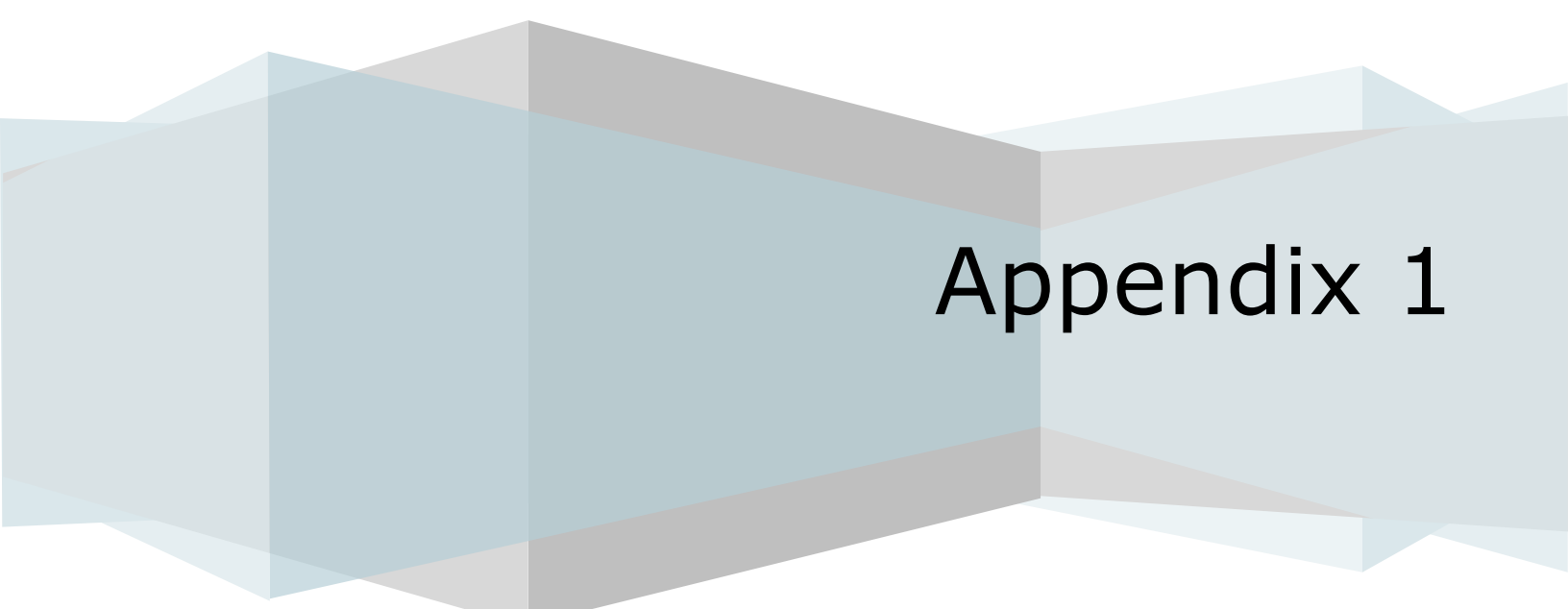


Bid & Contract Provisions

CDBG/HOME Guidebook



Appendix 1

Invitation to Bid

In addition to the language normally included in any advertisement for sealed bid for a construction project, the ad should contain the following references:

- 1) *This project is financed through the Community Development Block Grant program with funds obtained from the U.S. Department of Housing and Urban Development.*
- 2) *Davis Bacon Works Requirements: This project is subject to meet Federal Labor Standards Provisions Davis Bacon wage laws as explained in HUD form 4010. All work performed on the project will be subject to the approved wage determination rates in bid documents.*
- 3) *Equal Opportunity/Affirmative Action: Owner is an equal opportunity and affirmative action employer. Minority-owned and women-owned businesses are encouraged to submit bids.*

Bid Package

The Bid Package should contain the following

- a) Instructions to Bidders (see above for required advertisement language);
- b) Agreement, including time limit and liquidated damages;
- c) Federal Labor Standards Provisions, (HUD form 4010, a copy will be provided);
- d) Appropriate Davis-Bacon Wage Decision (copy will be provided);
- e) Specifications and drawings. Brand names can only be used if “or approved equal” is included in their reference.
- f) All new construction or rehabilitation construction contracts must include specifications and drawings to make the structure handicap accessible.
- g) A bid guarantee from each bidder equal to 5% of the bid price. The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

General Contract Provisions & Bonding Requirements

Equal Employment Opportunity – All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375 and as supplemented by regulations at 41 CFR part 60. The following language must be included in all contracts of **\$10,000 or more**.

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color,

religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Federal Labor Standards Provisions – Most contracts in excess of **\$2,000 for construction or repair** must include the Federal Labor Standards Provisions (HUD form 4010) which address the following:

The following are not subject to these provisions:

- **HOME** funded housing projects with **fewer than 12 HOME** assisted units.
- **CDBG** funded residential rehabilitation if property contains **less than 8 units**.

1. **Copeland “Anit-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)** – The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.
2. **Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)** – Most contracts of more than \$2,000 must include a provision for compliance with the Davis-Bacon Act and Dept. of Labor regulations (29 CFR part 5). Under this Act, contractors are required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. Wages must be paid not less than once a week.
3. **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** – Construction contracts in excess of \$2,000 and other contracts involving the employment of mechanics or laborers in excess of \$2,500, must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act. Each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay. The Act also provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

Rights to Inventions Made Under a Contract or Agreement – Contracts for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR Part 401.

Prohibition on the Use of Funds for Lobbying Activities: The Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, prohibits recipients of federal contracts, awards, cooperative agreements, and loans from using appropriated funds to influence the Executive or Legislative Branches of the federal government in connection with a specific contract, award, cooperative agreement, loan, or any other award covered by §1352. 18 U.S.C. 1913 makes it a crime to use funds appropriated by Congress to influence members of Congress regarding congressional legislation or appropriations. Finally, the following are unallowable charges to award funds or cost sharing: certain electioneering activities, financial support for political parties, attempts to influence federal or state legislation either directly or through grass-roots lobbying, and some legislative liaison activities.

Debarment and Suspension (E.O.s 12549 and 12689) – No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority.

Conflict of Interest –the following provision shall be included in every contract:
The Contractor covenants that no person, who presently exercises any functions or responsibilities in connection with the Kitsap County Block Grant Program, will obtain a personal or financial interest from the assisted activity. The Contractor further covenants that he/she presently has no interest in, nor shall he/she acquire any interest, direct or indirect, either for themselves or those with whom they have business, or family, which would conflict in any manner or degree with the performance of his/her services hereunder. The contractor further covenants that in the performance of this Agreement any potential conflict, on the part of the Contractor or his/her employees, will be disclosed to the Agency and the County.

All contracts in excess of \$25,000 must include provisions concerning the following:

- 1) **Breach of Contract** - contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- 2) **Termination** – suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- 3) **Access to Records** – provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

In addition to the above, construction contracts over \$100,000 require the following:

Bonding Requirements - The minimum bonding requirements for construction or facility improvement contracts over \$100,000 include:

- A Performance Bond on part of the contractor for 100% of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- A payment bond on the part of the contractor for 100% of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

- Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223.

Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended – Contracts in excess of **\$100,000** shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and Federal Water Pollution Control Act.

Section 3 Clause: If a grant recipient receives more than \$200,000 of CDBG or HOME funds for construction, demolition or rehabilitation and enters into a contract over \$100,000 then the contract must contain the Section 3 clause below.

- A. The work to be performed under this contract is subject to the requirements of section 3 of this Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 U (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance of HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, and be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers; representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. Attachments:
 - Section 3 Instructions
 - Section 3 Plan
 - Section 3 Opportunities Plan with Tables A&B