

Bid & Contract Provisions

CDBG/HOME Guidebook



Appendix 1a

CDBG Subrecipients

Bid and Contracting Requirements

Appendix 1a

For projects subject to 2 CFR Part 200

A. RFQ/RFP/Bid Language

In addition to the language normally included, the following language should also be included:

- 1) *This project is financed in part through the Kitsap County Community Development Block Grant program with funds obtained from the U.S. Department of Housing and Urban Development. No contract shall be made to parties listed as debarred or suspended in the federal System for Award Management (SAM).*
- 2) *Equal Opportunity/Affirmative Action: Owner is an equal opportunity and affirmative action employer. Small and Minority-owned businesses, women-owned businesses, and labor surplus area firms are encouraged to submit bids.*
- 3) *Section 3 Preference: The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, 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 shall to the greatest extent feasible, be directed to low-and very low-income persons. Section 3 businesses are encouraged to submit bid proposals.*
- 4) *Davis Bacon Works Requirements (if applicable): This project is required 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.*

B. MBE/WBE Outreach

To encourage small minority and women's business enterprise participation, contractors are encouraged to take actions that would increase opportunities for small and minority businesses and women's business in subcontracting. Affirmative steps include, but are not limited to:

- Placing qualified small and minority and women's business enterprises on solicitation lists;
- Assuring that these firms are solicited whenever they are a potential source;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by these firms;

- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Dept. of Commerce.

C. Competitive Proposals

Agencies are encouraged to submit RFQ/RFP or bid documents to locations which will best reach potential bidders. The following plan centers may be helpful:

Seattle Daily Journal of Commerce <http://www.djc.com/cust/IntroPages/JobsIntro.php>

Contractor Plan Center, Inc. <http://www.contractorplancenter.com/>

D. Bid Package

For projects that go out for competitive bid, the bid package should contain the following:

1. Instructions to Bidders;
2. Prime Contractors, if subcontractors are to be let, are required to take affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
3. Agreement, including time limit and liquidated damages;
4. Federal Labor Standards Provisions, (HUD form 4010, a copy will be provided);
5. Appropriate Davis-Bacon Wage Decision (copy will be provided);
6. Specifications and drawings. Brand names can only be used if "or approved equal" is included in their reference.
7. All new construction or rehabilitation construction contracts must include specifications and drawings to make the structure handicap accessible.
8. Bonding Requirements
9. Section 3 language, if applicable.

E. Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding \$150,000, subrecipients are required to have adequate bonding policy and requirements. The minimum requirements are as follows:

- A **bid guarantee** from each bidder equivalent to **5% of the bid price**. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- A **performance bond** on the 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 law of all persons supplying labor and material in the execution of the work provided for in the contract.

F. Contract Provisions and Language (2 CFR Part 200, Appendix II)

The following language should be included in all contracts as applicable:

Breach of Contract – All contracts for more than the \$150,000 (the simplified acquisition threshold) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.

Termination for Cause – All contracts in excess of \$10,000 must address termination for cause and for convenience including the manner by which it will be affected and the basis for settlement.

Equal Employment Opportunity – Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”. **The following equal opportunity clause must be included in all contracts and subcontracts:**

- (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:*
 - a. *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, sexual orientation, gender identity, or national origin.*
- (3) *The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee’s essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor’s legal duty to furnish information.*
- (4) *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 advising the said labor union worker’s representatives of the contractor’s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for*

employment.

(5) *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.*

(6) *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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

(7) *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 or federally assisted construction 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.*

(8) *The contractor will include the provisions of paragraphs (1) through (8) 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."*

Davis Bacon – Federal Labor Standards Provisions (if applicable)

Contracts subject to Davis Bacon requirements must include the following language:

This project is required 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 federal wage determination rates in bid documents.

Note: HUD form 4010 must be attached to the contract.

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 \$150,000 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.

Debarment and Suspension (E.O.s 12549 and 12689) – No contract shall be made to parties listed on the government wide exclusions in the System for Award Management (SAM). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded. **All contracts and subcontracts must include as an attachment the Certification Regarding Debarment and Suspension form.** It must be signed,

dated and submitted to the Kitsap County Block Grant Program office. The following language must be included in the contract:

The contractor agrees to certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency in accordance with Executive Orders 12549 and 12689, 24 C.F.R. Pt. 24.

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. **The Certification of Payments to Influence Federal Transactions form must be included as an attachment in all contracts and subcontracts.** It must be signed, dated and submitted to the Kitsap County Block Grant Program office. The following language must be included in the contract:

The contractor agrees to certify that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, or the entering into of any cooperative agreement.

Section 3 Hiring: If a grant recipient receives more than \$200,000 of CDBG or HOME funds for construction, demolition or rehabilitation 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. 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.

- E. *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.*

Bid & Contract Provisions

CDBG/HOME Guidebook



Appendix 1b

HOME Owner/Sponsor/Developer

Bid and Contracting Requirements

Appendix 1b

For projects NOT subject to 2 CFR Part 200

A. RFQ/RFP/Bid Language

In addition to the language normally included, the following language should also be included:

- 1) *This project is financed in part through the Kitsap County Community Development Block Grant program with funds obtained from the U.S. Department of Housing and Urban Development. No contract shall be made to parties listed as debarred or suspended in the federal System for Award Management (SAM).*
- 2) *Equal Opportunity/Affirmative Action: Owner is an equal opportunity and affirmative action employer. Small and Minority-owned businesses, women-owned businesses, and labor surplus area firms are encouraged to submit bids.*
- 3) *Section 3 Preference: The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, 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 shall to the greatest extent feasible, be directed to low-and very low-income persons. Section 3 businesses are encouraged to submit bid proposals.*
- 4) *Davis Bacon Works Requirements (if applicable): This project is required 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.*

B. MBE/WBE Outreach

To encourage small minority and women's business enterprise participation, contractors are encouraged to take actions that would increase opportunities for small and minority businesses and women's business in subcontracting. Affirmative steps include, but are not limited to:

- Placing qualified small and minority and women's business enterprises on solicitation lists;
- Assuring that these firms are solicited whenever they are a potential source;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- Establishing delivery schedules, where the requirement permits, which encourage participation by these firms;

- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Dept. of Commerce.

C. Competitive Proposals

Agencies are encouraged to submit RFQ/RFP or bid documents to locations which will best reach potential bidders. The following plan centers may be helpful:

- a. Seattle Daily Journal of Commerce
<http://www.djc.com/cust/IntroPages/JobsIntro.php>
- b. Contractor Plan Center, Inc.
<http://www.contractorplancenter.com/>

D. Bid Package

For projects that go out for competitive bid, the bid package should contain the following:

1. Instructions to Bidders;
2. If subcontractors are to be hired, prime contractors are required to take affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.
3. Agreement, including time limit and liquidated damages;
4. Federal Labor Standards Provisions, (HUD form 4010, a copy will be provided);
5. Appropriate Davis-Bacon Wage Decision (copy will be provided);
6. Specifications and drawings. Brand names can only be used if “or approved equal” is included in their reference.
7. All new construction or rehabilitation construction contracts must include specifications and drawings to make the structure handicap accessible.
8. Bonding Requirements
9. Section 3 language, if applicable.

E. Contract Language

The following should be included in all contracts:

Equal Employment Opportunity – Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity”. **The following equal opportunity clause must be included in all contracts and subcontracts:**

(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:

- a. *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, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) 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 advising the said labor union worker's representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) 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.

(6) 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) 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 or federally assisted construction 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.

(8) The contractor will include the provisions of paragraphs (1) through (8) 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."

Section 3 Hiring: If a grant recipient receives more than \$200,000 of CDBG or HOME funds for construction, demolition, or rehabilitation then **the contract must contain the Section 3 clause below:**

- 1. 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.*
- 2. 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.*
- 3. 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. 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*
- 4. 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.*
- 5. 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.*

Debarment and Suspension (E.O.s 12549 & 12689) - No contract shall be made to parties listed on the government wide exclusions in the System for Award Management (SAM). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded. **All contracts and subcontracts must include as an attachment the Certification Regarding Debarment and Suspension form.** It must be signed, dated, and submitted to the Kitsap County Block Grant Program office. The following language must be included in the contract:

The contractor agrees to certify that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency in accordance with Executive Orders 12549 and 12689, 24 C.F.R. Pt. 24.

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. **The Certification of Payments to Influence Federal Transactions form must be included as an attachment in all contracts and subcontracts.** It must be signed, dated, and submitted to the Kitsap County Block Grant Program office. The following language must be included in the contract:

The contractor agrees to certify that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, or the entering into of any cooperative agreement.

Davis Bacon – *Federal Labor Standards Provisions (if applicable)*

Contracts subject to Davis Bacon requirements must include the following language:

This project is required 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 federal wage determination rates in bid documents.

Note: HUD form 4010 must be attached to the contract.