting any of the foregoing, Subcontractor specifically acknowledges and agrees that (i) the Project is

participating in the ABP and therefore Contractor must pay, and/or require its Subcontractors to pay, prevailing wages under the Illinois Prevailing Wage Act, 820 ILCS 130, et seq., for work and labor covered under such Act

All certified payroll and prevailing wage requirements must also be in compliance with Attachment E- PREVAILING WAGE AND CERTIFIED PAYROLL REQUIREMENTS AND INSTRUCTIONS, attached herein.

**Submission of Plans**

Submission of Plans to Meet the Illinois Adjustable Block Program requirements, including the Diversity, Equity, and Inclusion Requirements. Each Subcontractor shall submit to Contractor an outline of their plan to meet the requirements within two weeks prior to mobilization, or upon Contractor request, whichever comes first.

**Compliance Reporting & Record Keeping Requirements**

The Subcontractor is required to submit compliance reporting to Contractor on the 15<sup>th</sup> of each month for the month prior showing progress in their submitted Plan to meet the 2023-24 Program Year 10% Equity Eligible Persons for an entity's (Subcontractor's) work force or the 2024-25 Program year 12% Equity Eligible Persons for an entity's (Subcontractor's) work, as applicable, of the total MES & EEP requirements. Monthly reporting shall be submitted via email to [subcontracts@reconcorporation.com](mailto:subcontracts@reconcorporation.com) and shall continue until the completion of the work

If any additional guidance and/or revisions to the Proposed Regulations are issued regarding the ABP, Subcontractor agrees to comply with such revisions and additional guidance, accordingly.

**Additional Resources:**

<https://illinoisshines.com/wp-content/uploads/2023/04/Guide-to-EAS-and-Illinois-Shines-April-14-2023.pdf>

<https://illinoisshines.com/remind-reminder-minimum-equity-standard-compliance-plans-due-june-1-2023/>

<https://ipa.illinois.gov/diversity-equity-and-inclusion/minimum-equity-standard.html>

[https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/draft2022long-termplan-\(13-jan-2022\).pdf](https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/draft2022long-termplan-(13-jan-2022).pdf)

# ATTACHMENT "G"

## INFLATION REDUCTION ACT APPRENTICESHIP COMPLIANCE & REPORTING REQUIREMENTS

### General Requirements

Subcontractor acknowledges that the work and this Subcontract Agreement is subject to the IRA requirements, "*Inflation Reduction Act of 2022*" or "*IRA*", which is the federal legislation that passed the United States Congress as H.R. 5376 on August 16, 2022, and any agency rules, policies, and guidance relating to the implementation and administration of H.R. 5376.

Without limiting anything herein concerning Subcontractor's obligation to perform the Work in accordance with all Applicable Laws, Subcontractor specifically acknowledges and agrees that the Project is participating in the IRA and, as such, the Project and thereby the Subcontractor is subject to compliance with the requirements of the same.

The IRA requires that Qualified Apprentices be utilized for work on this project at a rate of 12.5% (for projects that start after after December 31, 2022, and before January 1, 2024) and 15% (for projects that start construction after January 1, 2024), of the total labor hours of each project.

In the event that a Subcontractor cannot meet these requirements, there is a "good faith" exception for cases where apprentices are requested but are unavailable, but these efforts must be documented.

It is Subcontractor's sole responsibility to familiarize itself with and adhere to all IRA requirements as applicable to this Project and this Subcontract.

### Submission of Plans

Submission of Plans to Meet IRA requirements. Each Subcontractor shall submit to Contractor an outline of their plan to meet the IRA apprenticeship requirements within two weeks prior to mobilization, or upon Contractor request, whichever comes first.

### Labor

As set forth in the Prime EPCA Contract and applicable through flow down to Subcontractor, Subcontractor shall provide all labor and personnel required in connection with the Work, all of whom shall be properly licensed and qualified to perform those portions of the Work each will perform on the Project, and shall be responsible for payment of prevailing or union wages, if any, required under applicable Law. Without limiting any of the foregoing, Subcontractor specifically acknowledges and agrees that (i) the Project is participating in the ABP and therefore Subcontractor must pay, and/or require its Subcontractors to pay, prevailing wages under the Illinois Prevailing Wage Act, 820 ILCS 130, *et seq.*, for work and labor covered under such Act and (ii) the Project intends to claim an ITC under the IRA and therefore Subcontractor itself must satisfy, and/or through the use of its Subcontractors to satisfy, the prevailing wage requirements and the minimum thresholds for employment of apprentices as set forth in the IRA. Subcontractor shall promptly provide Contractor with all documents and information necessary for Contractor and/or Owner to (i) make certain filings with the Illinois Department of Labor, the U.S. Department of Labor, and other State and federal agencies and (ii) promptly respond to any inquiries from the Illinois Department of Labor, the U.S. Department of Labor, and other state and federal agencies.

### Apprenticeship Requirements

Subcontractor will determine, maintain, and provide to Contractor a schedule setting forth with respect to each Project how many apprentices and apprentice hours will be required in order to satisfy the (i) 12.5% labor hour requirement (applicable because construction will begin after December 31, 2022, and before January 1, 2024), (ii) the required apprentice to journey worker ratios, and (iii) the apprenticeship participation requirements (i.e., each taxpayer, contractor, or subcontractor **who employs 4 or more individuals** to perform construction, alteration, or repair work with respect to a qualified facility **must employ 1 or more qualified apprentices** to perform such work) (the "**Apprenticeship Schedule**"). For avoidance of doubt apprentice to Journeyman ratios must meet a 1:1 ratio on a daily basis for compliance.

Subcontractor will identify an apprenticeship program or programs that are "registered apprenticeship programs" (within the meaning of PW&A and the Proposed Regulations) (each a "**RAP**" and together the "**RAPs**") that (i) trains apprentices for the work needed for the construction of the Project, (ii) has a usual and customary business practice of providing apprentices for the occupation in which they are being trained, and (iii) can reasonably be expected to provide such apprentices for the construction of

the Project. Subcontractor will submit written requests for “qualified” apprentices to the RAPs in accordance with the requirements of Treasury Regulation section 1.45-8(e)(1)(A)(1) (the “**Requests for Apprentices**”). Subcontractor will update and submit additional Requests for Apprentices in the event of any increase in the apprenticeship requirements for the Project. In the event a RAP fails to respond within five business days or denies any Request for Apprentices, Subcontractor will submit additional Requests for Apprentices to RAPs at least every 120 days from such denial or nonresponse, as is necessary to satisfy the requirements of the “good faith exception” described in Treasury Regulation section 1.45-8(e)(1).

Subcontractor will include the applicable RAPs in the Apprenticeship Schedule and will provide to Contractor copies of Requests for Apprentices together with the Apprenticeship Schedule at least 30 days before any construction begins on the Project and every 120 days thereafter until the Project are placed in service.

### **Applicable Wage Determinations & Certified Payroll**

The Project Owner intends to claim an ITC under the IRA and therefore Subcontractor must satisfy, and/or require its Subcontractors to satisfy, the prevailing wage requirements and the minimum thresholds for employment of apprentices as set forth in the IRA. Contractor shall promptly provide Owner with all documents and information necessary for Owner to (i) make certain filings with the Illinois Department of Labor, the U.S. Department of Labor, and other state and federal agencies and (ii) promptly respond to any inquiries from the Illinois Department of Labor, the U.S. Department of Labor, and other state and federal agencies.

Subcontractor will obtain the prevailing wage determinations on [www.sam.gov](http://www.sam.gov) as of the date that construction, alteration, or repair work begins under the EPC Agreement for the **geographic area** and **type or types of construction** applicable to the Project, including **all labor classifications** for the construction, alteration, or repair work that will be done (the “**General Wage Determination**”). If the General Wage Determination does not provide a labor classification or wage determination for any portion of the Work, then within 90 days prior to beginning such work, Subcontractor will request a supplemental wage determination (a “**Supplemental Wage Determination**”) with respect to such portion of the work in accordance with Treasury Regulation section 1.45-7(b)(2). If more than one General Wage Determination applies with respect to any portion of the work, Subcontractor may request a Supplemental Wage Determination for such portion of the work.

All certified payroll and prevailing wage requirements must also be in compliance with Attachment E- PREVAILING WAGE AND CERTIFIED PAYROLL REQUIREMENTS AND INSTRUCTIONS, attached herein.

### **Compliance Reporting & Record Keeping Requirements**

The Subcontractor is required to submit compliance reporting to Contractor on the 15<sup>th</sup> of each month for the month prior showing progress in their submitted Plan to meet the 12.5 -15%, as applicable, of the total labor apprenticeship requirement. Monthly reporting shall be submitted via email to [subcontracts@reconcorporation.com](mailto:subcontracts@reconcorporation.com) and shall continue until the completion of the work. And shall minimally contain the following information:

1. Name, social security number, address, telephone number, and email address of each laborer, mechanic, or apprentice (each as defined in 29 CFR §5.2, in either case referred to herein as a “**Worker**”) performing the work;
2. Each Worker’s labor classification as published by the Secretary of Labor and documentation supporting the applicable classification;
3. The prevailing wage determinations made by the Secretary of Labor applicable to the work and each such labor classification;
4. The hourly rate of wages actually paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each such labor classification;
5. Records to support any contribution irrevocably made on behalf of a Worker to a trustee or other third person pursuant to a bona fide fringe benefit program, and the rate of costs that were reasonably anticipated in providing bona fide fringe benefits to Workers pursuant to an enforceable commitment to carry out a plan or program described in 40 U.S.C. 3141(2)(B), including records demonstrating that the enforceable commitment was provided in writing to the affected Workers;
6. The number of daily and weekly hours worked by each Worker in connection with the work;
7. The total wages paid to each Worker for each pay period (including identifying any deductions from wages) in connection with the work;
8. Records to support wages paid to any apprentices at less than the applicable prevailing wage rates, including records reflecting the registration of the apprentices with a registered apprenticeship program and the applicable wage rates and apprentice to journey worker ratios prescribed by the apprenticeship program;
9. The amount and timing of any correction payments and documentation reflecting the calculation of the correction payments.
10. Any written requests for the employment of apprentices from registered apprenticeship programs, including any contacts with the U.S. Department of Labor’s Office of Apprenticeship or a State apprenticeship agency regarding requests for apprentices

- from registered apprenticeship programs, and related correspondence;
11. Any agreements entered into with registered apprenticeship programs with respect to the construction, alteration, or repair of the Project;
  12. Records to support any registered apprenticeship program's qualification as an RAP;
  13. Documents reflecting the standards and requirements of any registered apprenticeship program, including the applicable ratio requirement prescribed by each registered apprenticeship program from which taxpayers, contractors, or subcontractors employ apprentices;
  14. The total number of labor hours worked by apprentices;
  15. Records reflecting the daily ratio of apprentices to journey workers;
  16. Records reflecting satisfaction of the Labor Hours Requirement and the Participation Requirement; and
  17. Any other documentation required pursuant to any applicable regulation or Treasury Guidance in order to demonstrate whether the apprenticeship requirements set forth in Section 45(b)(8) and Section 48(a)(11) of the Code have been satisfied with respect to the work.

Subcontractor will maintain these records (and will require that our contractors and subcontractors will maintain these records) with respect to each Project for a period of not less than seven (7) years following the date the Project is placed in service.

The requirements set forth herein are derived from Code Section 48(a)(9)(B) and (a)(10) and (11), Code Sections 45(b)(7) and (8), IRS Notice 2022-61 (November 29, 2022), and the regulations proposed by the Department of the Treasury, Internal Revenue Service entitled "*Increased Credit or Deduction Amounts for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements*" published in the Federal Register on August 30, 2023 (the "**Proposed Regulations**"). If any additional guidance and/or revisions to the Proposed Regulations are issued, Subcontractor agrees to comply with such revisions and additional guidance, accordingly.

#### **Correction/Penalty Payments**

If at any time it is determined that Subcontractor of any of its Sub-Subcontractors, with respect to any Project, fails to satisfy the requirements of Section 48(a)(10)(A) or (11) of the Code, Subcontractor will immediately pay all corrective and penalty sums due to the relevant employees, and cause to be paid or reimbursed for such costs to Contractors, Subcontractors, Owners and the IRS or any other Governmental Authority the amounts described in Section 48(a)(10)(B) and 45(b)(8)(D) of the Code, as applicable.

#### **Good Faith Efforts**

If Subcontractor has made good faith efforts to meet the requirements, but cannot, it shall then submit proof of its good faith efforts to Contractor. A Good Faith Effort Exception and be made if the Subcontractor has satisfied the apprenticeship requirements with respect to a qualified facility if the Subcontractor has requested qualified apprentices from a registered apprenticeship program and:

- (i) such request has been denied, provided that such denial is not the result of a refusal by the subcontractors engaged in the performance of construction, alteration, or repair work with respect to such qualified facility to comply with the established standards and requirements of the registered apprenticeship program, or
- (ii) the registered apprenticeship program fails to respond to such request within 5 business days after the date on which such registered apprenticeship program received such request.

Subcontractors intending to rely on the good faith effort exception must keep records reflecting those good faith efforts, such as documents showing the requests for apprentices and the response, if any, from the Registered Apprenticeship program and must supply these to the Contractor.

#### **Additional Resources:**

<https://www.dol.gov/sites/dolgov/files/WHD/IRA-presentation.pdf>

<https://www.apprenticeship.gov/inflation-reduction-act-apprenticeship-resources>

<https://www.federalregister.gov/documents/2022/11/30/2022-26108/prevailing-wage-and-apprenticeship-initial-guidance-under-section-45b6bii-and-other-substantially>

<https://www.dol.gov/general/inflation-reduction-act-tax-credit>

<https://sam.gov/content/wage-determinations>