**Modifications to Contracts for IRA/179D Funding**

The following additions/modifications shall be made to Contract/Bidding Documents, as listed below, when pursuing the Inflation Reduction Act or 179D tax credit funding. See *the Inflation Reduction Act Guidance exhibit* for summary table to determine if domestic content requirements are required for specific project types pursuing IRA funding.

No modifications, other than those listed in this document, shall be made without prior authorization from the Office of the President.

The numbering of the contracts varies, so where highlighted, confirm numbering based on the contract used.

NOTE: for the sake of example, we have used the Design-Build contract and refer to the contractor as “Design-Builder”. Please update all highlighted terms for the delivery method of a specific project.

**Advertisement for Prequalification**

*For the* ***CM at Risk****,* ***Design Build, Progressive Design Build, Brief Design Build*** *and* ***Energy Savings Brief Design Build*** *delivery methods, the following shall be added to the Advertisement for Prequalification after “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”*

, and because funding under the Infrastructure Reduction Act is sought, this project is subject to requirements as set forth in Federal USC 45(b)(8), which include prevailing wage, reporting, and apprenticeship requirements enforced by the US Department of Labor.

*If domestic content is also required, the following shall be added at the bottom of the document:*

The project is seeking funding under the Infrastructure Reduction Act and is thus subject to requirements as set forth in Federal 26 USC 45(b)(9)(B), which include domestic content requirements and associated record-keeping.

**Advertisement for Bids**

*For the* ***Long Form****,* ***CM at Risk****,* ***Brief Form, Design Build, Progressive Design Build, Multiple Prime****,* ***Brief Design Build, and Energy Savings Brief Design Build*** *delivery methods, the following shall be added to the Advertisement for Bids or Announcement to Prequalified Proposers after “This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations”*

, and because funding under the Infrastructure Reduction Act is sought, this project is subject to requirements as set forth in Federal USC 45(b)(8), which include prevailing wage, reporting, and apprenticeship requirements enforced by the US Department of Labor.

*If domestic content is also required, the following shall be added at the bottom of the document:*

The project is seeking funding under the Infrastructure Reduction Act and is thus subject to requirements as set forth in Federal 26 USC 45(b)(9)(B), which include domestic content requirements and associated record-keeping.

**Instruction to Bidders**

*For the* ***Long Form, Brief Form, Informal Form, CM at Risk,*** *and* ***Multiple Prime*** *delivery methods, the following shall be* ***added*** *to the Supplementary Instructions to Bidders:*

**MODIFICATIONS TO ARTICLE 2 – Bidder’s Representations**

The following section, 2.1.9 is added to Article 2:

Bidder (or Proposer) also agrees that every contractor and all subcontractors at every tier shall follow the prevailing wage, payroll records, and apprenticeship requirements as set forth in 14.2, 14.3, and 14.4 of the Supplementary Conditions.

*If domestic content is also required, the following shall be added to the Supplementary Instructions to Bidders:*

## **MODIFICATIONS TO ARTICLE 2 – Bidder’s Representations**

The following section, 2.1.10 is added to Article 2:

Bidder (or Proposer) also agrees that every contractor and all subcontractors at every tier shall follow the Domestic Content and associated record-keeping requirements as set forth in 3.12.10 of the Supplementary Conditions.

**Bid/Price Proposal Form**

*For the* ***Long Form, Brief Form, Informal Form, CM at Risk,*** *and* ***Multiple Prime*** *delivery methods, the following shall be* ***added*** *to the Bid Form (or Price Proposal Form) at the end of* ***article 1- Bidder’s or (Proposer’s) Representations****:*

Bidder (or Proposer) also agrees that every contractor and all subcontractors at every tier shall follow the prevailing wage, payroll records, and apprenticeship requirements as set forth in Article 2.1.9 of the Instructions to Bidders.

*If domestic content is also required, the following shall be added to the end of* ***article 1- Bidder’s or (Proposer’s) Representations****:*

Bidder (or Proposer) also agrees that every contractor and all subcontractors at every tier shall follow the Domestic Content and associated record-keeping requirements as set forth in 2.1.10 of the Instructions to Bidders.

*For the* ***Design Build, Progressive Design Build, Brief Design Build, and Energy Savings Brief Design Build*** *delivery methods, the following shall be* ***added*** *in the Price Proposal Form at the end of* ***article 1- Bidder’s or (Proposer’s) Representations****:*

Bidder (or Proposer) also agrees that every contractor and all subcontractors at every tier shall follow the prevailing wage, payroll records, and apprenticeship requirements as set forth in 14.2, 14.3, and 14.4 of the Supplementary Conditions

*If domestic content is also required, the following shall be added to the end of* ***article 1- Bidder’s or (Proposer’s) Representations****:*

Bidder (or Proposer) also agrees that every contractor and all subcontractors at every tier shall follow the Domestic Content and associated record-keeping requirements as set forth in 3.19.11 of the Supplementary Conditions.

**Supplementary Conditions**

*For the* ***Long Form****,* ***CM at Risk****,* ***Brief Form, Design Build, Progressive Design Build, Multiple Prime****,* ***Informal Form, Brief Design Build, and Energy Savings Brief Design Build*** *delivery methods, the following shall be* ***added*** *to the Supplementary Conditions (use Contractor, CM/Contractor, or Design Builder as appropriate):*

ADDITIONS TO ARTICLE 14.2 PREVAILING WAGE RATES

14.2.4 [Contractor, CM/Contractor,Design Builder] shall comply and shall ensure that all Subcontractors comply with the prevailing wage requirements for construction, alteration, or repair of a similar character in the locality in which the Work is performed as most recently determined by the Secretary of Labor, in accordance with subchapter IV of chapter 31 of title 40, United States Code (the “Federal Prevailing Wage”). Compliance with these sections is required by this Contract irrespective of whether the Work relates to a “qualified facility” under 26 USC 45(b). The [Contractor, CM/Contractor,Design Builder] shall, and shall ensure that all Subcontractors, maintain and preserve sufficient records, including books of account or records for work performed by the [Contractor, CM/Contractor,Design Builder], the Subcontractors, and their respective personnel, to establish that all workers, laborers, and mechanics were paid wages not less than such Federal Prevailing Wage rates, in accordance with the general recordkeeping requirements under Internal Revenue Code Section § 6001 and § 1.6001–1, et seq. [Contractor, CM/Contractor,Design Builder] shall comply with all reporting requirements designated by the Federal Government in order to receive any tax deductions related to the Federal Prevailing Wage. These reporting requirements may be updated frequently by the IRS and Treasury Department, and it is [Contractor, CM/Contractor, Design Builder]’s obligation to stay apprised and comply with all changes in reporting requirements.

14.2.5 The Federal Prevailing Wage rates are available at sam.gov. [Contractor, CM/Contractor,Design Builder] shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the Federal Prevailing Wages to all workers, laborers, and mechanics employed by such Subcontractors in the execution of the Construction Work. [Contractor, CM/Contractor,Design Builder] shall be responsible for all costs, fees, and penalties associated with any failure to pay the appropriate Federal Prevailing Wage rates. The amount of this penalty shall be determined pursuant to 26 USC 45(b)(7)(B)(i)(II) and 26 USC 45(b)(7)(B)(iii). Such amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. [Contractor, CM/Contractor,Design Builder] shall also pay to any worker, laborer or mechanic who was paid less than the Federal Prevailing Wage rate for the work or craft for which the worker was employed for any portion of the Construction Work amounts calculated pursuant to 26 USC 45(b)(7)(B)(i)(I). If [Contractor, CM/Contractor,Design Builder] fails to pay such amount within 30 days following receipt of written notice from the University, the University may pay such amounts and pursue reimbursement from [Contractor, CM/Contractor,Design Builder] for such amounts, plus interest and expenses. [Contractor, CM/Contractor,Design Builder] is required to comply with the requirements of this Article 14.2 to ensure that the entire tax deduction or credit (whether from 48/48E, 179D, or 30E) is realized. To the extent [Contractor, CM/Contractor,Design Builder] fails to follow the Article 14.2 requirements, [Contractor, CM/Contractor,Design Builder] will be responsible to the University for any tax deduction or tax credit shortfall plus interest.

14.2.6 In the event of any conflict between the State Prevailing Wage rates and the Federal Prevailing Wage rates, the higher amount shall be controlling under this Section.

 14.2. ADDITIONS TO ARTICLE 14.3 PAYROLL RECORDS

14.3.4 [Contractor, CM/Contractor,Design Builder] and every Subcontractor required to submit certified payrolls shall use the web-based electronic certified payroll reporting (eCPR) system to be named by University. The software shall be a web-based eCPR system accessed by a web browser. CM/Contractor and each Subcontractor will be furnished a log-on identification and password to access University's reporting system. Use of the system may entail additional data entry of weekly payroll information, including, without limitation, employee identification, labor classification, total hours worked and hours worked on the project, wage and benefit rates paid, etc. The required software shall be used regardless of the ability to interface with [Contractor, CM/Contractor,Design Builder]'s or Subcontractor's payroll and accounting software or system. On-line training in the use of the system will be available via the Internet. University may elect to schedule training classes in the use of the software and [Contractor, CM/Contractor,Design Builder] shall have all necessary personnel attend and shall require attendance by all Subcontractors.

ADDITIONS TO ARTICLE 14.4 APPRENTICES

14.4.8 [Contractor, CM/Contractor,Design Builder] shall comply and shall ensure that all Subcontractors comply with the apprenticeship requirements set forth in 26 USC 45(b)(8) (the “Apprenticeship Requirements”). Compliance with these sections is required by this Contract irrespective of whether the Work relates to a “qualified facility” under 26 USC 45(b). The [Contractor, CM/Contractor,Design Builder] shall, and shall ensure that all Subcontractors, maintain and preserve sufficient records, including books of account or records for work performed by [Contractor, CM/Contractor,Design Builder], the Subcontractors and their respective personnel, to establish that the Apprenticeship Requirements have been satisfied in accordance with the general recordkeeping requirements under Internal Revenue Code Section § 6001 and § 1.6001–1, et seq. [Contractor, CM/Contractor,Design Builder] shall comply with all reporting requirements designated by the Federal Government in order to receive any tax deductions related to these Apprenticeship Requirements. These reporting requirements may be updated frequently by the IRS and Treasury Department, and it is [Contractor, CM/Contractor,Design Builder]’s obligation to stay apprised and comply with all changes in reporting requirements.

14.4.9 [Contractor, CM/Contractor,Design Builder] shall cause all subcontracts to include the provision that all Subcontractors comply with the Apprenticeship Requirements. [Contractor, CM/Contractor,Design Builder] shall be responsible for all costs, fees, and penalties associated with any failure to comply with the Apprenticeship Requirements. The amount of this penalty shall be determined pursuant to 26 USC 45(b)(8)(D)(i)(II) and 26 USC 45(b)(8)(D)(iii). Such amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. If [Contractor, CM/Contractor,Design Builder] fails to pay such amount within 30 days following receipt of written notice from the University, the University may pay such amounts and pursue reimbursement from [Contractor, CM/Contractor,Design Builder] for such amounts, plus interest and expenses. To the extent that [Contractor, CM/Contractor,Design Builder] seeks to satisfy the Apprenticeship Requirements based on the good faith efforts standard set forth in 26 USC 45(B)(8)(D)(ii) (the (“Good Faith Efforts Exception”), [Contractor, CM/Contractor,Design Builder] shall be responsible for demonstrating to the Federal Department of Labor that the exception is applicable. [Contractor, CM/Contractor,Design Builder] is responsible for all costs and expenses associated with demonstrating compliance with the Good Faith Efforts Exception. [Contractor, CM/Contractor,Design Builder] shall be responsible for any costs, fees and penalties incurred by the University associated with such efforts. In the event [Contractor, CM/Contractor,Design Builder] has not received a final determination from the Department of Labor that the Good Faith Efforts Exception is applicable within 120 days following a determination that the Apprenticeship Requirements were not satisfied, the University may pay any costs, fees, and penalties necessary to satisfy the Apprenticeship Requirements and pursue reimbursement from [Contractor, CM/Contractor,Design Builder] for such amounts, plus interest and expenses.

*If domestic content is also required, the following shall be added to the Supplementary Conditions (use Contractor, CM/Contractor, or Design Builder as appropriate):*

14.4.10: [Contractor, CM/Contractor, Design Builder] is required to comply with the requirements of this Article 14.4 to ensure that the entire tax deduction or credit (whether from 48/48E, 179D, or 30E) is realized. To the extent [Contractor, CM/Contractor, Design Builder] fails to follow the Article 14.4 requirements, [Contractor, CM/Contractor, Design Builder] will be responsible to the University for any tax deduction or tax credit shortfall plus interest.

14.4.11: As part of the reporting requirements set forth in Articles 14.2 and 14.4, [Contractor, CM/Contractor, Design Builder] shall provide to the University documentation needed to comply with these provisions including, but not limited to documentation supporting (a) the location and type of the qualified facility, energy storage technology, or energy project, (b) applicable wage determinations, (c) the wages paid and hours worked for each of the laborer or mechanic classifications engaged in the construction, (d) the number of workers who received correction payments, (e) the amount of penalty payments owed with respect to any failures to pay applicable prevailing wage rates, (f) the wages paid and hours worked by qualified apprentices for each of the laborer or mechanical classifications engaged in the construction, (g) the total labor hours for the construction of the facility, energy storage technology or energy project by any laborer or mechanic employed by the taxpayer or any contractor or subcontractor, (h) the amount of hours for which you claim to have satisfied the apprenticeship requirements under the good faith effort exception, and (i) the amount of penalty payments owed with respect to any failure to meet the labor-hours requirement or the participation requirement. This list is not exhaustive and the University reserves the right to request additional supporting documentation.

## ADDITIONS TO ARTICLE 3.19.11 (3.17.11 in Progressive Design Build)

[Contractor, CM/Contractor,Design Builder] shall and shall ensure that all Subcontractors use products and materials that are incorporated into the [Project] that comply with the domestic content requirements set forth in 26 USC 45(b)(9)(B) as applied to 26 USC 48E(a)(3)(B) (**the “Domestic Content Requirements**”).   [Contractor, CM/Contractor,Design Builder] shall, and shall ensure that all Subcontractors, maintain and preserve sufficient records, including books of account or records for work performed by [Contractor, CM/Contractor, Design Builder], the Subcontractors and their respective suppliers, to establish that the Domestic Content Requirements have been satisfied in accordance with the general recordkeeping requirements under Internal Revenue Code Section § 6001 and § 1.6001–1, et seq.  [Contractor, CM/Contractor,Design Builder] shall provide, and shall cause its Subcontractor’s to provide, any certifications and substantiating product data required to demonstrate that the Domestic Content Requirements have been satisfied.  Contractor must review and submit Product Data for all steel, iron, or manufactured products as defined by the Domestic Content Requirements, to the University Representative prior to installation, and in accordance with Article 3 submittal procedures in the General Conditions and any related specifications.

To the extent that [Contractor, CM/Contractor,Design Builder], or any Subcontractor, wishes to rely on the exceptions available under 26 USC 48(d)(5) (the “**Exceptions**”) to demonstrate compliance with the Domestic Content Requirements, [Contractor, CM/Contractor,Design Builder] shall deliver to the University an attestation, signed by an officer of [Contractor, CM/Contractor,Design Builder] under penalty of perjury, that [Contractor, CM/Contractor,Design Builder] has made a good faith determination that the applicable products qualifies for either or both of the Exceptions together with reasonable documentation supporting the attestation.  Following receipt of the foregoing, the University will promptly review the same and advise [Contractor, CM/Contractor,Design Builder] as to whether the University is willing to accept the attestation as evidence of compliance with the Domestic Content Requirements.  Such determination will be made by the University acting reasonably and in good faith.

[Contractor, CM/Contractor,Design Builder] shall cause all subcontracts to include the provision that all Subcontractors comply with the Domestic Content Requirements.  [Contractor, CM/Contractor,Design Builder] shall be responsible for all costs, fees and penalties associated with any failure to comply with the Domestic Content Requirements including any reduction in the tax credit available under 26 USC(a)(3)(B).  Such amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum.  If [Contractor, CM/Contractor,Design Builder] fails to pay such amount within 30 days following receipt of written notice from the University, the University may pay such amounts and pursue reimbursement from [Contractor, CM/Contractor,Design Builder]  for such amounts, plus interest and expenses.

**Contract Exhibit**

*For the* ***Long Form****,* ***CM at Risk****,* ***Brief Form, Design Build, Multiple Prime****,* ***Informal Form, Brief Design Build, and Energy Savings Brief Design Build*** *delivery methods, the Inflation Reduction Act Guidance exhibit shall be* ***added*** *as a contract exhibit.*