



We Are Columbia

CDBG DISASTER RECOVERY PROCUREMENT POLICY

APRIL 1, 2017

**CDBG DISASTER RECOVERY PROGRAM
DISASTER RELIEF ACT OF 2016
PUBLIC LAW 114-113
DECEMBER 18, 2015**

CITY OF COLUMBIA COMMUNITY DEVELOPMENT DEPARTMENT

CDBG DISASTER RECOVERY PROCUREMENT POLICY

These procedures are intended to serve as guidelines for the procurement of supplies, equipment, construction services and professional services for the City of Columbia Community Development Block Grant (CDBG) Disaster Recovery Program. These guidelines meet state requirements and the standards established in §2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (formerly 24 CFR 85.36).

CODE OF CONDUCT

The City of Columbia (the City) maintains these standards of conduct covering conflict of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts as required by 2 CFR Section 200.318. No employee, officer, or agent of the City of Columbia shall participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award.

If the City of Columbia has a parent, affiliate or subsidiary organization (that is not a state, federally recognized tribe, or local government), the entity must also maintain written standards of conduct covering organization conflicts of interest. Organizational conflicts of interest occur when the entity is unable, or appears to be unable, to be impartial in conducting a procurement action involving a related organization because of relationships with a parent company, affiliate or subsidiary organization.

To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft design plans and specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements as required in 2 CFR Section 200.319 (a).

Under the 1991 Ethics Reform Act, South Carolina Code of Laws, 1976 as amended, City of Columbia employees are prohibited from accepting *anything of value* from any person such as contractors or firms, potential contractors or firms, or parties to sub-agreements. *Anything of value* includes, but is not limited to, lodging, transportation, entertainment, food, meals, beverages, money, gifts, honorariums, discounts and interest free loans.

Any alleged violations of these standards of conduct shall be referred to the City of Columbia Attorney. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer; where violations or infractions appear to be substantial in nature, the matter may be referred to the appropriate officials for criminal investigation and possible prosecution.

PROCUREMENT PROCEDURES

The director of each department or agency of the City of Columbia responsible for procurement of services, supplies, equipment, or construction obtained with Disaster Recovery CDBG funds shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the Director, an analysis to determine which approach would be the most economical shall be undertaken.

The City of Columbia shall take affirmative steps to assure that small and minority firms, women's business enterprises, and surplus labor firms are solicited whenever they are potential qualified sources. The City of Columbia shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms, women's business enterprises, and labor surplus firms. Where permitted by regulations, delivery schedules will be developed that will include participation by such businesses. The City of Columbia shall assist the prime contractor whenever possible by providing lists that identify qualified small and minority firms, women's business enterprises, and labor surplus area firms.

SELECTION PROCEDURES

All goods and services procured with CDBG Disaster Recovery funds shall be carried out in a manner that provides maximum free and open competition. Procurement procedures will not restrict or eliminate competition. The City of Columbia shall not place unreasonable requirements on firms in order for them to qualify to do business. Nor will the City of Columbia encourage or participate in noncompetitive practices among firms. The City of Columbia is alert to organizational conflicts that would jeopardize the negotiation process and limit competition. The City of Columbia will not require unnecessary experience or bonding.

Pursuant to state law and federal regulations at 2 CFR 200.319 (c), all solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. A *brand name or equal* description may be used to define the performance or other salient requirements of procurement. The specific features of the named brand that must be met by offerors shall be clearly stated.

All solicitations of offers shall clearly set forth all requirements that offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

Contracts shall be awarded only to responsible contractors/firms that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.

Consideration shall be given to such factors as the contractor's/firm's capacity, integrity, compliance with public policy, record of past performance, and financial and technical resources.

Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees will not preclude potential bidders from qualifying during the solicitation period.

METHODS OF PROCUREMENT

Direct procurement by the City of Columbia shall be made using one of the following methods depending on the type of service to be procured.

Small Purchase Procedures Relatively simple, informal procurement procedures will be used where the purchase of materials, single task services, supplies, equipment, and/or other property will not cost in the aggregate more than \$25,000 except where further limited by state law or Disaster Recovery CDBG policy. The procurement officer must obtain a minimum of three written price or rate quotations from qualified sources. Documentation on all quotations received shall be made a part of the file. Selections shall be made principally on price. Payment shall be made upon delivery or completion.

Competitive Sealed Bids/Formal Advertising Under this procedure, bids is publicly advertised in accordance with the state's Public Bid Law. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and that conforms to all the material terms and conditions of the advertisement for bids.

Competitive sealed bids can be used ONLY when the following criteria are met: (1) there are complete, adequate, and realistic specifications or purchase descriptions; (2) there are two or more responsible bidders who are willing and able to compete effectively; (3) the procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price. When formal advertising is used the following conditions shall be met:

- The advertisement for bids shall be publicly advertised in accord with state law.
- The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the advertisement.
- All bids shall be opened publicly at the time and place specified in the advertisement for bids.
- A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken.
- Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the Disaster Recovery CDBG Program.

Competitive Negotiation: Requests for Proposals/Qualification Statements. The technique of competitive proposals is normally conducted with more than one source submitting an offer and either a fixed price or cost-reimbursement type contract is awarded. All competitive proposals shall be conducted using a formal RFP/RFQ when conditions are not appropriate for the use of sealed bids. Architectural and engineering services must be procured via requests for qualification statements; administrative consulting services must be procured via requests for proposals. Other professional services may also be procured by requests for proposals. The following procedures will be used for competitive negotiation:

- Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from an adequate number of qualified sources;
- The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- All submittals will be honored and entered into the competition.
- Request for proposals or qualification statements shall contain a detailed list of tasks in the proposed scope of work that is expected to be accomplished.
- The request for proposals or qualification statements shall identify all significant evaluation factors or selection criteria, including the corresponding point system that will be used to rate the proposals/qualification statements. Requests for proposals shall always include cost and at least one non-cost evaluation factor.
- The selecting official (or committee, if one is designated) shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement that identifies the basis upon which the selection was made; including the importance of cost (for RFPs).

A contract award will be made to the responsible offeror whose submission is deemed most appropriate to the City of Columbia with consideration for price, qualifications, and other

factors set by the local governing body. Unsuccessful offerors shall be notified in writing within ten working days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.

For qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, at least three firms will be solicited. Following the review of the qualification statements received, the most qualified competitor will be selected to enter into contract negotiation. This shall always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into a contract.

Noncompetitive Negotiation/Sole Source Noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiation will involve solicitations of a proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures result in only one proposal or qualification statement. Noncompetitive negotiation shall only be used when written authorization has been obtained from the U.S. Housing and Urban Development (HUD) In order to qualify for this type of procurement, one of the following circumstances must apply:

- The item or service is available only from a single source;
- It is determined that a public urgency or emergency exists and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
- After solicitation of a number of sources, competition is determined to be inadequate.

PROTESTED SOLICITATIONS AND AWARDS

Right to protest. Any actual or prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the appropriate procurement officer. The protest, setting forth the grievance, shall be submitted in writing within five (5) days after such aggrieved persons know, or should have known of, the facts giving rise thereto, but in no circumstance after 10 days of notification of contract award.

Authority to resolve protests: The appropriate procurement officer shall have authority, prior to the commencement of an administrative review, as provided in this article, to settle and resolve a protest of an aggrieved bidder, offeror, contractor or subcontractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be utilized in a manner consistent with regulations or laws governing the procurement of supplies, services and construction for the city.

Decision. If the protest is not resolved by mutual agreement, the appropriate procurement officer shall promptly issue a decision in writing within 10 days. The decision shall state the reasons for the action taken.

Notice of decision. A copy of the decision shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

Finality of decision. A decision of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review in writing, setting forth the grievance, to the city manager within 10 days of the decision. The protestant may also request an interview with the city manager.

Request for review. The request for a review shall not stay the contract unless fraudulent.

CONTRACT PRICING

Cost plus percentage of cost and percentage of construction cost methods of contracting **MUST NOT** be used. The City of Columbia shall perform cost or pricing analysis in connection with every procurement action including contract modifications in accordance with the requirements of *Cost and Price Analysis for HUD Grantees and Funding Recipients*. Costs or prices based on estimated costs for Disaster Recovery CDBG projects shall be allowed only to the extent that the costs incurred or the cost estimates included in negotiated prices are consistent with federal cost principals [48 CFR Part 31]. Lump sum prices will only be utilized when there is a definable work product and the quantity to be provided is certain and the contractor assumes all the risk for costs incurred. Unit prices can be utilized when there is a definable work product and the contractor assumes all the risk for costs incurred, but the quantity is estimated. Cost reimbursement will be utilized when the task does not result in a definable work product or the contractor will not assume the risk of incurring the cost to complete the task. Cost reimbursement, unit or lump sum price, or a combination thereof may be utilized as appropriate.

A cost reimbursement type contract is most appropriate when the scope and extent of the work to be performed are not clearly defined, such as a professional services contract. A cost reimbursement contract **MUST** clearly establish a cost ceiling which may not be exceeded without formally amending the contract, and must identify a fixed dollar profit that may not be increased unless there is a contract amendment that increases the scope of the work.

A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract can only be awarded when fair and reasonable prices can be established through adequate price competition and the solicitation is based principally on price.

A fixed price contract **MUST** establish a guaranteed price that may not increase unless there is a contract amendment that increases the scope of the work.

PROCUREMENT RECORDS

The City of Columbia shall maintain records sufficient to detail the history of all CDBG Disaster Recovery procurements. The Procurement Record shall include documentation of:

- The determination and rationale for selecting the method of Procurement from among the methods permissible under these guidelines;
- The process used to determine best value, the manner in which the evaluation process was conducted, and the evaluation criteria which, whenever possible, shall be quantifiable;
- The rationale for selecting the specific Contractor or Vendor and the basis upon which cost was determined to be reasonable.

- For each amendment to an existing Contract, especially those containing material changes (e.g., changes in scope, performance period, price, price ceiling, etc.), a written justification shall be included in the Procurement Record.
- Determinations of emergency with respect to Emergency Selection Contracts shall be included in the Procurement Record, as well as the determination to enter into a Sole Source or Single Source Contract.

ECONOMIC OPPORTUNITIES FOR SECTION 3 RESIDENTS AND BUSINESSES

It is the policy of the City of Columbia to require its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment.

Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) requires the City of Columbia to ensure that employment and other economic and business opportunities generated by HUD financial assistance, to the greatest extent feasible, are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low income persons.

Section 3 requirements are triggered whenever the need for new employment, contracting or subcontracting is established for federally funded projects involving the construction or rehabilitation of housing, or other public construction projects, valued at \$200,000 or more and contracts of \$100,000 or more. Section 3 regulations apply to construction and professional services contracts alike and cover the entire project regardless of whether it is fully or partially funded by HUD.

Procurement and Contracting Policy

The City of Columbia will incorporate Section 3 Contracting Policy and Procedures in all procurements generated for use with HUD funding. This policy establishes goals for awarding contracts to Section 3 Businesses and Small Disadvantaged Businesses, formerly Minority and Women Business Enterprises (M/WBE). It is the responsibility of contractors, vendors and suppliers to implement progressive efforts to attain Section 3 compliance. The numerical goal is:

Ten percent (10%) of the aggregate number of new hires in any fiscal year.

The Section 3 Contract Clause specifies the requirements for contractors hired for Section 3 covered projects. Any contractor that does not meet the Section 3 numerical goals must demonstrate why meeting the goals were not feasible. All contractors submitting bids or proposals to the City of Columbia are required to certify that they comply with the requirements of Section 3. The City's Office of Business Opportunity tracks Section 3 compliance.

Section 3 Clause

All Section 3 covered contracts shall include the following clause:

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, as amended, 12 U.S.C. 1701u. The purpose of

Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD- assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

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.

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 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.

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.

With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract are subject to the provisions of Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

The City of Columbia will take all necessary affirmative steps to assure minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small, minority, and women's business enterprises;

- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above.

CONTRACT COST AND PRICE

The City of Columbia will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$150,000) including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the City will make independent estimates before receiving bids or proposals.

The City of Columbia must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the City of Columbia under Subpart E—Cost Principles of this part. The City of Columbia may reference its own cost principles that comply with the Federal cost principles. **The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.**

CONTRACT ADMINISTRATION

The City of Columbia shall maintain contract administration systems that ensure contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/ firms will be a factor in subsequent contract negotiations and award. Remedial action by the City of Columbia through legal processes shall be considered in instances of significant nonperformance.

PURCHASING DIVISION - SEGREGATION OF DUTIES

Segregation of duties is a vital and critical measure for effective internal controls in citywide procurement and contracting operations and to ensure the integrity of the business process. These measures further reduce the risk of erroneous and inappropriate actions and deter fraud and fraudulent acts. Staff with multiple functional roles has a greater opportunity to abuse powers within an organization. The City of Columbia clearly separates the roles of purchasing and finance including a separation of receiving (custody) of assets and recording, payments, monitoring and reviewer approval roles. Some specific examples of segregation of duties are as follows:

- The person who requisitions the purchase of goods or services is not the person who creates the purchase order or approves the purchase.
- The person who approves the purchase of goods or services is not the person who processes the invoices for payment.
- The person receiving an invoice is not the same individual creating the Purchase Order.
- The person who approves the purchase of goods or services is not able to obtain custody of checks to the recipient.
- The person who opens the mail is not the person handling fixed assets, invoicing, checks, etc.

Management is ultimately responsible for oversight, monitoring and review of the internal purchasing process. By performing periodic assessments and reviews of its procurement activities, the City will greatly reduce risks of fraud and abuse.

RESPONSIBLE CONTRACTORS

The City of Columbia will make awards only to responsible Contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. [2 CFR § 200.318(h)]. The City Community Development Department will assess vendor responsibility. Contractors and vendors must affirmatively demonstrate their responsibility and the responsibility of their proposed subcontractors.

PRE-QUALIFIED POOL (PQP) OF VENDORS

The City of Columbia may select contractors or vendors for any procurement activity from a qualified pool of potential contractors selected on the basis of an RFP or RFQ. Using a Pre-qualified Pool of Vendors allows aspects of the competitive process to be addressed early in a phased selection process so that vendors and contractors in the pool can be subsequently engaged on an accelerated, more efficient basis. Where a PQP has been established for a particular procurement, the solicitation of individual bids need not be publicly advertised. Contract award will be based on the lowest bid for specific services required. The City shall ensure that all panels include enough qualified sources to ensure maximum open and free competition. The City also will not preclude potential bidders from qualifying during the solicitation period. [2 CFR § 200.319(d)]

- State Agency or State Authority Contract. The City may enter into contracts with eligible vendors where the State has engaged in a competitive process to create a pool of eligible vendors for comparable services.
- Affiliated Agency Contract or Affiliated Agency Competitive Selection Process. Whenever an Affiliated Agency has completed a competitive process to create a pool of eligible vendors for the provision of goods and/or services, the City may enter into a contract with those vendors for such services, if for the same services and upon comparable terms.

- Intergovernmental Agreements. To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, the City is encouraged to enter into State and local intergovernmental agreements or inter-entity agreements, where appropriate, for procurement or use of common or shared goods and services. [2 CFR § 200.318(e)]

NO IN-STATE OR LOCAL GEOGRAPHICAL PREFERENCES

The City of Columbia must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws.

BONDING REQUIREMENTS

City of Columbia construction or housing rehabilitation contracts or subcontracts exceeding the Simplified Acquisition Threshold of \$150,000 may accept the City's contractor bonding policy and requirements provided that the federal awarding agency or pass-through entity has determined that the federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each bidder equivalent to five percent 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 its bid, execute such contractual documents as required within the time specified. [2 CFR § 200.325 (a)]
- A performance bond on the part of the Contractor for 100 percent 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. [2 CFR § 200.325 (b)]
- A payment bond on the part of the Contractor for 100 percent 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. [2 CFR § 200.325 (c)]

REQUIRED LANGUAGE IN CONTRACTS SUPPORTED BY FEDERAL FUNDS

All contracts supported by, or paid with, federal funds, and all terms required by any applicable federal statute, regulation, Federal Register notice, or policy shall be specifically incorporated by reference to such statute, regulation, Federal Register notice or policy. All CDBG-Disaster Recovery funded contracts must contain the applicable provisions described in Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is annexed to these procedures.

APPENDIX II TO PART 200

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, 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.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of *federally assisted construction contract* must include the equal opportunity clause in accordance with Executive Order 11246, *Equal Employment Opportunity*, as amended by Executive Order 11375 and implementing regulations at 41 CFR part 60, *Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor*.
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141- 3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations ([29 CFR Part 5, Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction](#)). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland Anti-Kickback Act (40 U.S.C. 3145). The Act provides that each contractor or subrecipient must 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 or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701- 3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40

U.S.C. 3702 and 3704. Less than 40 U.S.C. 3702 of the Act, each contractor must be 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 one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of *funding agreement* under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that *funding agreement*, the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, *Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements*, and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401- 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251- 1387), as amended - Contracts and subgrants in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act as amended. Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award must not 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 by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.