

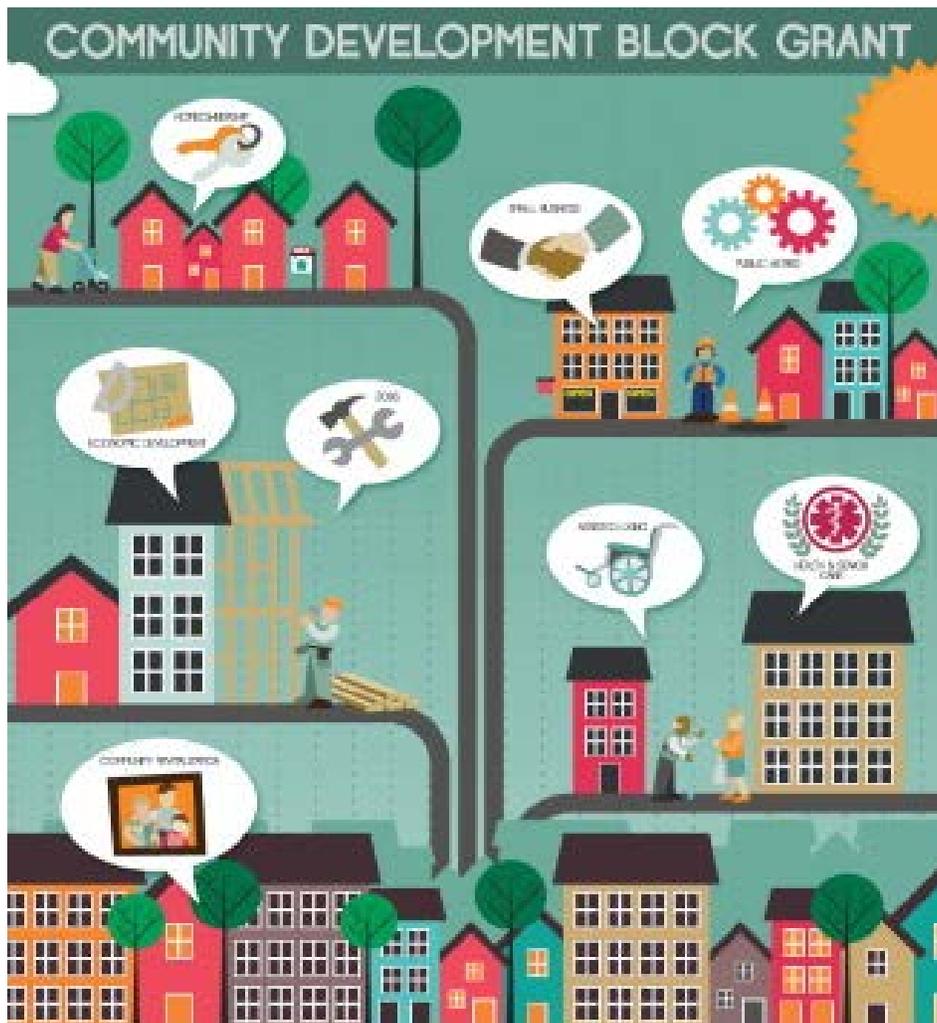


Clark County Department of Community Services



Community Development Block Grant Program Procedures Manual

2016



CLARK COUNTY
DEPARTMENT OF COMMUNITY SERVICES

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

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CHAPTER I

ORGANIZATION AND PROGRAM FUNCTIONS

I. COMMUNITY DEVELOPMENT PROGRAM

II. CITIZEN PARTICIPATION

III. PROCEDURES MANUAL

IV. ADDITIONAL INFORMATION

EXHIBIT I-1 CLARK COUNTY CDBG PROCESS FLOW CHART

I. COMMUNITY DEVELOPMENT PROGRAM

Clark County's Urban County Community Development Program was established to address local housing and community development needs. Funds are provided through the federal Community Development Block Grant (CDBG) program. First created by Congress in 1974, block grant funds are provided by the U.S. Department of Housing and Urban Development (HUD) and may be used to support a wide range of housing and community development projects. The purpose of the CDBG program is:

To develop viable urban communities by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income.

The program has been operating locally since 1985 when Clark County's population reached 200,000, qualifying the county to receive CDBG funds.

The CDBG program replaced a number of previous HUD grant programs, including Urban Renewal, Model Cities, Open Space, and Water and Sewer, allowing a more flexible approach to community development. The program is planned and controlled locally, although compliance with federal regulations is required; and, participating communities decide how to meet identified needs based on a local assessment.

To ensure cooperative local involvement in the program, a consortium of the county and participating cities is formalized by a three-year intergovernmental cooperation agreement. In this agreement, the county and the participating cities agree to work together to secure and administer the CDBG program. Each jurisdiction appoints a representative to the Urban County Policy Board (UCPB) which serves as the advisory body to the County Board of Councilors.

The Clark County Board of Councilors is responsible for administering the CDBG program. All policies relevant to program implementation, as well as final approval of the application for funds, must be approved by the Board of Councilors.

II. CITIZEN PARTICIPATION

A joint effort by the Department of Community Services and project subrecipients assures citizen participation in the County's CDBG program by providing opportunities as follows:

- Involvement in defining housing and community development needs during the periodic identification and evaluation of needs undertaken in each participating community;
- Review, via public hearings, Consolidated Annual Performance Evaluation Report, (CAPER), CDBG project proposals, proposed amendments to the Action Plan, and any substantive amendments to previously submitted lists of project activities; and,
- Comment and consideration of views at Urban County Policy Board (UCPB) and Board of Councilors meetings where CDBG program-related matters are under discussion.

- Jurisdictions who are members of the Clark County Community Development Consortium shall hold public meetings in their communities to solicit views about community development needs.
- Subrecipients should provide for adequate citizen information and involvement including, if appropriate, the formation of advisory committees composed of affected citizens to oversee the planning and implementation of projects.
- Non-profit organizations should also be invited to attend jurisdiction meetings to identify their community development needs.

III. PROCEDURES MANUAL

This manual is intended to provide information for use by subrecipients in the management of their CDBG projects. This edition of the manual has been simplified and updated to reflect the latest changes in Federal regulations and Clark County policies. If a subrecipient is unsure how to proceed after reading the manual, they are encouraged to call the Clark County Community Development Block Grant Program for direction.

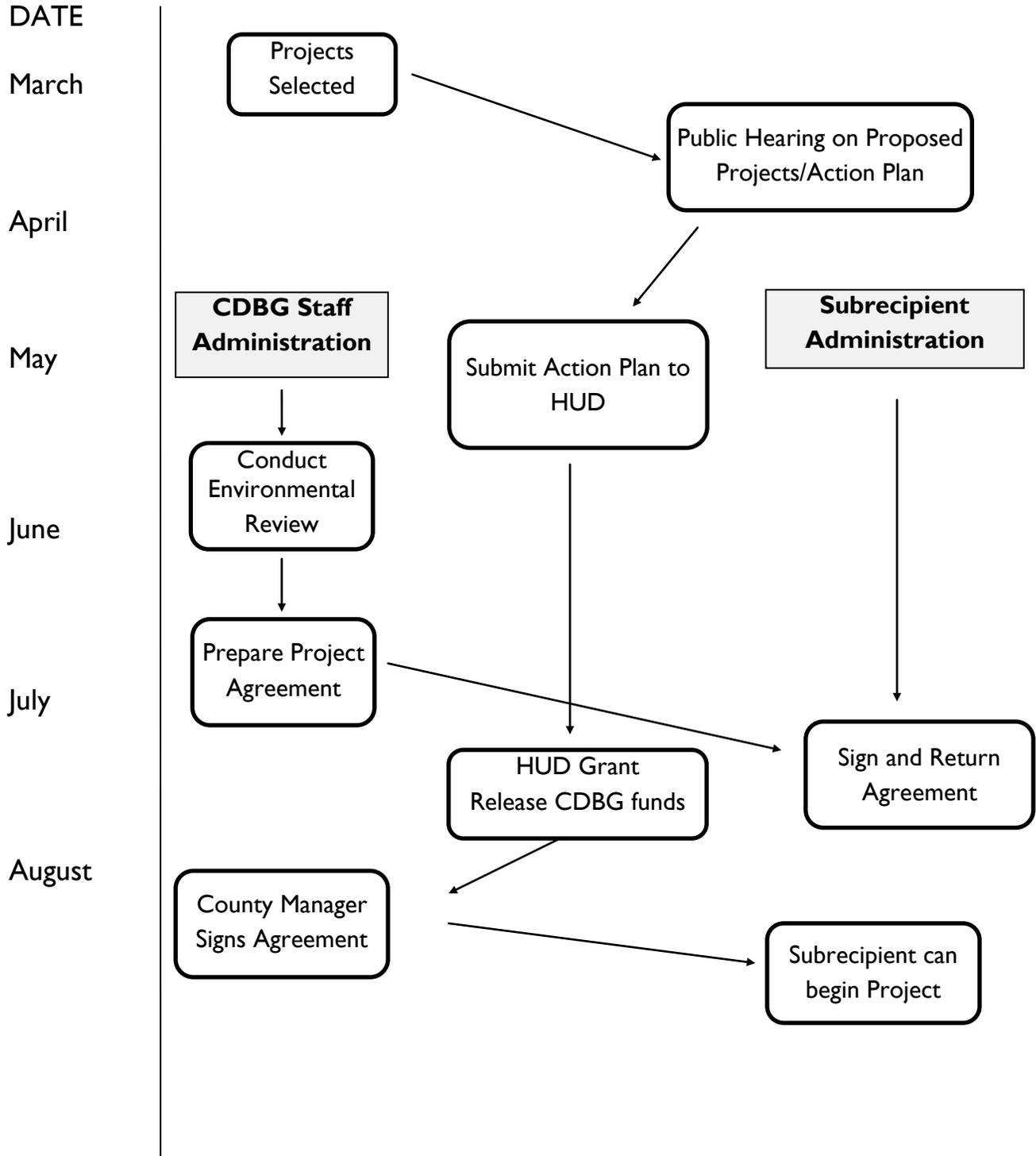
Periodically, subrecipients will be sent updated manuals when there have been regulatory or programmatic changes.

IV. ADDITIONAL INFORMATION

Additional sources of information about the Clark County CDBG program include:

- A list of Federal regulations which the Community Development Block Grant program must comply with is provided in Appendix A; and
- Various Federal circulars and regulations which are available through the Department of Community Services CDBG Program; and
- Exhibit I-I is a flow chart denoting the process each selected project must go through before actually receiving funds for implementation.

**EXHIBIT I-1
CLARK COUNTY CDBG PROCESS FLOW CHART**



CHAPTER 2

ENVIRONMENTAL REVIEW

- I. INTRODUCTION**
- II. GENERAL RESPONSIBILITIES**
- III. SUBRECIPIENT REQUIREMENTS**
- IV. CDBG PROGRAM REQUIREMENTS**

I. INTRODUCTION

Community Development Block Grant (CDBG) regulations require the preparation of an Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred on any project. The overall governing legislation is the National Environmental Policy Act (NEPA). Clark County CDBG staff must also determine whether the project meets other applicable statutory and regulatory requirements such as those of the Advisory Council on Historic Preservation and the Environmental Protection Agency.

II. GENERAL RESPONSIBILITIES

Federal regulations require Clark County to determine if project activities will cause adverse impacts to the human environment. The human environment is defined as the natural and physical environment and the relationship of people with that environment. In essence, the environmental review process must consider the ultimate effect of a proposed project, including the potential effects of both the CDBG portion and any related project activities. For example, if CDBG funds will be used to extend a water line to a site for a new affordable housing project, then the ultimate effect of the project is not only that of the new water line, but also the new housing. Therefore, the environmental review must address the impacts of both the CDBG-funded water line and the privately financed development of the housing. The scope of an environmental review encompasses this definition of a project.

The environmental review must identify and address the physical, social, and economic impacts of each proposed activity prior to the subrecipient taking *any choice-limiting action* on the activity. Any contractual obligation involving the proposed activity must leave “a way out” (i.e., an option agreement) prior to completion of the environmental review. Practically, this means no contract may be executed or work done on the site, whether publicly or privately funded, until the environmental review has been completed by Clark County.

Grant funds for choice-limiting activity costs may not be committed or drawn down, and cannot be incurred until the environmental review process has been completed. Environmental requirements vary according to the nature of the grantee’s project. Selecting activities that do not adversely affect the environment simplifies the environmental review process.

III. SUBRECIPIENT REQUIREMENTS

Project subrecipients may be asked to assist in the development of the ERR by providing additional information, maps, and site data. In some cases, subrecipients may be asked to complete a biological assessment or gain project clearance from the state historic preservation office.

Subrecipients shall comply with all terms and conditions of the ERR and shall implement all required mitigation measures identified in the ERR for the project. The subrecipient shall ensure that all activities related to their project (including those that are paid for entirely with local or other funds) including property acquisition, construction, and use of the property/facilities are conducted in accordance with the project scope, as defined in the ERR and with the conditions set out in the ERR. The subrecipient shall also retain a copy of any required environmental data and the CDBG executed project agreement on file.

IV. CDBG PROGRAM REQUIREMENTS

Clark County CDBG staff will complete the Environmental Review Record. The time required for completion of the ERR can vary from three weeks to three months. If the initial Environmental Assessment determines that an Environmental Impact Statement (EIS) or a Biological Assessment is necessary, the subrecipient will be required to make appropriate budget modifications to assure the costs of the EIS or BA are paid with project funds.

After completing the Environmental Review Record, CDBG staff will publish a notice of a Finding of No Significant Environmental Impact (FONSI) in a local newspaper declaring the intent to request release of project funds from HUD. After the release of the funds by HUD, CDBG will execute a written agreement to begin the project. *Subrecipients shall not implement any project activities nor incur any project costs until receipt of the executed agreement.*

CHAPTER 3

PROCUREMENT

I. INTRODUCTION

II. GENERAL RESPONSIBILITY

III. SUBRECIPIENT REQUIREMENTS

IV. METHODS OF PROCUREMENT

- 1) Small Purchases (under \$150,000)
- 2) Competitive Sealed bids (over \$150,000)
- 3) Competitive Proposals (over \$150,000)
- 4) Noncompetitive Proposals

V. PRICE AND COST ANALYSIS

- 1) Price Analysis
- 2) Cost Analysis

VI. TECHNICAL REQUIREMENTS

VII. CONTRACT COMPLIANCE

- 1) Professional Service Contracts
- 2) Construction Contracts
- 3) Project Plaque

VIII. SUBRECIPIENT DOCUMENTATION

EXHIBIT 3-1 REQUIRED FEDERAL CONTRACT CLAUSES FOR NON-CONSTRUCTION CONTRACTS

EXHIBIT 3-2 FEDERAL CONTRACT REQUIREMENTS

EXHIBIT 3-3 INVITATION TO BID LANGUAGE

EXHIBIT 3-4 PROJECT SIGN REQUIREMENTS

I. INTRODUCTION

The procurement of goods and services by government entities must follow the standards and procedures outlined in 2 CFR Part 200, including:

- Section 200.318 - General procurement standards.
- Section 200.319 - Competition.
- Section 200.320 - Methods of procurement to be followed.

These standards are to ensure that purchases of materials and services are obtained efficiently, economically, and in compliance with the provisions of applicable federal law. In addition, all local procurement procedures must be followed.

II. GENERAL RESPONSIBILITY

Regulations governing the purchase and procurement of goods and services with CDBG funds must be followed to assure that:

- 1) Procurement transactions are conducted in a manner that provides maximum free and open competition;
- 2) National goals (Equal Employment Opportunity, participation of Minority Business Enterprises (MBE's), and Fair Labor Standards) are adhered to throughout the procurement process;
- 3) Small, minority-owned businesses, women's business enterprises, and project area firms have an opportunity to bid on CDBG funded projects; and
- 4) Unnecessary or duplicate purchases are not made.

III. SUBRECIPIENT REQUIREMENTS

To achieve the objectives of the federal regulations, the following is required:

- 1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- 2) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals including federally-required contract language such as Equal Employment Opportunity, Davis-Bacon wage rates, and Section 3;
- 3) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources;

- 4) Any and all bids may be rejected when there are sound documented business reasons for doing so; and,
- 5) All subrecipients must have written procurement procedures for the purchase of goods and services.

IV. METHODS OF PROCUREMENT

Four methods of procurement are allowed; however only Small Purchases and Competitive Sealed Bids are commonly used. Rarely, Competitive Service Proposals and Noncompetitive Proposals may be allowable upon staff approval.

1) Small Purchases (under \$150,000)

- A) Small purchasing procedures are applicable for the procurement of services, supplies, or other property costing a total of not more than \$150,000. These purchases are relatively simple, informal and do not always involve competitive bidding. In obtaining goods or services by the small purchase method, second, third, and fourth class cities and towns should also follow where applicable the requirements of Title 35 23.352 of the RCW.
- B) Subrecipients must observe the following procedures in utilizing the small purchase procurement method:
 - i) A minimum of three competitive price quotes must be obtained.
 - ii) Competitive sealed bids or competitive negotiation procedures may be followed.
 - iii) Some form of cost or price analysis shall be made and documented in connection with every procurement action (cost and price analysis are discussed in greater detail in Section V. of this chapter).
 - iv) Professional Services Contracts must include federal contract clauses found in Exhibit 3-1.
 - v) Construction Contracts must include Clark County's "Supplementary General Conditions" found in Exhibit 3-2. Construction Contracts must also include a copy of the current Davis-Bacon Wage Decision in the contract.
 - vi) Contract Review: Subrecipient must provide a copy of the draft contract and evidence of at least three written quotes to CDBG staff at least 10 days prior to executing any contract with a vendor.

2) Competitive Sealed Bids (over \$150,000)

- A) This method of procurement is appropriate for all construction and material contracts exceeding \$150,000 and is strongly encouraged for contracts under \$150,000. Competitive sealed bids means sealed bids are publicly solicited through formal advertising and a formal bid opening is conducted. A firm fixed-price contract is awarded to the lowest responsive and responsible bidder (meaning the bidder whose bid conforms to all the material terms and conditions of the bid invitation and is the lowest in price). The contract awarded may be a lump sum or a unit price

contract. Construction contracts shall pay the current Davis-Bacon wage rates and include a copy in the contract. Some form of cost or price analysis shall be made and documented in connection with every procurement action (cost and price analysis are discussed in greater detail in Section V of this chapter).

- B) To contract for sealed bids, following receipt of the project Notice to Proceed from CDBG, subrecipients must follow, at a minimum, the steps outlined below:
- i) All bid documents should include the following:
 - (a) Instructions to Bidders (see Exhibit 3-3 for required advertisement language);
 - (b) Agreement, including time limit and liquidated damages;
 - (c) General Conditions (**IMPORTANT:** a copy of the Clark County CDBG Program's "Supplementary General Conditions," Exhibit 3-2 of this chapter, must be incorporated within the contract.); and,
 - (d) Davis-Bacon Wage Rates in effect at the time of the bid (*Davis-Bacon Wage Rates applicable to the project are those wage rates that are in effect 10 days before the date of bid opening*).
 - (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 handicapped accessible.
 - ii) Bid documents with an estimated construction cost exceeding \$150,000 shall also include the following:
 - (a) A bid guarantee equal to five percent (5%) of the proposed contract. The bid guarantee may be secured through a bid bond or a certified check.
 - (b) A separate Performance Bond and Labor and Material Payment Bond, each for one hundred percent (100%) of the contract price.
 - (c) The grant recipient will require the contractor to carry and provide evidence of general casualty (commercial liability) insurance to protect against legal liability arising out of contracts to be paid for in whole or in part with CDBG funds. Such insurance shall provide a minimum of \$1,000,000 per occurrence and \$2,000,000 per general aggregate limit with a maximum deductible of \$5,000.00. If the Contractor uses motor vehicles in conducting activities under this Agreement, liability insurance covering bodily injury and property damage shall be provided either through a self-insurance program or through a commercial insurance policy. Such insurance shall have minimum limits of \$500,000 per occurrence, combined single limit for bodily injury liability and property damage with no aggregate limit.
 - iii) Subrecipient shall provide a copy of the draft bid/contract document for CDBG program review at least 10 days prior to its release. CDBG Staff will review the bid documents and provide current Davis-Bacon wage rates for inclusion in the bid document.

iv) The subrecipient may advertise for bids following the review of the bid documents by CDBG. The subrecipient must:

(a) Advertise for bids in at least one general business newspaper and one minority newspaper. Advertisement shall include the language provided in Exhibit 3-3. Normal bid time is two to four weeks depending on the complexity of the project;

Local Minority-Owned Newspapers:

Portland Observer
4747 NE Martin Luther King Jr. Blvd
Portland, OR 97208
Phone: (503) 288-0033
FAX: (503)288-0015

The Skanner
415 N. Killingsworth
Portland, OR 97217
Phone: (503) 285-5555
FAX: (503) 285-2900

Hispanic News
P.O. Box 306
Portland, OR 97207
Phone: (503) 736-9878
FAX: (503) 228-3384

The Asian Reporter
922 N. Killingsworth, Suite 2D
Portland OR 97217
Phone: (503) 283-4440
FAX: (503) 283-4445

(b) Request the Affidavit of Publication. Subrecipient shall not pay for any advertising until the Affidavit of Publication is received.

(c) Distribute copies of the bid documents to local plan centers.

(v) Ten days before the bids are to be opened, check with the CDBG staff to determine if the Davis Bacon wage rates have changed. If the wage rates changed ten or more days before the bid opening, the new wage rates must be provided to prospective bidders through a formal addendum to the bid/contract document.

(vi) Following a minimum two-week bidding period, the subrecipient shall publicly open the bids received. CDBG staff may attend the bid opening. The subrecipient shall:

(a) Check with CDBG staff that the apparent low bidder is not on HUD's list of debarred or suspended contractors.

(b) Review the bids with the architect or engineer.

(c) Execute the Contract.

(d) Conduct a Preconstruction Conference. The General Contractor and all subcontractors must attend. CDBG staff attendance is required to provide forms and explain HUD requirements.

(e) Send Notice to Proceed to the General Contractor.

The following two procurement methods are for unique circumstances and rarely used by the Clark County CDBG program. Please contact staff for further guidance and approval.

3) Competitive Service Proposals

This method is appropriate for service contracts when cost is not the most important factor (i.e. professional services such as architectural or engineering). For contracts exceeding \$150,000, proposals are evaluated based on experience, price, personnel, and other pertinent factors. Some form of cost or price analysis shall be made and documented in connection with every procurement action (cost and price analysis are discussed in greater detail in Section V of this chapter).

4) Noncompetitive Proposals

Noncompetitive proposal is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, including competitive bidding, competition is determined inadequate.

V. PRICE AND COST ANALYSIS

Some form of cost or price analysis shall be made and documented in connection with every procurement action.

1) Price Analysis

Definition: A review and evaluation of a proposed price without evaluating separate cost elements. It must be used in all cases where a cost analysis is not performed. One or more of the following techniques may be used to perform a price analysis:

- A) Compare proposed prices received in response to the solicitation.
- B) Compare prior proposed prices and contract prices with current proposed prices for the same or similar items/services.
- C) Apply rough yardsticks (such as dollars per pound, per square foot, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- D) Compare competitive price lists (such as the Consolidated Supply Contract Catalog), published market prices of commodities, similar indices and discount or rebate arrangements.
- E) Compare proposed prices with your independent cost estimates.

2) Cost Analysis

Definition: A review and evaluation of the separate elements of cost which make up the contractor's cost proposal. A costs analysis is required when:

- A) The competitive proposal method of contracting is used for consulting and architecture/engineering (A/E) services.
- B) After soliciting sealed bids, you receive only one bid in response which differs substantially from your independent estimate.

- C) Negotiating a modification (including change orders) to any contract that changes the work previously authorized and impacts the price or estimated cost, upwards or downwards. Request a cost breakdown of the contractor's proposed cost.

If the price can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or the price is set by law or regulation, a cost analysis is not required.

D) Cost Analysis Techniques:

- i) Verify cost and pricing data and evaluate cost estimates, including:
 - a) Necessity for and reasonableness of proposed costs, including allowances for contingencies;
 - b) Projection of offeror's cost trends; and,
 - c) Technical appraisal (e.g., by an engineer) of proposed direct cost elements.
 - ii) Evaluate the effect of the offeror's current practices on future costs.
 - iii) Compare costs proposed by the offeror with:
 - a) Actual costs previously incurred by the same offeror;
 - b) Previous cost estimates from the offeror or other offeror's for the same or similar items;
 - c) The methodology to be used by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed?); and,
 - d) An independent cost estimate (or that of an independent architect, engineer, appraiser, etc.).
- E) Cost analysis also requires negotiating profit as a separate element of the price. In negotiating profit, consider the following:
- i) The complexity of the work to be performed;
 - i) The risk borne by the contractor;
 - ii) The contractor's investment;
 - iii) The amount of subcontracting;
 - iv) The quality of the contractor's record of past performance; and,
 - v) Industry profit rates in the surrounding geographical areas for similar work.

VI. TECHNICAL REQUIREMENTS

Any subrecipient using CDBG funds to purchase goods or services shall have formalized procurement procedures in place prior to contracting for any goods or services. At a minimum the project subrecipient's procurement procedures should:

- A) Address the avoidance of real or apparent conflicts of interest and specify standards of behavior;
- B) Follow competitive bidding/selection whenever possible;
- C) Make positive efforts and document, actions to attract small businesses, minority-owned businesses, and female-owned businesses to bid on CDBG contracts;
- D) Establish procedures to prohibit "cost plus a percentage of cost" and "percentage of construction cost" methods of contracting;
- E) Establish procedures to review contracts or requests for financial, contractual, and programmatic requirements prior to payment;
- F) Award the contract to the lowest bidder to provide required supplies, equipment, construction, and services unless there is a clear indication that the contract should not be awarded to the lowest bidder based on an assessment of the integrity, resources, capacity and past performance of the firm or person making the bid; and,
- G) Comply with the procurement procedures of Attachment B and Attachment O of 24 CFR Part 85.
- H) Some form of cost or price analysis shall be made and documented in connection with every procurement action.

VII. CONTRACT COMPLIANCE

Contract compliance is the administration of a written contract to insure compliance with the terms of the agreement, particularly quantity, quality, and timeliness. This section covers the responsibilities of the project subrecipients after the contract has been awarded.

1) Professional Service Contracts

The subrecipient must monitor consultants for a Certificate of Insurance and invoices for completion of stated work and current charges.

2) Construction Contracts

The subrecipient must monitor the General Contractor and provide to CDBG staff copies of the following:

- A) Bonds (Bid Bond, Performance Bond, Labor and Material Payment Bond);
- B) Certificate of Insurance (construction of new structures requires "Builder's All Risk" insurance, certificate shall name Clark County as an additional insured);
- C) Project Sign (see Exhibit 3-4);

- D) Submission by the contractor, of the Schedule of Values if the contract does not require unit prices;
- E) Written change orders;
- F) Retainage from each payment to the contractor;
- G) Check with CDBG staff to make sure Federal Labor Standards have been satisfied prior to releasing retainage.

All labor documentation will be monitored by CDBG staff including, but not limited to, the Contract Work Hours and Safety Standard Act, Davis-Bacon Act (wage rates), Section 3, and MBE requirements.

The Davis-Bacon Act requires contractors and subcontractors to pay laborers and mechanics minimum wages based on each particular classification and to pay time and one half for any work in excess of 40 hours per week. **The CDBG Program cannot reimburse costs unless all the laborers and mechanics have been paid the correct wage rates.** Workers who have been underpaid must be paid restitution to meet the minimum wage rates before all CDBG funds can be disbursed.

The U.S. Department of Housing and Urban Development Economic Opportunities for Low and Very Low-Income Person, Section 3, requires that subrecipients maintain records of the income, racial/ethnic, and jurisdiction of their residence for any new hires and of business/contractors/subcontractors hired for certain projects funded with CDBG funds. The CDBG staff will provide forms on which the data must be collected.

3) Project Plaque

All construction projects are required to include a plaque at the project site upon completion, unless a waiver is approved in writing by Clark County staff. The plaque must be located in a high traffic area and include the following information:

- Project name/description;
- Year of completion;
- Funded by the Clark County Community Development Block Grant Program through the US Department of Housing and Urban Development

VIII. SUBRECIPIENT DOCUMENTATION

Each project subrecipient must maintain and fully document the procurement process for each project. Chapter 6 describes in detail a suggested filing system and records which must be maintained.

EXHIBIT 3-1

Required Federal Contract Clauses for Non-Construction Contracts

Grantees must enter into agreements with consultants. In order to meet HUD and Clark County CDBG Program Requirements, agreements with contractors must include the following elements:

- Scope of services to be provided, consistent with County grant contract,
- Schedule for work completion,
- Budget and payment schedule,
- Provisions for termination for non or poor performance,
- Bonding and insurance requirements,
- “Cost plus a percentage of cost” and “percentage of construction costs” methods of contracting shall not be used. For example, an engineer may not be paid fifteen percent of the project construction costs; instead the contract must identify a firm fixed price or “not to exceed amount” that includes direct reimbursable expenses. Note that if a "cost-plus-fixed-fee" contract is used, the invoices should include at a minimum:
 - 1) Direct Labor: list any people who worked on the contract, their hours and the hourly rate (paid to them by the firm);
 - 2) Overhead: a percentage of direct labor cost usually 80-140%. The overhead pool usually includes clerical services and others not billed as direct labor;
 - 3) Other Direct Costs: reimbursables, printing, mileage, postage, etc.; and
 - 4) Fee: Fixed fee, which is prorated over the total billings.

Agreements must also include the following required Federal Contract Clauses:

- 1) Source of Funds
Work under this contract will be funded [in part/in its entirety] with federal grant funds from the Clark County Community Development Block Grant program.
- 2) Conflict of Interest
 - A) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a Contractor’s organizational, financial, contractual, or other interests are such that:
 - i) Award of the contract may result in an unfair competitive advantage; or
 - ii) The Contractor’s objectivity in performing the contract work may be impaired.
 - B) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The Owner may however,

terminate the contract or task/delivery order for the convenience of the Owner if it would be in the best interest of the Owner.

- C) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Owner may terminate the contract for default.
- D) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

3) Prohibition on the Use of Federal Funds for Lobbying

The following certification must be signed by all contractors and subcontractors:

4) Anti-Lobbying

By signing this Agreement the Contractor certifies that, to the best of its knowledge and belief:

- A) No federally appropriated funds have been paid or will be paid, by or on behalf of it, 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 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;
- B) 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, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
- C) It will require that the language of paragraph 1 and 2 of this anti-lobbying 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.

5) Examination and Retention of Contractor's Records

The owner, Clark County CDBG Program, HUD, or Comptroller General of the United States, or any of their duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

6) Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- A) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
- B) The contractor shall 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, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
- C) The contractor shall post in conspicuous places available to the employees and applicants for employment the notices to be provided by the contracting officer that explain this clause.
- D) The contractor shall, 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.
- E) The contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the contracting officer advising the labor union or workers' representative of the contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- F) The contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- G) The contractor shall furnish all information and reports required by Executive Order 11246, as amended and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- H) In the event of a determination that the contractor is not in compliance with this clause or any rule, regulations, or order of the Secretary of Labor, 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 under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- I) The contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary

of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if 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 the litigation to protect the interests of the United States.

7) Debarment and Suspension

- A) The Contractor shall comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by HUD at 2 CFR 2424, Nonprocurement Debarment and Suspension. The Contractor certify that neither it nor its principals, officers, employees and subcontractor(s) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. That information is available at <https://www.epls.gov/>.
- B) The Contractor shall provide written certification of the above to the County within thirty days of the start of this Contract, and maintain evidence of compliance in personnel files or with the subcontractor's documents.

8) Faith-Based Activities

The Contractor shall comply with the requirements of 24 CFR 470.200(j) and shall ensure that funds provided under this Agreement shall not be utilized for inherently religious activities such as worship, religious instruction, or proselytization.

9) Nondiscrimination

- A) General. The Contractor will comply with all federal, state and local laws prohibiting discrimination on the basis of age, sex, sexual orientation, marital status, race, creed, color, national origin, disability, or familial status. These requirements are specified in Section 109 of the Housing and Community Development Act of 1974 (42 USC Section 5309); Civil Rights Act of 1964, Title VII (42 USC Section 2000e); Civil Rights Act of 1968, Title VIII (Fair Housing Act) (42 USC Sections 3601 - 3639); Executive Order 11063 (Equal Opportunity in Housing); Executive Order 11246, as amended (Equal Employment Opportunity); Architectural Barriers Act of 1968 (42 USC 4151, et seq.); Americans with Disabilities Act (42 U.S.C. 12101, et seq.); and Section 3 of the Housing and Urban Development Act of 1968, and 24 CFR 570.601.
- B) Program Benefit. The Contractor will not discriminate against any resident of the project service area by denying benefit from or participation in any block grant funded activity on the basis of race, color, sex, sexual orientation, national origin, disability, age, marital status and familial status. (Civil Rights Act of 1964, Title VI; Civil Rights Act of 1968, Title VII; Architectural Barriers Act of 1968; Americans with Disabilities Act; Section 109, Housing and Community Development Act of 1974; Section 504, Rehabilitation Act of 1973 as amended).

- C) Fair Housing. The Contractor will take necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government (Civil Rights Act of 1968, Title VIII) (Fair Housing Act) (42 USC Sections 3601 – 3639).
- D) Employment. In all solicitations under this Agreement, the Contractor will state that all qualified applicants will be considered for employment. The words “equal opportunity employer” in advertisements will constitute compliance with this section.
- E) The Contractor will not discriminate against any employee or applicant for employment in connection with this Agreement because of age, marital status, and familial status, except when there is a bona fide occupational limitation. The Contractor will not refuse to hire, employ or promote, or bar, discharge, dismiss, reduce in compensation, suspend, demote, or discriminate in work activities, terms or conditions because an individual has a physical or mental disability in any employment in connection with this Agreement unless it can be shown that the particular disability prevents the performance of the work involved. Such action will 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. (Executive Order 11246, as amended.)
- F) Contractors and Suppliers. No contractor, subcontractor, union or vendor engaged in any activity under this Agreement will discriminate in the sale of materials, equipment or labor on the basis of age, sex, sexual orientation, marital status, race, creed, color, national origin, disability, and familial status. No contractor, subcontractor, union or vendor engaged in any activity under this Agreement will refuse to hire, employ or promote, or bar, discharge, dismiss, reduce in compensation, suspend, demote or discriminate in work activities, terms or conditions because an individual has a physical or mental disability in any employment in connection with this Agreement unless it can be shown that the particular disability prevents the performance of the work involved. Such practices include upgrading, demotion, recruiting transfer, layoff, termination, pay rate, and advertisement for employment. (Executive Order 11246 as amended)
- G) Limited English Proficiency. The agency shall take necessary and appropriate actions to assist clients with limited English proficient persons, Executive Order 13166 and the HUD Notice “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons” (Federal Register, January 22, 2007 pages 2731- 2754)
- H) The Contractor shall provide each applicant, participant, and beneficiary of activities funded by the agreement with information to apprise such persons of the protections against discrimination covered by the above Acts, Executive Orders, and regulations. The HUD 928.1 Notice found online at www.hud.gov/utilities/intercept.cfm?http://www.hud.gov/offices/fheo/promotingfh/928-1.pdf. The Clark County ADA and Section 504 of the Rehabilitation Act of 1973 Notice also provide such information.

10) Nonparticipation in Political Activities

The Contractor agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, Chapter 15 of Title V, United States Code.

11) Section 3 – Economic Opportunities

A) 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 USC 1701 (hereafter “Section 3”), and the implementing regulations at 24 CFR 135 (Economic Opportunities For Low- And Very Low-Income Persons). 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.

B) As evidenced by its execution of this Contract, the Contractor certifies that it is under no contractual obligation or other impediment that would prevent it 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 shall 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 should contain: (1) the number of jobs and the job titles subject to hire, (2) availability of apprenticeship and training positions and qualifications for each; (3) the name and location of the person(s) taking applications for each of the positions; and (4) the anticipated date the work shall begin.

D) The Contractor agrees to require this Section 3 clause in every subcontract subject to compliance with 24 CFR 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 a subcontractor is in violation of 24 CFR 135. The Contractor shall not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in to be in violation of 24 CFR 135.

E) By its signature to this Contract, the Contractor certifies 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 135 require employment opportunities to be directed, were not filled to circumvent the contractor’s obligations under 24 CFR 135.

F) Noncompliance with 24 CFR 135 may result in sanctions, termination of this Contract, and debarment or suspension from future HUD-assisted contracts.

EXHIBIT 3-2

FEDERAL CONTRACT REQUIREMENTS
U.S. DEPARTMENT OF HOUSING
and
URBAN DEVELOPMENT

Clark County Community Development Block Grant Program
Updated: 9/24/15

I. PRECONSTRUCTION CONFERENCE

Either before or soon after the actual award of the Contract (but in any event prior to the start to Work at site), the Contractor or his representative, and his subcontractors, shall attend a Preconstruction Conference with representatives of the Owner, the Engineer, or Architect, and Clark County. The Conference will be held to establish procedures for handling shop drawings and other submittals and for processing applications for payment, and to acquaint the participants with the general plan of contract administration and requirements under which the construction operation is to proceed. The date, time, and place of the Conference will be furnished to the Contractor by the Owner or the Architect/Engineer. The Contractor will notify his subcontractors of the Conference and require their attendance.

2. SUBMISSION OF COMPLIANCE DOCUMENTS

In order to document compliance with the Clark County Community Development Block Grant Program requirements and Federal regulations, the successful Bidder will be required to submit and to require his subcontractors to submit various forms and reports required by the Contract Documents, including: (a) HUD Contract and Sub-Contract Activity Form; and (b) HUD Weekly Payroll; whether the contractor or subcontractor is a sole proprietor, an owner performing all work on the project, a contractor with no employees, or otherwise. Contractors and subcontractors will be required to allow interviews with employees on the job during working hours.

3. ACCESS TO RECORDS

The Secretary of HUD, the Clark County Community Development Block Grant Program, the Comptroller General of the United States, the Owner and any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property of the Contractor and his Subcontractors pertaining to work performed under this Contractor and his Subcontractors pertaining to work performed under this Contract for the purpose of making surveys, audits, examinations, excerpts, and transcripts. The Contractor shall retain records pertinent to this Contract for a period of three years from the date of termination or completion of this contract.

4. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION

This certification is required by the regulations set forth in 2 CFR 180. The terms “covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded,” as used in this clause, have the meanings set out in 2 CFR 180.

By signing this Contract, the Contractor certifies that neither it nor its principals, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The Contractor shall provide immediate written notice to the Clark County Department of Community Services if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of

changed circumstances.

Before entering into a “covered transaction” with another party at the next lower tier, the Contractor agrees by signing this Contract that it will first verify that the person or party with whom it intends to do business is not excluded or disqualified. The Contractor may do this by:

- Checking the federal Excluded Parties List System (EPLS) at sam.gov;
- Collecting a certification from the person or party; or
- Adding a clause or condition to the covered transaction with that person or party that fully meets the requirements set out in 2 CFR 180.

The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person or party who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

The certification in this clause is a material representation of fact upon which reliance is placed at the time of Contract execution and at the time of any subsequent modification(s). If it is at any time determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Before hiring any new employee, the Contractor shall conduct a search of the Federal Excluded Parties List System referenced above to ensure that the individual is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The search must be conducted by the Contractor *prior to* making an employment offer. Evidence of search results must be maintained in the employee’s personnel file.

The Contractor shall maintain written documentation of its compliance with the above-stated requirements and make said documentation available to Clark County for review upon request.

5. INTEREST OF CERTAIN FEDERAL OFFICIALS

No member of or delegate to the Congress of the United States and no Resident Commissioners shall be admitted to any share or part of this Agreement or to any benefit that may arise hereunder.

6. INTEREST OF OWNER'S EMPLOYEES OR OTHER PUBLIC OFFICIALS

No member officer, or employee of Clark County, or its designees or agents, no member of the governing body of the city in which the Project is located, and no other public official of the city in which the Project is located who exercises any functions or responsibilities with respect to the Clark County CDBG Program during his or her tenure or for one year thereafter, shall have any interest, direct or indirect, in this

Agreement or any subcontract, or the proceeds thereof. The Contractor shall incorporate, or cause to be incorporated, in all subcontracts a provision prohibiting such interest.

7. CERTIFICATION REGARDING LOBBYING

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.

By signing this contract the undersigned certifies, to the best of his or her knowledge and belief, that:

- 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 any agency, a Member of Congress, an officer or employee 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.
- 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.
- 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.

8. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (41 CFR 60-4.2(d) - Executive Order 11246)

- A. The offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade	Goals for female participation in each trade
4.5%	6.9%

- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the covered area is Clark County, Washington.

9. HISTORICAL OR CULTURAL ARTIFACTS

In the event of an inadvertent discovery of potentially significant archaeological materials (bones, shell, stone tools, hearths, etc.) and/or human remains during project activities, all work in the immediate vicinity should stop, the area must be secured, and the discovery must be reported to the Department of Archaeology and Historic Preservation (DAHP) (360-586-3056) and all relevant Native American tribes. In the event human remains are identified, local law enforcement, the county medical examiner, State Physical Anthropologist at DAHP (360-586-3534), the Clark County planning office, and the affected Tribes should be contacted immediately. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required.

10. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (41 CFR 60-4.3 - Executive Order 11246)

- A. As used in these specifications:
 - 1. "Covered area means the geographical area described in the solicitation from which this contract resulted;
 - 2. "Director means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - 3. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. Whenever the Contractor, or any Subcontractor at any tier, Subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with the Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G 1 - 16 of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these

specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - 1. Ensure and maintain a working environment free of harassment, intimidation, and coercion, at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - 2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - 3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, recruitment source or community organization and of what action was taken with respect to each such individual, If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - 4. Provide immediate written notification to the Director when the union or union with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union

referral process has impeded the Contractor's efforts to meet its obligations.

5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organization such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
 11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing shall be provided to assure privacy between the sexes. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 15. Document and maintain a record of all solicitations of offers for subcontractors from minority construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 16. Conduct a review, at least annually, of all supervisors adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected to the

Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

- I. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security

number, race, sex, status (e.g., mechanic, apprentice trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the CDBG Program).

II. COMPLIANCE WITH EQUAL OPPORTUNITY PROVISIONS (EO 11246, Subpart B - Contractors' Agreements SEC. 202)

During the performance of this contract, the contractor agrees as follows:

- A. 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.
- B. 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.
- C. 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.
- D. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

- E. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by 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.
- F. In the event of the contractor's noncompliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, 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 September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractor will include the provisions of paragraphs (A) through (G) 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 the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

12. SECTION 3 (24 CFR 135.38)

- A. 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. 1701 (section 3). 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.
- 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 of 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. 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.

13. CERTIFICATION OF NONSEGREGATED FACILITIES

By signing the Bid Proposal, the Bidder certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The Bidder certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The Bidder agrees that a breach of this certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this Bid. As used in this certification, the term segregated facilities means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where he has obtained identical certification from proposed sub-contractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

*Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

14. FEDERAL LABOR STANDARDS PROVISIONS

A. Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

B. Minimum Wages

- I. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cost equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed, The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - The classification is utilized in the area by the construction industry; and
 - The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
3. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
4. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
5. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (B)(2) or (3) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (a) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor Shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (b) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations, under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

C. Withholding

HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

D. Payrolls and Basic Records

- I. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such

worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof of the types described in Section 1 (b)(2)(B) of the Davis Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the cost anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(1). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

2. Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5 (a)(3)(1) and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or

indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
3. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the Statement of Compliance required by paragraph D(2) of this section.
 4. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
 5. The contractor or subcontractor shall make the records required under paragraph D(1) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.
- E. Apprentices and Trainees
- Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under

the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a state Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

F. Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at

less than the applicable predetermined rate for the work performed until an acceptable program is approved.

G. Equal Employment Opportunity

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

H. Compliance with Copeland Act Requirements

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

I. Subcontractors

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

K. Contract termination; debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

L. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

M. Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

N. Certification of Eligibility

I. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

2. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., Federal Housing Administration transactions”, provides in part: “Whoever, for the purpose of.... influencing in any way the action of such Administration...makes, utters or publishes any statement knowing the same to be false... shall be fined not more than \$5,000 or imprisoned not more than two years, or both.”

O. Complaints, Proceedings, or Testimony by Employees

No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified, or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

P. Contract Work Hours and Safety Standards Act (CWHSSA)

As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. 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 he or she is employed on such work to work in excess of forty 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 forty hours in such workweek in any contract in an amount in excess of \$100,000.

2. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in subparagraph P(1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages.

In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph P(1) of this paragraph, in the sum of

\$10 for each calendar day which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph P(1) of this paragraph.

3. Withholding for unpaid wages and liquidated damages
HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph P(2) of this paragraph.
4. Subcontracts
The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph P(1) through P(4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs P(1) through P(4) of this paragraph.
5. Health and Safety
 - A. No laborer or mechanic shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
 - B. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).
 - C. The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

15. CLEAN AIR AND WATER POLLUTION CONTROL ACTS (Contracts in excess of \$150,000)

The contractor shall comply with all applicable standards, orders, or requirements issued under the Federal Water Pollution Control Act (33 USC 1251 et seq.) the Clean Air Act (42 USC 1857 et seq.), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Parts 15 and 61) including the following requirements:

- A. The Contractor warrants that any facility utilized in the performance of this agreement is not listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.
- B. The Contractor will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said sections and all regulations and guidelines issued thereunder.
- C. The Contractor agrees that as a condition for the award of this contract he will notify the owner of the receipt of any communication from the Assistant Administrator of EPA that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities; and will make any such notification promptly prior to contract award.
- D. The Contractor will include or cause to be included the criteria and requirements in paragraphs (A) through (D) of this article in every non-exempt subcontract and will take such action as the United States Government or its agencies may direct as a means of enforcing such provisions.

16. ENERGY EFFICIENCY

Contractor shall follow mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201) at Title 51 WAC, Department of Enterprise Services (Building Code Council).

GENERAL WAGE DECISION

U.S. Department of Labor

The following Federal Davis-Bacon wage rates are made a part of this agreement. The Contractor is responsible for complying with the current Federal wage decision during the construction period.

**CERTIFICATION OF BIDDER REGARDING SECTION 3
AND SEGREGATED FACILITIES**

Name of Prime Contractor

Project Name & Number

The undersigned certified that:

- (a) Section 3 provisions are included in the Contract.
- (b) If contract equals or exceeds \$100,000 Clark County Section 3 report will be submitted with the final pay estimate.
- (c) No segregated facilities will be maintained.

Name & Title of Signer (print or type)

Signature

Date

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certify on
name and title of bidder's official)

behalf of _____ that: (name
of bidder)

- (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 any 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 sub awards 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 is 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.

Executed this _____ day of _____, _____

By _____
(Signature of authorized official)

(Title of authorized official)

EXHIBIT 3-3
INVITATION TO BID LANGUAGE

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

"This project is financed through the Community Development Block Grant Program with funds obtained from the U.S. Department of Housing and Urban Development. The contract will be subject to regulations of the Departments of Labor and Housing and Urban Development.

Attention is called to Federal provisions for Equal Employment Opportunity, HUD Section 3 requirements, and the minimum wages as set forth in the contract documents."

EXHIBIT 3-4

PROJECT SIGN REQUIREMENTS

The Clark County CDBG Program requires that any construction project exceeding \$50,000 have a project identification sign located at the project site.

One project identification sign shall be provided and installed by contractor. Locate sign as directed by Architect/Engineer.

- A. Install project sign before any construction is started. Maintain sign for the duration of the construction.
- B. Remove sign within ten (10) days of Final Certificate of Payment.
 1. Fill all post holes.
 2. Finish site area as directed by Architect/Engineer.
 3. Upon removal of sign, sign and posts shall belong to owner as identified in the construction contract.

Specifications

- A. 3/4" plywood (minimum 4' x 5').
- B. Sign should have at least two foot clearance at grade and 3' embedment of support posts.
- C. Paint shall be white background. Background shall be three equal horizontal bands, top red, center white, and bottom blue. Lettering shall be black gloss.
- D. Lettering should not be less than 3 3/4" high.
- E. Information shall be all capital letters, all lines centered. Approximate layout:

<p style="text-align: center;">CLARK COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM</p> <p style="text-align: center;">[Project Name]</p> <p style="text-align: center;">This project is funded in whole or in part with funds provided by the U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)</p> <p style="text-align: center;">A COOPERATIVE COMMUNITY IMPROVEMENT PROJECT WITH [city or agency name]</p>

CHAPTER 4

REAL PROPERTY ACQUISITION/DISPLACEMENT/RELOCATION & ONE FOR ONE HOUSING REPLACEMENT

I. INTRODUCTION

II. GENERAL RESPONSIBILITIES

- 1) **Uniform Relocation Assistance & Real Property Acquisition Requirements**
- 2) **One-for-One Housing Replacement Requirements**

III. RESPONSIBILITIES AND PROCEDURES

- 1) **Considerations Before Acquisition**
- 2) **Real Property Acquisition Procedures**

IV. PROMISSORY NOTE AND DEED OF TRUST

V. SUBRECIPIENT DOCUMENTATION

EXHIBIT 4-1 ACQUISITION DECISION MATRIX

EXHIBIT 4-2 SAMPLE VOLUNTARY ACQUISITION OF PROPERTY LETTER FOR ENTITY WITH EMINENT DOMAIN AUTHORITY: INITIAL NOTICE TO OWNER

EXHIBIT 4-3 SAMPLE INVOLUNTARY ACQUISITION OF PROPERTY: INITIAL NOTICE TO OWNER

EXHIBIT 4-4 DONATION UNDER BASIC ACQUISITION WHERE EMINENT DOMAIN MAY BE USED

EXHIBIT 4-5 INVITATION FOR OWNER TO ACCOMPANY APPRAISER

EXHIBIT 4-6 WRITTEN OFFER TO PURCHASE

EXHIBIT 4-7 VOLUNTARY ACQUISITION OF PROPERTY LETTER FOR ENTITY WITHOUT EMINENT DOMAIN AUTHORITY: INITIAL NOTICE TO OWNER

I. INTRODUCTION

Community Development Block Grant projects involving property acquisition, displacement or relocation (temporary or permanent) or which involve the demolition or conversion of residential units occupied by low-income households must adhere to the requirements of:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Uniform Relocation Act Amendments of 1987 (URA), and
- Section 104(d) of the Housing & Community Development Act of 1974, as amended.

II. GENERAL RESPONSIBILITIES

1) Uniform Relocation Assistance & Real Property Acquisition Requirements

All acquisition of real property, permanent easements, and relocation of businesses, nonprofits, farms, or persons is to be conducted in accordance with the URA, which covers all HUD-assisted program/projects as required by 49 CFR Part 24 and 24 CFR Part 570.

The URA requirements apply to the acquisition of real property and permanent easements for CDBG-assisted projects. If CDBG funds are used for any part of the project, the URA must be followed, even if local or other non-CDBG funds are used to pay the acquisition costs.

The URA applies to:

- **ACQUISITION:** acquisition of fee simple title; acquisition of fee title that is subject to retention of a life estate or a life use; acquisition by leasing where the lease term, including option(s) for extension is 50 years or more; and to the acquisition of permanent easements. The Uniform Act also applies to donations of real property or easements.
- **DISPLACEMENT AND RELOCATION:** The URA covers displacement and relocation. All persons (families, individuals, businesses, non-profit organizations and farms) displaced (forced to move) as a direct result of rehabilitation, demolition or acquisition (privately or publicly undertaken) for a CDBG project are entitled to relocation payments. Clark County displacement and relocation policies (enacted in accordance with the URA) provide assistance to persons who are involuntarily displaced as a result of property acquisition by non-governmental agencies or as a result of substantial property rehabilitation.

2) One-for-One Housing Replacement Requirements

Section 104(d) of the Housing and Community Development Act requires replacement of low and moderate income housing units that are demolished or converted to another use in connection with a Community Development Block Grant assisted activity. “Low and moderate income dwelling unit” means a dwelling unit or home with a market rent

(including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for the Section 8 housing program. The unit can be occupied or vacant. The term does not include a unit that is owned and occupied by the same person(s) before and after rehabilitation.

III. RESPONSIBILITIES AND PROCEDURES

1) Considerations Before Acquisition

Before undertaking **any** acquisition procedures, the subrecipient should determine if **Federal Displacement/Relocation** or **One-for-One Housing Replacement** rules apply to the project. Subrecipients must contact Clark County CDBG staff if any of the following conditions are present:

- A) The property to be acquired is presently occupied by a family/families, an individual/individuals, a business/businesses, non-profit organizations or farm.
- B) If the property to be acquired includes a housing unit (or units) that is proposed for conversion to another use or to be demolished.

The procedures for the provision of relocation assistance and one-for-one housing replacement are extremely complex and must not be initiated by the grantee. *In the event it is determined that one or both of the above conditions are present, a CDBG/HOME staff person will be assigned to undertake the relocation and/or one-for-one replacement and charge their time to the project.*

2) Real Property Acquisition Procedures

The required steps for property acquisition differ according to the type of organization (government or non-profit) acquiring the property and in the case of acquisition by a government entity, whether the acquisition will involve the use of eminent domain. A decision matrix is provided in Exhibit 4-1 to help entities determine which of the following sets of steps is most appropriate for their property acquisition.

- A) Acquisition for Cities & Other Governmental Entities (Entities with Eminent Domain Authority)
 - i) *Voluntary Acquisition for an Entity with Eminent Domain Authority*
PLEASE NOTE: for acquisition by an entity with the power of eminent domain to be considered voluntary, it must meet the following condition: No specific site or property is designated for acquisition, although the entity may limit its search for alternative sites to a general geographic area. Where an entity wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly. The property to be acquired shall not be part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.

- (a) Arrange for at least one full independent narrative appraisal (MAI) of the property by a qualified appraiser. An exception to this requirement may be allowed for small, uncomplicated acquisitions with low fair market values (\$2,500 or less). Donated property does not have to be appraised.
 - (b) Issue a formal acquisition notice to the owner informing them of interest in acquiring the property. Exhibit 4-2 is a sample acquisition notice. The formal notice must:
 - Inform the property owner that the buyer will **not** use its power of eminent domain to acquire the property if negotiations fail to result in an amicable agreement; and
 - Inform the property owner of the buyer's estimate of the fair market value of the property. This figure may be based upon either the appraisal of the property or upon some other determination of fair market value, whichever is less. The purchaser must give the seller this written information before making an offer. If for any reason, the seller is not informed of these facts, and the sale is not closed, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty. Important Note: The basis for the buyer's estimate of fair market value must be prepared by a person familiar with real estate values, and must be backed with reasonable evidence. The *buyer's files* must include an explanation of the basis for the estimate. The buyer is not required to share the basis for its estimate of fair market with the property owner.
 - (c) The acquisition must go through real estate escrow. The escrow agent must be a neutral third party to the acquisition. Buyer must obtain title insurance for the acquisition.
- ii. *Involuntary Acquisition for an Entity with Eminent Domain Authority*
- (a) Issue a preliminary acquisition notice to the owner informing them of interest in acquiring the property and provide a copy of the HUD brochure, "When a Public Agency Acquires Your Property." Exhibit 4-3 is a sample acquisition notice.
 - (b) Arrange for at least one full independent narrative appraisal (MAI) of the property by a qualified appraiser. An exception to this requirement may be allowed for small, uncomplicated acquisitions with low fair market values (\$2,500 or less). Donated property does not have to be appraised if the requirements of the Uniform Act are met.
 - (c) Give the owner a written invitation to accompany the appraiser. Exhibit 4-4 is a sample appraisal invitation.
 - (d) Arrange for a review appraisal to assure appraisal meets applicable standards.
 - (e) Establish just compensation for the property by official resolution. The just compensation should not be less than the approved appraisal of the fair market value of the property, taking into account allowed damages or benefits to any remaining property.

- (f) Promptly make a written purchase offer to the owner. The offer shall include a summary of the basis for the offer of just compensation. Exhibit 4-5 is a sample purchase offer.
- (g) After negotiations, make a final offer indicating that if the offer is not acceptable, the subrecipient may institute condemnation proceedings. **THIS APPLIES TO PUBLIC ENTITIES ONLY.**
- (h) If a sale agreement is reached, provide written notice to vacate the property to all owners and tenants at least 90 days in advance.
- (i) The acquisition must go through real estate escrow. The escrow agent must be a neutral third party to the acquisition. Buyer must obtain title insurance for the acquisition.

B) Acquisition for Nonprofit Organizations (i.e., Entities without Eminent Domain Authority)

i. Acquisition for an Entity without Eminent Domain Authority

- (a) Arrange for at least one full independent narrative appraisal (MAI) of the property by a qualified appraiser. An exception to this requirement may be allowed for small, uncomplicated acquisitions with low fair market values (\$2,500 or less). Donated property does not have to be appraised.
- (b) Issue a preliminary acquisition notice to the owner informing them of interest in acquiring the property. Exhibit 4-6 is a sample acquisition notice. The preliminary notice must:
 - Inform the property owner that the buyer does not have the power of eminent domain, and therefore, will not acquire the property if negotiations fail to result in an amicable agreement; and
 - Inform the property owner of the buyer's estimate of the fair market value of the property. This figure may be based upon either the appraisal of the property or upon some other determination of fair market value, whichever is less. The purchaser must give the seller this written information before making an offer. If for any reason, the seller is not informed of these facts, and the sale is not closed, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty. Important Note: The basis for the buyer's estimate of fair market value must be prepared by a person familiar with real estate values, and must be backed with reasonable evidence. The *buyer's files* must include an explanation of the basis for the estimate. The buyer is not required to share the basis for its estimate of fair market with the property owner.
- (c) The acquisition must go through real estate escrow. The escrow agent must be a neutral third party to the acquisition. Buyer must obtain title insurance for the acquisition.

IV. PROMISSORY NOTE AND DEED OF TRUST

All nonprofit subrecipients shall enter into a Promissory Note and Deed of Trust with the County for any facility constructed, acquired, or rehabilitated in whole or in part with CDBG funds (In certain cases, the County may also require a covenant running with the land). The Deed of Trust shall require the subrecipient to operate the facility for the original purpose for which it received CDBG funds until at least fifteen (15) years after the latest of (a) acquisition, or (b) final completion of rehabilitation or construction or until the return of all CDBG funds used for the project. The Deed of Trust and Promissory Note will impose conditions that the County determines are necessary to protect the CDBG funds. The nonprofit shall keep the property free and clear of all other charges, liens, or encumbrances impairing the security of the Deed. The County may, upon written request, permit one superior encumbrance depending on the specific project. When a Promissory Note and Deed of Trust are necessary, the following requirements apply:

- Both documents shall be executed within thirty (30) days of acquisition or substantial completion of any construction activity; and
- The term of both documents shall be for at least fifteen (15) years from the latest date of acquisition, or final completion of rehabilitation or construction.

V. SUBRECIPIENT DOCUMENTATION

All correspondence must be sent by **certified mail** so receipts are available for documentation purposes. The following records should be maintained:

- A) Proof of official decision to pursue acquisition;
- B) Written preliminary acquisition notice to the owner;
- C) Written invitation to owner to accompany appraiser (for involuntary acquisition only);
- D) Copy of each appraisal report;
- E) Copy of resolution or other document showing the determination of just compensation (for involuntary acquisition only);
- F) Purchase agreement, all escrow documents, evidence of title insurance, recorded deed, declaration of taking and other documents used in conveying the property;
- G) Names of all persons occupying the real property on: (1) the date of the submission of the application for assistance by the property owner to the grantee; or (2) whenever site control is obtained after submission of the application, the date of site control;
- H) Names of all persons moving into the property on or after the date specified in subparagraph A) above, but before completion of the project; and
- I) Names of all persons occupying the property immediately following completion of the project.

**EXHIBIT 4-I
ACQUISITION DECISION MATRIX**

If there is a structure on the property to be acquired **and** is it currently occupied and/or
If there is a housing unit on the property that will be demolished or converted to another use, then:

Contact Clark County
CDBG Staff Immediately

Who Are You?

Government Entity (with
Eminent Domain Authority)

Non-Profit Organization (no
Eminent Domain Authority)

See Section III(2)(B): Acquisition
for Non-Profit Organizations (i.e.
Entities without Eminent Domain
Authority)

Voluntary
or Involuntary?

Voluntary: See Section III(2)(A)(i):
Voluntary Acquisition for an Entity
with Eminent Domain Authority
(City/County, etc.)

Involuntary: See Section III(2)(A)(ii):
Involuntary Acquisition for an Entity
with Eminent Domain Authority

EXHIBIT 4-2

**SAMPLE VOLUNTARY LETTER FOR ENTITY
WITH EMINENT DOMAIN AUTHORITY**

**ACQUISITION OF A PERMANENT EASEMENT OR REAL PROPERTY
INITIAL NOTICE TO OWNER**

Date: _____

Dear _____:

This is to inform you that _____ (Agency) would like to purchase the property located at Street Address or Other Property Identification, if a satisfactory agreement can be reached.

Because Federal funds may be used in the purchase, however, we are required to disclose to you the following information:

- 1) The sale is voluntary. If you do not wish to sell, the _____ (Agency) will not acquire your property. The _____ (Agency) has the power to acquire your property by condemnation (i.e., eminent domain) but will not use the power of eminent domain to acquire your property.

- 2) We estimate the fair market value of the property to be \$_____.

Since the purchase would be a voluntary, arm's length transaction, you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it.

If you have any questions about this matter, please contact _____.

His/her telephone number is _____.

Sincerely,

(Name/Title) _____

EXHIBIT 4-3

SAMPLE INVOLUNTARY LETTER ACQUISITION OF A PERMANENT EASEMENT OR REAL PROPERTY INITIAL NOTICE TO OWNER

Date: _____

Dear _____:

The City of <NAME OF ENTITY> is participating in a <TYPE OF PROJECT> project using federal funds from the Clark County Community Development Block Grant program. The <NAME OF ENTITY> needs to acquire the following <PERMANENT EASEMENT/REAL PROPERTY> from you for the project.

(Insert a description or reference an attachment that describes of the specific permanent easement or real property to acquired. A legal description should be used, if one is available.)

(Insert reason why the permanent easement or real property is needed for the project and how it will be used.)

The City of <NAME OF ENTITY> is required to inform you of your rights under federal law. You are entitled to "just compensation" for the permanent easement or real property the city needs. The definition of "just compensation" and a description of your other rights are contained in the enclosed brochure "When a Public Agency Acquires Your Property". Please read it carefully. The City of <NAME OF ENTITY> may exercise its right of eminent domain to acquire the easement or property if negotiations should fail.

<Insert the appropriate paragraph from the following two selections:>

1. For permanent easements or real property valued at more than \$2,500

The City of <NAME OF ENTITY> will send you a separate offer of just compensation after it has obtained an independent appraisal of the fair market value. You have the right to accompany the appraiser when he or she conducts the appraisal of your property. Please let us know within <INSERT NUMBER HERE> days or not later than <INSERT DEADLINE HERE> if you desire to accompany the appraiser.

2. For permanent easements or real property valued at \$2,500 or less

We believe the value of the <PERMANENT EASEMENT/REAL PROPERTY> the City of <NAME OF ENTITY> needs from you does not exceed \$2,500. Our determination is based on (insert description of the process used that meets the requirements in paragraph 5-2.c.(1)(b) on page 5-3 of Handbook 1378). Federal law does not require an independent appraisal for permanent easements or real property valued at less than \$2,500 unless the owner requests an appraisal.

EXHIBIT 4-3 (CONTINUED)

You have the right to donate the <PERMANENT EASEMENT/REAL PROPERTY>. To donate, you must sign a written statement that says you have been informed of your rights under federal law. It is very important to understand that the city cannot offer you any special benefits in connection with a donation.

If you want to donate the <PERMANENT EASEMENT/REAL PROPERTY>, please let us know within <INSERT NUMBER HERE> days or no later than <INSERT DEADLINE HERE>. The City of <NAME OF ENTITY> will include the donation language in an acquisition document specific to your property.

We will very much appreciate your cooperation in this matter because the project will benefit all residents of the community. These steps are essential for City of <NAME OF ENTITY> to receive the federal grant funds necessary to complete the project.

Please feel free to call <NAME OF CONTACT HERE> at <INSERT NUMBER HERE> if you have any questions or specific requests to make regarding the appraisal or a donation of your property.

Sincerely,

(Name/Title)

EXHIBIT 4-5

INVITATION FOR PROPERTY OWNER TO ACCOMPANY APPRAISER

<DATE>

<PROPERTY OWNER ADDRESS>

Dear _____:

I have been requested by the City of Anytown to prepare an appraisal of your property at <ADDRESS >. I will visit the property <DATE> at <TIME>. If you wish to accompany me, please phone me at <PHONE NUMBER> to arrange a mutually convenient time.

Sincerely,

<APPRAISER NAME>

EXHIBIT 4-6

WRITTEN OFFER TO PURCHASE

<DATE>

<SELLER's ADDRESS >

Dear <SELLER>:

This will introduce you to <REPRESENTATIVE>, who represents <BUYER>, in the capacity of Property Officer and who will discuss with you the acquisition by <BUYER> of the property, which our records indicate is owned by you. This property is required for <PURPOSE OF PROPERTY PURCHASE>.

We have had the property appraised by a competent and unbiased fee appraiser and this report has been thoroughly analyzed by the <BUYER> and found to be well supported. Based on the appraisal and review, the <BUYER> hereby makes you a firm offer in the amount of \$<AMOUNT> for the purchase of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with your approval, <BUYER>'s representative has prepared a Statement of Settlement Costs and will assist in finalizing the acquisition.

Thank you very much for your cooperation and favorable consideration of this offer.

Sincerely,

(Name/Title)

Enclosure: Appraisal

EXHIBIT 4-7

**SAMPLE VOLUNTARY LETTER FOR ENTITY
WITHOUT EMINENT DOMAIN AUTHORITY
ACQUISITION OF A PERMANENT EASEMENT OR REAL PROPERTY
INITIAL NOTICE TO OWNER**

Date: _____

Dear _____:

This is to inform you that (ORGANIZATION/INDIVIDUAL) would like to purchase the property located at Street Address or Other Property Identification, if a satisfactory agreement can be reached.

Because Federal funds may be used in the purchase, however, we are required to disclose to you the following information:

- 1) The sale is voluntary. If you do not wish to sell, the _____ (Agency) will not acquire your property. The _____ (Agency) does not have the power to acquire your property by condemnation (i.e., eminent domain).
- 2) We estimate the fair market value of the property to be \$_____.

Since the purchase would be a voluntary, arm's length transaction, you would not be eligible for relocation payments or other relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), or any other law or regulation.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it.

If you have any questions about this matter, please contact _____. His/her telephone number is _____.

Sincerely,

(Name/Title)

CHAPTER 5

LABOR STANDARDS

I. INTRODUCTION

II. GENERAL RESPONSIBILITIES

III. ENFORCEMENT OF FEDERAL LABOR STANDARDS PROVISIONS

- 1) Before Advertising Bids**
- 2) Ten Days Before Bid Opening**
- 3) Before Awarding Construction Contract**
- 4) Before Construction Begins**
- 5) During Construction**
- 6) Before Releasing Retainage on Construction Contracts**

IV. USE OF VOLUNTEERS

I. INTRODUCTION

Community Development Block Grant (CDBG) activities are subject to Federal labor standards requirements as identified in your contract. These requirements, which the CDBG program monitors, are detailed in this chapter.

II. GENERAL RESPONSIBILITIES

The labor standards for construction contracts are set forth in four federal statutes:

Section 110 of the Housing and Community Development Act of 1974, as amended (Title I): All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

Davis-Bacon Act: All laborers and mechanics employed by contractors or subcontractors on the project shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor; regardless of contractual relationship. Wages must be paid weekly. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units.

Contract Work Hours and Safety Standards Act (for prime contracts over \$100,000): The wages for every mechanic and laborer employed on the job shall be computed on the basis of a standard work week of forty hours. Employees shall be compensated at a rate of not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of forty hours in the work week.

No person employed on the job site shall be required to work in surroundings or any other working conditions which are unsanitary, hazardous or dangerous to the health and safety of an employee as determined by the Construction Safety and Health standards promulgated by the Secretary of the United States Department of Labor.

Liquidated damages for failure to pay overtime will be computed in the sum of \$10 for each calendar day on which an employee was required or permitted to work in excess of the standard work week of forty hours without payment of overtime wages, without reference to work in excess of eight hours per day.

Copeland Act (Anti-Kickback Law): Whoever by force, intimidation or threat of procuring dismissal from employment or by any other manner whatsoever, induces any

person employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under their contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

III. ENFORCEMENT OF FEDERAL LABOR STANDARDS PROVISIONS

Clark County CDBG program shall be responsible for monitoring contractor compliance with the Federal Labor Standards Provisions. Subrecipients are responsible for supporting the Clark County CDBG program in its efforts to monitor contractor compliance and more importantly are *responsible for the enforcement* of contractor compliance with the Federal Labor Standards Provisions. A number of actions must be taken during the bidding and construction process for monitoring and enforcement of the Federal Labor Standards Provisions. These actions (generally listed in order of occurrence during the construction process) are as follows:

1) Before Advertising Bids

- Subrecipient requests a copy of Federal Labor Standards Provisions (Supplementary General Conditions) for inclusion in bid document/quote package.
- Subrecipient submits draft bid/contract document for review to Clark County CDBG Staff at least 10 days prior to advertisement of bid.

2) Ten Days Before Bid Opening

- Subrecipient requests a copy of the current federal wage decision from Clark County CDBG staff *ten days before bid opening*. The updated wage decision must be sent to all planholders in a formal addendum to the bid document. This updated wage decision will apply to all work covered by the construction contract to be awarded under that bid advertisement. An exception to the “lock-in” date described above applies when the construction contract award is delayed 90 days or more after the bid opening. In these cases, changes in the wage decision published between the bid opening and construction contract award date must be included in the construction contract.
- Note on Negotiated bids: Federal Wage Rate “lock-in” is the day the construction contract is signed by the general contractor.

3) Before Awarding Construction Contract

Subrecipient contacts Clark County CDBG Staff to verify eligibility (check for debarment) of the general contractor before awarding the construction contract.

4) Before Construction Begins

Subrecipient holds pre-construction conference with representatives to ensure that federal labor standards requirements are discussed with the general contractor before construction begins. Clark County CDBG staff shall be responsible for leading the labor standards discussion. It is recommended to have the general contractor's payroll administrator and site superintendent participate in the pre-construction conference along with any known subcontractors.

General contractor is responsible to verify that all labor classifications are represented in the wage determination. If a classification is not listed, the general contractor must contact Clark County CDBG staff to request a new classification approval from HUD as soon as possible due to length of time for approval process. The County cannot reimburse for labor costs of unlisted classifications until approval from HUD is received.

Clark County CDBG Staff must verify eligibility (check for debarment) of each subcontractor before they are authorized to perform work at the job site.

5) During Construction

Clark County staff is responsible for the following:

- Inform, advise and support contractor compliance;
- Review certified payroll reports for compliance; and
- Monitor for violations and investigate probable violations and complaints of underpayment.

If it's determined that the contractor is in violation of Federal Labor Standards Provisions, Subrecipient shall be required to take enforcement measures (withhold progress payment, assess liquidated damages, take legal action as appropriate and necessary, etc.).

6) Before Releasing Retainage on Construction Contract

Before releasing retainage, grantee must check with CDBG staff to make sure construction contractor has satisfied all requirements under the Federal Labor Standards Provisions. Note that for construction projects subject to these provisions, the County shall reserve the final 10% of grant funds budgeted on the construction line item (as specified in Exhibit A of Construction Contract) pending the County's receipt of a complete and correct set of certified payrolls and required reports from project contractor(s).

IV. USE OF VOLUNTEERS

Volunteers on CDBG projects are exempt from the prevailing wage law (Davis-Bacon) requirements if they are providing their services to a subrecipient (local government or non-profit organization) without promise, expectation, or receipt of compensation and they are not otherwise employed, at any time, on the project. Volunteers cannot be paid for materials or supplies unless the volunteer has obtained the items in compliance with state and federal procurement laws. Federal rules at 24 CFR Part 70.3 cover the use for use of volunteers on CDBG-assisted construction projects. If volunteers are going to be used on the project, the recipient must comply with the following reporting requirements:

- A) If the project will involve volunteers that will receive any kind of benefits, the grantee must get pre-approval from Housing and Urban Development (HUD) through the Clark County CDBG Program. In addition, the subrecipient must keep and submit the following documents to the Program for review and to be submitted to HUD:
 - i. For projects that include paid construction workers, the subrecipient must record volunteers' names and hours volunteered; and
 - ii. For projects that will only use volunteers, subrecipients must record the number of volunteers and the number of hours worked, collectively.

- B) If none of the project volunteers will receive benefits, then HUD's pre-approval is not required but the same information as described in A(i) and A(ii) is required.

The federal regulations do not require any specific reporting format. Subrecipients may use the certified payroll report form to keep the required records because it will capture all the necessary information and reduce the chance of error.

CHAPTER 6

FINANCE/ACCOUNTING

I. INTRODUCTION

II. GENERAL RESPONSIBILITIES

- 1) Project Budget**
- 2) Grant Contract Amendments**
- 3) Internal Controls**
- 4) Financial Reporting**
- 5) Other Financial System Requirements**

III. FINANCIAL PROCEDURES

- 1) Budget Summary**
- 2) Budget Revisions**
- 3) Reimbursement for Block Grant Projects**

IV. PROGRAM INCOME

V. SUBRECIPIENT AUDITS

VI. SUBRECIPIENT DOCUMENTATION

I. INTRODUCTION

This section addresses the financial and accounting aspects of the CDBG Program. The following procedures are guidelines that should be adhered to in financial transactions to meet federal requirements.

II. GENERAL RESPONSIBILITIES

In accordance with 2 CFR Part 200, all subrecipients must meet the audit requirements specified therein. Additionally, all financial transactions with CDBG monies are subject to federal audit. Subrecipients must be prepared to explain how and why transactions were made and be able to account for any funds expended.

1) Project Budget

The approved grant budget contained in the county grant agreement identifies the activities determined to be eligible for grant funds. **Grant funds cannot be used for any costs that are incurred before the agreement is signed.** The subrecipient's financial system must have procedures in place to monitor obligations and expenditures against the approved budget in the agreement. The system should:

- Maintain the amounts budgeted for eligible activities in its accounting records;
- Include both obligations/expenditures and unexpected/unobligated balances for each line item; and
- Periodically compare actual obligations and expenditures to-date against planned obligations and expenditures and against projected accomplishments for the grant project.

2) Grant Contract Amendments

Subrecipients must contact CDBG staff to obtain an amendment to the approved grant contract if:

- The scope of work/project changes; or
- The project cannot be completed by the agreement end date contained in the contract.

3) Internal Controls

Internal controls are a combination of procedures, specified job responsibilities, qualified personnel, and records which create accountability in the financial management system and safeguard its cash, property, and assets. The internal controls must protect the integrity of the grant funds. At a minimum, the system should provide for adequate separation of duties so that no one person has authority over an entire financial transaction. One person should not have control over more than one of the following:

- Authorization to execute transaction;
- Recording the transaction; and
- Custody of the assets involved in the transaction.

Subrecipients should consult with their auditor/accountant to be sure that adequate internal controls are in place for the CDBG project.

4) Financial Reporting

The subrecipient's financial system must generate regular reports that permit an observer to compare actual expenditures against the approved budget (from the grant agreement).

5) Other Financial System Requirements

A subrecipient's financial system must be set up to satisfy an auditor conducting a single audit or independent audit, whichever applies. During an audit, the auditor will examine records to ascertain if:

- Funds are properly budgeted and approved;
- Budget revisions have been documented and approved;
- Personnel charges are properly allocated to the block grant and based on payroll documents such as time and attendance records;
- All expenditures can be traced to source documents (i.e., purchase orders, invoices, canceled checks);
- Drawdowns have been timely;
- Only allowable funds have been claimed on the project;
- The subrecipient accounting system reflects all assets, liabilities, etc.;
- Property has been managed and inventoried properly;
- In-kind costs and costs billed to other funds are clearly documented;
- There are billings for indirect costs, an indirect cost allocation plan has been approved by the Department of Community Services; and,
- The subrecipient's program has been accomplished in the manner set out in the application and/or agreement with the county.

III. FINANCIAL PROCEDURES

To assist subrecipients in meeting the financial guidelines, Clark County CDBG has developed standard procedures for authorizations, budgets and reimbursements for CDBG projects.

Technical assistance in setting up proper internal controls and record keeping can be obtained through the Clark County CDBG Program. However, as a subrecipient, you will ultimately be held responsible for management of the project and budget.

I) Budget Summary

The Budget Summary, part of your CDBG agreement, is used in conjunction with the Voucher Request Form. It is designed to enable subrecipients, program staff, county finance and federal auditors to more precisely identify and track the expenditure of program funds.

2) Budget Revisions

A request for a budget revision must be submitted to the Department of Community Services **BEFORE** a subrecipient:

- (1) Overspends on one budget line item and proposes to use the surplus remaining in another budget line item to cover any shortfall; or
- (2) Allows costs for any budget line item or the total unobligated balance of CDBG project funds to be reduced to a level that is inadequate to meet current or anticipated obligations.

3) Reimbursement for CDBG Projects

When subrecipients receive billings or incur costs for projects, the amount due is paid and then reimbursed by the County.

Match Requirements: Incurred CDBG costs should be in proportion to the subrecipient's match accrual for which funds are to be drawn. When approximately 50% of the CDBG funds have been expended and with each voucher thereafter, the Contractor shall document total match expenditures in proportion to the amount requested. At the conclusion of the project, match shall be equal to, or greater than, the amount shown on the Budget Summary.

Costs which are charged must be included in the approved Budget Summary and must be allowable under 2 CFR Part 200.

To request payment for projects, the Voucher Form must be fully completed and accompanied with backup documentation. Vouchers and instructions are available online at <https://www.clark.wa.gov/community-services/documents>.

The County will withhold the final payment to subrecipients until all necessary forms, including forms required of the contractor by the Davis-Bacon Act, are completed.

IV. PROGRAM INCOME

Program income is defined as the gross income that is received by a subrecipient and has been directly generated from the use of CDBG funds. Examples include:

- Gross income from the use or rental of real property that has been acquired, constructed, or improved with CDBG funds. Cost incidentals to the generation of the income are deducted from the gross income.
- Interest earned on program income is also considered program income.
- Funds collected through special assessments that are made against properties owned and occupied by non-low and moderate-income households where the assessments have been made to recover some, or all, of the CDBG portion of a public improvement.
- Proceeds from the disposition of real property that has been acquired or improved with CDBG funds where the disposition occurs within five-year period after the expiration of the agreement between the County and the subrecipient for the specific project.

The contract between each subrecipient and the County requires that the subrecipient return any program income to the County. The County will then, as required by the CDBG regulation, use the funds for other CDBG eligible activities.

V. SUBRECIPIENT AUDITS

Each subrecipient must provide the CDBG Program a copy of their most recent independent fiscal audit. For cities, the audit must conform to A-128 and the Washington State Auditor's Office requirements. Non-profits must submit a copy of their most recent independent fiscal audit or have one prepared that meets generally accepted auditing standards (American Institute of Certified Public Accountant) and 2 CFR 200.

VI. SUBRECIPIENT DOCUMENTATION

Subrecipients managing more than one CDBG project, shall maintain separate files for each project. See Chapter 8 for more information.

CHAPTER 7

OTHER FEDERAL REQUIREMENTS (FAIR HOUSING, ACCESSIBILITY FOR PERSONS WITH DISABILITIES & LEAD-BASED PAINT)

I. INTRODUCTION

II. GENERAL RESPONSIBILITIES

- 1) Fair Housing Activities**
- 2) Accessibility**
- 3) Lead-Based Paint**

I. INTRODUCTION

The CDBG Program triggers several additional federal “cross-cutting” requirements that affect CDBG projects. These requirements include

- 1) Fair Housing
- 2) Accessibility
- 3) Lead Based Paint (applies to residential housing projects/programs)

Summary information about compliance with each of these requirements can be found in this chapter. In order to assure compliance with these requirements, the CDBG agreements entered into for each project spell out several duties and obligations of the project owner with respect to federal regulations.

II. GENERAL RESPONSIBILITIES

1) Fair Housing Activities

Project subrecipients, as subrecipients of CDBG funds, are responsible for taking necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the Federal government. Further, subrecipients should strive to promote a strategy for increasing the choice of housing opportunities for low and moderate income persons including minorities and female-headed households. Possible actions which project subrecipients, particularly municipalities or public agencies, can take are as follows:

- review zoning, building, and housing codes and revise if necessary to encourage equal opportunity in housing;
- consider fair housing priorities when developing land use plans for public facilities and housing;
- develop or strengthen local fair housing laws, including enforcement powers and sanctions;
- require private developers and real estate agents to use HUD affirmative marketing and advertising practices; and,
- make available at public locations the Clark County "Fair Housing, Equal Opportunity for All" brochure.

2) Accessibility

A) Americans with Disabilities Act: The Americans with Disabilities Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers

that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.

- B) Section 504 Handicap Accessibility Policy: Section 504 was enacted as part of the Rehabilitation Act of 1973. It prohibits discrimination on the basis of handicap in all programs and activities receiving federal assistance and, in 1978, it was amended to apply to all programs conducted by the Federal Government. This regulation provides that no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. Clark County provides a TDD phone for the hearing impaired (360-737-6065) and will provide sign interpreters for public meetings upon request for CDBG program accessibility. All public meeting sites are handicap accessible and auxiliary aids are available for those individuals requesting them.

Structures built or rehabilitated must be made handicapped accessible. Structures designed, built, or altered (rehabilitated) with CDBG funds shall conform to the Uniform Federal Accessibility Standards (UFAS), which was published in the Federal Register on August 7, 1984 (49 CFR 13518). The UFAS technical requirements meet or exceed comparable provisions of ANSI 117.1-1980 Specifications For Making Buildings and Facilities Accessible to, and Useable by Physically Handicapped People.

3) Lead-Based Paint (applies to all residential housing)

The use of lead-based paint is prohibited. CDBG recipients must document that all occupants of structures built before 1978 have been notified of the hazard of lead-based paint.

The Federal requirements pertaining to Lead-Based Paint are contained in 24 CFR Part 35. A fact sheet containing information about current efforts to protect children from lead-based paint poisoning has been prepared by the Environmental Protection Agency and HUD. A copy may be obtained from the Clark County CDBG/HOME Program.

- A) Notification Requirements: Landlords renting units in structures built before 1978 must utilize the pamphlet entitled "Protect Your Family from Lead in Your Home" to notify their tenants of the potential hazards of lead-based paint (copies of this pamphlet are available from the Clark County CDBG Program). The same pamphlet must also be used to notify buyers of homes built before 1978 of the hazards of lead-based paint. The landlord/seller must document that the tenant/buyer was provided with the pamphlet.
- B) Identification of Defective Paint Surfaces: Grantees must complete visual inspections for defective surfaces in all property constructed prior to 1978. All interior and exterior surfaces, including those in common areas must be examined. Subrecipients must contact their Clark County CDBG Coordinator if defective paint surfaces are detected. Surfaces identified as being defective shall require further analysis and shall

require interim controls (a set of measures designed to temporarily reduce human exposure to lead-based paint hazards). The presence of lead based paint may ultimately require lead based paint abatement.

- C) Lead Hazard Evaluations: Federal regulations required that Lead Hazard Evaluations be performed by EPA-certified inspectors on all pre-1978 homes receiving over \$5,000 in federal funds. The “chewable surfaces” of any home occupied by a child under seven years old who has an identified blood lead level must be tested for lead content using an approved lead detection method. Subrecipients should keep their CDBG Coordinator informed of the status/results of lead based paint testing. Lead based paint remediation efforts must be taken if “chewable surfaces” test positive for lead.

CHAPTER 8

**DOCUMENTATION, RECORDS
AND MONITORING**

I. INTRODUCTION

II. FILING SYSTEM

- 1) Project Files
- 2) Records Retention

III. RECORDS/DOCUMENTATION

- 1) Documentation of Program Benefits
- 2) Project Activity Summary
- 3) Project Monitoring

EXHIBIT 8-1 CLARK COUNTY CDBG QUARTERLY REPORT

EXHIBIT 8-2 CLARK COUNTY CDBG DIRECT BENEFIT REPORT

I. INTRODUCTION

Clark County CDBG is responsible for collecting pertinent qualifying and performance data from subrecipients for CDBG program reporting, and project monitoring purposes. Subrecipients must keep accurate records that conform to the reporting requirements as outlined below and as detailed in the Monitoring Checklist included as Appendix C.

This section will explain record-keeping and reporting requirements for program benefit information, fair housing actions, displacement, and minority business enterprise participation. Documentation and record keeping of other program components are covered in other sections of this manual on financial documentation, citizen participation, and property acquisition/relocation.

II. FILING SYSTEM

I) Project Files

Subrecipients must be able to fully document their CDBG projects so that compliance with all applicable regulations can be demonstrated. The filing system established should provide a historic account of each project.

The following is a suggested outline for file categories and contents of files for each project:

(1) General Project File

- (a) Project Proposal
- (b) Project Agreement (and agreement modifications) with Clark County
- (c) CDBG Quarterly Reports
- (d) Direct Beneficiary Data
- (e) Meeting Minutes
- (f) Correspondence

(2) Financial Records

- (a) Notices of grant awards
- (b) Authorizations, motions, or resolutions
- (c) Third Party Contracts
- (d) Written Evidence of Clark County Approval of Third Party Contracts
- (e) Budget revisions
- (f) Bills for payment
- (g) Copies of reimbursement requests
- (h) Copies of approved vouchers and warrants
- (i) Payroll time sheets
- (j) Records of technical assistance monitoring visits
- (k) Audit records
- (l) Approved indirect cost allocation plan, if applicable
- (m) Project income records
- (n) Records documenting source and amount of supplemental (matching) resources

- (3) Procurement
 - (a) Bid Advertisements
 - (b) Affidavit of Publication
 - (c) RFP's
 - (d) Bids/Proposals
 - (e) Price or Cost Analysis
 - (f) All Third Party Contracts
 - (g) Preconstruction Conference Notes
 - (h) Section 3 Documentation
 - (i) Change Orders
 - (j) Pay Estimates
 - (k) Site Inspection Reports
 - (l) Engineer's Certification of Completion, if applicable

2) Records Retention

All records pertaining to your CDBG grant must be retained for at least five (5) years after expiration of the contract and any amendments or completion of an independent audit. If there is any litigation, claim, or audit findings that extend beyond this five-year period, you must retain the records until all litigations, claims, or audit findings involving the records have been resolved. Records for property acquired with grant funds shall be retained for five (5) years after final disposition. Records for any displaced person shall be retained for five (5) years after the person has received final relocation assistance.

III. RECORDS/DOCUMENTATION

1) Documentation of Program Benefits

A) Limited Clientele & Direct Benefit Projects: The benefits of CDBG-funded projects must be available to anyone regardless of ethnic background, sex, age, national origin or physical or mental handicap. Minorities and low and moderate income persons in particular are expected to benefit from community development programs. Project subrecipients must document the number of minorities and low/moderate income persons served within the jurisdiction or service area. Additionally, outreach efforts must be documented for projects that provide direct services to clients. Action must also be taken to correct conditions which have had limited minority participation in the past.

For documentation purposes, limited clientele and direct benefit (housing rehabilitation, counseling services, and job training) project subrecipients must complete a CDBG Direct Benefit Report (Exhibit 8-2) with the final quarterly report.

B) Area-wide & Direct Benefit Projects: The data sources such as surveys and census data, which qualified the project on an area-wide basis, should be retained in the subrecipient's files.

2) Project Activity Summary

Project subrecipients must retain information regarding the status of the project and accomplishments throughout the project as well as at completion of the project. This information is captured in the CDBG Quarterly Report (Exhibit 8-1) and submitted quarterly once the contract is signed through final payment of the contract.

Record Keeping Responsibilities: The following examples of measures of project progress and accomplishment must be documented and made available for review:

- total number of square feet, linear feet, wheelchair ramps, etc., constructed or installed;
- number of houses rehabilitated;
- number of jobs filled, training classes held, clients treated; and,
- description of equipment or training supplies purchased.

3) Project Monitoring

Depending on the complexity of the specific project, the CDBG Program staff will formally monitor subrecipients one or more times. Subrecipients will be advised in writing of the monitoring visits. The Monitoring Checklist (Appendix C) will be used during the monitoring. Monitoring visits determine if there are findings, violations of the regulations, concerns, potential for violations or other problems. The results of the monitoring visit will be provided in writing within thirty (30) days of the visit. Corrective actions (detailed in the monitoring findings) may be required.

Monitoring should not be considered a “one-time event.” It is an effective tool for avoiding problems and improving performance, and is an ongoing process of planning, implementation, communication and follow-up.

**EXHIBIT 8-1
CLARK COUNTY CDBG QUARTERLY REPORT**



Quarterly Progress Report

Report Period: _____ Funding Source: HOME CDBG

City/Agency: _____

Project Name: _____

Contract Number: _____

Person Completing Form: _____

Contact Telephone number: _____

Final Report? No Yes If yes, complete the Clark County Direct Benefit Report (page 2)

1. Describe current status of Project (for example: planning, procurement, pre-development, construction, activity underway, service marketing, etc.) and current focus of activity:

2. Describe significant actions taken during report period:

3. Describe and provide reasons for changes in original project goals/timelines:

4. Were project costs incurred during this project period? Yes No

5. Were project funds expended during this project period? Yes No
Type and amount of funds expended:

6. Additional comments:

**EXHIBIT 8-2
CLARK COUNTY CDBG DIRECT BENEFIT REPORT**

**SUBRECIPIENT:
PROJECT:
DATES COVERED:**

Numbers Must Be All Either By Person (P) or By Household (H). Please Indicate (P) or (H): _____

Table I: GENERAL INFORMATION

GENERAL INFORMATION	NUMBER
Total Number Assisted	
Female-Headed Households	
Homeless	
Disabled/Special Needs	

TABLE II: INCOME INFORMATION

INCOME CHARACTERISTICS	NUMBER
Low and Moderate Income (50-80% AMI)	
Low Income (31-49% AMI)	
Very Low Income (0-30% AMI)	
TOTAL	

Table III: RACE/ETHNICITY INFORMATION

RACE CATEGORIES	ETHNICITY		
	Number of Households	Number that are Hispanic	Number that are non-Hispanic
American Indian or Alaska Native			
Asian			
African American or Black			
Native Hawaiian or Other Pacific Islander			
White			
American Indian or Alaska Native <i>and</i> White			
Asian <i>and</i> White			
African American or Black <i>and</i> White			
American Indian of Alaska Native <i>and</i> African American or Black			
Balance/Other Multi-Racial			
TOTAL			

APPENDIX A REGULATORY REFERENCES

Citizen Participation

- CDBG Regulations (24 CFR 570.303)
- Citizen Participation Plan (24 CFR Part 92)
- Consolidated Plan (24 CFR Part 92)

Environmental Review

- CDBG Regulations (24 CFR 570.604)
- Clean Air Act (42 USC 7400 et seq., Sections 117 and 176)
- Clean Water Act (33 CFR Parts 230, 320-325)
- Coastal Barrier Resource Act 1982
- Coastal Zone Management Act (15 CFR Part 930)
- Endangered Species Act (50 CFR Part 402)
- Environmental Justice in Minority Populations (59 CFR 7629 and 3CFR, 1994 Comp. p859)
- EO 11988, Floodplain Management (24 CFR Part 55)
- EO 11990, Protection of Wetlands (24 CFR Part 55)
- EO 12372, Intergovernmental Review of Federal Programs (24 CFR 570.612)
- EO 12898, Environmental Justice in Minority Populations and Low-Income Populations (24 CFR Part 58.5)
- Farmlands Protection Policy Act of 1981 (7 CFR Part 658)
- Flood Disaster Protection Act of 1973 (Pg. 93-234)
- HUD Environmental Review Regulations (24 CFR Part 58)
- HUD Notice 79-33 (24 CFR Part 51 (C,D))
- National Environmental Policy Act of 1969, regulations at (40 CFR Parts 1500-1508)
- National Historic Preservation Act (36 CFR Parts 800, 1294)
- Noise Control Act (24 CFR Part 51 (B))
- Resources Conservation and Recovery Act (42 USC 6901-6987)
- Safe Drinking Water Act (42 USC 300)
- Wild and Scenic Rivers Act (CBQ Memorandum 8-10-80)

Procurement

- Architectural Barriers Act of 1968 (42 USC 4151)
- CDBG Regulations (24 CFR Parts 85, 135, 570, Ch. X, (B))
- Civil Rights Act of 1964, Title VI
- Civil Rights Act of 1968, Title VIII
- Contract Work Hours and Safety Standards Act (40 USC 327)
- Davis-Bacon Act (40 USC 276A)
- DOL Regulations (41 CFR Part 60-1, 60-4, 60-250, 60-741)
- EO 11246 as amended
- Fire Administration Authorization Act of 1992 (Pub. L. 102-522)

Acquisition/Displacement/Relocation

- Acquisition Policies Act of 1970 (40 USC 4601) as amended
- CDBG Regulations (24 CFR 570.602)
- Displacement, Relocation Assistance, and Real Property Acquisition (24 CFR __ Part 42 (C))
- Federal Uniform Relocation Assistance and Real Property

Finance

- Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (24 CFR Part 85) [Applies to the county and local units of government participating in the CDBG Program.]
- Audits of Institutions of Higher Education and other Nonprofits Organizations (OMB Circular A-133) [Supersedes Attachment F, subparagraph 2h, of Circular A-110.]
- Audits of State and Local Governments (OMB Circular A-128) [Implements single audits and establishes uniform audit requirements.]
- CDBG Regulations (24 CFR Part 570)
- Cost Principals and Standards for Determining Costs Applicable to Grants, Contracts, and other agreements with state and local governments (OMB Circular A-87) [Enables grant recipients to determine which costs items are "allowable".]
- Cost Principals for Non-Profit Organizations (OMB Circular A-122) [Enables non-profit organizations to determine "allowable" costs.]
- Uniform Requirements for Grants to Universities, Hospitals and other Non-Profit Organizations (OMB Circular A-110) [Establishes audit requirements for non-governmental recipients of federal grants.]

Records and Documentation

- 24 CFR Part 85
- CDBG Regulations (24 CFR Part 570)
- Civil Rights Act of 1964, Title VI
- Civil Rights Act of 1968, Title VIII
- EO 11063
- Section 504 of the Rehabilitation Act (1973) as Amended

Regulatory references are available for review at the Clark County Department of Community Services Community Development Block Grant Program.

**APPENDIX B
COMMONLY USED ABBREVIATIONS**

ANSI	American National Standards Institute
A/E	Architect and/or Engineer
BCC	Board of County Councilors
CAPER	Consolidated Annual Performance and Evaluation Review
CDBG	Community Development Block Grant
CFR	Code of Federal Regulations
DCS	Department of Community Services
DOL	Department of Labor
EO	Executive Order
EIS	Environmental Impact Statement
FMR	Fair Market Rent
FONSI	Finding of No Significant Environmental Impact
HUD	Department of Housing and Urban Development
MAI	Member of the Appraisal Institute
MBE	Minority Business Enterprise
NEPA	National Environmental Policy Act
RCW	Revised Code of Washington
RFP	Request for Proposal
RFQ	Request for Qualification Statement
UCPB	Urban County Policy Board
UFAS	Uniform Federal Accessibility Standards
USC	United States Code

**APPENDIX C
MONITORING RECORD**

CLARK COUNTY	
COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT MONITORING	Today's Date
Agency:	Address:
Project:	Address:
Contact Person(s):	Position:
Name:	Position:
Name:	Position:
Evaluator(s):	Date of Monitoring:

Yes	No	N/A	COMMENTS
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A. Subrecipient Management and Training System

1. Have technical assistance/training on applicable CDBG program requirements been provided during the most recent program year? If yes, list persons trained, topics, dates provided.				
2. Have HUD resource materials been provided during the most recent program year?				
3. Have HUD recordkeeping requirements, including record retention been communicated to agency?				
4. Procedures Manual provided?				

B. National Objective

1. L/M Income Area Benefit Identify service area				
2. L/M Limited Clientele				
3. Presumed Benefit Type				
4. L/M verification determined by:				
a. Client completed self-certification form				
b. Client referred from another agency that determined income status				
c. Other method, describe				

	Yes	No	N/A	COMMENTS
C. Citizen Participation Records				
1. Did the subrecipient hold, or participate in, a public meeting to solicit citizen views about CD needs?				
2. Has the subrecipient retained narrative or other documentation describing the process used to inform citizens about the opportunities to participate in Block Grant Projects?				
3. Was an advisory committee formed to oversee project planning and implementation?				
4. Were there any complaints about CDBG funded projects?				
5. If so, was every reasonable effort made to provide written responses to citizen complaints within a reasonable time period?				
D. Procurement Practices				
1. Does subrecipient have an adopted written procurement policy?				
2. Does subrecipient have an adopted written code of conduct?				
3. Can the subrecipient document sufficient number of price quotations for small purchases?				
4. Was a cost or price analysis performed?				
5. Does the agency have procedures to adequately identify CDBG property and assets?				
6. Are property records kept as required by 24 CFR 85.32(d)(1) or OMB Circular A-110, Attachment N, 6(d)?				
7. Does agency ensure adequate safeguards for preventing loss, damage, or theft of agency-held property as per 24 CFR 85.32(d)(3)? If yes, describe.				

	Yes	No	N/A	COMMENTS
E. Procurement - Construction				
1. Did subrecipient advertise RFP/BID Proposal in a business and minority newspaper?				
2. Does subrecipient have copies of Affidavit of Publication?				
3. Does Invitation for Bid clearly describe the requirements?				
4. Did subrecipient receive at least one sealed bid?				
5. Were bids opened publicly?				
6. Was contract awarded to lowest bidder?				
7. If not lowest bidder, does justification for award appear acceptable?				
8. Has subrecipient cleared contracts with DCS prior to award?				
9. Federal Contract Conditions in contract?				
F. Labor Compliance				
1. Pre-construction conference checklist?				
2. Current Wage Rates provided?				
3. Weekly Payroll provided?				
4. Wage Interviews conducted?				
5. Contractor/Subcontractor agreements all included?				
6. Affidavit to sign payroll forms?				
7. Section 3 data collected?				
G. Procurement - Professional Services				
1. Was RFP reviewed by DCS?				
2. Were proposals solicited from an adequate number of qualified sources?				
3. Did subrecipient advertise RFP in a business newspaper and a minority newspaper?				
4. Does subrecipient have Affidavit of Publication?				
5. Did subrecipient provide mechanism to make technical evaluations?				
6. Was Price/Cost analysis performed?				
7. Were appropriate handicapped accessibility design standards utilized?				

	Yes	No	N/A	COMMENTS
H. Acquisition and Relocation				
1. Did owner receive timely notice of Agency's interest in acquiring property?				
2. Did owner receive timely information explaining basic rights?				
3. Were properties appraised by qualified appraisers?				
4. Were appraisals reviewed by qualified appraisers?				
5. Was owner invited to accompany appraisers on inspection of property?				
6. Does the data in the appraisals and the analysis of that data demonstrate the soundness of the appraiser's conclusion of fair market value?				
7. Did recipient promptly provide owner written Offer of Just Compensation for property (stating all basic terms and conditions) before initiating negotiations?				
8. Did Statement of Basis for the establishment of just compensation accompany offer?				
9. Did recipient coordinate relocation activities with purchase offer?				
10. Did owner receive payment of just compensation for property?				
11. Notification of Rights and General Advisory Services: Did person receive timely written information (e.g., General Notice and a brochure explaining rights to payments, comparable replacement housing, nondiscrimination and appeals?				
12. Did the property acquired with CDBG funds contain low/moderate income housing?				
13. Were Section 104(d) requirements followed?				
14. Is property acquired listed in the property records in the Finance Department?				
I. Project Progress				
1. Is timeline in contract being met? If not, why?				

J. Follow-up Action Required From Subrecipient

K. Follow-up Action Required from CDBG



APPENDIX D COST AND PRICE ANALYSIS

Background and Introduction

The CDBG and HOME programs require that some form of cost or price analysis be done in connection with every contract awarded with CDBG or HOME funds. The purpose for doing cost and price analysis is to assure “cost reasonableness.” Just as a person renovating his/her bathroom might go to a number of stores to compare prices on faucets, the county or an agency seeking the services of a planner or architect should endeavor to know that the cost for completing the desired work was competitive in the marketplace.

The requirements for cost price analysis are provided in 24 CFR 85.36(f) and in 24 CFR 84.45.

24 CFR 85.36(f)

(f) Contract cost and price.

1. Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

24 CFR 84.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

For competitive bidding, the process is easy – detailed plans and specifications are provided to the marketplace of contractors who respond to the city with the cost for accomplishing that work. Conducting cost and price analysis for professional services is different. The industry standard within the engineering/architectural professions is to provide a detailed scope of work and a matrix that illustrates the cost of accomplishing that scope of work. Details would include:

- the professional classification of personnel working on the job,
- the hourly rate charged for each professional classification
- estimated number of hours worked by each professional classification, and
- The total estimated cost

The bottom line is that sufficient detail must be provided to allow for a reliable analysis be done to determine whether costs are reasonable.

As is the case with many CDBG and HOME regulations, the tools and methods for accomplishing the analysis are left to the grantee. One way of accomplishing this is completing the Cost Price Detail Sheet following this introduction. The worksheet is intended to be filled out by the consultant doing the work and certified by the grantee (County staff). Ideally, this work is completed before a contract is signed by the consultant.

For further background, please see the attached document, “Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients”.

Cost Price Detail Sheet

Name of Consultant		Date of Proposal	
Street Address		Federal ID Number	
City, State, Zip		Total Price \$	
A. <u>Direct Labor</u> (specify personnel by name) Attach a copy of the scope of services identified in the contract. Each task identified in the scope of services should be assigned an estimated amount of time for completion. The total amount of time identified on the scope of services should correspond to the estimate in this section.			
Personnel Name		Est. No. of Days	Daily Rate
1.			
2.			
3.			
4.			
5. Total Direct Labor			
B. <u>Overhead/Indirect Costs</u>		<u>Rate</u>	<u>Base</u>
			<u>Est. Cost</u>
C. <u>Other Direct Costs</u>			
Transportation		Est. # of site visits	Rate
Per Diem		Est. No. of Days	Daily Rate
Reproduction		Est. No. of Pages	Page Rate
Other (specify)			\$
1.			\$
2.			\$
3.			\$
4.			\$
5. Total Other Direct Costs			\$
D. <u>Subcontracts</u>			
Name of Subcontractor(s)		Est. No. of Days	Daily Rate
1.			
2.			
3. Total Subcontractor Costs			
Total Estimated Costs (Line A5+B+C5+D3)			\$
Profit			\$
TOTAL PRICE			\$

CERTIFICATIONS

Contractor

A. Has a federal agency or a federally certified state or local agency performed any review of your accounts or records in connection with any other federal grant or contract within the past 12 months?

YES NO

If yes, give name, address, and telephone number of the reviewing office:

B. This summary conforms to the applicable cost principals.

C. This proposal is submitted for use in connection with, and in response to, _____ . This is to certify that to the best of my knowledge and belief the cost and pricing data summarized herein are complete, current, and accurate as of _____ and that a financial management capability exists to fully and accurately account for the financial transactions under this project. I further certify that I understand that the sub agreement price may be subject to downward renegotiation and/or recoupment where the above costs and pricing data have been determined, as a result of audit, not to have been current complete and accurate as of the day above.

Date of Execution

Signature and Title of Proposer

Grantee Reviewer

I certify that I have reviewed the cost/price summary set forth herein and the proposed costs/price appears acceptable for subagreement award.

Date of Execution

Signature and Title of Proposer

Reviewer, if applicable

Date of Execution

Signature and Title of Proposer

Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients

This HUD guide is provided here: <http://www.hud.gov/offices/cpo/grantees/cstprice.cfm>

Who is this guide for?

This guide is for all HUD grantees and funding recipients that contract for services and/or supplies using funds provided in whole or in part by HUD.

What is price analysis?

Price analysis is essentially price comparison. It is the evaluation of a proposed price (i.e., lump sum) without analyzing any of the separate cost elements that it is composed of.

What is cost analysis?

Cost analysis is the evaluation of the separate elements (e.g., labor, materials, etc.) that make up a contractor's total cost proposal or price (for both new contracts and modifications) to determine if they are allowable, directed related to the requirement and ultimately, reasonable.

Is cost or price analysis always required?

Yes. HUD's regulations at 24 Code of Federal Regulations (CFR) Part 84, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR Part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments," require grantees to perform a cost or price analysis for *every* procurement action, including contract modifications (e.g., "change orders"), using HUD grant funds.

When do I perform a price analysis?

You use price analysis whenever you are comparing lump sum prices – not cost estimates - received from contractors in a competitive pricing situation (e.g., when sealed bids are obtained).

What qualifies as competition?

Generally, competition means two or more responsible (e.g., not debarred or suspended, etc.) offerors ("bidders"), competing independently, submit priced offers that satisfy the grantee's contract requirement. Obviously, the greater the number of offers received, the greater the competition and ideally, the better the pricing.

When do I perform a cost analysis?

Cost analysis is used whenever you do not have price competition. A cost analysis is required when:

- Using the *competitive proposal* (or "negotiated") method of contracting (see 24 CFR 85.36(d)(3) for a definition), e.g., for acquiring professional, consulting or architect/engineering (A/E) services. Under the competitive proposal method, offerors are

required to submit cost proposals that show the elements (e.g., labor, materials, overhead, profit) of their proposed costs or price.

- Negotiating a contract with a **sole source**, i.e., not soliciting competitive bids or offers. When a sole source is appropriate and justified (see 24 CFR 85.36(d)(4)), you must obtain a complete cost breakdown from the sole source contractor and perform an analysis using the cost principles to establish a fair and reasonable price or estimated cost.
- After soliciting competitive sealed bids, you receive **only one bid**, and it differs substantially from your independent estimate of the contract price. If you determine that the bid is unreasonable and decide to not recompetete (e.g., market survey tells you that you wouldn't get competition), then you may formally cancel the solicitation and negotiate a contract price with the single bidder. In that case, you must obtain a cost breakdown of the single bid price and use cost principles to determine if that price is reasonable.
- Negotiating a **modification** (including change orders) to *any* type of contract, if the modification changes the work authorized under the contract, and changes the price or total estimated cost, either upwards *or* downwards. You must obtain a detailed breakdown of the contractor's proposed cost - not a lump sum proposal - before negotiating the change in contract price.

CAUTION: *Modifications that change the work beyond the scope of the contract must be justified in accordance with the conditions set forth in 24 CFR 85.36(d)(4) or 24 CFR 84.43. If the out-of-scope change cannot be justified, you must procure the work competitively.*

Could there ever be a situation where I don't have price competition, and I don't have to perform a cost analysis?

Yes. There are two situations:

- The price can be established on the basis of catalog or market prices of commercial products or services sold in substantial quantities to the general public. A product is considered to be "sold in substantial quantity" when the regular sales volume is large enough to constitute a real commercial market. Services are considered to be "sold in substantial quantity" when the contractor/vendor customarily provides them, using his/her regularly employed personnel and using equipment (if any is needed) regularly maintained solely to provide the services.

or

- The price is set by law or regulation.

Do I need to analyze and negotiate profit separately?

Whenever you are required to perform a cost analysis, and you are negotiating a contract action that provides for a profit or fee, you must negotiate profit separately. When negotiating profit, you should consider *all* of the following:

- The complexity of the work to be performed. The more difficult the work, the more profit a contractor may be entitled to.
- Contractor's risk. How much risk – either performance or cost to the contractor - will the contract create? The higher the risk, the higher the reward, i.e., profit.
- Contractor's investment (labor, oversight, etc.). How much and what type of resources will the contractor have to dedicate to performing the contract? The greater the investment of resources the more profit.
- Subcontracting. The amount of profit depends upon the size, nature and oversight needs of the subcontracts the contractor will use. Will the contractor perform most of the work, or will he/she sub out some of it, and if so, how much? Will subcontracted work be routine or complex? What amount and level of oversight and management will subcontracted work require of the contractor? Simple subcontracts for routine supplies of services should not be worth as much profit as complex subcontracts that require a lot of oversight by your own highly skilled staff or management.
- Quality of the contractor's past performance. Profit should reward the contractor for a proven record of high quality performance. A consistent record of delivering quality goods or services on time within cost, indicates that the contractor will likely “deliver the goods” to you, too. (Note: You probably won't be considering a poor performer for a new contract award.) Performance under the current contract must be considered when negotiating a modification.
- Industry profit rates in the surrounding geographical areas for similar work. What's the “going rate,” especially for standard, more commercial types of work? **CAUTION:** Be careful to not pay going rates when the work required is not really covered by those rates, e.g., paying specialty rates for routine work.

CAUTION! The “*cost-plus-a-percentage-of-cost*” and “*percentage-of-construction-cost*” contract types are prohibited. (See also 24 CFR 85.36(f)(4), and 24 CFR 84.44(c).) These types of contracts reward contractors for incurring greater costs, which is just the opposite of what is in your, the buyer's, best interest.

How do cost analysis and price analysis apply to the different contracting methods?

- *Small Purchases.* For routine, commercial type purchases, comparing price or rate quotes obtained from an adequate number of qualified vendors is sufficient price analysis. If the small purchase is for professional or technical services, or the HA needs to evaluate other factors than price, then at least a limited cost analysis is appropriate. In either case, the

HA's analysis should include comparing the proposed prices to past prices it has paid for the same or similar items or services.

- *Sealed Bidding.* This is the preferred method for contracting for supplies, equipment and construction. (See 24 CFR 85.36(d)(2) for a definition.) Normally, the competitive pricing forces of the marketplace determine the reasonableness of the low price obtained through sealed bidding. Nevertheless, the HA should always compare its own independent cost estimate to the low competitive bid received. In the event they are significantly different, the HA will need to examine each to verify that either its own estimate or the market price is valid. Otherwise, no further price or cost analysis is required under sealed bidding.

CAUTION! *When only one bid is received in response to a competitive bid solicitation, you do not have price competition. If you decide to award on the basis of a single submitted bid price, i.e., without negotiation, you must justify that the price is fair and reasonable. At a minimum, you should compare the bid price to your own in-house estimate and past prices paid for the same or substantially similar item(s) in the past. You should also try to obtain information from the marketplace, if you have not already done so in developing your own estimate. If you decide to cancel the sealed bid and negotiate a contract price with the single bidder, you must obtain a complete cost breakdown and perform a cost analysis of the proposed price. If the bidder refuses to provide a breakdown of his/her costs, you may have no other choice than to resolicit bids. In any case, you must document the rationale for your award decision.*

- *Competitive Proposals.* This method is most often used to contract for professional, consulting, and architect/engineering (A/E) services. (See 24 CFR 85.36(d)(3) for a definition.) To determine the reasonableness of proposed costs, you must obtain cost breakdowns from the offerors showing all the elements of their proposed total costs and perform a cost analysis of each proposal using the appropriate set of cost principles (discussed below).

NOTE! *When awarding a contract using the competitive proposal method, the type of contract (e.g., firm fixed-price or cost-reimbursement) you propose to award does not affect the requirement for a cost analysis. For example, if you intend to award a firm fixed-price contract via the competitive proposal method, you still must analyze all of the proposed costs contained in each offeror's price. However, you are not required to negotiate each individual cost element in arriving at an agreement on total price. The final price you negotiate with the contractor on a fixed-price contract normally reflects agreement only on the total price. Therefore, the overall objective should be to negotiate total prices that are fair and reasonable.*

NOTE! *In certain cases, the contract may specify separately priced items. This is commonly done in indefinite-delivery (e.g., indefinite-quantity, sometimes called job order, or "open ended") contracts. Under these contracts, the HA orders pre-priced items on an as-needed basis, up to a stated maximum quantity. For these contracts,*

agreement must be reached on each item's price before award and the prices included in the final contract document.

- *Noncompetitive Proposals.* These are sometimes called sole source contracts and are different from single bids. No competition is intended, and usually, there is no market to help set the price or estimated cost. Since there is no price competition to tell you if the price or estimated cost is reasonable, you must obtain a breakdown of the proposed costs and perform a cost analysis.

What other contract actions or types require cost analysis?

- *Contract Modifications.* If you are negotiating a modification (including change orders) to any contract (even if the basic contract was awarded competitively through sealed bidding) that changes the scope of work previously authorized and impacts the price or estimated cost, you must use cost analysis to arrive at a reasonable cost. The only exception to this rule is a contract modification based on pricing terms already established in the contract document. Keep in mind that changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these modifications require cost analysis using the cost principles to determine that the price change is fair and reasonable.
- *Contract Terminations.* Terminating a contract means unilaterally ending it before its stated end. Contracts can be terminated for the convenience of the grantee or for cause (also called default). Contracts are usually terminated for convenience when the buyer no longer has a need for the service or products as they are specified in the contract, or when it is not possible to substantiate that the contractor's performance is poor enough to terminate him/her for cause. Contracts may be terminated for cause when the contractor fails to perform the contract as written. If you are terminating a contract of any type (fixed-price or cost-reimbursement) for convenience, or a cost-reimbursement contract for cause, you must use cost analysis - and the appropriate cost principles - to negotiate the final amount of the termination settlement.

***NOTE!** For contracts with for-profit entities and nonprofits listed in Attachment C to OMB Circular A-122, the cost principle at FAR 31.205-42 specifically addresses termination costs.*

- *Cost-reimbursement Contracts.* In determining reasonable costs under any cost-reimbursement contract, a cost analysis using the cost principles is required.
- *Architect/Engineer Contracts.* Cost analysis is required in determining if the cost portion of an A/E contract is fair and reasonable.
- *Construction Contracts.* This includes all contracts and contract modifications negotiated on the basis of cost for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It does not include contracts for equipment, or other kinds of personal property. Construction contracts awarded using

sealed bidding **do not** require cost analysis (see *Sealed Bidding* above), but construction contracts awarded using any method other than sealed bidding, and modifications to construction contracts do require cost analysis (see *Modifications* above).

NOTE! *Because of widely varying factors in construction work such as the nature, size, duration, and location of the construction project, advance agreements for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, etc., can be particularly important in construction and A/E contracts. When appropriate, they serve to express the parties' understanding regarding work starts and any costs are incurred. This helps to avoid possible disputes or disallowances later. Guidance on the use of advance agreements is found at FAR 31.109.*

How do I perform an analysis?

Here are some basic techniques.

Price analysis. Use as many of the following techniques as applicable and appropriate:

- Compare competitive prices received in response to the solicitation to one another. This assumes you receive a large enough number of competitively priced offers from the current marketplace.
- Compare proposed prices with prices under existing contracts and with prices proposed in the past for the same or similar items/services. Be sure to factor in any market changes (e.g., commodity price changes) or other influences (e.g., inflation).
- Apply rough yardsticks (e.g., dollars per pound, per square foot, per hour, etc.) to compare prices and highlight significant inconsistencies that warrant additional pricing inquiry.
- Compare competitive price lists, published catalog or market prices of commodities and products, similar indices and discount or rebate arrangements.
- Compare proposed prices with your independent (i.e., in-house) cost estimates.

Cost Analysis

- Verify the accuracy of the cost and pricing information submitted, and evaluate:
 - The reasonableness of the proposed costs, including allowances for contingencies. To be considered reasonable, proposed costs must meet three critical tests. The costs must be:
 - ⇒ *Allowable.* The applicable cost principles (see section below) will usually state whether a type of cost is allowable or not.

- ⇒ *Allocable*. This means that the costs are logically related to, or required in the performance of the contract. Many costs may be allowable but not related to the work required under the contract.
- ⇒ *Reasonable*. This term is generally defined as what a prudent business would pay in a competitive marketplace. A cost can be allowable and allocable, and still not be what a prudent businessperson would pay (e.g., first class airfare for a proposed subcontractor).
- The necessity for proposed cost items. Technical personnel (e.g., engineer, architect, information systems specialist, etc.) should review the proposed direct cost elements to determine their necessity to perform the contract and reasonableness (e.g., in comparison to market rates). A cost may be allowable under the cost principles and even allocable to the type of work to be performed, *but* still not be necessary for the specific contract.
- Application of audited or pre-negotiated (e.g., by the Federal Government) indirect cost (e.g., overhead) rates, labor and fringe benefit rates, or other factors.
- Effect of the offeror's current practices on future costs. Does the offeror have a track record of containing costs (completing contracts at or “under cost”)? Does he/she overrun costs?
- The projection of the offeror's cost trends. Is there any indication that his/her costs are likely to increase or decrease over the life of the contract?
- Compare costs proposed by the offeror with:
 - Actual costs previously incurred by the same contractor for the same or similar work. If it is a repetitive type of work or service, how much has it cost in the past. Apply any appropriate inflation factors for past work.
 - Actual costs of previous the same or similar work performed by other contractors.
 - Previous cost estimates from the offeror or other offerors for the same or similar items.
 - The methods proposed by the offeror with the requirements of the solicitation (i.e., do the costs reflect the technical approach proposed and the work required?).
 - The HA’s independent cost estimate, either created by HA staff or for the HA by an independent architect, engineer, appraiser, etc.
- Verify that the offeror's cost submissions comply with the appropriate set of cost principles.

What are cost principles?

Cost principles describe the allowability of various types of costs (e.g., labor, travel, communications, etc.). The HUD regulations at 24 CFR Part 85, “Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments” (specifically, section 85.22, “Allowable costs”), and 24 CFR Part 84, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations” (specifically, section 84.27, “Allowable costs”) require you to use them when performing cost analysis.

Which cost principles do I use?

It depends upon the type of organization with which you are contracting. The use of one set or another is contract-specific. For example, if the contract is with a private business concern, use the principles in FAR Subpart 31.2 (see below). Here is a list of the cost principles and the types of organizations covered by each:

State, local and tribal governments	Office of Management and Budget (OMB) Circular A-87
Private nonprofit organizations other than institutions of higher education or hospitals	OMB Circular A-122
Educational institution	OMB Circular A-21
Private, profit-making entities and nonprofits listed in Attachment C of OMB Circular A-122	Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, Subpart 31.2

***NOTE!** When applying the cost principles in FAR Subpart 31.2, the following terms shall be read to refer to the HUD grantee/funding recipient: “Government,” “agency,” “contracting officer” and “administrative contracting officer” (“ACO”). The term “contractor” shall refer to the grantee’s/funding recipient’s contractor. FAR 31.001 contains a glossary of technical terms used in Subpart 31.2.*

Where can I find the cost principles?

The cost principles are available online:

OMB Circulars: <http://www.whitehouse.gov/omb/circulars/index.html>

FAR Subpart 31.2: <http://www.arnet.gov/far/>