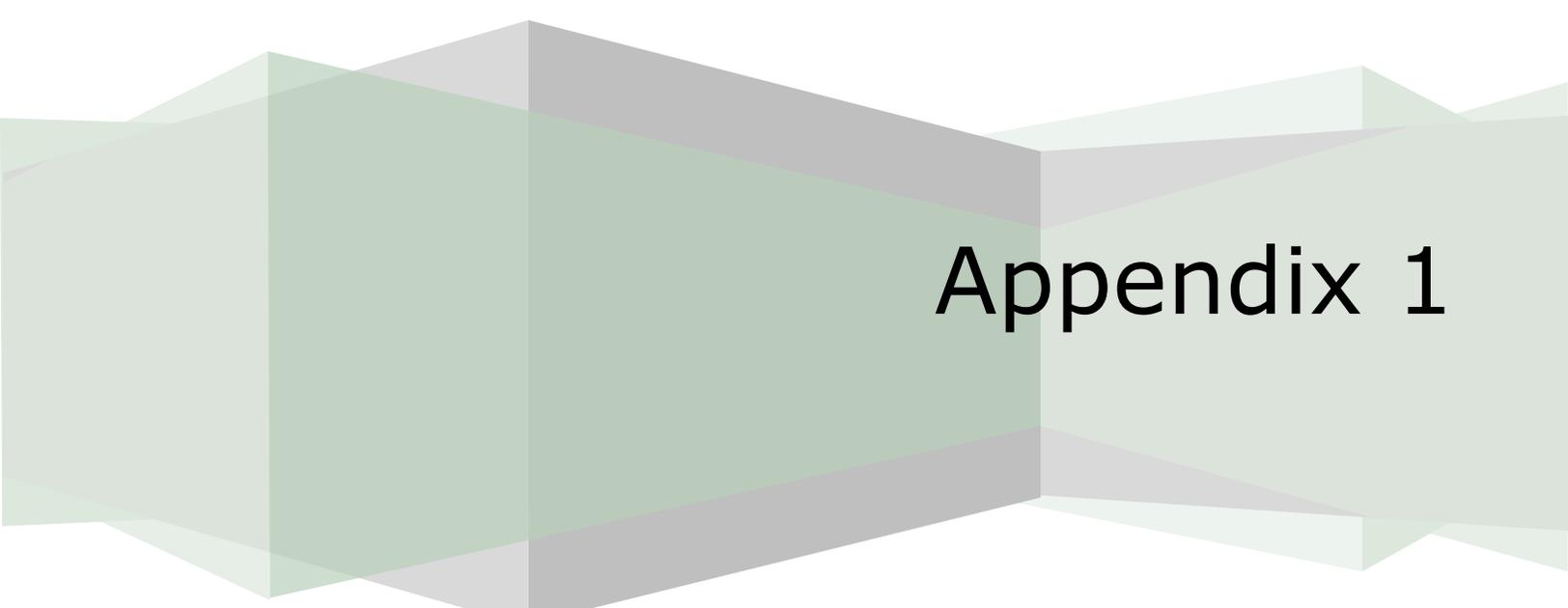


Bid & Contract Provisions

CDBG/HOME Guidebook



Appendix 1

Bid and Contract Requirements for grant recipients subject to 2 CFR Part 200.

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:

- 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) 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) Davis Bacon Works Requirements (if applicable): ***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.***
- 4) Section 3 Preference (if applicable): ***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.***

Agencies are encouraged to submit bid documents to locations which will best reach potential bidders and must also follow step 1 below under Bid Package in their own outreach to include minority-owned and women-owned businesses. The following plan centers may be helpful:

Associated Sub Contractors
4033 South Union
Tacoma, WA 98409
Phone (253) 460-4740

Construction Plan Center, CDCC
105 14th Ave., 1st Floor
Seattle, WA 98122
(206)323-0721

Bid Package

The Bid Package should contain the following:

1. Instructions to Bidders; In addition to normal bid instruction the following instructions should be included:
SMALL AND MINORITY AND WOMEN'S BUSINESS ENTERPRISES PARTICIPATION
Contractors are encouraged to take actions that would increase opportunities for small and minority businesses and women's business in subcontracting. Affirmative steps must include, but are not limited to:
 - i. Placing qualified small and minority and women's business enterprises on solicitation lists;

- ii. Assuring that these firms are solicited whenever they are a potential sources;
 - iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
 - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by these firms;
 - v. Using the services and assistance of the following:
 - a. Small Business Administration www.northwestmsdc.org
 - b. the Minority Business Development Agency
Department of Commerce
www.Omwbe.wa.gov
2. Agreement, including time limit and liquidated damages;
 3. Federal Labor Standards Provisions, (HUD form 4010, a copy will be provided);
 4. Appropriate Davis-Bacon Wage Decision (copy will be provided);
 5. Specifications and drawings. Brand names can only be used if “or approved equal” is included in their reference.
 6. All new construction or rehabilitation construction contracts must include specifications and drawings to make the structure handicap accessible.
 7. 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.
 8. Section 3 language, if applicable.

General Contract Provisions & Bonding Requirements

All contracts, including small purchases, awarded by subrecipients for CDBG/HOME funded work shall contain the provisions of 2 CFR Part 200 Subpart F Appendix II, as follows:

- 1. Breach of Contract** – All contracts for more than the \$150,000 (the simplified acquisition threshold) must have a provision that addresses administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide sanctions and penalties where appropriate.
- 2. 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 effected and the basis for settlement.
- 3. Equal Employment Opportunity** – All federally assisted contracts for construction shall contain a provision requiring compliance with Executive Order 11246, “Equal Employment Opportunity,” as amended by E.O. 11375 and as implemented by regulations at 41 CFR part 60. The following equal opportunity clause contained in Section 202 of the order 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: 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."

4. Davis Bacon – Federal Labor Standards Provisions (if applicable)

Most contracts in excess of \$2,000 for construction or repair must include the Federal Labor Standards Provisions (HUD form 4010). It must be referenced in the contract and included as an attachment.

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**.

5. Contract Work Hours and Safety Standards Act – Contracts in excess of \$100,000 that involve the employment of mechanics or laborer must include the following provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- Overtime Requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- Working Conditions** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require such laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

6. 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.

7. 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.

8. Debarment and Suspension (E.O.s 12549 and 12689) – No contract shall be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded. All subcontracts must include the following provision:

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.

9. 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. The following certification must be included in all subcontracts.

I, (name and title of bidder's official), hereby certify on behalf of (name of bidder) that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

10. In addition to the provisions above, construction contracts over \$150,000 require the subrecipient have a bonding policy and requirements are approved by the Block Grant Program and protect the interest of the City

of Bremerton, the Federal awarding agency or the minimum requirements are as follows:

- A **bid guarantee** from each bidder equivalent to **5% of the bid price**. The “bid guarantee” must be a firm commitment in the form of a bid bond, certified check, or other negotiable instrument as assurance that the bidder is prepared to execute a contract, upon acceptance of the bid, within the time specified for the bid amount.
- A **performance bond** from the contractor or sub-contractor for **100% of the contract price** to secure the contractor’s or sub-contractor’s fulfillment of all obligations under the contract.
- A **payment bond from the contractor or sub-contractor for 100% of the contract price** to assure payment of all persons supplying labor and material under 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.

Additional Contract Provisions

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 City of Bremerton 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.

Section 3 Hiring: 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