



The following due diligence requirements must be met to the satisfaction of PHFA prior to a program closing:

Construction Bid Package

PHFA will hire a general contractor (GC) or construction manager (CM) to complete the installation of all Program approved measures. Owner, general contractor, and all sub-contractors are responsible for compliance with Weatherization Assistance Program (WAP) and the Commonwealth contracting provisions. The construction contract will be the AIA A101 Standard Form of Agreement between Owner and Contractor where the basis of payment is a Stipulated Sum (2007 Edition). The **PHFA ADDENDUM TO** must be included in the bid package and made part of all construction contracts.

Selection of a GC or CM is made following an open and competitive bidding process. To ensure that a minimum of responses are received from at least three experienced and unrelated (to the owner) bidders, the bid package should be sent to a minimum of five to seven contractors. Bidding opportunities must be made available to disadvantaged, minority and women business entities. Contact information for firms meeting these designations is available by searching databases maintained by the Pennsylvania Department of General Services¹, Commonwealth Bureau of Minority and Women Owned Businesses² and PHFA³.

Offers to bid must be advertised in a manner deemed appropriate to ensure that reasonable opportunity to review and submit response to the bidding material is available to a sufficient group of potentially qualified bidders. PHFA will also post bidding opportunities on its web site.

To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of WAP funding, all Contractors shall post jobs they create or seek to fill as a result of receiving WAP funding to the PA CareerLink® system at www.pacareerlink.state.pa.us. Contractors can locate their local PA CareerLink® office through the same website or by calling 1.866.858.2753. Staff at local PA CareerLink® can assist Contractors with the posting positions and explain how to retrieve resumes for applications within the system.

Unless otherwise noted by PHFA, the use of Smart Rehab funding requires compliance with Davis-Bacon Wage Rates. For any building five stories in height or taller, Davis-Bacon “building” rates are applicable. For buildings less than five stories in height, the “weatherization” and “residential” rates are applicable. The contract for construction services between PHFA and the general contractor/construction manager and all contracts between the general contractor/construction

¹ <http://www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx>

² <http://www.portal.state.pa.us/portal/server.pt/community/bureau%20of%20minority%20and%20women%20business%20opportunities/1358>

³ <http://mwbe.phfa.org/>

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manager and the sub-contractors must, without exception, include the Davis-Bacon Act Requirements (Act), in its entirety. Key aspects of the Act include but are not limited to payroll payments to each worker must be no less than weekly, the submissions of certified payroll forms weekly to PHFA and the submission of a Statement and Acknowledgement, Standard Form 1413.

The bid package must include the Davis-Bacon Wage determination provided by PHFA and clearly state that each contractor is responsible for complying with the Act and with the following reporting requirements:

1. Wage rate determination is locked ten (10) days prior to date of public bid opening.
2. All certified payroll forms must be the original form (no copies) and must be submitted weekly (maintain a copy at the location) to PHFA. A separate payroll form needs to be completed, signed and submitted for each week worked. All forms must be completed in their entirety, with all fields properly completed, including checking either Box A or Box B on the second page and signing the form.
3. Project site must include the county of the project, since labor rates are based on the county in which the work is completed.
4. Workers must be identified by full first and last name (no Smith, T.) with the last four digits of the social security number and the appropriate job classification such as: Weatherization Worker), Doors and Windows Weatherization Workers, and HVAC. Use the Carpenter, Electrician, and Plumber wages on the Wage Determination ONLY if the work performed is NOT covered under the listing found on the Weatherization Worker Wage Determination. Appropriate wage and fringe benefits for these positions equal to or exceeding Davis Bacon Act requirements must be paid and indicated on the form.
5. Each contractor and sub-contractor must complete a separate certified payroll for each week worked.
6. Base Hourly Wage/Fringe benefit rates must be listed separately as such (\$11.00/\$2.74) regardless of whether Box A OR B is checked on the back of the payroll form. For example, if the total of the DB required wage is \$11.00 and benefits must equal \$2.74, simply writing \$13.74 is not acceptable. Please use the DOL wage determination chart as a guide when determining proper breakout of base hourly and fringe benefits. For those employers paying wages above the prevailing wage requirement, please refer to the wage determination chart in order to break out fringe benefits proportionately.
7. Either Box A (fringe benefits paid to approved plans) OR Box B (fringe benefits paid in cash) must be checked on the second page of the payroll form. If you have employees which fall under both descriptions, check the appropriate box for the majority listed and list the others in Section (c) Exclusions. Under no circumstances should both Box A and Box B be selected.
8. Some wages, as listed on the certified payroll, are below the Davis Bacon required wages for the particular worker classification and county. In some cases, the wrong (or outdated) DOL wages/benefits were paid. Please check to make sure you are using the correct US DOL Wage Determination List. Rates outlined in the DOL Decision dated 9/3/2009 are to be used for pay

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periods up to March 14, 2010 and rates in revised DOL Decision dated 12/11/2009 (attached) should be used starting with the pay period beginning March 15, 2010.

9. More clarification about any employee listed as 'owner' of the business listed on the certified payroll form is required. DOE has ruled that bona fide owners who serve in an executive, administrative or professional capacity and do not work as a laborer or mechanic do not need to be listed on the payroll forms. Bona fide owners who do work on the job as laborers and mechanics (Davis Bacon job classifications) must be listed (full name and classification as 'owner') but their hours and wages do not need to be included. In order to be considered a bona fide owner, the company must be registered as a business in the Commonwealth of Pennsylvania and have an appropriate business license. If the individual is not a bona fide owner of a business, he/she MUST be paid the DBA prevailing wage. For auditing and monitoring purposes, please make sure you have the proper documentation on file.

Bids for all heating, ventilation, air conditioning and hot water equipment must be based on properly sized equipment as determined by a professional engineer following ACCA Manual J & N standards, as applicable.

WAP requires that the materials installed during construction meet published material standards found in **Appendix A to Part 440 – Standards for Weatherization Materials**. The construction bid package must include a statement that the contractor is required to provide the owner with a certification stating that all materials install during construction are compliant with said standards.

PHFA must vet the general contractor selected by the owner to complete the work. To complete this requirement, the bid package must require the bidder to provide all of the following:

- a. A Contractor's Qualification Statement - AIA Document A305
 - a. Under Section 3.5 of the AIA A305 form, only projects with a scope of work similar to the proposed weatherization work shall be listed. Provide a contact person and contact information for each project listed.
- b. Registered name and tax identification number,
- c. Name and tax identification number of each principal having a 5 percent or greater ownership interest,
- d. Most recent audited financial statements,
- g. Evidence of good standing (no current tax liability to the Commonwealth),
- h. Evidence of Commercial General Liability insurance equal to or greater than:
 - i. minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate liability, or
 - ii. an amount acceptable to the PHFA and owner
- i. PHFA will not require the GC to be bonded.
- j. Certification from the GC to PHFA that the GC can meet the requirement of Environmental Protection Agency's "Renovation, Repair and Painting" (RRP) final rule, and/or HUD's "lead Safe Housing Rule" as more fully explained below.

The bid package must state that renovations disturbing painted finishes in any development built prior to 1978 in which children under the age of six may reside, must comply with Environmental Protection Agency's "Renovation, Repair and Painting" (RRP) final rule, unless the

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surfaces disturbed can be proven to be lead free or the disturbed area is smaller than the “de minimis” limits established in the rule. The RRP rule requires all firms performing renovations to be certified, all individuals performing renovations to be trained, a Certified Renovator to be assigned to each renovation project, and lead safe work practices to be followed.

In addition, any development meeting the above criteria and which is federally owned or receives federal assistance in the form of multifamily mortgage insurance; project-based rental assistance; rehabilitation assistance; acquisition, leasing, supportive services or operation assistance; tenant-based rental assistance; or is owned by a public housing authority, is subject to HUD’s “Lead Safe Housing Rule”. This rule requires renovation worker certification or on-the-job training from a Certified Renovator/Certified Lead Abatement Supervisor, and lead safe work practices. These requirements do not apply if the surfaces disturbed can be proven to be lead free or the disturbed area is smaller than the “de minimis” limits established in the rule. However, HUD’s training, lead safe work practices, lead based paint testing methods, and “de minimis” requirements are different from those of the EPA.

Both the EPA and HUD rules require pre-renovation tenant notification regarding the potential hazards of lead based paint and lead paint dust.

For more information on the EPA’s Renovation, Repair and Painting rule, see:
<http://www.epa.gov/lead/pubs/renovation.htm>

For more information on HUD’s Lead Safe Housing Rule, see:
<http://www.hud.gov/offices/lead/enforcement/lshr.cfm>

For a comparison of the requirements between the EPA and HUD rules. See:
http://www.hud.gov/offices/lead/enforcement/lshr_rrp_changes.cfm

PHFA is required to reevaluate the savings-to-investment ratio using the bid price from the winning bidder. To meet this requirement, **the bidder must provide a separate bid price for each measure exactly as described in the energy audit. Furthermore, the cost for each measure must include all work required to complete that measure (mechanical, electrical, carpentry, painting, etc.).** If the bid is based on “building” Davis-Bacon wage rates, the bidder must also provide separate labor (including the number of hours estimated for each wage rate classification) and material cost for each measure.

Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid and any other relevant information as may be specified by regulation, together with the name of each bidder, shall be recorded. The record shall be open to public inspection.

Bids shall be unconditionally accepted without alteration or modification except as authorized in the invitation for bids. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth the evaluation

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criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Bids may be modified or withdrawn by written notice or in person by a bidder or its authorized representative if its identity is made known and a receipt for the bid is signed prior to the exact hour and date set for the opening of bids. The withdrawal and modification of bids received after the exact hour and date specified for the opening of bids shall not be considered. Withdrawal of erroneous bids after bid opening but before award based on bid mistakes shall be permitted by the written determination of the contracting officer when the bidder requests relief and presents credible evidence that the reason for the lower bid price was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetical error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid. The request for relief and the supporting evidence must be received by the contracting officer within a reasonable time period after the bid opening. The time period shall be specified by the department. The contracting officer shall not permit a withdrawal of a bid if the withdrawal of the bid would result in the awarding of the contract on another bid of the same bidder, its partner or a corporation or business venture owned by or in which the bidder has a substantial interest. No bidder who is permitted to withdraw a bid shall supply any material or labor to or perform any subcontract or other work agreement for any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted without the written approval of the contracting officer.

The contract shall be awarded to the PHFA approved bidder within no more than 60 days of the bid opening by written notice or all bids shall be rejected. Extensions of the date for the award may be made by mutual written consent of the contracting officer and the lowest responsible bidder. Within 30 days of the bid opening the contracting officer shall, if bid security was required by the invitation for bids, return the bid security to all but the lowest and next-to-lowest responsible bidders then under consideration for contract award.

WAP Requirements

Weatherization Assistance Program funds (WAP) requires compliance with all of the following:

1. U.S. Department of Energy regulations define a WAP eligible improvement (measure) as one that has a savings to investment ratio (SIR) equal to or greater than 1.0. The scope of work in the pro forma was based on the SIR estimates found in the energy audit. **A measure(s) may be removed from the final scope of work if the bid price reduces the SIR below 1.0.**
2. For each calendar quarter in which WAP funds are provided to the project, general contractor will be required to submit the following to PHFA as soon as construction is completed or no less than within **five (5) calendar days** after the end of the quarter:
 - a. For the GC or CM provide:
 - i. Business Name
 - ii. DUNS Number
 - iii. Date of Payment(s)
 - iv. Payment Amount(s)

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- v. Zip + 4 Code of contractor's headquarters
 - vi. Description of work or products
- b.** Number of jobs created or retained
- i. Calculate the number of jobs using a "full time equivalent" of 40 hours per week including paid leave
 - ii. "Retained" is used to describe a worker or position that would have otherwise been laid off had it not be for the WAP funded activity
 - iii. When describing a job that has been created or retained, use terms that are widely understood and describe the general nature of the work (e.g., job titles, broader labor categories, or the existing practice for describing jobs)
 - iv. Report the number of jobs created or retained that directly support the activity paid with WAP
 - v. Report the total hours worked during the quarter in jobs created or retained
 - vi. Do not include jobs that provide "indirect support" to the activity (e.g., clerical/administrative staff preparing reports, review board staff, departmental administrators)
 - vii. Do not include jobs created by material suppliers or central service providers
3. Owner will be responsible for consultation with the State Historic Preservation Office if a building(s) is over 50 years old, and any of the following is true:
- a. Any of the proposed work will change the exterior appearance of a building, or
 - b. The proposed work will replace original, non-replacement windows/doors on facades visible from the street with new modern material (vinyl or aluminum) windows or doors, or
 - c. The proposed work includes the replacement of any window or door with a new window or door of a different size, shape or placement from the original except for ground level basement or cellar windows.
- (See SHPO Review Info and Forms, attached)
4. The availability of WAP may be contingent upon a contribution of funds from the owner. Prior to closing, Owner must provide PHFA evidence that the account to be used as an owner's contribution has sufficient funds to meet the requirement and that the owner has received all necessary approvals to use said funds. If a development lacks the financial resources to meet the required contribution and if the development is owned by a non-profit entity or regulated by HUD, Rural Development, or PHFA, the owner may request a waiver to the owner's contribution by submitting the following to PHFA for consideration:

- a. A cover letter from the owner addressed to:

David L. Evans
Pennsylvania Housing Finance Agency
211 North Front Street, PO Box 8029
Harrisburg, PA 17105-8029

- b. Evidence of owner's non-profit status. Evidence includes a valid 501 (c) (3) letter from the IRS for the corporate owner or the managing general partner of a limited partnership owner. Also, provide evidence (Limited Partnership Agreement) that the

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non-profit has at least 51 percent ownership interest in the general partnership and evidence that owner is, or is controlled by, a qualified nonprofit organization.

- c. A copy of the project's most recent certified audited financial statements, including comparison with the previous year.
- d. Current year's operating budget.
- e. The current Reserve for Replacement account balance, if one exists.
- f. A summary of the anticipated uses of the Reserve for Replacement funds and an explanation why this account is not available to make the required contribution.

Final Pro Forma

Upon PHFA's review and approval of the construction bid, the pro forma will be adjusted to reflect actual pricing. Revisions to the sources of funds will be subject to regulatory limits and the availability of sufficient funds to ensure completion of the work.

Other Owner Requirements

Owner must provide evidence of builder's risk insurance or an acknowledgment that the project's property loss and liability insurance company acknowledges that the building(s) is/are under renovation. Evidence can be in the form of a Certificate of Insurance that includes PHFA as an additional insured.

It will be the owner's responsibility to ensure that on-site personnel follows normal protocol advising the tenant of any expected inconvenience or limitation of the project's use during construction. This may include, but is not limited to, advising tenants of construction schedules, scheduling access to units for workers and PHFA's Tech Rep, and providing information to tenants regarding Lead Based Paint hazards (required for all buildings constructed prior to 1978).

Compliance documentation must be maintained by the owner and available for review by PHFA and the Pennsylvania Department of Community and Economic Development (including applicable federal and state agencies) for a period of five years following completion of all Program funded work.

The owner is expected to provide or coordinate tenant education on the use of any new controls or equipment installed in the project as well as general measures tenant may take to achieve greater energy efficiencies and a healthier living environment. PHFA's Housing Services Representatives will be available to assist the owner and on-site staff in coordinating and implementing energy efficiency educational programs.

To measure the effectiveness of the improvements and tenant education, the property's energy usage will be tracked for five years following construction completion. Owner will be required to provide PHFA with releases to obtain energy usage data directly from the utility company of all project-paid utilities. Similar releases will be required from a minimum of one-half of the residents occupying

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each unit type (e.g., one bedroom, two bedroom, three bedroom units, etc.) for all tenant-paid utilities. PHFA has acquired software to track energy usage and provide ongoing feedback on the property's performance following completions of the energy efficiency improvement. The property will be required to pay PHFA an annual licensing fee each of the five years following construction completion. Energy consumption and trending reports will be available to the owner.

Owner is advised that information gathered in connection with all aspects of this Program will be public information.

Participation in the Preservation through Smart Rehab Program will require owners to enter into an agreement extending the affordability of the project for **five** years. A covenant agreement will be recorded on the real property and the term of the agreement may run coterminous with existing affordability restrictions.

Closing

A closing will occur upon receipt and approval of the following:

1. Smart Rehab Program Agreement

Agreement will be prepared in draft form by PHFA and provided to owner for review and comment.

2. Restrictive Covenant Agreement (RCA)

Agreement will be prepared in draft form by PHFA and provided to owner for review. Prior to PHFA disbursing Program funds, owner must provide evidence that agreement has been recorded in County in which the project is located. Prior to closing, owner must provide signed evidence of consent from mortgagee and all regulatory agencies (HUD, RD, etc.) allowing PHFA to record the RCA.

3. Promissory Note , if applicable

Agreement will be prepared in draft form by PHFA and provided to owner for review and comment. A note will be required for all PHFA loans. A note is not applicable to the Weatherization Assistance Program funds.

4. Mortgage, if applicable

Agreement will be prepared in draft form by PHFA and provided to owner for review and comment. A mortgage will be required for all PHFA loan. A mortgage is not applicable to the Weatherization Assistance Program funds.

5. Site Control

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Owner must have site control of the project. Evidence may be in the form of a recorded deed or long term lease.

6. Organizational Documents

Organizational documents of the owner may include a date-stamped copy of Certificate of Limited Partnership and Articles of Incorporation for all General Partners or Articles of Incorporation, if owner is a corporation.

7. Owner Authorization and Certification

Owner must provide (1) written consent from the general partner(s), if owner is a limited partnership, or (2) Board resolution authorizing owner to close on transaction.

8. Owner's Contribution

If the sources of funds includes and owner contribution, owner must provide current account statement(s) to evidence sufficient funds and authorization from any and all regulatory agencies (HUD, RD, etc.) to use said funds as owner's contribution.

9. Construction Bids

Provide copies of all construction bids. Bid must itemize the cost for each improvement and be inclusive of contractor fees.

Owner must confirm to PHFA the name of the winning bidder and, if the winning bid is not the low bid; provide PHFA with an explanation why low bidder was not selected.

Provide evidence of outreach to MBE/WBE/DBE firms (evidence could include but is not limited to bid package proof of mailing, letter from firm declining the opportunity to bid, attendance sheet from bidder conference, etc.).

10. Contractor's Qualification Statements (AIA document A305)

Each bidder must provide for PHFA review a qualification statement and all supporting documentation Subcontractors hired by the GC or CM are not required to provide qualification statements for PHFA review.

AIA is the American Institute of Architects and for instruction on how to purchase AIA documents, please refer to <http://www.aia.org/contractdocs/purchase/index.htm>.

11. Construction Contract with PHFA Addendum

Owner will contract for construction services using the AIA Document A101 Standard Form of Agreement Between Owner and Contractor, 2007 Edition, AIA Document A201 General Conditions of the Contract for Construction, 2007 Edition, and the Pennsylvania Housing Finance Agency Addendum to AIA Documents A101 and A201 (copy attached).

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The final contract price must be based on the Davis/Bacon wage rate determination in effect at the time of closing. Up to date determinations for buildings of four stories or less is available at http://www1.eere.energy.gov/wip/dol_wage_determinations.html or for building of five or more stories use the “building” rates available at <http://www.wdol.gov/dba.aspx#0> .

The approved scope of work will be summarized in the final PHFA pro forma. The contract must reference the date of final plans and specification, if available, or final work write-up. Note that due to WAP regulations, it is possible that measures included in the bid package and bid responses may not be included in the final scope.

Prior to closing, the GC must provide PHFA with Standard Form 1413, OMB No. 9000-0014, and copy attached.

12. Evidence of Contractor Insurance

GC or CM must provide a Certificate of Insurance with PHFA as an additional insured.

13. Building Permits, if applicable

GC or CM will provide a copy of all building permits or a letter confirming that permits are not applicable.

14. Evidence of Lead Paint compliance

The GC or CM and all subcontractors must provide evidence of their compliance with EPA’s “Renovation, Repair and Painting” final rule and HUD’s “Lead Safe Housing Rule”. Evidence includes copies of contractor certification, training records or certificates, name of certified renovator assigned to the project, and an outline of how firm will comply with lead safe work practices requirements. Owner must provide PHFA a certification that, when applicable, owner has provided the tenants with published Lead-Based Paint notices.

15. Contractor certification of compliance with Standards for Weatherization Materials (due prior to final payout)

Prior to PHFA’s final disbursement of WAP, contractor must certify that the materials used in the weatherization of the project comply with WAP standards.

16. Evidence of Section 504 compliance, if applicable

Prior to closing, the architect or owner must provide a written explanation stating if Section 504 requirements are or is not applicability to this transaction.

17. Evidence of contractor posting new jobs with PA CareerLink® system (due prior to final payout)

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The GC or CM and all subcontractors must provide evidence of notification to PA CareerLink of new jobs created as a result of this transaction or written statement that no new jobs were created.

18. Quarterly ARRA Jobs Report

GC or CM must provide to PHFA an ARRA jobs report within 5 days following the end of each calendar quarter. Specific instructions are found in the PHFA addendum to the Owner/Contractor Agreement.

19. Owner prepared memo discussing tenant benefits

The owner is to provide PHFA with a synopsis of how the measures installed will benefit the tenants. Benefits can be in the form of but are not limited to health & safety improvements, lower utility costs, increase comfort or reliability of systems, the use of utility cost savings to benefit the tenants by reinvesting the funds into supportive services or other educational programs, and the continued affordability of the units.

Disbursing Agent – Payout Procedures

PHFA will be the disbursing agent and payments will be made directly to the general contractor. When applicable, project funds may be disbursed by the project. Evidence of the disbursement of all project funds is required prior to PHFA's final payment of program funds. Soft costs included in the pro forma and incurred by the owner or project prior to closing may be reimbursed immediately upon recordation of the Program closing documents. Program Application and Authorization for Payment forms will be provided prior to closing.

Payment of work in progress that has been inspected and approved by PHFA will be made monthly. Final payment will be made upon PHFA's final inspection and acceptance of the completed contract scope-of-work. Final contract payment will not be made until PHFA has received and reviewed all required compliance documentation. **GC or CM must inform all sub-contractors that DAVIS/BACON WAGE RATE REGULATIONS REQUIRES THAT WORKERS BE PAID AT LEAST WEEKLY.**

A cost certification will not be required from the owner or contractor upon completion of the improvements. It is the owner's responsibility to ascertain if a cost certification may be required by other funding sources (i.e., Rural Development or HUD).

Construction Inspections

A PHFA Technical Services Representative (Tech Rep) will be assigned to your project and responsible for inspecting and compliance monitoring of all work completed under the Program. The owner is responsible for providing the Tech Rep with construction schedules and contact information for an on-site contact to coordinate the timely inspection of work in process and completed to date. These

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monitoring visits will include reviews of Davis/Bacon records and worker interviews as deemed necessary by PHFA.

Attachments:

PHFA Addendum to Owner/Contractor Agreement
Construction Bid Summary Worksheet
Davis/Bacon Wage Act
Davis/Bacon Wage Determination
Certified Weekly Payroll Form
Standard Form 1413
Appendix A of Part 440 – Standards for Weatherization Materials
Closing Index
Smart Rehab Program Agreement
Restrictive Covenant Agreement
Limited Partners Consent to Restrictive Covenant Agreement
Mortgagee Consent to Restrictive Covenant Agreement

Revision Date – November 4, 2010