

SECTION 01 35 85

INFLATION REDUCTION ACT REQUIREMENTS

1.1 GENERAL TERMS

- A. The Owner intends to claim from the Internal Revenue Service one or more refundable tax credits under Section 6417 of the Internal Revenue Code of 1986, as amended by the Inflation Reduction Act of 2022 (Pub. L. No. 117-169) for the portion(s) of the Work designated by the Owner pursuant to the Contract Documents (the “IRA PWA Work ”). For Owner to claim such IRA tax credits, the Contractor and its Subcontractors shall comply with the prevailing wage and apprenticeship requirements for laborers and mechanics set forth herein.
- B. The Contractor and its Subcontractors shall familiarize themselves and comply with the prevailing wage requirements and apprenticeship requirements for laborers and mechanics as set forth in the Contract Documents and (a) this Section 01 35 85; (b) the prevailing wage requirements of 26 U.S. Code § 45(b)(7) and Treas. Reg. § 1.45-7; (c) the apprenticeship requirements of 26 U.S. Code § 45(b)(8) and Treas. Reg. § 1.45-8; and (d) the recordkeeping and reporting requirements of Treas. Reg. § 1.45-12 (each as supplemented and amended, including changes to the foregoing requirements, changes to authorities included by referenced therein, including without limitation, changes in statutes, regulations, administrative guidance, or caselaw relating thereto, collectively, the “IRA PWA Requirements”) with respect to all IRA PWA Work to ensure that the Owner is eligible to claim the 5 times credit multiplier for the IRA tax credits under 26 U.S. Code §§ 48(a)(9) and 48E(a)(2)(A)(ii)(III) and 48E(a)(2)(B)(ii)(III), as the case may be.
- C. The Contractor shall comply with and give all notices and maintain all records as required by the IRA PWA Requirements applicable to performance of the IRA Work, regardless of whether such requirements are solely applicable to Owner under the IRA PWA Requirements. For the avoidance of doubt, the Contractor and its Subcontractors shall be responsible for payment of all correction payments to their workers and apprentices as required under the IRA PWA Requirements. Notwithstanding the preceding two sentences, the Contractor shall not notify, make requests to or communicate with the Internal Revenue Service or U.S. Treasury with respect to the IRA PWA Work or the IRA PWA Requirements without the Owner’s prior review and approval of such notices, requests and communications in its sole and absolute discretion; further, the Contractor shall not notify, make requests to or communicate with the U.S. Department of Labor with respect to the IRA Work or the IRA PWA Requirements without providing prior written notice to Owner of such notices, requests and communications. Any payments to be paid to the IRS or the U.S. Treasury under the IRA PWA Requirements shall be paid to Owner unless otherwise directed in writing by Owner. The Contractor and its Subcontractors shall immediately notify the Owner of any non-compliance with the IRA PWA Requirements.
- D. Terms capitalized in this Section 01 35 85 are specifically defined herein and in the contract between the Owner and Contractor.

1.2 PREVAILING WAGE AND APPRENTICESHIP REQUIREMENTS

- A. **Definitions.** In addition to the terms defined below, terms used herein and not otherwise defined herein have the respective definitions in this Section 01 35 85:
 - 1. “Apprenticeship Applicable Percentage” means _____ percent.
 - 2. “Apprenticeship Non-Compliance Determination Date” means the earliest date that (a) the Owner, Contractor or a Subcontractor determines that an Apprenticeship Non-Compliance Payment is owed with respect to the IRA PWA Work and (b) the IRS determines that the Owner must pay a penalty under Treas. Reg. § 1.45-8 with respect to any apprenticeship requirements or IRA PWA Work performed by the Contractor or Subcontractor, as applicable.
 - 3. “Laborers and Mechanics” means all laborers and mechanics employed by the Contractor or any Subcontractor in the construction, alteration, or repair of the IRA PWA Work, including working

forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties.

4. “Prevailing Rates” means the prevailing rates for construction, alteration, or repair of a similar character in the locality in which the IRA PWA Work is located most recently determined by the Secretary of Labor in accordance with 40 U.S.C. chapter 31, subchapter IV (Davis-Bacon Act) in the Applicable Wage Determination issued by the Secretary of Labor pursuant to 40 U.S.C. 3142, 29 CFR part 1, and other implementing guidance for the specified type of construction in the geographic area where the IRA PWA Work is located.
5. “PW Non-Compliance Determination Date” means the earliest date (a) the Owner, Contractor or a Subcontractor determines that a PW Non-Compliance Payment is owed with respect to the payment of wages for any construction, alteration, or repair of the IRA PWA Work with respect to such laborer, mechanic or apprentice or (b) the IRS determines that the Owner must pay a penalty under Treas. Reg. § 1.45-7 with respect to any work on the IRA PWA Work performed by the Contractor or Subcontractor, as applicable.

B. Prevailing Wage Requirements

- (a) **Prevailing wage requirements—(1) In general.** The Contractor and each Subcontractor must satisfy the prevailing wage requirements of 26 U.S. Code § 45(b)(7) and Treas. Reg. § 1.45-7 with respect to all construction, alterations and repairs of the IRA PWA Work by ensuring that (i) all Laborers and Mechanics employed by such Contractor or Subcontractor in the construction of the IRA PWA Work and (ii) during the 5-year period beginning on the date the IRA PWA Work is placed in service, all Laborers and Mechanics employed by such Contractor or Subcontractor for the construction, alteration or repair of the IRA PWA Work, are paid wages at rates not less than the Prevailing Rates (the “**Prevailing Wage Requirements**”).
- (b) **Wage determinations—(1) In general.** The Contractor and each Subcontractor must ensure that all Laborers and Mechanics are paid wages at rates not less than those set forth in the Applicable Wage Determination for the specified type of construction in the geographic area where the IRA PWA Work is located. If the construction, alteration, or repair of the IRA PWA Work occurs in more than one geographic area, the Contractor or Subcontractor must use the Applicable Wage Determination for the work performed in each geographic area.
 - (2) **General wage determinations—(i) In general.** Except as provided in paragraph (b)(3) of this section, to satisfy the Prevailing Wage Requirements, the Contractor and each Subcontractor must ensure that all Laborers and Mechanics employed by such Contractor or Subcontractor in the construction, alteration, or repair of the IRA PWA Work are paid wages at rates not less than those set forth in the Applicable General Wage Determination(s).

(A) Approximately 90 days prior to the commencement of any IRA PWA Work, (B) between 30 and 2 business days prior to executing the Guaranteed Maximum Price Amendment or the commencement of any IRA PWA Work (or such other timeframe agreed to by the Owner) and (C) on the date of execution of the Guaranteed Maximum Price Amendment or the commencement of any IRA PWA Work, the Contractor shall (w) identify the general wage determination applicable to the wages to be paid to Laborers and Mechanics for the IRA PWA Work, (x) determine whether any additional classifications and wage rates or an applicable supplemental wage determination, needs to be requested from the U.S. Department of Labor for any Laborers and Mechanics and promptly notify the Owner of the expected general wage determination, (y) notify the Owner if the Contractor requests any additional classifications and wage rates or any applicable supplemental wage determination, from the U.S. Department of Labor, and (z) notify the Owner of any additional classifications and wage rates or any applicable supplemental wage determination from the U.S. Department of Labor applicable to the wages to be paid to Laborers and Mechanics for the IRA PWA Work.

Prior to executing (and on the date of execution of) any modification to the contract to include additional substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated and prior to the exercise of an option to extend the term of a contract for the construction, alteration, or repair, the Contractor shall (w) identify the general wage determination applicable to the wages to be paid to Laborers and Mechanics for such modified, additional and/or extended IRA PWA Work, (x) determine whether any additional classifications and wage rates or an applicable supplemental wage determination, needs to be requested from the U.S. Department of Labor for any Laborers and Mechanics and promptly notify the Owner of the expected general wage determination, (y) notify the Owner if the Contractor requests any additional classifications and wage rates or any applicable supplemental wage determination, from the U.S. Department of Labor, and (z) notify the Owner of any additional classifications and wage rates or any applicable supplemental wage determination from the U.S. Department of Labor applicable to the wages to be paid to Laborers and Mechanics for the IRA PWA Work.

- (3) Supplemental wage determinations and additional classifications and rates.** In the event the Secretary of Labor has not issued a general wage determination for the relevant geographic area and type of construction for the IRA PWA Work, or the Secretary of Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the IRA PWA Work by Laborers and Mechanics is not listed, the Contractor and each Subcontractor must ensure that Laborers and Mechanics are paid wages at rates not less than those set forth in the applicable supplemental wage determination or additional classification and wage rate issued by the U.S. Department of Labor upon request by the Contractor or Subcontractor (or, in the Owner's discretion, by Owner) in accordance with the requirements and process described in section 1.3. With prior written notice to the Owner, the Contractor or Subcontractor shall, also request a supplemental wage determination if the location of the IRA PWA Work involves work by Laborers and Mechanics that spans more than one contiguous geographic area.
 - (4) Reconsideration and review.** With the prior written consent of the Owner in its sole discretion, the Contractor or a Subcontractor may seek reconsideration and review by the Administrator of the Wage and Hour Division of a general wage determination, or a determination issued with respect to a request for a supplemental wage determination or additional classification and wage rate in accordance with the procedures set forth in 29 CFR 1.8 and 5.13 and any subsequent guidance issued by the U.S. Department of Labor. With prior written consent of the Owner in its sole discretion, a contractor or subcontractor may appeal the decision of the Administrator of the Wage and Hour Division to the U.S. Department of Labor's Administrative Review Board in accordance with the procedures set forth in 29 CFR part 7 and any subsequent guidance issued by the U.S. Department of Labor. Questions regarding wage determinations and rates may be referred to the Administrator of the Wage and Hour Division.
 - (5) Correction Payments for wages paid before a supplemental wage determination or additional classification and wage rate is issued by the U.S. Department of Labor Wage and Hour Division.** If a supplemental wage determination or an additional classification and wage rate has been requested from the Wage and Hour Division in accordance with paragraph (b)(3)(ii) of this section and the Wage and Hour Division makes a wage determination or issues an additional classification and wage rate determination after the construction, alteration, or repair of the IRA PWA Work has started, the Contractor and each Subcontractor must make a payment within 30 days of the determination to each of the affected Laborers and Mechanics equal to the difference between the amount of wages paid to such laborer or mechanic before the determination and the amount of wages required to be paid to such laborer or mechanic for such period based on the determination. The Contractor and each Subcontractor shall promptly notify the Owner of and provide sufficient evidence and calculation of each such correction payment.
- (c) Obligation to cure any failure to satisfy the prevailing wage requirements—(1) In general.** If the Contractor or any Subcontractor fails to ensure that all Laborers and Mechanics are paid wages at rates

not less than those set forth in the Applicable Wage Determination(s), such Contractor or Subcontractor, as the case may be, must timely make the correction payments and non-compliance payments provided in paragraphs (c)(1)(i) and (ii) of this section.

- (i) **Correction Payment.** The Contractor or Subcontractor, as the case may be, must pay any laborer or mechanic who was paid wages at a rate below the rate described in paragraph (b) of this section for any pay period during such year an amount equal to the sum of (the “**Correction Payment**”):
 - (A) The difference between the amount of wages paid to such laborer or mechanic for all hours worked during such period and the amount of wages required to be paid to such laborer or mechanic pursuant to paragraph (a) of this section for all hours worked during such period; and
 - (B) Interest on the amount determined under paragraph (c)(1)(i)(A) of this section at the Federal short term rate as determined under section 6621 but substituting “6 percentage points” for “3 percentage points” in section 6621(a)(2).

The Contractor or Subcontractor must pay the Correction Payment by the last day of the first month that follows the end of the calendar quarter in which the failure to pay the correct wages occurred (or such earlier date required by the IRS or Treasury under the IRA PWA Requirements or other applicable IRS or Treasury guidance). The Contractor or Subcontractor must provide the Owner with satisfactory evidence of all such payments no later than (a) _____ and/or (b) upon request of the Owner.

Correction Payments for Laborers and Mechanics who cannot be located. If the Contractor or Subcontractor cannot locate a laborer or mechanic to whom a Correction Payment is owed, the Contractor or Subcontractor must demonstrate to the Owner’s satisfaction compliance with the applicable State unclaimed property law and all Federal and State withholding and information reporting requirements with respect to the Correction Payment.

- (ii) **PW Non-Compliance Payment.** The Contractor or Subcontractor, as the case may be, must pay to the Owner within ___ days of the PW Non-Compliance Determination Date, a non-compliance payment equal to \$5,000 multiplied by the total number of laborers and mechanics who were paid wages at a rate below the rate described in paragraph (b) of this section for any period during such year (the “PW Non-Compliance Payment”).
- (iii) **Conditions for Waiver of PW Non-Compliance Payment.** If the contractor or subcontractor makes the Correction Payment by the last day of the first month that follows the end of the calendar quarter in which the failure occurred, and:
 - (A) The laborer or mechanic is paid wages at rates less than the amount required to be paid under paragraph (b) of this section for not more than 10 percent of all pay periods of the calendar year (or part thereof) during which the laborer or mechanic was employed in the construction, alteration, or repair of the IRA PWA Work; or
 - (B) The difference between the amount the laborer or mechanic was paid during the calendar year (or part thereof) and the amount required to be paid under paragraph (b) of this section is not greater than 5 percent of the amount required to be paid under paragraph (b) of this section;

then, upon the Owner’s satisfactory confirmation that the foregoing conditions have been satisfied, the Owner may in its discretion waive the Contractor’s or Subcontractor’s PW Non-Compliance Payment relating to such Correction Payment; provided that if at any time Owner pays the IRS a penalty due to any prevailing wage non-compliance by the Contractor or a Subcontractor, then the Contractor or Subcontractor, as the case may be, shall pay such PW Non-Compliance Payment to the Owner regardless of whether the Owner previously waived such PW Non-Compliance Payment.

- (2) **Obligations to Avoid Intentional Disregard Penalties.** The Contractor and each Subcontractor shall not knowingly or willfully fail to pay wages at the prevailing wage rate to any laborer or mechanic employed by such Contractor or Subcontractor in the construction, alteration, or repair of the IRA PWA Work. The Contractor and each Subcontractor shall:
- (A) Work in good faith with, and respond to requests of, and provide reasonably requested information requested by, the Owner, the Owner’s designees, assignees, or agents and any third-party vendors engaged by the Owner and/or the Owner’s designees, assignees, or agents (each a “PWA Reviewer”) to:
 - (i) ensure that all Laborers and Mechanics are paid wages at not less than the applicable prevailing wage rate set forth in the Applicable Wage Determination;
 - (ii) permit each PWA Reviewer to determine or review the applicable classifications of Laborers and Mechanics, through quarterly, monthly, weekly, or more frequent, review of the applicable classifications of Laborers and Mechanics according to the actual duties performed by those Laborers and Mechanics;
 - (iii) permit each PWA Reviewer to determine or review the applicable prevailing wage rate(s) for Laborers and Mechanics to ensure usage of correct rates by the Contractor and all Subcontractors, such as through a quarterly, monthly, weekly, or more frequent, review of the prevailing wage rates actually paid by such Contractor or Subcontractor;
 - (iv) permit each PWA Reviewer to review periodically (quarterly, monthly, weekly, or more frequently) wages paid to Laborers and Mechanics to ensure that wages at rates not less than the applicable prevailing wage rates were paid (including allowing each PWA Reviewer to review payroll information of the Contractor and Subcontractor);
 - (B) Regularly (at intervals requested or approved by the Owner or any PWA Reviewer), and upon request, provide payroll information for each of the Laborers and Mechanics to the Owner, any PWA Reviewer or a third party acting on behalf of the Owner;
 - (C) Promptly and timely cure any failures (by making timely Correction Payments) to ensure that Laborers and Mechanics are paid wages at rates not less than the applicable prevailing rates set forth in the Applicable Wage Determination so as to avoid the PW Non-Compliance Payments or the Owner’s incurrence of penalties under the IRA PWA Requirements;
 - (D) Maintain records in accordance with recordkeeping requirements set forth in Treas. Reg. § 1.45 12 and this Section 01 35 85;
 - (E) Post in a prominent place at the IRA PWA Work or otherwise provide written notice to Laborers and Mechanics during the construction, alteration, or repair of the IRA PWA Work, the applicable wage rate(s) as determined by the U.S. Department of Labor in the Applicable Wage Determination for all classifications of work to be performed for the construction, alteration, or repair of the IRA PWA Work, with such post or notice stating that in order to be eligible to claim certain tax benefits, employers must ensure that Laborers and Mechanics are paid wages at rates not less than such wage rates, and instructions on how Laborers and Mechanics may contact the Owner’s personnel departments or the Owner’s project managers to report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with applicable wage determinations, employment tax violations, or violations of workplace standard laws without retaliation or adverse action (each a “PWA Notice”);
 - (F) Give Laborers and Mechanics the opportunity to acknowledge each PWA Notice;
 - (G) Put in place procedures whereby Laborers and Mechanics can report suspected failures to pay prevailing wages and/or suspected failures to classify workers in accordance with the wage determination of workers, employment tax violations, or violations of workplace standard laws to

appropriate personnel departments or managers without retaliation or adverse action, and investigate such reports by Laborers and Mechanics;

- (H) Provide all Laborers and Mechanics with written notice of the rights conferred by the whistleblower provisions of the Taxpayer First Act in 26 U.S. Code § 7623(d);
- (I) Provide all Laborers and Mechanics with paystubs (or access to individual payroll records) reflecting the amount they were paid per pay period (including the specific hourly rate and all deductions from wages);
- (J) Notify the Owner of, and investigate any complaints of retaliation or adverse action resulting from, reports of suspected failures to pay prevailing wages and/or classify workers in accordance with applicable wage determinations, employment tax violations, or violations of workplace standard laws and take appropriate actions to remedy any retaliation or adverse action and prevent it from reoccurring;
- (K) Maintain and preserve records as required herein sufficient to establish compliance with the prevailing wage requirements for relevant tax years; and
- (L) Not fail to pay prevailing wages to its employees as required under other applicable laws.

C. Apprenticeship Requirements

- (a) **Apprenticeship Requirements**—If the Contractor or Subcontractor employs four or more individuals to perform construction, alteration, or repair work with respect to the construction of the IRA PWA Work at any time prior to the IRA PWA Work being placed in service (regardless of whether such individuals are employed at the same location or at the same time) (each an “**AR contractor**” or an “**AR subcontractor**”), the AR contractor and each AR subcontractor must satisfy each of (i) the Participation Requirement, (ii) the Labor Hours Requirement and (iii) the Apprenticeship Ratio Requirement (collectively, the “**Apprenticeship Requirements**”).
 - (1) **Participation Requirement.** The AR contractor and each AR subcontractor must employ one or more Qualified Apprentices to perform work with respect to the construction, alteration, or repair of the IRA PWA Work prior to the IRA PWA Work being placed in service (the “**Participation Requirement**”). The Participation Requirement applies if the AR contractor or AR subcontractor employs four or more individuals in the construction of the IRA PWA Work over the entire course of the construction, regardless of whether they are employed at the same location or at the same time.
 - (2) **Labor Hours Requirement—Percentage of Total Labor Hours.** (i) The AR contractor and each AR subcontractor must ensure that, prior to the IRA PWA Work being placed in service, Qualified Apprentices (hired by the AR contractor or AR subcontractor, as applicable) perform not less than the Apprenticeship Applicable Percentage (the “**Labor Hours Requirement**”) of the total labor hours of the construction, alteration or repair work performed by such AR contractor or AR subcontractor, as applicable, with respect to the IRA PWA Work (the “**Total Labor Hours**”). The Total Labor Hours for such AR contractor or AR subcontractor, as applicable, will be increased by each hour worked by an apprentice in which the Apprenticeship Ratio is not satisfied.
 - (3) **Apprenticeship Ratio Requirement**—To count toward the Apprenticeship Applicable Percentage, each hour worked by Qualified Apprentices must be an hour in which the Apprenticeship Ratio is satisfied (the “**Apprenticeship Ratio Requirement**”). If the Apprenticeship Ratio is not satisfied during any hour that an apprentice works, that apprentice must be paid at the Prevailing Rates and may not be paid at the RAP Apprenticeship Rate.

- (b) **Exceptions to the Apprenticeship Requirements.** If the AR contractor or AR subcontractor either (i) satisfies the requirements of the Good Faith Effort Exception to the satisfaction of the Owner or (ii) pays to the Owner the Apprenticeship Non-Compliance Payment described in paragraph (b)(2)(i) below for any failures to satisfy the Apprenticeship Requirements where the Good Faith Effort Exception is not satisfied, then the Owner may excuse the AR contractor or AR subcontractor from satisfying the Apprenticeship Requirements in paragraph (a) of this section with respect to the construction, alteration, or repair of the IRA PWA Work prior to the IRA PWA Work being placed in service.

(1) Good Faith Effort Exception.

- (i) **In general.** The Owner may in its discretion determine the AR contractor or an AR subcontractor has satisfied the Apprenticeship Requirements of this section (the “**Good Faith Effort Exception**”) with respect to a request for Qualified Apprentices (a “**GFE Request**”) if the AR contractor or AR subcontractor meets the following requirements:
- (A) **Request for qualified apprentices.** The AR contractor or AR subcontractor must submit a written request for Qualified Apprentices to at least one Registered Apprenticeship Program that has a geographic area of operation that includes the location of the IRA PWA Work; trains Qualified Apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the IRA PWA Work; and has a usual and customary business practice of entering into agreements with employers for the placement of qualified apprentices in the occupation for which they are training, consistent with the standards and requirements set forth in 29 CFR parts 29 and 30, and any subsequent guidance issued by the Department of Labor. Such request must be in writing and sent electronically or by registered mail with an e-mail and written copy to the Owner within five business days of making such request). The initial request to a Registered Apprenticeship Program for Qualified Apprentices must be made no later than 45 days before the Qualified Apprentices are requested to start work. Any subsequent requests for Qualified Apprentices made to the same Registered Apprenticeship Program after the initial request must be made no later than 14 days before the Qualified Apprentices are requested to start work. If there is no Registered Apprenticeship Program that has a geographic area of operation that includes the location of the IRA PWA Work; trains qualified apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the IRA PWA Work; and has a usual and customary business practice of entering into agreements with employers for the placement of qualified apprentices in the occupation for which they are training, consistent with the standards and requirements set forth in 29 CFR parts 29 and 30, and any subsequent guidance issued by the Department of Labor, the Owner may determine in its discretion whether the AR contractor or AR subcontractor has satisfied the Good Faith Effort Exception with respect to the Qualified Apprentices that the AR contractor or AR subcontractor would have requested.
- (B) **Content of valid GFE Request.** The GFE Request of the AR contractor or AR subcontractor must include the proposed dates of employment, occupation of Qualified Apprentices needed, location of the work to be performed, number of Qualified Apprentices needed, the number of labor hours expected to be performed by the Qualified Apprentices, and the name and contact information of the AR contractor or AR subcontractor requesting employment of Qualified Apprentices from the Registered Apprenticeship Program. Reasonable estimates of the foregoing information are permissible. The request must also state that the request for Qualified Apprentices is made with an intent to employ Qualified Apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the Registered Apprenticeship Program and to employ Qualified

Apprentices consistent with the expected number of hours and dates of employment specified in the request. If the employer of the requested Qualified Apprentices is not the same as the AR contractor or AR subcontractor submitting the request for Qualified Apprentices, then the request must include the name of the employer.

- (C) **Duration of request.** If the AR contractor or AR subcontractor submits a GFE Request conforming with the requirements of paragraphs (b)(1)(i)(A) and (B) above and the request is denied or not responded to, the Owner in its discretion may determine that the AR contractor or AR subcontractor has exercised a Good Faith Effort and met the Good Faith Effort Exception with respect to the request for the period described in the request but not exceeding 365 days (366 days in case of a leap year). For requests that are denied or not responded to and include a period of employment for Qualified Apprentices that exceeds 365 days (366 days in case of a leap year), the AR contractor or AR subcontractor must submit one or more additional requests with respect to the period of such request in excess of 365 days (366 days in case of a leap year). The AR contractor or AR subcontractor will not be determined to have made a Good Faith Effort beyond 365 days (366 days in case of a leap year) of a previously denied request unless the AR contractor or AR subcontractor submits an additional request. There is no limit on the number of requests an AR contractor or AR subcontractor may submit to one or more Registered Apprenticeship Programs for purposes of the Good Faith Effort Exception and the AR contractor or AR subcontractor is not required to make subsequent requests to the same Registered Apprenticeship Program in order to qualify for the Good Faith Effort Exception. The 365 day (366 days in case of a leap year) duration of requests for Qualified Apprentices also applies in circumstances in which there is no Registered Apprenticeship Program with a geographic area of operation that includes the location of the IRA PWA Work at the time an AR contractor or AR subcontractor attempts to request Qualified Apprentices from a Registered Apprenticeship Program.
- (D) **Denial of request.** If the AR contractor or AR subcontractor submits a GFE Request in accordance with paragraph (b)(1)(i)(A) of this section and the request is denied (including after an initial acceptance and before the scheduled Qualified Apprentice work starts), the Owner in its discretion may determine that the AR contractor or AR subcontractor has satisfied the Good Faith Effort Exception, *provided* that such denial is not the result of a refusal by the AR contractor or AR subcontractor or any AR contractors or AR subcontractors engaged in the performance of construction, alteration, or repair work with respect to the IRA PWA Work to comply with the established standards and requirements of the Registered Apprenticeship Program. The denial of a request is only valid for purposes of establishing a Good Faith Effort with respect to the portion(s) of the request that were denied. In the case of a partial denial, the AR contractor or AR subcontractor must accept the Qualified Apprentices offered in response to the request to satisfy the Good Faith Effort with respect to the portion of the request that was denied. If a request is partially denied, the Qualified Apprentice labor hours specified in the request that were denied that qualify for the Good Faith Effort Exception are considered to be labor hours performed by Qualified Apprentices. Subject to the requirements of paragraph (b)(1)(i)(C) of this section, the AR contractor or AR subcontractor does not need to follow up with the Registered Apprenticeship Program after the initial request or after the receipt of a non-substantive response. The date on which a Registered Apprenticeship Program received a request for Qualified Apprentices is determined by the date the electronic request is sent to the Registered Apprenticeship Program or the date of delivery shown on a receipt from the registered mail delivery.

- (E) **Response to a valid request.** A response to a valid request for Qualified Apprentices is a substantive written reply to the request that agrees, in whole or in part, to the specific requirements in the AR contractor's or AR subcontractor's request. If the Registered Apprenticeship Program fails to provide a response to a request submitted in accordance with paragraph (b)(1)(i)(A) and (B) of this section within five business days after the date on which such Registered Apprenticeship Program received the AR contractor's or AR subcontractor's request, then such request is deemed to be denied.
- (F) **Employer sponsored apprenticeship programs.** If the AR contractor or AR subcontractor sponsors one or more internal Registered Apprenticeship Programs and is unable to employ a sufficient number of Qualified Apprentices through such programs to meet the Apprenticeship Requirements, the AR contractor or AR subcontractor must submit a request for Qualified Apprentices to at least one Registered Apprenticeship Program that it does not sponsor in order to satisfy the Good Faith Effort Exception.

(2) Apprenticeship Cure Obligation.

- (i) **In general.** If the AR contractor or AR subcontractor fails to satisfy the Apprenticeship Requirements in paragraph (a) of this section with respect to the construction, alteration, or repair of the IRA PWA Work prior to the IRA PWA Work being placed in service, the AR contractor or AR subcontractor, as the case may be, must pay the Owner upon demand, a non-compliance payment equal to \$50 multiplied by the total labor hours for which the Labor Hours Requirement and/or the Participation Requirement were not satisfied with respect to the AR contractor's or AR subcontractor's construction, alteration, or repair work on the IRA PWA Work (the "**Apprenticeship Non-Compliance Payment**").
 - (A) **Total labor hours for failure to meet Labor Hours Requirement.** If the AR contractor or AR subcontractor fails to meet the Labor Hours Requirement, the total labor hours for which the Labor Hours Requirement was not satisfied for purposes of calculating the Apprenticeship Non-Compliance Payment, is calculated as the difference between the total labor hours performed by Qualified Apprentices that would be required to meet the Labor Hours Requirement and the sum of the labor hours actually worked by all Qualified Apprentices during which the Apprenticeship Ratio was satisfied plus the hours qualifying for the Good Faith Effort Exception for such AR contractor or AR subcontractor.
 - (B) **Total labor hours for failure to meet Participation Requirement.** If the AR contractor or AR subcontractor fails to meet the Participation Requirement, the total labor hours for which the Participation Requirement was not satisfied for purposes of calculating the Apprenticeship Non-Compliance Payment, is calculated as the total labor hours of construction, alteration, or repair work with respect to the IRA PWA Work performed by all laborers or mechanics employed by the AR contractor or AR subcontractor that failed to meet the Participation Requirement divided by the number of laborers or mechanics employed by such AR contractor or AR subcontractor that performed construction, alteration, or repair work on the IRA PWA Work.
- (ii) **Intentional Disregard Non-Compliance Payment** —(A) If the Owner in its sole discretion or the IRS determines that any failure to satisfy the Apprenticeship Requirements is knowing or willful or due to intentional disregard of those requirements, then the AR contractor or AR subcontractor must pay the Owner upon demand an additional amount equal to the difference between (x) the amount of the Apprenticeship Non-Compliance Payment actually paid by the AR contractor or AR subcontractor to the Owner and (y) \$500 multiplied by the total labor hours for which the Labor Hours Requirement and/or the Participation Requirement were not satisfied by the AR contractor or AR subcontractor to with respect to the construction, alteration, or repair work on the IRA PWA Work.

- (B) Facts and circumstances considered.** The facts and circumstances that are considered in determining whether a failure to satisfy the Apprenticeship Requirements is due to intentional disregard include, but are not limited to—
- (1) Whether the failure was part of a pattern of conduct that includes repeated or systemic failures to ensure compliance with the Apprenticeship Requirements;
 - (2) Whether the AR contractor or AR subcontractor took steps to determine or review the applicable percentage of labor hours required to be performed by Qualified Apprentices;
 - (3) Whether the AR contractor or AR subcontractor sought to promptly cure any failures;
 - (4) Whether the AR contractor or AR subcontractor has been required to make a similar apprenticeship non-compliance payment or penalty in previous years;
 - (5) Whether the AR contractor or AR subcontractor included provisions in any contracts entered into with AR contractors that required the employment of Qualified Apprentices by the AR contractor and any AR subcontractors consistent with the labor hour requirement of 26 U.S. Code § 45(b)(8)(A) and the participation requirement of 26 U.S. Code § 45(b)(8)(C) and whether the AR contractor or AR subcontractor regularly reviewed its use of Qualified Apprentices;
 - (6) Whether the AR contractor or AR subcontractor made no attempt to comply with the Apprenticeship Requirements;
 - (7) Whether the AR contractor or AR subcontractor developed and used a plan to utilize Qualified Apprentices in the construction, alteration, or repair of the IRA PWA Work;
 - (8) Whether the AR contractor or AR subcontractor regularly followed up with Registered Apprenticeship Programs regarding requests for Qualified Apprentices;
 - (9) Whether the AR contractor or AR subcontractor contacted the Department of Labor’s Office of Apprenticeship or relevant State apprenticeship agency for assistance in locating a Registered Apprenticeship Program;
 - (10) Whether the AR contractor or AR subcontractor had in place procedures whereby individuals could report suspected failures to comply with the Apprenticeship Requirements, without retaliation or adverse action, whether the AR contractor or AR subcontractor investigated such reports by individuals, and whether the AR contractor or AR subcontractor had internal controls to prevent the failures to comply with the Apprenticeship Requirements;
 - (11) Whether the AR contractor or AR subcontractor investigated complaints of retaliation or adverse action resulting from reports of suspected failures to comply with the

Apprenticeship Requirements, and took appropriate actions to remedy any retaliation or adverse action and prevent it from reoccurring; and

- (12) Whether the AR contractor or AR subcontractor failed to maintain and preserve records sufficient to establish compliance with the apprenticeship requirements for the Owner's relevant tax years.

D. Recordkeeping and Reporting

- (a) **In general.** The Contractor and Subcontractors must maintain and preserve records sufficient to establish compliance with the requirements of 26 U.S. Code § 45(b)(6)(B), (b)(7), and (8), as applicable and 26 U.S. Code § 45(b)(7) and (8) and Treas. Reg. §§ 1.45-7 and 1.45-8, respectively. At a minimum, those records include payroll records for each laborer and mechanic (including each qualified apprentice) employed by the Contractor or any Subcontractor in the construction, alteration, or repair of the IRA PWA Work. The Contractor and Subcontractors must provide, on a timely basis as well as upon request, copies of all payroll and all records relating to the compliance or non-compliance with the Prevailing Wage Requirements and the Apprenticeship Requirements and work in good faith with, and respond to requests of, and provide requested information requested by PWA Reviewers.
- (b) **Recordkeeping for the prevailing wage requirements.** In addition to payroll records otherwise maintained by the Contractor or Subcontractors, records sufficient to demonstrate compliance with the applicable prevailing wage requirements in 26 U.S. Code § 45(b)(7) and Treas. Reg. § 1.45-7 may include Forms WH-347 completed fully and correctly with information for each laborer and mechanic (including each qualified apprentice) employed by the Contractor, or Subcontractors with respect to each qualified facility. Records sufficient to demonstrate compliance with the applicable prevailing wage requirements in 26 U.S. Code § 45(b)(7) and Treas. Reg. § 1.45-7 may also include the following other documents and records with respect to each qualified facility:
 - (1) Identifying information for each laborer and mechanic who worked on the construction, alteration, or repair of the IRA PWA Work, including the name, the last four digits of a social security or tax identification number, address, telephone number, and email address;
 - (2) The location and type of construction of the IRA PWA Work;
 - (3) The labor classification(s) the Contractor or Subcontractor applied to each laborer and mechanic for determining the prevailing wage rate and documentation supporting the applicable classification, including the applicable wage determination and copies of executed contracts for construction, alteration, or repair of the IRA PWA Work with the Contractor or any Subcontractor;
 - (4) The hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof) for each applicable labor classification;
 - (5) Records to support any contribution irrevocably made on behalf of each laborer or mechanic 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 laborers and mechanics 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 laborers and mechanics affected;
 - (6) The total number of hours worked by each laborer and mechanic per pay period;

- (7) The total wages paid to each laborer and mechanic for each pay period (including identifying any deductions from wages);
- (8) Records to support wages paid to any qualified apprentices at less than the applicable prevailing wage rates, including records reflecting an individual's participation in a Registered Apprenticeship Program and the applicable wage rates and apprentice- to-journeyworker ratios prescribed by the Registered Apprenticeship Program;
- (9) The amount and timing of any correction and non-compliance payments and documentation reflecting the calculation of the correction and non-compliance payments, including records to demonstrate the Owner's eligibility for the penalty waiver in Treas. Reg. § 1.45-7(c)(6);
- (10) Records to document any failures to pay prevailing wages and the actions taken to prevent, mitigate, or remedy the failure (for example, records demonstrating that the Contractor or a Subcontractor (or an independent third party engaged by the Contractor or a Subcontractor) regularly reviewed payroll practices, included requirements to pay prevailing wages in contracts with contractors, and posted prevailing wage rates in a prominent place on the job site); and
- (11) Records related to any complaints received by the Contractor or Subcontractor that the Contractor or Subcontractor was paying wages less than the applicable prevailing wage rate for work performed by laborers and mechanics with respect to the IRA PWA Work.

(c) Recordkeeping for the apprenticeship requirements. Records sufficient to demonstrate compliance with the applicable apprenticeship requirements in 26 U.S. Code § 45(b)(8) and Treas. Reg. § 1.45-8 may include the following information with respect to each qualified facility:

- (1) Any written requests for the employment of qualified 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 qualified apprentices from Registered Apprenticeship Programs;
- (2) Any agreements entered into with Registered Apprenticeship Programs with respect to the construction, alteration, or repair of the IRA PWA Work;
- (3) Documents reflecting the standards and requirements of all Registered Apprenticeship Programs from which the Contractor or any Subcontractor employed qualified apprentices with respect to the construction, alteration, or repair of the IRA PWA Work (including the applicable ratio requirement prescribed by each Registered Apprenticeship Program);
- (4) The total number of labor hours worked with respect to the construction, alteration, or repair of the IRA PWA Work, including and identifying hours worked by each qualified apprentice;
- (5) Records reflecting the daily ratio of apprentices to journeyworkers;
- (6) Records demonstrating compliance with the Good Faith Effort Exception in Treas. Reg. § 1.45-8(f)(1) (including requests for qualified apprentices, correspondence with Registered Apprenticeship Programs, and denials of requests);
- (7) The amount and timing of any non-compliance payments and documentation reflecting the calculation of the non-compliance payments;
- (8) Records to document any failures to satisfy the apprenticeship requirements under 26 U.S. Code § 45(b)(8) and Treas. Reg. § 1.45-8 and the actions taken to prevent, mitigate, or remedy the failure; and

(9) Records related to any complaints received by the Contractor or a Subcontractor that the Contractor or a Subcontractor was not satisfying the apprenticeship requirements under 26 U.S. Code § 45(b)(8) and Treas. Reg. § 1.45-8.

(d) Satisfaction of the recordkeeping requirements. The Contractor or a Subcontractor may satisfy the recordkeeping requirements in this section as follows:

- (1) The Contractor or Subcontractor may collect and physically retain relevant records from every Contractor and Subcontractor. The records may have personally identifiable information (PII) redacted to comply with applicable privacy laws. Unredacted information must be made available to the IRS upon request;
- (2) The Contractor or Subcontractor may provide relevant records to a third party vendor to physically retain on behalf of the Owner. The records may have PII redacted to comply with applicable privacy laws. Unredacted records must be made available to the IRS upon request; or
- (3) The Contractor or Subcontractor may each physically retain the relevant unredacted records for their own employees. Unredacted records must be made available to the IRS upon request.

E. General PWA Information

(a) Definitions: In addition to the terms defined below, terms used herein and not otherwise defined herein have the respective definitions in this Section 01 35 85:

“Applicable Wage Determination” means the applicable wage determination(s) issued by the Secretary of Labor pursuant to 40 U.S.C. § 3142, 29 CFR part 1, and other implementing guidance, on the approved U.S. Department of Labor website for the specified type of construction in the geographic area where the IRA PWA Work is located including the Applicable General Wage Determination or any additional classifications and wage rates, or an applicable supplemental wage determination, including those requested pursuant to section 1.3 hereto in each case, as applicable.

“Applicable General Wage Determination” means the applicable general wage determination(s) published by the U.S. Department of Labor on the approved website in effect for the specified type of construction in the geographic area (a) at the times set forth in the Contract Documents for the proposal, commencement, modification or extension of construction, alteration, or repair of the IRA PWA Work, (b) at the time the contract between the Owner and the Contractor for work on the IRA PWA Work is modified to include additional substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated or (c) at the time of an extension of the term of a contract for the construction, alteration, or repair of the IRA PWA Work. The Applicable General Wage Determination will continue in effect for any additional contracts executed by such contractor with any subcontractors with respect to the construction, alteration, or repair of the IRA PWA Work.

“apprentice” has the same meaning as qualified apprentice in Treas. Reg. § 1.45-8(g)(8).

“Apprenticeship Ratio” means, as determined on each work day, the applicable ratio of apprentices to journeymen required under the Registered Apprenticeship Program and consistent with 26 U.S. Code § 45(b)(8)(B) and Treas. Reg. § 1.45-8 and in accordance with 29 CFR part 29 as such ratio is established by the Registered Apprenticeship Program or the ratio applicable to the geographic area of the IRA PWA Work pursuant to 29 CFR 5.5(a)(4)(i). Any apprentice performing construction, alteration, or repair work on the job site in excess

of the Apprenticeship Ratio during any hour means that the Apprenticeship Ratio is not satisfied for such hour. If there are not enough journeyworkers to apprentices to meet the Apprenticeship Ratio on the job site for any hour, then the Apprenticeship Ratio is not satisfied for such hour. If the contractor or subcontractor is performing construction, alteration, or repair work on the IRA PWA Work in a geographic area other than the geographic area in which the Registered Apprenticeship Program is registered, the contractor or subcontractor must comply with the apprentice-to-journeyworker ratios applicable within the geographic area in which the construction, alteration, or repair work is being performed. If there is no applicable ratio for the geographic area of the IRA PWA Work, the ratio specified in the Registered Apprenticeship Program standard must be observed.

“bona fide fringe benefits” means fringe benefits described in 29 CFR part 5. Bona fide fringe benefits include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits (each as described in 29 CFR part 5 and other U.S. Department of Labor guidance). Consistent with 29 CFR 5.29, bona fide fringe benefits do not include benefits required by other Federal, State, or local law.

“construction, alteration, or repair” has the same meaning as in Treas. Reg. § 1.45-7(d)(3) and generally means those activities described in 29 CFR 5.2 as being construction, prosecution, completion, or repair that are performed with respect to the IRA PWA Work as defined under Section 45 of the Internal Revenue Code. Construction, alteration, or repair does not include any activities that are excluded from the requirement to pay prevailing wages under the definitions described in 29 CFR 5.2. Repair work normally includes an activity that improves the IRA PWA Work, either by fixing something that is not functioning properly or by improving upon the IRA PWA Work’s existing condition; involves the correction of individual problems or defects as separate and segregable incidents and is not continuous or recurring; or improves the IRA PWA Work’s structural strength, stability, safety, capacity, efficiency, or usefulness. Construction, alteration, or repair does not include work that is ordinary and regular in nature that is designed to maintain and preserve existing functionalities of the IRA PWA Work after it is placed in service. Work designed to maintain and preserve functionality of the IRA PWA Work after it is placed in service includes basic maintenance such as regular inspections of the IRA PWA Work, regular cleaning and janitorial work, regular replacement of materials with limited lifespans such as filters and light bulbs, and the regular calibration of equipment. However, such work that occurs before the IRA PWA Work is placed in service may constitute construction for which prevailing wages must be paid in order to claim the increased credit amount. Maintenance generally includes work that is needed to keep the IRA PWA Work in its current condition so that it may continue to be used and work that does not improve the current condition or function of the IRA PWA Work. Maintenance is routinely scheduled and continuous or recurring. Ultimately, the determination of whether an activity can be categorized as construction, alteration, or repair is dependent on the facts and circumstances.

“employed” has the same meaning as in Treas. Reg. § 1.45-7(d)(5) and means performing the duties of a laborer or mechanic for the Contractor or Subcontractor (as applicable), regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes.

“established standards and requirements” means those standards of apprenticeship required by 29 CFR parts 29 and 30 for Registered Apprenticeship Programs, as well as any additional requirements established by the Registered Apprenticeship Program for the

placement of apprentices and applicable to all employers participating in the Registered Apprenticeship Program. Such requirements must not be found by the U.S. Department of Labor's Office of Apprenticeship or a recognized State apprenticeship agency to be contrary to Department of Labor guidance regarding the administration of Registered Apprenticeship Programs.

"general wage determination" means a wage determination issued by the U.S. Department of Labor and published on the approved website. A general wage determination provides the minimum hourly wage rates (both the basic hourly rate of pay and bona fide fringe benefit rates) that the U.S. Department of Labor has determined are prevailing for laborers and mechanics in specified types of construction in a given geographic area.

"geographic area" and **"locality"** mean the county, independent city, or other civil subdivision of the State in which the IRA PWA Work is located. The terms geographic area and locality also include areas located offshore of the United States and within the outer continental shelf of the United States and the U.S. territories. If construction, alteration, or repair work is performed in multiple counties, independent cities, or other civil subdivisions, the geographic area may include all counties, independent cities, or other civil subdivisions in which the work will be performed. The locality in which the IRA PWA Work is located is defined as the physical place or places where the IRA PWA Work will be placed in service and remain. The locality of the IRA PWA Work also includes secondary locations where a significant portion of the IRA PWA Work is constructed, altered, or repaired provided that such construction is for specific use at that facility and does not simply reflect the manufacture or construction of a product made available to the general public, and provided further that the site is either established specifically for, or dedicated exclusively for a specific period of time to, the construction, alteration, or repair of the IRA PWA Work. A significant portion means one or more entire portion(s) or module(s) of the IRA PWA Work, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the IRA PWA Work will be placed in service and remain. A significant portion does not include materials or prefabricated component parts delivered to the location of the IRA PWA Work. A specific period of time means a period of weeks, months, or more, and does not include circumstances in which a site at which multiple facilities are in progress is shifted exclusively to a single facility for a few hours or days in order to meet a deadline. The locality of the IRA PWA Work also includes any adjacent or virtually adjacent dedicated support sites, including job headquarters, tool yards, batch plants, borrow pits, and similar facilities of the contractor or subcontractor that are established specifically for or dedicated exclusively to the construction, alteration, or repair of the IRA PWA Work, and adjacent or virtually adjacent to either a primary construction site or a secondary construction site.

"journeyworker" means an individual who has attained a level of skill, abilities, and competencies recognized within an industry as having mastered the skills and competencies required for the occupation. Use of the term may also refer to a mentor, technician, specialist, or other skilled individual who has documented sufficient skills and knowledge of an occupation, either through formal apprenticeship or through practical on-the-job experience and formal training.

"labor hours" means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by the Contractor or a Subcontractor, as the case may be. Labor hours do not include hours worked by foremen, superintendents, owners, or persons employed in bona fide executive, administrative, or professional capacities (as defined in 29 CFR part 541).

"laborer" and **"mechanic"** mean those individuals whose duties are manual or physical in nature (including those individuals who use tools or who are performing the work of a

trade). The terms laborer and mechanic include apprentices and helpers. The terms do not apply to individuals whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Working forepersons who devote more than 20 percent of their time during a workweek to laborer or mechanic duties, and who do not meet the criteria for exemption of 29 CFR part 541, are considered laborers and mechanics for the time spent conducting laborer and mechanic duties.

“Qualified Apprentice” means an individual who is employed by the Contractor or a Subcontractor, as the case may be, and who is participating in a Registered Apprenticeship Program. An individual is participating in a Registered Apprenticeship Program if, the individual has entered into a written agreement with a Registered Apprenticeship Program containing the terms and conditions of the employment and training of the apprentice and has been registered as an apprentice with the U.S. Department of Labor’s Office of Apprenticeship or a recognized State apprenticeship agency during the time period in which work is performed by the apprentice for the Contractor or a Subcontractor, or the individual is in the first 90 days of probationary employment as an apprentice in a Registered Apprenticeship Program and the individual has been certified by the U.S. Department of Labor’s Office of Apprenticeship or a recognized State apprenticeship agency as eligible for probationary employment as an apprentice.

“Registered Apprenticeship Program” means a program that has been registered by the U.S. Department of Labor’s Office of Apprenticeship or a recognized State apprenticeship agency, pursuant to the National Apprenticeship Act and its implementing regulations for registered apprenticeship at 29 CFR parts 29 and 30, as meeting the basic standards and requirements of the Department of Labor for approval of such program for Federal purposes. Registration of a program is evidenced by a Certificate of Registration or other written indicia. Registered apprenticeship programs include those that the Owner, the Contractor or a Subcontractors sponsor, create, or partner with and include joint and non-joint programs (as those terms are used in 29 CFR part 29). In the event the U.S. Department of Labor’s Office of Apprenticeship or a State apprenticeship agency recognized by the U.S. Department of Labor’s Office of Apprenticeship withdraws approval of an apprenticeship program, such program shall no longer be deemed to be a Registered Apprenticeship Program and the Contractor or Subcontractor will no longer satisfy the Prevailing wage Requirements by paying apprentices less than the applicable predetermined rate for the work performed until an acceptable Registered Apprenticeship Program is approved. The term geographic area for purposes of determining the geographic area of operation of a Registered Apprenticeship Program has the same meaning as the term geographic area and locality defined in Treas. Reg. § 1.45-7(d)(7).

“State apprenticeship agency” means an agency of a State government that has responsibility and accountability for apprenticeship within the State and that has been recognized and authorized by the U.S. Department of Labor’s Office of Apprenticeship to register and oversee apprenticeship programs and agreements for Federal purposes.

“subcontractor”, as used in this Section 01 35 85, means any person that enters into a contract with the Contractor for the construction, alteration, or repair of the IRA PWA Work. The term subcontractor also includes any person that agrees to perform or be responsible for the performance of any part of a contract entered into between the Owner (or the Owner’s designee, assignee, or agent) and the Contractor (or between the Contractor and another Subcontractor) with respect to the construction, alteration, or repair of the IRA PWA Work.

“type of construction” means the general category of construction as established by the U.S. Department of Labor for the publication of general wage determinations as defined in 29 CFR 1.2.

“wages” generally means wages as defined in 29 CFR 5.2. In general, wages means the basic hourly rate of pay; any contribution irrevocably made by the Contractor or a Subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the Contractor or Subcontractor, as the case may be, that may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, provided the commitment was communicated in writing to the laborers and mechanics affected. Whether amounts are wages for prevailing wage purposes is not relevant in determining whether amounts are wages or compensation for other Federal tax purposes.

(1) Timing and Applicability of wage determination.

- (i) The applicable prevailing wage rates on a general wage determination are those in effect at the time of the commencement, substantial modification or extension of the IRA PWA Work. The applicable prevailing wage rates on a general wage determination at such time apply to all Subcontractors of that Contractor.
- (ii) The applicable prevailing wage rates of a general wage determination generally remain valid for the duration of the work performed with respect to the construction, alteration, or repair of the IRA PWA Work by the Contractor or Subcontractor. A new general wage determination is required to be used if the contract between the Owner (or the Owner’s designee, assignee, or agent) and the Contractor for work on the IRA PWA Work is modified to include additional substantial construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated, including if an option to extend the term of a contract for the construction, alteration, or repair is exercised. A new general wage determination is not required if the Contractor is simply given additional time to complete its original commitment or if the additional construction, alteration, and/or repair work in the modification of the contract is merely incidental. In circumstances in which a new general wage determination is required, the applicable prevailing wage rates on a general wage determination are those in effect at the time the additional substantial work is agreed to or at the time when an option to extend the term of the contract is executed.
- (iii) After the IRA PWA Work is placed in service, the applicable prevailing wage rates on a general wage determination for the alteration or repair of the IRA PWA Work are those in effect at the time the contract for the alteration or repair work is executed by the Owner (or the Owner’s designee, assignee, or agent) and a Contractor.
- (iv) If the Owner (or the Owner’s designee, assignee, or agent) executes separate contracts with more than one Contractor with respect to the construction, alteration, or repair of the IRA PWA Work, then, for each such contract, the applicable prevailing wage rates with respect to any work performed by the Contractor (and all Subcontractors of the Contractor) are determined at the time provided above. If no contract exists with respect to the construction, alteration, or repair of the IRA PWA Work (or if the date of execution of the relevant contract cannot be reasonably determined), the applicable prevailing wage rates on a general wage determination are those in effect at the time the construction, alteration, or repair work starts.
- (v) If the Owner enters into a contract for alteration or repair work over an indefinite period of time that is not tied to the completion of any specific work, the applicable prevailing wage rates must be updated on an annual basis on the anniversary date of such contract. General

wage determinations published on the U.S. Department of Labor approved website contain no expiration date and remain valid until revised, superseded, or canceled.

- (vi) Any supplemental wage determination applies without expiration from the time the Owner incorporates the supplemental wage determination into the contract provided that the supplemental wage determination is incorporated into the contract within 180 days of issuance of the supplemental wage determination. If there is no contract, any supplemental wage determination applies without expiration from the time construction, alteration, or repair starts provided the construction, alteration, or repairs starts within 180 days of issuance of the supplemental determination. Any additional classification and wage rate applies without expiration from the earlier of the date of issuance or the first day in which work in the additional classification was performed. If a supplemental wage determination or additional classification and wage rate is issued after construction, alteration, or repair of the PWA IRA Work has started, the applicable prevailing rates apply retroactively to the date construction started.

- (2) Payment of wages (including bona fide fringe benefits).** The Contractor and each Subcontractor must pay all Laborers and Mechanics (i) in the time and manner consistent with the regular payroll practices of the Contractor or Subcontractor, as applicable, (ii) without subsequent deduction or rebate on any account (except such payroll deductions as are required by the law or permitted by regulations issued by the Secretary of Labor), and (iii) the full amount of wages (including bona fide fringe benefits or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the Applicable Wage Determination of the Secretary of Labor. The Contractor and each Subcontractor may discharge its wage obligations for the payment of wages by paying the full amount in cash, by making payments to a bona fide fringe benefit provider or incurring costs for bona fide fringe benefits, or by a combination thereof. The Contractor and each Subcontractor is solely responsible for ensuring that all Laborers and Mechanics are paid wages not less than the Prevailing Rate. The rules set forth in 29 CFR 5.25 through 5.33, and any subsequent guidance issued by the U.S. Department of Labor apply with respect to costs for bona fide fringe benefits that may be credited for purposes of the payment of wages.

- (3) Apprentices—(i) Rate of pay.** Consistent with the requirements of 26 U.S. Code § 45(b)(8) and Treas. Reg. §1.45-8 and subject to payment of wages at rates set forth in the Applicable Wage Determination as described in paragraph (8)(iii) below, the Contractor and each Subcontractor must pay all apprentices who perform work for such Contractor or Subcontractor with respect to the construction, alteration, or repair of the IRA PWA Work wages at rates not less than the rates specified by the Registered Apprenticeship Program for the apprentice's level of progress, expressed as a percentage of the journeyworker hourly rate specified for the apprentice's classification in the applicable wage determination ("**RAP Apprenticeship Rate**"). If the apprentice is working in a classification that is not part of the occupation of the Registered Apprenticeship Program, the apprentice must be paid not less than the applicable wage rate on the wage determination for laborers or mechanics working in that classification. Any individual listed on payroll at an apprenticeship wage, who is not participating in a Registered Apprenticeship Program, must be paid not less than the Applicable Wage Determination for the classification of work actually performed to satisfy the Prevailing Wage Requirements. In the event the U.S. Department of Labor's Office of Apprenticeship or a State apprenticeship agency recognized by the U.S. Department of Labor's Office of Apprenticeship withdraws approval of the apprenticeship program to which the Contractor's or Subcontractor's apprentice belongs, the Contractor or Subcontractor will no longer satisfy the Prevailing Wage Requirements by paying its apprentices less than the applicable rates set forth in the Applicable Wage Determination for the work performed until the apprentice belongs to an acceptable and approved Registered Apprenticeship Program.

(ii) Bona fide fringe benefits. To satisfy the Prevailing Wage Requirements, the contractor and each subcontractor must ensure their apprentices are paid bona fide fringe benefits in accordance with the provisions of the Registered Apprenticeship Program. If the Registered Apprenticeship Program does not specify the payment of bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the Applicable Wage Determination for the applicable classification in cash or in kind.

(iii) Apprenticeship Ratio. The Contractor and each Subcontractor may only pay apprentices who perform work for such Contractor or Subcontractor with respect to the construction, alteration, or repair of the IRA PWA Work at the RAP Apprenticeship Rate if the Apprenticeship Ratio is satisfied for such work day for such job site. For any day that the Apprenticeship Ratio is not satisfied on a job site, any apprentice performing construction, alteration, or repair work on the job site in excess of the Apprenticeship Ratio must be paid not less than the applicable wage rate on the Applicable Wage Determination for the work actually performed to satisfy the Prevailing Wage Requirements.

(iv) Reciprocity of ratios and wage rates. If the Contractor or Subcontractor is performing construction, alteration, or repair work on the IRA PWA Work in a geographic area other than the geographic area in which the Registered Apprenticeship Program is registered, the Contractor or Subcontractor must comply with the apprentice-to-journeyworker ratios applicable within the geographic area in which the construction, alteration, or repair work is being performed. If there is no applicable ratio for the geographic area of the IRA PWA Work, the ratio specified in the Registered Apprenticeship Program standard must be observed. The wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the geographic area in which the construction, alteration, or repair work is being performed must be observed.

1.3 SUPPLEMENTAL WAGE DETERMINATIONS AND ADDITIONAL CLASSIFICATIONS

A. Supplemental wage determinations and additional classifications and rates—(i) Use of supplemental wage determinations and additional classifications and rates. In the event the Secretary of Labor has not issued a general wage determination for the relevant geographic area and type of construction for the IRA PWA Work, or the Secretary of Labor has issued a general wage determination for the relevant geographic area and type of construction, but one or more labor classifications for the construction, alteration, or repair work that will be done on the IRA PWA Work by Laborers and Mechanics is not listed, the Contractor and Subcontractor must ensure that Laborers and Mechanics are paid wages at rates not less than those set forth in the applicable supplemental wage determination or additional classification and wage rate issued to the Owner by the U.S. Department of Labor upon request by the Owner, the Contractor or Subcontractor in accordance with paragraph (A)(ii) of this section 1.3. With the prior written notice to the Owner (or, upon the request of the Owner), the Contractor or Subcontractor shall also request a supplemental wage determination if the location of the IRA PWA Work involves work by Laborers and Mechanics that spans more than one contiguous geographic area.

(ii) Request for supplemental wage determinations and additional classifications and rates—(A) Manner of making request. The Contractor or Subcontractor requesting a supplemental wage determination or additional classification and wage rate under paragraph (A)(i) of this section must (1) submit the request to the U.S. Department of Labor at, U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210, by email at IRAPrevailingwage@dol.gov, or such other address as may be prescribed in guidance and instructions issued by the Administrator of the Wage and Hour Division of the U.S. Department of Labor (“Wage and Hour Division”) and promptly e-mail a copy thereof to the Owner.

B. Timing of requests for prevailing wage rates for additional classifications. A request for prevailing wage rates for additional classifications can be made any time after a contract for the construction, alteration, or repair of the IRA PWA Work has been executed between the Owner (or the Owner's designee, assignee, or agent) and the Contractor. In the absence of a contract, the Contractor or Subcontractor should make such requests no more than 90 days before construction, alteration, or repair of the IRA PWA Work starts. If the Contractor or Subcontractor cannot reasonably determine prior to execution of the contract between the Owner (or the Owner's designee, assignee, or agent) and the Contractor or prior to the start of the construction, alteration, or repair work that an additional classification and wage rate is necessary, the Contractor or Subcontractor should make such request as soon as practicable after determining that an additional classification and wage rate is necessary.

C. Required information. The request for a supplemental wage determination or additional classification and wage rate must include the information set forth following information:

- (1) The name of the Owner, the Contractor or Subcontractor requesting the supplemental wage determination or wage rate;
- (2) The general wage determination(s), if any, applicable to construction, alteration, or repair of the IRA PWA Work;
- (3) A description of the work to be performed, including the type(s) of construction involved and, if the IRA PWA Work involves multiple types of construction, information indicating the expected cost breakdown by type of construction;
- (4) The geographic area in which the IRA PWA Work is being constructed, altered, or repaired, including the name and address of the IRA PWA Work (if known);
- (5) The date the Owner (or the Owner's designee, assignee, or agent) expects to enter into a contract with the Contractor for which a supplemental wage determination is needed or the date of execution of the contract with the Contractor for which a prevailing wage rate for an additional classification is needed;
- (6) The start date of construction, alteration, or repair at the IRA PWA Work;
- (7) The labor classification(s) needed for performance of the work on the IRA PWA Work (excluding those for which wage rates are available on an applicable general wage determination);
- (8) The duties to be performed by each such labor classification on the IRA PWA Work;
- (9) The proposed wage rate, including any bona fide fringe benefits, for each such labor classification;
- (10) Any pertinent wage payment information that may be available;
- (11) Any additional relevant information otherwise required by forms and instructions published by the U.S. Department of Labor; and
- (12) Any additional information the Owner, the Contractor or Subcontractor wants the U.S. Department of Labor to consider.

(iii) Issuance of supplemental wage determinations and additional classifications and wage rates. Once the Wage and Hour Division notifies the Contractor or Subcontractor as to the supplemental wage determination or the labor classifications and wage rates to be used for the type of work in question in the geographic area in which the IRA PWA Work is located ("**Supplemental Determination/Additional Classification**"), the Contractor or Subcontractor shall promptly notify the Owner of such Supplemental Determination/Additional Classification and

maintain records of the same. Supplemental wage determinations issued by the Wage and Hour Division are effective for 180 calendar days from the date such determinations are issued. If a supplemental wage determination is not incorporated into the contract (or, in the absence of a contract, if construction has not started) during the 180 day period, the determination is no longer effective, and a new supplemental wage determination will need to be requested by the Contractor or Subcontractor pursuant to paragraph (A)(ii) above. The Wage and Hour Division will resolve requests for a prevailing wage rate for an additional classification within 30 days of receipt of the request or will advise the requester within the 30 day period that additional time is necessary. The Contractor or Subcontractor shall promptly notify the Owner, and maintain records, of the same.

(iv) Reconsideration and review. With the prior written notice to the Owner, the Contractor or Subcontractor may seek reconsideration and review by the Administrator of the Wage and Hour Division of a general wage determination, or a determination issued with respect to a request for a supplemental wage determination or additional classification and wage rate in accordance with the procedures set forth in 29 CFR 1.8 and 5.13 and any subsequent guidance issued by the U.S. Department of Labor. With prior written notice to the Owner, the Contractor or Subcontractor may appeal the decision of the Administrator of the Wage and Hour Division to the U.S. Department of Labor's Administrative Review Board in accordance with the procedures set forth in 29 CFR part 7 and any subsequent guidance issued by the U.S. Department of Labor. Questions regarding wage determinations and rates may be referred to the Administrator of the Wage and Hour Division.

1.4 DOMESTIC CONTENT REQUIREMENTS (RESERVED)

1.5 ADDITIONAL REQUIREMENTS

- A. The Contractor and its Subcontractors shall designate an individual responsible for compliance with this Section 01 35 85 to participate in a training facilitated by the Owner's third party provider that will outline the requirements of the IRA related to prevailing wage and apprenticeship standards, and provide information and methodology associated with the third-party technology that will be used to collect, analyze and provide feedback on information provided by the Contractor and each Subcontractor.
- B. The Contractor and Subcontractors shall, before commencing any IRA PWA Work, coordinate with the Owner's designees regarding the implementation of processes and procedures that will be used to document compliance with the IRA PWA Requirements, and shall cooperate with such designees in all aspects of IRA PWA compliance.
- C. All Contractors and Subcontractors performing IRA PWA Work shall initiate and maintain iterative, weekly and monthly data accumulation and reporting processes, and shall use tools, interfaces, software and templates designated by the Owner and its designees for the purpose of documenting compliance with the IRA PWA Requirements. In addition, and without limiting the foregoing, the Contractor shall provide:
 - 1. on a monthly basis, a list of all Subcontractors that performed IRA PWA work in the preceding month, daily site entry logs for each day in a form acceptable to the Owner, and all data attributes required to complete the DOL Form WH-347 plus detailed fringe benefit rates; and
 - 2. on a weekly basis, payroll request and apprenticeship reports.
- D. All Contractors and Subcontractors performing IRA PWA Work shall train their employees on the importance of compliance with the data accumulation and reporting processes required herein. The Contractor shall post or give written notification to employees whose work is covered by IRA PWA Requirements.
- E. The Contractor shall notify the Owner in writing of any secondary work sites that may be covered by the IRA PWA Requirements.

- F. In the event that an actual or potential non-compliance with the prevailing wage or apprenticeship requirements of this Section 01, 35 85 is discovered, the Contractor and any Subcontractors involved in such non-compliance shall meet with the Owner and its designees and immediately take such action as may be reasonable and necessary under the circumstances to minimize payments and penalties arising from such non-compliance. The Contractor and Subcontractors shall immediately notify the Owner in writing upon discovery of any non-compliance with the IRA PWA Requirements.
- G. The Contractor and Subcontractors performing IRA PWA Work shall afford the Owner and its auditors, during regular business hours and upon reasonable notice, access to, and shall permitted them to inspect, audit and copy, records of sufficient to demonstrate compliance with the applicable prevailing wage and apprenticeship requirements set forth herein, and shall allow them to interview all current or former employees to discuss matters pertinent to compliance with this Section 01 35 85. Where such records subject to audit are maintained or have been generated from data stored electronically, regardless of the form, the Contractor and Subcontractors shall provide the Owner’s representatives with native data files or suitable extracts of data files in readable format requested by the Owner. Records subject to this obligation shall include, without limitation:
1. Applicable wage determinations and mapping of worker roles to appropriate wage determination job classifications.
 2. Documentation pertaining to labor hours, apprentice-to-journeyworker ratios, and participation by qualified apprentices.
 3. Payroll records, including hourly rate and deductions, including without limitation:
 - a. Name (or unique identifier), last four digits of the social security or tax identification number;
 - b. Labor classifications(s) applied to each laborer for determining the prevailing wage rate and documentation supporting the applicable classification;
 - c. Hourly rate(s) of wages paid (including rates of contributions or costs for bona fide fringe benefits or cash equivalents thereof, and overtime rate) for each applicable labor classification; and
 - d. the total number of labor hours worked and wages paid per pay period.

1.6 FREQUENTLY ASKED QUESTIONS

ABBRIEVATED FAQs

PREVAILING WAGE COMPLIANCE

Q1. What are the prevailing wage requirements of the IRA?

A1. All laborers and mechanics employed by the Contractor or Subcontractor on the construction, alteration, or repair of the IRA PWA Work must be paid wages at rates that are not less than the prevailing rates determined by the Department of Labor in accordance with subchapter IV of chapter 31 of title 40 of the U.S. Code (the Davis-Bacon Act) for the type of work performed in the geographic area of the IRA PWA Work.

Q2. What does construction, alteration, or repair mean for purposes of the IRA prevailing wage and apprenticeship requirements?

A2. The term construction, alteration, or repair generally means those activities that are considered “construction, prosecution, completion, or repair” as defined by the Davis Bacon Act and U.S. Department of Labor (DOL) guidance thereunder and that are performed with respect to the IRA PWA Work. Repair work normally includes an activity that improves the IRA PWA Work, either by fixing something that is not functioning properly or by improving upon the IRA PWA Work’s existing condition; involves the correction of individual problems or defects as separate and segregable incidents and is not continuous or recurring; or improves the IRA PWA Work’s structural strength, stability, safety, capacity, efficiency, or usefulness.

Construction, alteration, or repair work does not include maintenance work after the IRA PWA Work is placed in service. Maintenance is work that is ordinary and regular in nature and designed to maintain existing functionalities of the IRA PWA Work such as regular inspections of the IRA PWA Work, regular cleaning and janitorial work, regular replacement of materials with limited lifespans such as filters and light bulbs, and the regular calibration of equipment. Generally, work that improves the current condition or function of the IRA PWA Work is considered an alteration or repair and not maintenance work.

Q3. Who is considered employed by the Contractor or Subcontractor for purposes of the IRA prevailing wage requirements?

A3. For purposes of the prevailing wage requirements, a laborer or mechanic is considered employed by Contractor, or Subcontractor if the individual performs the duties of a laborer or mechanic for Contractor, or Subcontractor regardless of whether the individual would be characterized as an employee or an independent contractor for other Federal tax purposes. The definition of employed for purposes of the prevailing wage requirements is generally different and broader than the definition used elsewhere in the Code, for example with respect to employment taxes, as well as the associated reporting and withholding obligations. Laborers and mechanics who are independent contractors for employment tax purposes may be considered employed for purposes of the IRA prevailing wage requirements.

Q4. To whom must prevailing wages be paid to satisfy the IRA prevailing wage requirements?

A4. Prevailing wages must be paid to all laborers and mechanics employed by the Contractor or Subcontractor in the construction, alteration, or repair of the IRA PWA Work. The requirement to pay prevailing wages applies to work performed with respect to a qualified facility (or qualified property, project, or equipment, as applicable) within the meaning of the relevant section of the Code. Prevailing wages must also be paid for construction, alteration, or repair work performed at any secondary work site where such work is for specific use at the qualified facility and does not reflect the manufacture or construction of a product made available to the general public and the secondary work site is established specifically for or dedicated exclusively for a specific period of time to the construction, alteration, or repair of the IRA PWA Work. The prevailing wage rates for work performed at any secondary work site is determined based on the geographic area in which the secondary site is located.

Laborers and mechanics are those individuals whose duties are manual or physical in nature (including those individuals who use tools or who are performing the work of a trade). The terms laborer and mechanic include apprentices and helpers. The terms do not include individuals whose duties are primarily administrative, executive, or clerical, rather than manual.

Q5. What is a prevailing wage?

A5. Under the statute and the final regulations, a prevailing wage is the combination of the basic hourly wage rate and any fringe benefits listed in an applicable wage determination, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code, also known as the Davis-Bacon Act. Contractors or Subcontractors comply with the prevailing wage provisions by ensuring that each laborer and mechanic performing construction, alteration or repair of the IRA PWA Work is paid the applicable prevailing wage for the classification of work performed entirely as cash wages or by a combination of cash wages and employer-provided bona fide fringe benefits.

Q6. Where do I find a general wage determination?

A6. General wage determinations are published by the Wage and Hour Division of DOL and available online at the [System for Award Management](#) website. If the Contractor or Subcontractor would like more information on wage determinations, the Wage and Hour Division has published a [guide to understanding wage determinations](#) [PDF](#). For more information, please visit DOL's [Prevailing Wage and the Inflation Reduction Act](#).

Q7. What do I do if there is no general wage determination for the geographic area of the IRA PWA Work?

A7. If there is no general wage determination for the geographic area of the IRA PWA Work, subject to the terms of the Contract Documents, Contractors, or Subcontractors may request a supplemental wage determination from the Wage and Hour Division of the Department of Labor. Subject to the terms of the Contract Documents, the Contractor, or Subcontractor should send requests for supplemental wage determinations to the U.S. Department of Labor at, U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210, or by email to iraprevailingwage@dol.gov.

Subject to the terms of the Contract Documents, the Contractor, or Subcontractor should make requests for a supplemental wage determination no more than 90 days before the Contractor expects to commence, substantially modify or extend the IRA PWA Work. In the absence of a contract, subject to the terms of the Contract Documents, the Contractor, or Subcontractor should make such requests no more than 90 days before construction, alteration, or repair of the IRA PWA Work starts.

Supplemental wage determinations issued by the Wage and Hour Division are effective for 180 calendar days from the date such determinations are issued. If a supplemental wage determination is not incorporated into the contract (or, in the absence of a contract, if construction has not started) during the 180-day period a new supplemental wage determination will need to be requested.

The request for a supplemental wage determination should contain all relevant information, including: the name of the Owner, Contractor, or Subcontractor requesting the supplemental wage determination or wage rate; the general wage determination(s), if any, applicable to construction, alteration, or repair of the IRA PWA Work; a description of the work to be performed, including the type(s) of construction involved and, if the project involves multiple types of construction, information indicating the expected cost breakdown by type of construction; the geographic area in which the IRA PWA Work is being constructed, altered, or repaired, including the name and address of the IRA PWA Work (if known); the date the Owner expects to enter into a contract with a Contractor for which a supplemental wage determination is needed; the start date of construction, alteration, or repair at the IRA PWA Work; the labor classification(s) needed for performance of the work on the IRA PWA Work (excluding those for which wage rates are available on an applicable general wage determination); the duties to be performed by each such labor classification on the IRA PWA Work; the proposed wage rate, including any bona fide fringe benefits, for each such labor classification; any additional relevant information

otherwise required by forms and instructions published by the U.S. Department of Labor; and any additional information the Owner, Contractor, or Subcontractor wants the U.S. Department of Labor to consider.

Q8. What do I do if the applicable general wage determination does not include all of the labor classifications that will be needed for the construction, alteration, or repair of the IRA PWA Work?

A8. If the applicable general wage determination does not include all of the labor classifications that will be needed for the construction, alteration, or repair of the IRA PWA Work, Contractors or Subcontractors (or the Owner) may request rates for an additional classification from the Wage and Hour Division of the Department of Labor. The Contractor, or Subcontractor should send requests for prevailing rates for additional classifications to the U.S. Department of Labor at, U.S. Department of Labor, Wage and Hour Division, Branch of Construction Wage Determinations, Washington, D.C. 20210, or by email to iraprevailingwage@dol.gov.

A request for prevailing wage rates for additional classifications can be made any time after a contract for the construction, alteration, or repair of the IRA PWA Work has been executed between the Owner and a Contractor. In the absence of a contract, Contractor, or Subcontractor should make such requests no more than 90 days before construction, alteration, or repair of the IRA PWA Work starts. If the Owner, Contractor or Subcontractor cannot reasonably determine prior to execution of the contract between the Owner and the Contractor or prior to the start of the construction, alteration, or repair work that an additional classification and wage rate is necessary, the Contractor, or Subcontractor should make such request as soon as practicable after determining that an additional classification and wage rate is necessary. Any wage rate for an additional classification that is issued applies from the earlier of the date of issuance or the first day in which work in the additional classification was performed.

The request rates for prevailing rates for an additional classification should contain all relevant information, including: the name of the Owner, Contractor, or Subcontractor requesting the supplemental wage determination or wage rate; the general wage determination(s), if any, applicable to construction, alteration, or repair of the IRA PWA Work; a description of the work to be performed, including the type(s) of construction involved and, if the project involves multiple types of construction, information indicating the expected cost breakdown by type of construction; the geographic area in which the IRA PWA Work is being constructed, altered, or repaired, including the name and address of the IRA PWA Work (if known); the date of execution of the contract with a Contractor for which a prevailing wage rate for an additional classification is needed; the start date of construction, alteration, or repair at the IRA PWA Work; the labor classification(s) needed for performance of the work on the IRA PWA Work (excluding those for which wage rates are available on an applicable general wage determination); the duties to be performed by each such labor classification on the IRA PWA Work; the proposed wage rate, including any bona fide fringe benefits, for each such labor classification; any additional relevant information required by forms and instructions published by the U.S. Department of Labor; and any additional information the Owner, Contractor, or Subcontractor wants the U.S. Department of Labor to consider.

Q9. Is it possible for more than one wage determination to apply to the construction, alteration, or repair of the IRA PWA Work at the same time?

A9. Yes. If construction, alteration, or repair of the IRA PWA Work takes place in more than one locality (i.e., if an applicable wage determination does not cover the entire geographic area in which construction of the IRA PWA Work will take place), then the Owner, Contractor, or Subcontractor must use the applicable wage determination for the work performed in each geographic area. The Contractor, or Subcontractor also is permitted to request a supplemental wage determination with respect to the IRA PWA Work and pay the rates determined by the DOL pursuant to the request.

Additionally, more than one wage determination may be applicable where two or more construction types (e.g. Heavy and Building) apply to the construction, alteration or repair of the IRA PWA Work.

Q10. When should the Contractor hired to perform construction, alteration or repair at the IRA PWA Work update the wage determination(s) that apply to the construction, alteration, or repair of the IRA PWA Work in order to comply with the prevailing wage provisions of the IRA?

A10. The applicable wage determination is the wage determination in effect at the time a contract for the construction, alteration, or repair of the IRA PWA Work is executed by the Owner and a Contractor. If the Owner executes separate contracts with more than one Contractor with respect to the construction, alteration, or repair of the IRA PWA Work, then for each such contract, including work performed by Subcontractors pursuant to that contract, the applicable wage determinations are those in effect at the time the contract is executed by the Owner and the Contractor. If no contract exists with respect to the construction, alteration, or repair of the qualified facility (or if the date of execution of the relevant contract cannot be determined), the applicable wage determinations are those in effect at the time the construction, alteration, or repair work starts.

Contractors and Subcontractors who perform any alteration or repair of the IRA PWA Work after the IRA PWA Work is placed in service must use the applicable wage determination in effect at the time the contract for the alteration or repair work is executed by the Owner and a Contractor.

The applicable general wage determination generally remains valid for the duration of the work performed with respect to the construction, alteration, or repair of the IRA PWA Work by the Contractor, or Subcontractor. Additionally, the Contractor needs to update the applicable general wage determination when work on the IRA PWA Work is changed to include additional construction, alteration, or repair work not within the scope of work of the original contract, or to require work to be performed for an additional time period not originally obligated, including where an option to extend the term of a contract for the construction, alteration, or repair is exercised. A new applicable general wage determination is not required if the Contractor is simply given additional time to complete its original commitment or if the additional construction, alteration, or repair work in the modification of the contract is merely incidental.

If the Owner enters into a contract for alteration or repair work over an indefinite period of time that is not tied to the completion of any specific work, the applicable general wage determinations must be updated annually based on the contract execution date.

APPRENTICESHIP COMPLIANCE

Q1. What are the apprenticeship requirements of the IRA?

A1. The apprenticeship requirements of the IRA include three components — a labor hours requirement, a ratio requirement, and a participation requirement. Under the labor hours requirement, a minimum percentage of the total labor hours performed on the construction, alteration, or repair of the IRA PWA Work must be performed by qualified apprentices from a registered apprenticeship program. The applicable percentage is 10% for construction beginning before 2023, 12.5% for construction beginning in 2023, and 15% for construction beginning in 2024 or after. Under the ratio requirement, the applicable ratio of apprentices to journeymen established by the registered apprenticeship program must be met for apprentices working on the IRA PWA Work each day. Under the participation requirement, any Contractor, or

Subcontractor that employs 4 or more individuals at any time during the course of the construction, alteration, or repair of the IRA PWA Work prior to it being placed in service must hire at least one qualified apprentice (regardless of whether they are employed at the same location or at the same time).

The apprenticeship requirements only apply with respect to construction, alteration, or repair of the IRA PWA Work that occurs prior to the IRA PWA Work being placed in service. There are no apprenticeship requirements with respect to alterations or repairs after the IRA PWA Work is placed in service.

Q2. Where can I learn more about finding qualified apprentices?

A2. The DOL's Office of Apprenticeship, as well as state apprenticeship agencies, routinely provide technical expertise on registered apprenticeship program matters, including identifying registered apprenticeship programs, and assisting employers seeking to register their own programs. More information on finding qualified apprentices is available at ApprenticeshipUSA.

Q3. What is an apprentice's rate of pay

A3. Under the IRA's final regulations for prevailing wage and apprenticeship, apprentices must be paid at not less than the rate specified by the registered apprenticeship program for the apprentice's level of progress expressed as a percentage of the journeyworker hourly rate specified for the apprentice's classification in the applicable wage determination. Apprentices may be paid at less than the prevailing rate for work performed consistent with the occupation of the registered apprenticeship program if they are:

1. qualified apprentices from a registered apprenticeship program who perform work with respect to the construction, alteration, or repair of a qualified facility; or
2. individuals in the first 90 days of probationary employment as an apprentice in a registered apprenticeship program who have been certified by the DOL's Office of Apprenticeship or a state apprenticeship agency to be eligible for probationary employment as an apprentice.

In order to pay apprentices at wage rates less than the prevailing rates, the applicable apprentice-to-journeyworker ratio must be met for each day the apprentices perform work on the IRA PWA Work. Additionally, to satisfy the prevailing wage requirements, apprentices must be paid bona fide fringe benefits in accordance with the provisions of the registered apprenticeship program. If the registered apprenticeship program does not specify the payment of bona fide fringe benefits, apprentices must be paid the full amount of bona fide fringe benefits listed on the wage determination for the applicable classification in cash or in kind.

Q4. What is the Good Faith Effort Exception to the apprenticeship requirements?

A4. Under the Good Faith Effort Exception, the Owner in its discretion may determine that a Contractor or Subcontractor has satisfied the apprenticeship requirements if such Contractor or Subcontractor has requested qualified apprentices from a registered apprenticeship program and either:

1. the request was denied for reasons other than the Contractor's or Subcontractor's refusal to comply with the established standards and requirements of the registered apprenticeship program, or

2. the registered apprenticeship program failed to respond within five business days of receiving a request.

If the Contractor or Subcontractor submits a valid, written request for apprentices to a registered apprenticeship program and the request is denied or not responded to, the Owner in its discretion may determine that the Contractor or Subcontractor has exercised a Good Faith Effort with respect to the request for the period described in the request, but not exceeding 365 days (366 days in case of a leap year). The Good Faith Effort Exception only applies to the specific portion of the request for apprentices that was not responded to or was denied. The Contractor or Subcontractor will not satisfy a Good Faith Effort beyond 365 days (366 days in case of a leap year) of a previously denied request unless the Contractor or Subcontractor submits an additional request.

Q5. What are the requirements for submitting a request for apprentices in order to satisfy the Good Faith Effort Exception?

A5. Contractors or Subcontractors must submit a written request for qualified apprentices to at least one registered apprenticeship program which:

1. has a geographic area of operation that includes the location of the IRA PWA Work;
2. trains qualified apprentices in the occupation(s) needed to perform construction, alteration, or repair with respect to the IRA PWA Work; and
3. has a usual and customary business practice of entering into agreements with employers for placement of apprentices in the occupation for which they are training, consistent with the standards and requirements set forth in 29 CFR parts 29 and 30, and any subsequent guidance issued by the Department of Labor.

The request must be in writing and sent electronically or by registered mail. The written request must include the proposed dates of employment, occupation of qualified apprentices needed, location of the work to be performed, number of apprentices needed, the number of labor hours to be performed by the apprentices, and the name and contact information of the Contractor, or Subcontractor requesting employment of qualified apprentices from the registered apprenticeship program. Reasonable estimates are permissible.

The request must also state that the request for qualified apprentices is made with an intent to employ the qualified apprentices in the occupation for which they are being trained and in accordance with the requirements and standards of the registered apprenticeship program and to employ the qualified apprentices consistent with the number of hours and dates of employment specified in the request. If the employer of the requested qualified apprentices is not the same as the Contractor or Subcontractor submitting the request for qualified apprentices, then the request must include the name of the employer.

The Initial request to a registered apprenticeship program for qualified apprentices must be made no later than 45 days before the qualified apprentices are requested to start work. Any subsequent requests for qualified apprentices made to the same registered apprenticeship program after the initial request must be made no later than 14 days before the qualified apprentices are requested to start work.

Q6. Will Contractors or Subcontractors need to submit a request for qualified apprentices to more than one registered apprenticeship program?

A6. In order to satisfy the Good Faith Effort Exception, Contractors or Subcontractors need to submit a request for qualified apprentice to at least one registered apprenticeship program. While it may be possible for a Contractor or Subcontractor to satisfy all the apprenticeship requirements from one apprenticeship program, it is likely that given the multiple occupations involved in the construction, alteration, or repair of the IRA PWA Work, a Contractor or Subcontractor will need to request apprentices from more than one apprenticeship program. This is in part because a registered apprenticeship program typically trains apprentices in a single occupation, whereas more than one occupation will be needed to meet the apprenticeship requirements.

Q7. What if there is no registered apprenticeship program with a geographic area of operation that includes the location of the IRA PWA Work?

A7. If there is no registered apprenticeship program with a geographic area of operation that includes the location of the IRA PWA Work, the Owner in its discretion may determine that a Contractor or Subcontractor has satisfied the Good Faith Effort Exception for the apprentices they would have requested for that occupation. A Contractor or Subcontractor that cannot locate a registered apprenticeship program with an area of operation that includes the location of the IRA PWA Work should consider contacting the DOL's Office of Apprenticeship or relevant State apprenticeship agency for assistance in locating a program.

Q8. How often do I need to contact a registered apprenticeship program for qualified apprentices in order to satisfy the Good Faith Effort Exception?

A8. If the Contractor or Subcontractor submits a request as described in Q/A 5 and the request is denied or not responded to, the Owner may determine that the Contractor or Subcontractor has made a Good Faith Effort with respect to the request for a period described in the request but not exceeding 365 days (366 days in case of a leap year) from the date of the request. The Contractor or Subcontractor will not have exercised a Good Faith Effort beyond 365 days (366 days in case of a leap year) of a previously denied request unless the Contractor or Subcontractor submits an additional request.

There is no limit on the number of requests a Contractor or Subcontractor may submit to one or more registered apprenticeship programs for purposes of being deemed to have exercised a Good Faith Effort. Additionally, a Contractor or Subcontractor is not required to make subsequent requests to the same registered apprenticeship program in order to qualify for the Good Faith Effort Exception.

Q9. What happens if a registered apprenticeship program fails to respond to a request for qualified apprentices?

A9. If the registered apprenticeship program fails to respond to a valid request within five business days after the date on which such registered apprenticeship program received the Contractor's or Subcontractor's request, then such request is deemed to be denied. A valid response to a request for qualified apprentices is a substantive written reply that agrees, in part or in whole, to the specific requirements in the request.

Q10. What if a registered apprenticeship program denies part of a request because it is only able to provide some of the qualified apprentices that were requested?

A10. A registered apprenticeship program's response that it can partially fulfill the request in the occupation(s) for which it trains qualified apprentices does not constitute a denial of the request with respect to the parts of the request that can be fulfilled. The parts of the request that were denied because they cannot be fulfilled will qualify a Contractor or Subcontractor for the Good Faith Effort Exception with respect to the portion of the request which was denied if the Contractor or Subcontractor accepts the requested apprentices that can be fulfilled and the other requirements for the Good Faith Effort exception have been met.

NON-COMPLIANCE PAYMENTS AND CURE PROVISIONS AND RECORDKEEPING

Q1. How can a Contractor or Subcontractor correct a failure to meet the prevailing wage or apprenticeship requirements during the construction, alteration, or repair of the IRA PWA Work?

A1. Even if the prevailing wage or apprenticeship requirements were not met during any period of the construction, alteration, or repair of the IRA PWA Work, the statute allows a Contractor or Subcontractor to still be eligible to get the increased credit or deduction amounts by making certain correction and non-compliance payments. The Owner may determine that a Contractor or Subcontractor has satisfied the prevailing wage requirements if the Contractor or Subcontractor:

1. pays the affected laborers or mechanics the difference between what they were paid and the amount they were required to have been paid, plus interest at the Federal short-term rate (as defined in section 6621) plus 6 percentage points, and
2. pays a non-compliance payment to Owner of \$5,000 for each laborer or mechanic who was not paid at the prevailing wage rate in the year.

The non-compliance payment for failures concerning prevailing wages may not apply if the Contractor or Subcontractor quickly corrects certain limited errors or has a qualifying project labor agreement in place and timely corrects any failures to pay prevailing wages. The amount a Contractor or Subcontractor must pay to the laborer or mechanic as well as the non-compliance payment to Owner is increased if the failure is determined to be the result of intentional disregard.

To cure a failure to meet the apprenticeship requirements, a Contractor or Subcontractor must pay a non-compliance payment to Owner of \$50 multiplied by the total labor hours for which the apprenticeship requirements were not met. The amount of the non-compliance payment to Owner with respect to the apprenticeship requirements is also increased to \$500 per labor hour if Owner in its sole discretion or the IRS determines the failure was due to intentional disregard. The non-compliance payment for failures concerning apprenticeship requirements may not apply if the Contractor or Subcontractor satisfies the Good Faith Effort Exception or has a qualifying project labor agreement in place.

END OF SECTION 01 35 85