



Lucas Metropolitan Housing Authority  
Procurement Department  
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Exhibit A – to be attached with Contract

### **1099 Workers and Davis Bacon Requirements**

The Department of Labor issued an Administrator’s Interpretation No. 2015-1 discussing the misclassification of employees as independent contractors. As stated in the July 15, 2015 release, “when employers improperly classify employees as independent contractors (1099 workers), the employees may not receive important workplace protections such as the minimum wage, overtime compensation, unemployment insurance and workers’ compensation.” The writer observes that classifying employees as independent contractors is usually an intentional misclassification to cut costs and avoiding compliance with labor laws. Possible results of the misclassification are an unfair playing field for employers who follow the rules, lower tax revenues for governments, and lack of benefits for workers.

While most misclassified employees are labeled independent contractors (1099 workers), there has been an increase of the number of instances where employees are labeled “owners”, “partners”, or “members of a limited liability company”. The determination of whether a worker is covered by the Fair Labor Standards Act (FLSA) is made by applying definitions and economic realities standards. If a worker is economically dependent on the employer, the worker is an employee. If the worker is in business for him or herself, the worker is an independent contractor or a sole proprietor. An employer would issue an independent contractor a 1099 and the worker would be responsible for filing his / her own taxes.

Generally, workers classified as independent contractors or “1099 workers” are covered by the Davis Bacon Act (DBA) and must be paid DBA wages and listed on the contractor’s certified payroll record if they are laborers or mechanics as defined in 29 CFR 5.2(m). Taxes must be withheld in accordance with applicable federal, state and local tax laws and IRS rules.

If the contractor/subcontractor hires an individual who is “self-employed,” but that individual has not taken the steps to become a business owner and is not, therefore, a “sole proprietor,” the contractor/subcontractor must pay the independent contractor the DBA wages and complete the certified payroll and withhold taxes, as if they are an employee.

If the business owner is a sole proprietor, the contracting entity must determine that the person they are contracting with is truly a bona fide sole proprietor of a company. The contracting entity must maintain a record of the company Federal Tax ID number and a copy of the business license in the contracting file. The contractor should verify if the sole proprietor plans to have anyone else assist with the work, as others brought on to perform laborer or mechanic work will be subject to the DBA. Such a bona fide sole proprietor is exempt from DBA and that individual is not required to submit a certified payroll showing withholding for weeks in which he or she does not employ others in the performance of work on the contract/project. However, it is recommended and LMHA will enforce that owners of a business who also perform construction work list themselves on a certified payroll and under the column for “Work Classification” insert the word “owner”.

Demetria M. Simpson, *President and Chief Executive Officer*  
Board of Commissioners

William J. Brennan, Chairman, Alisha M. Gant, Vice Chairman, Barbara J. Fuqua, Hugh W. Grefe, James A. Peppers





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An employee who owns at least a bona fide 20-percent equity interest in the enterprise in which employed, regardless of the type of business organization (e.g., corporation, partnership, or other), and who is actively engaged in its management, is considered a bona fide exempt executive. Upon request, the company must provide documentation that an individual it claims to be an owner is a bona fide owner and exercises the required management responsibilities. An example of illegal activity would be to earn money on a job and split it between 14 workers on the job – all called “owners”. It is impossible for 14 owners to each have a 20 percent equity interest in the company. Therefore, in this case, the contractor must pay each of the “owners” the required DBA wages.

If during the course of bidding a task order, the contractor realizes that there are job classifications that will be performed but are not listed on the wage determination table, it is the contractor’s responsibility to complete a form SF-1444 detailing the classifications needed and the proposed wage rate. The request will be submitted to the Department of Labor who will agree or disagree with the requests for an additional classification and the wages submitted.

In doing business with Lucas Metropolitan Housing Authority (LMHA), I understand that:

- 1) If I hire 1099 workers, it is my responsibility to pay the workers Davis Bacon wages and list them on a weekly certified payroll, and I must show withholdings and pay taxes per IRS rules.
- 2) If I am doing business with a bona fide sole proprietor, it is my responsibility to obtain and maintain a copy of their Federal tax ID number, a copy of their business license, and to obtain a certified payroll from the Contractor. If there are employees, the sole proprietor will furnish weekly certified payrolls with check stubs for the employees which will show withholdings. If the sole proprietor is a working owner, the contractor will provide a weekly certified payroll that lists themselves and under work classification, will state “owner”.
- 3) I will obtain certificates of insurance from the companies who I am subcontracting to, and provide to LMHA upon request. The limits of liability shall be the same as the limits that I am required to carry.
- 4) I will review the task order and submit a SF-1444 form for additional wage classifications and wages when necessary.
- 5) I will keep all business records, transactions related to the contract, papers and documents for three years after the final payment is made, for the purpose of audit or examination by the Housing Authority, HUD or Comptroller General of the United States or any of their duly authorized representatives.

Signed:  
Title:  
Company:  
Date:

Demetria M. Simpson, *President and Chief Executive Officer*  
Board of Commissioners

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