

Chapter 10: Contract Development and Modifications

Introduction

Once a Vendor has been selected, it is time to develop and execute a Contract. A Contract is a formal agreement between two or more parties which clearly states the responsibilities of each party, agreed upon compensation for services and payment terms, and conditions and procedures under which the contract may be terminated by either party. When a Contract has been fully executed, it is enforceable by law.

All work and services to be accomplished for the completion of a Community Development Block Grant (CDBG) funded project must be covered by a legally enforceable, fully executed contract, regardless of the source of funds to be used for payment of the contract amount.

Before any contract may be fully executed, it is the Grantee's responsibility to ensure that the contract complies with applicable federal and state laws, provides complete and full provision of the project scope, and avoids any real or implied Conflict of Interest concerns.

Section 10.1 Contract Development

Contracts paid with State and Small Cities CDBG funds must utilize a Firm, Fixed-Price Contract. A Firm, Fixed-Price Contract requires that the contractor deliver the product or service for the agreed-upon price. This type of contract is required for:

- Professional services, including Grant Administration, Labor Standards, and Environmental Review,
- Engineering or Architectural services,
- Legal fees, rate consultant, or any other type of professional services required, and
- Construction of the project activities.

Costs Plus Percentage of Cost contracts are specifically prohibited by CDBG regulations for any type of work or services to be performed on CDBG funded projects.

[2 CFR 200.323\(d\)](#)

NOTE: All service provider contracts must include a firm fixed rate or not-to-exceed amount, and may not just be listed as a percentage of the CDBG grant.

Section 10.2 Contract Requirements

All contracts executed for performance of CDBG related activities must include a full and complete description of the federal contract provisions as listed in Appendix II to Part 200.

[Appendix II to Part 200 –
Contract Provisions for
Non-Federal Entity](#)

- Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- Contracts for more than the simplified acquisition threshold currently set at \$250,000, must include language requiring domestic preferences for procurements in compliance with [2 CFR 200.322](#) and the Build American, Buy America Act (BABA).
- All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be affected and the basis for settlement.
- Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

All contracts executed for performance of CDBG related activities must include contract provisions as required by 24 CFR Part 570 Subpart K, including lead-based paint, acquisition of real property, and minimizing displacement.

[24 CFR 570 Subpart K](#)

All construction contracts must include the HUD 4010: Federal Labor Standards Provisions.

[9-1: Federal Labor Standards Provisions \(HUD 4010 Form\)](#)

All construction contracts for projects that exceed \$200,000 in HUD funding must include language applying Section 3 requirements in any subrecipient agreement or contract. Grantees must also require subrecipients, contractors, and subcontractors meet the prioritization requirements of [§75.19](#), regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

[24 CFR 75.19](#)

Bonding Requirements

Bonds are negotiable instruments required by federal and state law from construction contractors as a form of insurance. The bonds are available to contractors from surety companies, which are then turned over to the grantee to protect against situations that may arise. Some of these situations include:

- Work not completed as specified and/or the contractor refuses to finish the work without a change order or price escalation;
- Laborers or subcontractors are not being paid for work and are suing the grantee to recover their loss; or
- Payment of liquidated damages is required, arising from labor standards violations.

Construction contracts must include the following documents either physically or by reference to the project bid specifications and any addendums:

1. Applicable Davis-Bacon and Related Acts (Davis-Bacon) Wage Decision assigned to the project.
2. Bid Bond (submitted with the bid), Payment Bond and Performance Bond obtained by contractor and provided to Grantee to insure contract fulfillment.
 - The Bid Bond guarantees that the selected bidder will execute the required contract documents within the specified period of time. The Bid Bond must be equal to 5% of the bid price (contracts over \$50,000).
 - The Labor & Material Payment Bond is binding upon the contractor, subcontractors and their successors or assigns, for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must be for 100% of the contract price (contracts over \$100,000).

[CGS 49-41](#)

- The Performance Bond ensures that the contractor will fulfill all obligations under the contract within one year of substantial completion. The performance bond must be for 100% of the contract price (contracts over \$25,000).
- If a construction manager is employed, each subcontract exceeding \$100,000 shall be bonded or a certified check required.

The bonding company issuing the bonds must hold a 'Certificate of Authority' as acceptable sureties.

Insurance Requirements

The project's Assistance Agreement between the DOH and the Grantee will outline the insurance requirements for the Grantee.

The Grantee shall require all contractors and all professional service providers (i.e., engineer, architect, grant administrator, etc.) to obtain the following types of insurance, in amounts no less than the stated limits, against claims for injuries to persons or damages to property which may arise from or in connection with the CDBG assisted project; provided however, that if this project is (i) financial assistance of less than \$100,000, or (ii) a planning grant, only items 1 and 2 as set forth herein shall apply:

- 1) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include Premises and Operation, Independent Contractors, Product and Completed Operations and Contractual Liability. If a general aggregate is used, the general aggregate limit shall apply separately to the Agreement or the general aggregate limit shall be twice the occurrence limit.
- 2) Workers' Compensation and Employer's Liability: Statutory coverage in compliance with compensation laws of the State of Connecticut. Coverage shall include Employer's Liability with a minimum limit of \$100,000 each accident, and \$500,000 Disease – Policy limit, \$100,000 each employee. Certain classifications of business entities (sole proprietor with no employees) are excluded from this requirement under Connecticut State Law.
- 3) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract, then automobile coverage is not required.
- 4) Directors and Officers Liability: \$1,000,000 per occurrence limit of liability; provided, however, that Directors and Officers Liability insurance shall not be required for limited liability corporations or limited partnerships.
- 5) Comprehensive Crime Insurance: \$100,000 limit for each of the following coverages: Employee Dishonesty (Form O), Forgery/Alteration (Form B), and Money and Securities coverage for Theft, Burglary, Robbery, Disappearance and Destruction.
- 6) Builders Risk: (Construction Phase) With respect to any work involving the construction of real property during the construction project, if Agency is taking a collateral position in the property, the Applicant shall maintain Builder's Risk insurance providing coverage for the entire work at the project site. Coverage shall be on a Completed Value form basis in an amount equal to the projected value

of the project. **The Grantee shall be listed as A.T.I.M.A. and a copy must be submitted to DOH upon receipt.**

- 7) Property Insurance: (Post Construction) If the Agency is taking a collateral position in the property, the Applicant shall maintain insurance covering all risks of direct physical loss, damage or destruction to real and personal property and improvements and betterments (including flood insurance if property is within a duly designated Flood Hazard Area as shown on Flood Insurance Rate Maps (FIRM) set forth by the Federal Emergency Management Agency (FEMA)) at 100% of Replacement Value for such real and personal property, improvements and betterments or the maximum amount available under the National Flood Insurance Program. The State of Connecticut shall be listed as a Loss Payee.

Additional Insurance Provisions

- 1) Described insurance shall be primary coverage and Applicant and Applicant's insurer shall have no right of subrogation recovery or subrogation against the State of Connecticut.
- 2) Contractor shall assume any and all deductibles in the described insurance policies.
- 3) Each insurance policy above shall not be suspended, voided, cancelled or reduced except after thirty (30) days prior written notice by certified mail has been given to the State of Connecticut, with the exception that a ten (10) day prior written notice by certified mail for non-payment of premium is acceptable.
- 4) Each policy shall be issued by an Insurance Company licensed to do business by Connecticut Department of Insurance and having a Best Rating of A-, VII, or equivalent or as otherwise approved by Agency.

Contract Contents and Provisions

All contracts for work or services on CDBG funded projects must include the following provisions:

1. Effective date of contract,
2. Detailed description of the work or services to be performed,
3. Specifications of materials or other services to be provided,
4. Time for performance and completion of contract services,
5. Method of Compensation,
6. Conditions and terms under which the contract may be terminated, and remedies for violation or breach of contract, and
7. Printed and signed names and titles of Signatories for all contract parties.

Retainage Requirements

A retainage account may be set up to the project is satisfactorily completed, all suppliers have been paid in full, and all contractors, subcontractors and suppliers have submitted lien waivers. The amount of retainage withheld may not exceed 5% of the total contract amount according to Connecticut General Statutes.

[CGS 42-158k](#)

A Retainage Agreement must be reached, and included in the contract, between the Grantee and the prime contractor to establish a procedure for holding the retained funds until all parties agree that the retainage may be released to the contractor upon satisfactory completion of the project.

Retainage Account funds may be:

1. Deposited into a mutually agreed upon financial institution, in a separate account. If deposited to an interest bearing account, any accrued interest belongs to the contractor
2. Deducted from amounts of draw-downs for payments due contractor so that the State is holding the retainage funds until they become due and payable to the contractor.

If the contractor has provided Contractor's Affidavit of Release of Liens (AIA Form G706A) and lien waivers from major subcontractors and suppliers, a contractor may request the balance of retainage. If these documents are not provided, retainage cannot be paid until 91 days after the date on the Certificate of Substantial Completion.

Change Order Procedures

No change orders are permitted prior to the onset of construction. While the CDBG funded project is under construction, circumstances may arise that require changes to the scope of work called for in the original contract. Change orders are permitted if properly prepared and approved. Total net (+/-) change orders on a project may not exceed 15% of the original contract amount. Change orders must be approved by the Grantee's governing board, in writing. The Grantee must notify DOH for approval if total change orders will exceed 15% of the original contract amount. When additional units of materials are needed, the cost used to calculate the change order amount must be the same price as quoted in the original contract.

Contractors should never assume a change order will be approved and commence the work identified in the change order before all necessary approvals have been obtained. Verbal approvals are not sufficient and additional work or services not formally approved could result in the contractor doing work for which the Grantee is not obligated to pay.

Construction projects may sometimes encounter unforeseen circumstances which require changes to the scope of the project contract which exceed the 15% maximum net change orders permitted. Should this occur, it is the responsibility of the project Architect or Engineer to present to the Grantee a written explanation of the nature of the required changes and a full and complete explanation as to why the circumstances encountered were unforeseen during project design. The decision to approve this change must be made by the Grantee after DOH approval.

Disclosure Reports and Code of Conduct

The Grantee must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest exists. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.

[Attachment 10-1:
Disclosure Report](#)

In order to affirm that no conflict of interest exists on the implementation of any contracts which are a part of the federally assisted project, every Grantee must complete a Disclosure Report, to be included in the Assistance Agreement. The Disclosure Report must be updated throughout the project as additional contracts are awarded and maintained in the project files.

In addition, when a potential conflict of interest arises on a project a Request for Exception to Conflict of Interest must be completed and submitted to DOH for review and approval. If you have any questions about the possibility of a potential conflict, please contact DOH immediately. (See Conflicts of Interest in [Chapter 1: Project Administration](#).)

[Attachment 1-8: Conflict
of Interest Exception
Request](#)

Contractor Debarment

Contracts for work or services for compensation on a project funded in whole or in part with CDBG funds may not be awarded to parties excluded from participation in federally assisted projects. Please refer to [Chapter 4: Procurement](#) for more information on determining debarred contractors.

Any entity that enters a contract to perform work or services on a CDBG project may be subject to debarment proceedings for the following violations:

1. Repetitive violations of any federal or state law or department program regulation or instruction,
2. Repetitive failure to perform contractual obligations or carry out representations or warranties to the Grantee or the funding agency under any program administered by said agency,
3. Acts of misconduct indicating a lack of business integrity directly affecting the responsibility to participate in department programs including but not limited to false representation, embezzlement, theft, forgery, fraud, negligence, bribery, falsification of records, and receipt of stolen property,
4. Repetitive violations of any non-discrimination or equal opportunity requirements in connection with any program administered by the agency, or
5. Debarment from any agency of the federal or state government.

Recommendations for debarment for any of the above violations may be addressed to DOH staff stating the conditions under which the violations occurred.

Section 10.3 Budget Revisions

Minor Budget Revisions

From time to time, grantees may need to revise budget line items to meet actual costs. These revisions must be accomplished prior to submitting a payment request from DOH. In order to accomplish such changes, Grantees must submit a revised Financing Plan and Budget to DOH along with a clear narrative detailing those changes, including the reasons for the change. Requests must be made prior to the final quarter of the budget period (in other words, no last minute requests will be accepted).

[Attachment 10-2:
Financing Plan and
Budget](#)

Section 10.4 Subrecipient Agreements

It is not uncommon for grantees to carry out project activities through a subrecipient. A subrecipient is defined as a public or private nonprofit agency, authority, or organization, or other eligible entity, that is provided CDBG funds to carry out eligible activities on behalf of the grantee.

The most likely scenario under which a grantee would opt to utilize a subrecipient is when the grantee wishes to “support” certain eligible activities that are either being carried out or are the primary responsibility of some agency outside of the grantee. In effect, the grantee’s goals coincide with the subrecipient’s, and it makes more sense to utilize the capacities of an existing organization rather than create the apparatus necessary to carry out project activities and/or duplicate services. It is crucial to stress the importance of the grantee-subrecipient relationship. The grantee is not absolved of its responsibilities by utilizing a subrecipient to carry out project activities; in fact, many of these responsibilities cannot be undertaken by anyone other than the grantee, such as environmental determinations and requesting funds from DOH. Further, all CDBG requirements are applicable to subrecipients in terms of how they carry out project activities (procurement, financial management, labor compliance, acquisition, etc.).

When is an Entity Not Considered a Subrecipient?

An organization or individual is not considered a subrecipient if the entity is:

- A contractor procured according to the requirements described in [Chapter 4: Procurement](#);
- A homeowner or landlord of an apartment building receiving a rehabilitation loan or grant;
- A nonprofit or for-profit entity receiving relocation payments and other relocation assistance;
- A for-profit business receiving a loan for a special economic development project.

There may be additional nonprofit organizations that are not considered subrecipients. These are certain types of nonprofits authorized under section 5305(a)(15) of the CDBG statute that carry out community economic development, neighborhood revitalization or energy conservation projects. A grantee should contact DOH if they are uncertain regarding the status of a particular organization.

Written Agreements with Subrecipients

In order to protect the grantee, and to ensure the subrecipient's compliance with all relevant requirements, the relationship between the two entities must be formally defined through a written agreement (or contract). Such an agreement's purposes are to clearly establish the terms and conditions under which the CDBG funding is provided and establish a legal basis for action if those terms and conditions are not met.

[Attachment 10-3:
Sample Subrecipient
Agreement](#)

This agreement must contain the following minimum provisions (like the contract provisions discussed in Section 10.3: Contract Requirements above, these require specific language, and simple reference is not sufficient):

- Scope of Work – In sufficient detail to provide a sound basis for evaluating performance, a schedule and a budget.
- Records and Reporting – Specifying the records that must be maintained and reports which must be submitted in order for the grantee to meet its own record keeping and reporting responsibilities.
- Program Income (if applicable) – Subrecipients may be allowed to retain program income for use in specified eligible activities during the life of the agreement. If the grantee allows the subrecipient to retain program income, the agreement must specify which activities may be undertaken with those funds and must be identified in the Grantee's Program Income Re-Use Plan.
- Administrative Requirements – Specifically requiring compliance with all applicable uniform administrative mandates.
- Program Requirements – Specifying compliance with CDBG requirements and other state and Federal overlay requirements (labor standards, nondiscrimination, and equal opportunity, etc.), except that the subrecipient may not assume the grantee's environmental responsibilities.
- Conditions for Religious Organizations – Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations.
- Suspension and [Termination](#) – Specifying the conditions for convenience and cause.
- Reversion of Assets – Stipulating that, on the expiration of the agreement, the subrecipient must transfer to the grantee any CDBG funds on hand and any accounts receivable attributable to CDBG funds. This must also include provisions designed to ensure that any real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000 is either:
 - Used to meet one of the three national objectives for at least fifteen (15) years after the expiration of the agreement, or longer if stipulated by the grantee; or
 - Disposed of in a manner those results in the grantee being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-CDBG expenditures.
- Cessation of the Subrecipient – Providing remedies and procedures in the event of the subrecipient ceases to exist.
- Standard Provisions - Required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.). See Section 2: Contract Development of this chapter.

Section 10.5 Submission of Documents to DOH

Once the grantee has executed contracts for CDBG funded projects, the following documents are to be submitted to the Small Cities Construction Specialist:

- One copy of executed contract and grantee's authority to execute (Board Resolution, etc.)
- Notice to Proceed
- Copy of Performance Bond, Labor and Material Payment Bond, and Power of Attorney for Surety (unless under \$100,000).
- Certificate of Insurance from general contractor and all professional service providers (i.e., engineer, architect, grant administrator, etc.) covering liability and workers' compensation and builder's risk, as applicable.