



City of Albany
Community Development Block Grant

Capital Projects Manual

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Community Development Block Grant Program Overview

This manual supplements the CDBG Policies and Procedures Manual and outlines the various requirements that will apply to entities applying for and/or receiving funding from the City of Albany Community Development Block Grant (CDBG) program **for capital projects** such as **facility improvements, building rehabilitation – including housing rehabilitation, property acquisition, and construction related projects.**

CDBG staff recommend you arrange a one-on-one meeting prior to submitting an application for Capital Projects so staff can get a better sense of what you have planned and to go over the information that may be needed for the application and/or the environmental review.

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SECTION 1: Site and Environmental Review Requirements

City Policy: City staff shall document the review of each activity for compliance with the National Environmental Policy Act (NEPA) requirements prior to entering into a subrecipient agreement or dispersing funds.

Overview of the Environmental Review Process

All CDBG activities are subject to the requirements of HUD environmental review regulations found in 24 CFR Part 58. It is critical that environmental reviews be conducted in a timely and accurate manner so that projects may move forward and receive positive consideration for CDBG funding. Incomplete or erroneous reviews may result in decisions by the City to deny or rescind project funding.

As an applicant for funding from the City's CDBG program, you may be seeking to acquire property for your project, or you may already own the property on which your project will be located. Please read the following guidance carefully to determine whether your project will be compliant with the HUD requirements related to property acquisition and environmental reviews.

Timing of the Environmental Review: Before any choice-limiting actions.

In an October 29, 2003 Final Rule that was adopted for 24 CFR Part 58 (also known as the "HUD Environmental Review regulations"), HUD made it clear that they consider the purchase of land or land/buildings, as well as construction activities or the letting of construction contracts, to be choice-limiting actions. Choice-limiting actions are prohibited prior to the completion of a HUD Environmental Review. For purposes of the City of Albany CDBG program, completion of a HUD Environmental Review means completion of both the applicant's and the City's reviews, the subsequent publication of review findings, and the issuance of an Authorization to Use Grant Funds by HUD.

- Grantees may not spend either public or private funds (CDBG, other Federal or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair, or construction pertaining to a specific site until environmental clearance has been achieved.
- Grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).
- Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the grantee or other project participant's own funds, prior to obtaining environmental clearance.

For the purposes of the environmental review process, "commitment of funds" includes:

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact--- e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"--- e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

Level of Environmental Review. Environmental review processes, particularly the level of review required, vary with the type of project being considered. You must **complete the Environmental Review (ER) Checklist (Exhibit F in the CDBG Subrecipient Manual)** to the best of our ability and/or submit the necessary information to complete the ER checklist for the project being proposed. City staff can provide consultation and assistance and will review the data gathered upon checklist completion. Staff will utilize that information in determining whether a project may be

considered to have “passed” environmental review, or whether more detailed information will be needed to evaluate that question.

For a vacant site that meets HUD’s environmental review standards and for larger or complex projects, the typical outcome is that an Environmental Assessment is required. This is a fairly extensive review that may require the applicant to hire consultants to help determine the presence of wetlands or toxic substance, for example, on the site. Environmental Assessments require the City to publish a notice known as a “Finding of No Significant Impact,” or “FONSI” in the Albany Democrat Herald. That FONSI allows the public to comment directly to HUD on the content of and methodology used to create the Environmental Review Record for the project. Following the comment period, any comments are considered by HUD in conjunction with the City’s request that the record be approved, which is accomplished through a “Request for Release of Funds and Certification.” Please be advised that a full environmental assessment **may take from two to six months** depending on project and site complexity. <https://www.hudexchange.info/news/environmental-assessment-guide-and-resources/>

City staff will discuss this process with you in more detail as you work through your environmental review process.

Levels of Environmental Review

	Exempt	Categorically Excluded, not subject to 58.5	Categorically Excluded, subject to 58.5	Environmental Assessment	Environmental Impact Statement
Regulatory Citations	24 CFR Part 58.34	24 CFR Part 58.35(b)	24 CFR Part 58.35(a)	24 CFR Part 58.36	24 CFR Part 58.37
Examples	Administration, Project Planning, Environmental Studies, and Engineering Design	Supportive services, such as health care, housing services, etc., and assistance in accessing local, state and Federal government benefits Economic development activities, including equipment purchase, operating expenses and similar costs not associated with construction or expansion of existing operations Tenant-based rental assistance	Acquisition, repair, improvements, reconstruction or rehab; facilities have same use w/out changes in size or capacity > 20% Rehab of residential buildings (<= 4 units), when density is not increased beyond four units, land use is not changed, and footprint of the building is not increased in floodplain or wetland Projects to remove barriers restricting mobility & accessibility to elderly and handicapped persons	New construction, or land acquisition for housing or economic development Converting a property to another use (e.g. commercial to residential, commercial to public facility, etc.) Rehab that exceeds the thresholds for categorical exclusion	Projects having a regional and/or long-term impact, e.g., construction of a power plant or landfill Will pose significant or potentially significant impacts on unique resources, e.g., endangered species, unique landforms, etc. Effects are highly uncertain or involve unique or unknown risks. High controversial for scientific or engineering reasons

Guidance for Purchase of Property After Completion of the Environmental Review Process

Please follow these steps if your project includes acquisition of land and/or buildings:

- At the time you submit your application for CDBG funds, you may have a written option or earnest money agreement with the seller of the property you would acquire for your project.

Please be sure that your transaction follows the property acquisition guidelines included in SECTION 8 of this manual as you begin to negotiate your purchase. You will need to be able to demonstrate that the seller’s decision to sell you their property is voluntary. To help document a voluntary sale you will need to deliver and have the seller sign one or more specifically- worded acquisition notices. You will need to inform the seller that, although the project may be assisted with federal funds, your agency does not have the power of eminent domain. In addition, you will need to provide a fair market value to the seller. Your fair market value is contingent upon and ultimately must be substantiated by a value appraisal. This appraised value will need to be disclosed to the seller with an option to continue with the negotiated terms, void the sale, or

reenter negotiations to reach a new, amicably determined sales price. In most cases, your purchase price must be the lesser of either the fair market value or an agreed upon sales price and may not exceed the appraised fair market value of the property.

- No choice-limiting actions (acquisition, demolition, construction, awarding of construction contracts) may take place until the entire HUD Environmental Review process has been completed.
- The property may be purchased with CDBG funds, or with non-City funds if CDBG will be used for other project purposes, only after the completion of an entire HUD Environmental Review process.
- If CDBG funds are being used for the acquisition, you will also need to have completed and/or met all conditions of the City's award of funding and have executed a CDBG Funding Agreement prior to completing your purchase transaction.

Guidance for Purchase of Property Prior to Submitting a Letter of Intent to Apply for Funding

If you or a third party purchased bare land or land with improvements before you submitted a Letter of Intent to the City to apply for CDBG funds, the following will apply:

- CDBG funds may not be used to reimburse you or the third party for your purchase if it occurred prior to the completion of the HUD Environmental Review.
- Once an application for CDBG funds is submitted, no other choice-limiting actions may take place on the property prior to completion of the Environmental Review.
- You will still need to demonstrate that you acquired the property through a voluntary transaction with the seller, and that your purchase price was either the fair market value based on an appraisal or Certified Market Assessment, or another, lower negotiated price. Failure to provide documentation that the transaction was voluntary and at or below market value may cause the entire project to be found ineligible for City funding.
- If the property has been purchased by a third party with the intent to transfer it to your ownership at some point, the transfer cannot take place until the Environmental Review has been completed. The eventual transfer price from the third party to you cannot be for more than the price for which they purchased the property. In other words, the third party cannot receive holding fees for participating in the transaction.
- The third party also may not initiate any choice-limiting actions on the site after application for CDBG funds but prior to completion of the Environmental Review.

Under no circumstances may you, or a third party intending to transfer property to you, acquire the property using any resource (city or non-city) after you submit a letter of intent to apply for CDBG funds but before the Environmental Review is completed. Failure to comply with this requirement will cause your project to become ineligible for CDBG funds.

SECTION 2: ACCESSIBILITY REQUIREMENTS AND GUIDELINES

Three different sets of accessibility-related nondiscrimination requirements apply to the CDBG program: the Architectural Barriers Act, the Fair Housing Act, and the Americans with Disabilities Act (ADA).

CDBG applicants: Please alert project architects of these requirements so they can design the project accordingly.

The Architectural Barriers Act: The Architectural Barriers Act of 1968 requires certain federal and federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility, including a residential structure, designed, constructed, or altered with CDBG funds after December 11, 1995, and that meets the definition of a "building" (as defined below) is subject to the requirements of the Architectural Barriers Act as it is implemented through the Uniform Federal Accessibility Standards (UFAS) (24 CFR Part 40 and 41 CFR Part 101). Your project architect should be familiar with the Uniform Federal Accessibility Standards; the City will provide you with a copy of the Standards at your request.

Building: The term "building" means any building or facility (other than a privately owned residential structure not leased by the Government for subsidized housing programs or any building or facility on a military installation designed and constructed primarily for use by able bodied military personnel) *the intended use for which* either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is:

1. to be constructed or altered by or on behalf of the United States;
2. to be leased in whole or in part by the United States after August 12, 1968; or
3. to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

The Americans with Disabilities Act: The Americans with Disabilities Act (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities 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.

The Fair Housing Act: Multi-family dwellings consisting of four or more units, first occupied after March 13, 1991, must also meet the design and construction requirements of the Fair Housing Act.

- A. Multifamily dwellings must be designed and constructed so that at least one building entrance is located on an accessible route, unless it is impractical to do so because of the terrain or unusual characteristics of the site.
- B. Multifamily dwellings with a building entrance on an accessible route will be designed and constructed so that:
 1. The public and common use areas are readily accessible to and usable by handicapped persons;
 2. The doors are designed to allow passage into and within the common areas are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
 3. All of the covered (accessible) dwelling units contain the following features of adaptable design:
 - a. An accessible route into and through the covered (accessible) dwelling unit;
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
 - c. Reinforcements in bathroom walls to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat, where such facilities are provided; and
 - d. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

SECTION 3: REHABILITATION & CONSTRUCTION ACTIVITIES

The checklists outlined below are intended to give program managers a sense of the time and staff resources that you should expect to commit to your project from start to finish. Please note that each project has unique circumstances/requirements not described below that may arise. Planning Division staff are here to assist your organization with CDBG-funded projects so you can serve Albany residents, neighborhoods, and/or businesses.

National Objective Compliance. All property acquisition, building rehab, development, and public facility projects must meet a CDBG National Objective outlined in 24 CFR 750.208. Most CDBG-funded activities benefit low and moderate-income (LMI) persons either as direct beneficiaries of a service or program, or as a resident in a low- or moderate-income area, or a business/activity creates or retains low/mod jobs (LMJ). See the CDBG Policies and Procedures Manual for documenting compliance with a National Objective.

When real property is acquired or improved with CDBG funding, it must be used in a manner to comply with the CDBG National Objectives for a period of at least 5 years after the expiration of the Subrecipient Agreement.

Displacement. Funding recipients are encouraged to propose projects that prevent or minimize displacement of occupants, rehabilitation projects that require only temporary relocation, and new construction projects. If a project includes relocation, federal Uniform Relocation Act (URA) and Section 104(d) requirements must be met.

The Uniform Relocation Act (URA) applies to all occupied residential and/or commercial property assisted with federal funds. The URA protects all tenants in occupancy at the time of application for federal funds. You may not deny tenancy to current tenants – including refusal to renew a lease unless the tenant has violated the lease. The URA also protects tenants occupying or vacating units following application unless proper procedures are followed. URA guarantees that after the project is completed, the tenant's initial rent, including the estimated average monthly utility costs, will not exceed the greater of: tenant's current rent and average utility cost or 30% of tenant's average monthly gross household income. See the Property Acquisition and Relocation Requirements in SECTION 8 of this manual.

Housing Rehabilitation Projects funded with City CDBG assistance must meet HUD Housing Quality Standards (24 CFR 982.401) upon completion of the assisted project. Examples of such repairs that would need to be addressed include inadequate plumbing, heating, or electrical systems or failing structural components. Recipients of federal funds shall be responsible for an initial determination, with the review and approval of the City Planning Division staff, of the scope of work to be performed at the project site. An initial HQS inspection is recommended to determine deficiencies that will need to be included in the scope of work. At a minimum, the scope of work to be performed on a property must correct any HQS deficiencies upon project completion. The project contractor(s) are required to adhere to all applicable building codes, and either the owner or the contractor(s) shall obtain all required building permits. Where permits are required, documentation that all work has passed final inspections must be verified prior to final payment to the contractor(s). From a City perspective, HQS standards require that housing be free of lead-based paint hazards.

Income Certification

Subrecipients will be required to complete income certifications for beneficiaries to determine eligibility for funding. Guidance on performing income certifications is provided in the **CDBG Subrecipient Manual**.

Pre-Construction and Contractor Selection

- Develop a spreadsheet to track project expenditures, reimbursements, and activity elements.
- Develop the project design, specifications, and detailed final form must now be completed in order to assure that your project is described clearly, in its entirety, so that contractors interested in submitting proposals will all work from a common basis. As you or your design professional develop the details and specifications for your project you need to factor the following as they may be applicable to your project:
 - Meeting Davis-Bacon labor standards (see SECTION 5 of this manual)

- Accessibility Requirements per SECTION 2 of this manual
- Lead-based paint regulatory requirements [24 CFR 570.608 and 24 CFR Part 35]
- Requirements for soliciting and selecting contractors and design professionals, including (see Section 4 of this manual):
 - Minority-owned and Women-owned Business Enterprises (MBE/WBE) outreach (see SECTION 6 of this manual)
 - Section 3 businesses and employee outreach requirements and Safe Harbor benchmarks [see 24 CFR Part 75 and SECTION 7 of this manual)
- Develop a Construction Contract with General Conditions that will be used for the project and include any federal clauses, as applicable, as found in SECTION 9. Your Contract will also need to contain clauses that describe the City's roles, rights, and responsibilities as the project funder.

DO NOT SIGN ANY CONSTRUCTION CONTRACT until you have received written notification that the Environmental Review Record is complete from the Planning Division.

Program Income. Program income as defined at 24 CFR §570.500(a) is income received by the SUBRECIPIENT that is generated by activities carried out with CDBG funds provided by the CITY. If program income is anticipated (repaid loans, interest charged on loans or loan fees), this must be tracked by project and reported to the City on a quarterly basis with City provided reporting forms. The use of program income received by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR §570.504 – in general, funds must be used to carry out the same activity or service as the original CDBG funds. All unexpended program income shall be returned to the CITY at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted to the CITY within 30 days.

SUBRECIPIENT RESPONSIBILITIES

Once contractors are selected and the ERR is completed, it is important that you document everything in your files as you will be responsible for:

- Developing and maintaining a project file. The City may request copies of all project documents or inspect them during a monitoring visit.
- Tracking all expenditures and monitoring the project budget. Up-to-date and detailed budget reports are required with each contractor payment/reimbursement request.
- Requesting inspections of the work by City staff in conjunction with submitting a payment/ reimbursement request.
- Coordinating payment requests from contractors or suppliers.
- Overseeing the on-site work on a regular basis.
- Being the primary liaison between the contractor and City staff.
- Facilitating compliance and coordinating with City staff regarding federal regulations that may apply to your project (Davis Bacon wage rate, Lead-based paint regs, program income, etc.).
- Quarterly reporting on activities, budget and program income.
- Completing close-out documents (to be provided by the City) at the end of the project.

Please contact CDBG staff at cdbg@albanyoregon.gov or 541-917-7550 for assistance in complying with applicable federal requirements and with developing any materials.

SECTION 4: SELECTING AND PROCURING PROJECT CONTRACTORS

Applicability: Applies to Architectural/Design Services, Rehabilitation and Construction Contracting Services

It is the policy of the City of Albany to encourage and foster competition in the awarding of contracts to be funded with federal CDBG resources. Applicants must be aware of the requirements that will apply to their selection of the contractors that will carry out the work proposed in a CDBG funding application.

Depending upon various factors such as the type of agency seeking funds, the type of project, and the contractual relationship that an applicant will have with the City (subrecipient or non-subrecipient as defined by HUD), specific federal procurement regulations (e.g., 2 CFR 200) may or may not apply. Prior to developing project plans or specifications, or soliciting contractors for a project, applicants should contact the Planning Division to request that a determination be made regarding the procurement requirements for their project. Early determination is critical because applicants may need to proceed differently depending upon which requirements apply.

For most CDBG-funded activities, the applicant is a "subrecipient," as defined by HUD, the most important and pertinent set of federal regulations that apply is 2 CFR Part 200.318 through 200.326. Regardless of whether specific federal procurement regulations at 2 CFR 200 apply to an applicant, there are a number of universal procurement standards that apply to all capital projects funded in whole or in part through the City's CDBG program. Key procurement and contracting requirements that apply to all projects include:

- A. Cost Reasonableness must be determined and documented for all project costs including costs for design and contracting services. For projects under \$100,000 - some form of price analysis must be made and documented in the applicant's procurement files in connection with every procurement action. At a minimum, records must include criteria for proposal selection, justification for lack of competition when competitive bids or offers are not obtained, and the basis for making a cost reasonableness determination.

2 CFR 200.404 stipulates that a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

Using a price analysis to determine cost reasonableness may be accomplished in various ways, including: the comparison of price quotations (bids or proposals) submitted; independent and qualified third-party estimates or in-house estimates that are performed and documented prior to receiving contractor proposals; or written comparisons to market prices and similar indicators.

If an applicant chooses to negotiate a price from a specific contractor in lieu of a competitive bidding process, the applicant must clearly demonstrate cost reasonableness of the negotiated price by using one or a combination of the methods of price analysis.

- B. Open Competition. Procurements shall, to the maximum extent practical, provide for open and free competition. To achieve this goal the City requires that you secure at least two, preferably three or more, proposals from architectural, design or engineering firms if their services will be needed for your project, as well as at least two, preferably three or more, proposals from licensed, bonded and insured contractors for construction or rehabilitation elements of your project.
- C. Contractor Solicitation Plan. The City recommends first developing a contractor solicitation or marketing plan that specifies the approach you will use to solicit proposals, and the approach you will use to reach out to Minority-owned and Women-owned Business Enterprises (See SECTION 6 for more information on this requirement), and Section 3 businesses if applicable (See SECTION 7). ***Submit your Plan to the City for review and guidance.***
- D. Methods of Procurement:
 - o The sealed bid method is the preferred method for procuring construction. Bids will be publicly advertised and solicited from an adequate number of known suppliers; at least two (2) responsible bids

- must be received. A firm fixed-price contract is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
- o Procurement by competitive proposals (Request for Proposals) is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. Funding recipients may want to conduct a "Request for Qualifications" outreach process first to establish a pool of interested and qualified proposers.
 - o In all cases, copies of bids and proposals should be submitted to the City.
- E. The Bid or Request for Proposals (RFP) packet: Solicitation documents (must be provided for City review prior to distribution to contractors. Subrecipients will ensure that all prequalified lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.
- o All solicitation documents must include the following language:
 "The project described in this (Request for Proposals or other solicitation document as applicable) is being funded in whole or in part with funding from the U.S. Department of Housing and Urban Development through the City of Albany CDBG program and is covered by Davis Bacon and Related Acts."
 - o The list of qualified and interested contractors you developed through your RFQ process (including the MBE/WBE contractors to whom you will provide the RFP packet- find contractors in Linn, Benton, Polk, and other counties here: [COBID Certification Management System \(diversitysoftware.com\)](https://www.cobid.com)). Note: Check with the Planning Division to see if you also need to include Section 3 outreach in your process per SECTION 7 of this manual.
 - o Your instructions to contractors for obtaining the RFP packet and submitting a proposal.
 - o Your written criteria for selecting a contractor or contractors.
 - o A copy of the Construction Contract and General Conditions that will be used for the project (see below and SECTION 9 of this manual). Note: all construction contracts greater than \$2,000 must include the list of HUD contract provisions provided in SECTION 9 of this manual.
- D. Debarment. Federal funds granted by HUD may not be used to employ directly or indirectly, award contracts to, or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension, or placement of ineligibility status (2 CFR 2424). Prior to entering into any HUD-funded agreement, the Subrecipient (or granting agency) must check all contractors, subcontractors (including sub-tier contractors), consultants, and subrecipients against the System for Award Management (SAM), found at <https://www.sam.gov>. Subrecipients shall also check that contractors are not included on the Oregon Ineligible Contractors list, per ORS 279C.860. Debarment is the most serious compliance sanction and is generally imposed for a three-year period. However, debarment can be imposed for a longer period, if determined to be necessary to protect the public interest.
- F. All construction contractors must be CCB licensed, bonded and insured (verification may be found at <http://www.oregon.gov/CCB/>).
- G. MBE/WBE and Section 3 Businesses. Funding recipients and any subcontractors will take all necessary affirmative steps to assure that small, minority-owned, women-owned, and veteran-owned firms are used when possible; and to the greatest extent feasible, will award contracts for work to be performed under the programs to eligible businesses located in Albany/Linn and Benton Counties, and to those that employ low- and moderate-income persons. Each subcontractor must complete the **MBE/WBE and Section 3 Form** and submit it to the subrecipient for submittal to the city as provided in SECTIONS 6 and 7 of this manual.
- H. Contractors that assist you in the development of specifications, requirements, statements of work, invitations for bids and/or requests for proposals for the project you are proposing for City funding may be precluded from competing for contracts on your project. Check with the Planning Division prior to making such an arrangement with a contractor.

- I. Proposals shall be reviewed and compared to assess cost reasonableness, scope, completeness, and satisfaction of other criteria that may have been stipulated in the request for proposal. While project cost will in all cases be weighted heavily in reviewing competing proposals, the selected proposal shall be the one determined to be most advantageous when price, quality, and other factors such as contractor experience and capacity for your specific project, are considered.
- J. Cost agreements with contractors shall be in the form of a lump sum (aka: fixed sum or stipulated sum) for work or services that are clearly delineated.
- K. For construction contracts that exceed \$100,000, Contract Work Hours and Safety Standards Act requires overtime pay be paid to workers who work more than 40 hours per week. Contracts over \$100,000 also trigger bonding requirements shall include a bid guarantee equal to five percent of the bid price, and a performance bond and payment bond for 100% of the contract price. If you choose, you may also require these bonds for contracts in amounts less than \$100,000. If applicable, make sure your project budget reflects the costs of this type of bond. IN ADDITION – federal Section 3 requirements apply; see SECTION 7 of this manual.
- L. Construction/Subcontractor Contracts and Conditions. Develop a Construction Contract with General Conditions to guide the contractor’s work on your project and to ensure compliance with federal regulations. All City-funded contracts must be provided for City review prior to execution **and must include the following language**:

“This contract and the work it will carry out is being funded in whole or in part with funding from the U.S. Department of Housing and Urban Development through the City of Albany CDBG program.”

In addition to the above statement, contract documents must also include certain federally required clauses as outlined in SECTION 9: Contract Clauses Required in All CDBG Project Contracts.
- M. Project Management. Funding recipients shall designate a project manager to facilitate the selection of contractors, executing construction contracts, and coordinating funded activities with the City’s Planning Division. Subrecipients will maintain an administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

As you work through these pre-solicitation elements of your project, as well as the project itself, ***it is critical that you document all that you do, both for our records and for yours.*** Documentation that you should maintain includes but is not limited to copies of any correspondence, notifications, or advertisements; copies of faxes sent or received; written records of telephone or face-to-face conversations; and summaries, descriptions, justifications of any actions that vary from the approved project scope and process.

Proposal Analysis, Contractor Selection, Cost Reasonableness

The project manager shall facilitate and **document** the following:

- A thorough review of all proposals received for accurateness, completeness, and compliance with the request for proposal.
- Basis for contractor selection
- Process used to determine cost reasonableness

You must provide the Planning Division with copies of all proposals received and documentation of your contractor selection and cost reasonableness determination process.

SECTION 5: MEETING DAVIS-BACON LABOR STANDARDS

Applicability: Applies to Construction Contracting Services over \$2,000, excluding housing rehabilitation of 4 or fewer dwellings.

The Davis Bacon and Related Acts (DBRA) requires all contractors and subcontractors performing work on certain federal construction contracts or federally assisted contracts, whereby the cumulative total of contracts is in excess of \$2,000, to pay their laborers and mechanics not less than the federal prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area. The federal prevailing wage rates and fringe benefits are determined by the Secretary of Labor for inclusion in covered contracts.

Note: Do not confuse the federal Davis-Bacon requirements with the State of Oregon "Prevailing Wage Project" requirement which is administered by the Oregon Bureau of Labor and Industries (BOLI).

Although very similar, there are distinct differences in terms of applicability to projects, wage rate requirements, and administrative oversight. Some projects may be subject to the federal prevailing wage rate requirements but not the state's, or vice-versa; some may be subject to both sets of regulations. For more information regarding the BOLI requirements, please contact BOLI directly at (971) 673-0838.

Federal Davis-Bacon prevailing wage rate requirements apply to your project if you are proposing a CDBG-funded project that will involve construction or rehabilitation of a public facility (e.g., a homeless shelter); installation of public improvements to support affordable housing (e.g. streets, water/sewer lines); or rehabilitation of multifamily housing containing eight (8) or more assisted units.

These requirements often have an impact on the cost of projects and carry with them significant record keeping procedures. Applicants are encouraged to contact the Planning Division early in their project planning to ascertain whether a proposed project will be subject to Davis-Bacon. If your project will be a covered project, your solicitation documentation will need to alert contractors that Davis-Bacon requirements will apply and will need to include the appropriate federal wage decision* and other federally required documentation. Federal wage decisions will be made available by the Planning Division for project cost feasibility determinations.

*A wage decision (also known as a "wage determination") is a document issued and frequently updated by the Federal Department of Labor. Wage decisions are specific to the county in which the project is located (e.g. Linn), and are specific to the type of construction project being done. You must obtain Planning Division's confirmation of which is the applicable wage decision for your project prior to requesting proposals from contractors.

Your organization must keep all records which are relevant to the Davis-Bacon requirements for three (3) years after the activities are completed. (Keep in mind that subrecipients must keep all records which are relevant to the CDBG program for five (5) years after all activities funded through the CDBG program have ended.)

A. Compliance Measures: Requirements for the Project Site

1. Subrecipients must post Davis-Bacon wage decision information and "Notice to All Employees" (the WH-1321 form which can be found at <http://www.dol.gov/whd/programs/dbra/wh1321.htm>) at the job site;
2. City staff will conduct periodic on-site employee interviews of laborers and mechanics in all major trades;
3. Your organization must provide weekly payment of wages and submission of certified payrolls through the HUD-11 form which can be found at: www.hud.gov/offices/adm/hudclips/forms/files/11.doc;
4. If the employees are paid by the job, then the hourly wage must be determined by dividing total cost by number of hours worked;
5. If the prime contractor hires a subcontractor that is his/her sole employee, then the prime contractor must submit payroll for the subcontractor;
6. Apprenticeship and trainee programs must be approved by the U.S. Department of Labor;

7. "Helpers" must be paid at appropriate trade rate; and
8. Employers are required to pay wage restitution to underpaid employees within thirty (30) days. The prime contractor is responsible for ensuring that restitution is paid.

More information about the Federal Labor Standards Provision and the HUD-4010 form can be found at: <http://www.hud.gov/offices/adm/hudclips/forms/files/4010.pdf>

If you have any questions about the Davis-Bacon provisions and its applicability to your project, please contact the CDBG program staff in the Community Development Department.

The following **Construction Checklist** has been prepared to assist project managers, contractors and subcontractors in meeting contractual labor standards responsibilities.

CONSTRUCTION CHECKLIST

(Projects Subject to Davis Bacon Wage Rates)

1) **Request for Proposal:** In conjunction with your “request for proposal” you must check that:

- The request for proposal clearly informs all potential bidders that the project is covered by the federal Davis-Bacon and Related Acts. *“The project described in this (Request for Proposals or other solicitation document as applicable) is being funded in whole or in part with funding from the U.S. Department of Housing and Urban Development through the City of Albany CDBG program and is covered by Davis Bacon and Related Acts and is subject to the Federal Labor Standards Provisions found in HUD Form 4010.”*
- Prevailing wage rates and fringe benefits will be determined according to the type of work being performed under the contract. For more information about determining wage rates, visit: <http://www.wdol.gov/>. The wage rate lock-in occurs at the time of the bid opening, provided that the contract is awarded within 90 days. Oregon rates are here: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>
- The correct wage decision (confirmed by the City CDBG staff) is included in your request for proposal.
- A copy of the latest Federal Labor Standards Provisions (as issued by HUD’s Office of Labor Relations) is also included in request for proposal packet.
- Prior to issuing your request for proposal, you have put together a final draft of the proposal, submitted it to the Albany Planning Division, and have received approval of your packet from the Albany Planning Division.

2) **Pre-Contract:** Before awarding the construction contract, and before work begins, you must check that:

- The contractor has not been debarred or otherwise made ineligible to participate in any Federal or Federally-assisted project (found at <https://www.sam.gov/index.html/#1>).
- The contractor has reviewed and understands all labor standards contract provisions and has attended a pre-contract meeting hosted by City Planning covering the Davis-Bacon payment and reporting requirements.
- The contractor has consulted with the City of Albany regarding worker classifications not listed on the applicable wage decision. (The contractor who is awarded the job will need to work with the Planning Division to obtain an “additional classification” for such workers. Time is of the essence for this process.)
- If an apprentice will be performing work on the project, the contractor has requested and received certification of his/her apprentice program from the State’s Bureau of Apprenticeship and Training (recognized by U.S. BAT) and submitted copy thereof to the recipient prior to employment on the project. Likewise, “trainee” program certification from U.S. BAT, if applicable, must be submitted.
- The construction contract includes a copy of the applicable (correct) wage decision and Federal Labor Standards Provisions.
- The construction contract includes other provisions as may be required by the City of Albany CDBG program. (See Contract Clauses Required in All CDBG Project Contracts listed later in this section.)
- Prior to signing a construction contract, you have put together a final draft of the contract packet, submitted it to the Planning Division, and have received approval of your packet from the Planning Division.

3) **Pre-Construction:** Prior to, or at start of construction, you must check that the primary contractor has:

- Notified, in writing, to the Planning Division of the construction start date.
- Provided a list of all subcontractors and worker classifications to the Planning Division.
- Posted (and taken a picture) of each of the following on a bulletin board prominently located on the project site which can be seen easily by workers (and replaced if lost or unreadable at any time during construction):
 - A copy of the Wage Decision
 - “Notice to Employees” poster in English and Spanish (WH-1321). [Workplace Posters | U.S.](#)

[Department of Labor \(dol.gov\)](http://dol.gov)

- Before assigning each project worker to their tasks, obtained the worker's name, best mailing address, and last four digits of their Social Security number (for Payroll reporting purposes).
- Informed each worker of:
 - A. His/her work classification (journeyman or job title) as it will appear on the payroll
 - B. His/her duties of work
 - C. The U.S. DOL's requirements on this project that he/she is either a journeyman, apprentice, or laborer:
- If a journeyman, he/she must be paid a journeyman's minimum wage rate or more.
- If apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his year of apprenticeship.
- If a laborer, he/she is to do laborer's work only—not use any tool or tools of the trade and not perform any part of the journeyman's work and is to be paid the laborer's minimum rate or more.
- If applicable, obtained a copy of each apprentice's certificate with the apprentice's registration number, percentage of wage to be paid and his year of apprenticeship from the State BAT.
- An understanding of the requirement that each laborer or mechanic who performs work on the project in more than one classification within the same work week shall be classified and paid at the highest wage rate applicable to any of the work which he performs unless certain requirements are met.
- Informed each worker of:
 - His/her hourly wages (not less than the minimum wage rate for his/her work as stated on the Wage Decision);
 - Payment of overtime at the rate of time and one half for all work over 40 hours per week;
 - Fringe benefits must be paid in cash or into an approved third party trust;
 - Permissible deductions from his/her pay and/or any deductions voluntarily requested in writing from the employee.
- Informed each worker that he is subject to being interviewed on the job by a representative of the City of Albany Planning Division to confirm that the employer is complying with all labor requirements.
- Informed each foreman, journeyman, and apprentice that the proper journeyman-to-apprentice ratio must be observed on the job site at all times when an apprentice is working.

4) During Construction: During construction, you must check that each contractor:

- Has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off, and not dismissed any project worker because of race, color, religion, sex, or national origin.
- Has employed all registered apprentices referred to him through normal channels up to the applicable ratio of apprentices to journeyman in each trade used by the employer.
- Will maintain basic employment records for no less than three years, accessible to inspection by HUD, the City of Albany, or other U.S. government representatives.
- Must comply with all safety and health standards.
- Must pay workers weekly.**
- Must submit weekly certified payroll reports** prepared on either recommended form WH-347 (or on computerized printouts approved by the City of Albany Planning Division) and accompanied by the Statement of Compliance (which is found on the reverse of the **WH-347**). WH-347 Form is online here: <https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification>
- Knows that the following project workers are exempt from Davis-Bacon labor requirements and are not required to be shown on certified payrolls:
 - Project superintendent (performing administrative work only)
 - Supervisory foreman (performing less than 20% manual labor in a worker classification)
 - Clerical workers

5) Weekly Payroll Review:

- Weekly payrolls must be reviewed and approved by Planning Division staff or by someone appointed

by the Planning Division.

- All weekly payroll reports are due within one week (seven days) after the workweek has been completed.** (Late reports shall be cause to delay payments to the contractor.)
- All payroll reports from subcontractors must be reviewed, approved, and submitted by the prime contractor, prior to forwarding them to the Planning Division or its appointee.
- All weekly payroll reports must contain the correct information in the correct places (boxes) on the payroll form. Inaccurate payroll reports may be cause for delaying payment to contractor.** (Sample Payroll Reports are available from the planning Division.)
- All weekly payroll reports must be certified, meaning that the back of the report contains the HUD approved Statement of Compliance and that the report has been reviewed and signed by the prime contractor or a designated agent of the prime contractor. (Designated signers of payroll reports must have been previously approved by the Planning Division.)
- If a week goes by without any work being done, all project contractors must still issue certified payroll reports that no work was performed, unless payroll reports have been sequentially numbered.
- As previously stated, payment to contractors may be delayed if payroll reports are late or inaccurate.

6) After Project Completion:

- Each employer is required to keep all weekly payroll reports on the project for no less than three years after the Prime Contractor's project completion date. The City recommends copies of all payroll records submitted for review by the City or Subrecipient be submitted to the City for record keeping purposes.

SECTION 6: Minority- and Women-Owned Business Enterprises Outreach Requirements

Applicability: Applicable to all funded projects. [Section 281 of the National Affordable Housing Act]

The City of Albany and the recipients of CDBG funding are required to implement outreach programs to ensure that contracting opportunities are provided to minority owned business enterprises (MBE) and women owned business enterprises (WBE). **All recipients, prime contractors, and owners of CDBG-assisted projects must comply with the MBE/WBE outreach program procedures as a condition of assistance.** At a minimum, all recipients must conduct a five-county search for MBE/WBE enterprises which may be interested in and qualified to submit proposals for a funded project. The five counties include Linn, Benton, Lane, Marion and Polk. However, if you wish, you may solicit proposals from MBE/WBE located in other counties in addition to five counties listed here.

Definitions

A **Minority Business Enterprise (MBE)** is defined as a business firm which is at least 51 percent (51%) owned by minority group members, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by minority group members.

A **Women's Business Enterprise (WBE)** is defined as a business which is at least 51 percent (51%) owned by women group members, or in the case of a publicly owned business, at least 51 percent (51%) of the stock of which is owned by women group members. The minority or women's ownership must exercise actual day to day management and control of the business; Minority and Women's Business Enterprises must be officially certified or recognized as such, and must be included on the state of Oregon's listing of such firms, available at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>

Note: It is not mandatory that you reach out to other types of certified businesses listed on this website such as ACDBE, DBE, or ESB (see listing below). When conducting your countywide search on this website be sure to check and not check the appropriate "Certification Type" prior to launching the search.

Search by Certification Type	
Certifications	<input type="checkbox"/> Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)
	<input type="checkbox"/> Disadvantaged Business Enterprise (DBE)
	<input type="checkbox"/> Emerging Small Business (ESB)
	<input checked="" type="checkbox"/> Minority Business Enterprise (MBE)
	<input checked="" type="checkbox"/> Women Business Enterprise (WBE)

Requirements and Procedures

Again, you must conduct a five-countywide search using the above website to find contractors and businesses that may be qualified to work on the project. There are various ways to utilize the search mechanism of this web site. For example, if you hold down the control key, you can select all five counties (Benton, Lane, Lincoln, Linn, and Polk) to be searched together. You can also download the search results to an Excel spreadsheet which will contain all of the contact information and a description of the type of work each business specializes in.

Working from this list, you should make a list of all MBE and/or WBE businesses that appear to be qualified for the project. You then need to reach out to each of these businesses to inquire as to whether or not they would be interested in receiving a Request for Proposal packet.

Document! Document! Document! You must create and maintain documentation of your process. Keep a brief account of your activities: Companies contacted, date, response, packet sent or not, proposal received or not, etc. Emails are a good way to verify your outreach efforts. Keep a log of all phone calls to and from MBE or WBE contacts. The City of Albany will want to see your documented efforts to reach out and include MBE and WBE in your procurement process. Recipients must do so when soliciting for professionals (e.g. architects, engineers) and general contractors. Recipients are also responsible for explaining the MBE/WBE outreach requirements to their general contractor and other contractors who in turn are soliciting lower tier contractors. Documentation is required throughout the entire procurement process.

As a prerequisite to demonstrate MBE/WBE goal achievement, applicants will need to provide the City with the following information:

- List of MBE and/or WBE enterprises you informed (contacted) about your project.
- Copies of timely solicitation letters or emails sent to MBE/WBE firms identified in your five-county search.
- Documentation of any other efforts to extend opportunities to MBE/WBE firms, such as advertisements in minority and women trade association newsletters and minority-owned media and written notification sent to minority and women contractor associations; or press releases in the local media.
- List of MBE/WBE businesses who expressed an interest in your project and to whom you sent a request for proposal.
- List of MBE/WBE businesses which submitted proposals.
- A description of your proposal analysis and contractor selection process.
- The names of selected MBE/WBE contractors or subcontractors to be utilized (awarded contracts).
- The type of work and dollar amount to be awarded to each MBE/WBE subcontractor.

HUD's mandate is to achieve reasonable minority business participation in contracts let as a result of its grants and agreements. This means that, all else being equal (e.g. price, qualifications), MBE and WBE businesses will be given priority when selecting professionals, contractors, and subcontractors for a CDBG-funded project.

Post Contract Award Compliance

General contractors must promptly report in writing any and all proposed changes in the utilization of MBE/WBE firms to the funding recipient and the City. If a recipient or a general contractor intends to select another business in lieu of an equally qualified and competitive MBE or WBE firm, or does not intend to follow through with a previously selected MBE or WBE, the City of Albany will consider approving such action only if:

- The MBE/WBE firm is unable to meet the delivery requirements of the construction schedule.
- The MBE/WBE firm is not punctual in complying with the requirements of the contract documents.
- The MBE/WBE firm is not capable of fulfilling contract obligations.
- The MBE/WBE firm is prevented from performing due to bankruptcy, insolvency, or other incapacities.

The forms that follow on the next two pages provide tools 1) for contractors and subcontractors to report on their MBE/WBE status, and 2) for contractors to report on their use of subcontractors. The City will be happy to provide these forms for use by funding recipients and contractors throughout the course of a project.

Albany Community Development Block Grant (CDBG) Programs
Minority and Women's Business Enterprise (MBE/WBE) and Section 3 Information Form

This form must be completed by all vendors involved in construction projects funded with CDBG funds (general contractors, subcontractors and those providing professional services). [2 CFR 200.321]

Business name: _____

Business full address: _____

Business email (if applicable): _____ Business Phone # _____

Taxpayer's EIN: _____ On Debarred List? _____

Project Name: _____ Amount of Contract: \$ _____

Scope of Work: _____

Select the category that best applies to the business for this project: _____

(A) Professional Services (B) General Contractor (C) Sub-Contractor

(D) Other (please describe) _____

Business Description: _____

Owner's Name: _____ Email: _____

Owner's Full Address: _____

Check all that apply: Minority-owned Women-owned Neither

Definition of a minority or women- owned business: A minority or women-owned business is one that is 51% or more owned, operated and controlled on a daily basis by a minority or female.

Racial/Ethnic Code Number from list below: _____

#1 – White Americans

#4 – Hispanic Americans

#7 – Alaskan N

#2 – Black Americans

#5 – Asian Pacific Americans

#3 – Native Americans

#6 – Hasidic Jews

When hiring, do you reach out to and provide preferences to low-income local (Albany) residents? (Learn more: www.hud.gov/section3) _____

Form Completed by:

(Print Name): _____ Title: _____

Signature: _____ Date: _____

Return completed form(s) to cdbg@albanyoregon.gov OR
Mail to: Community Development Dept/CDBG; City of Albany, P.O. Box 490; Albany, OR 97321

CDBG Program Subcontractor List Reporting Form

Project name: _____ Project address: _____

General or Prime Contractor's Name and CCB#: _____

Business/Contractor Owner Name: _____

Company's Physical Address: _____

Amount of General/Prime Contract: _____

The Prime Contractor must identify all subcontractors who will perform work on the project identified above. Please use additional sheets (or alternate format with equivalent information) if necessary.

Subcontractor's company name:	CCB #
Physical address:	Tax ID #
Specialty trade:	Subcontract Amount: \$
Check all that apply:	·MBE ·WBE ·Section 3 Business ·Certified Renovator Firm
Contact person:	Phone:
Title:	Email:

Subcontractor's company name:	CCB #
Physical address:	Tax ID #
Specialty trade:	Subcontract Amount: \$
Check all that apply:	·MBE ·WBE ·Section 3 Business ·Certified Renovator Firm
Contact person:	Phone:
Title:	Email:

Subcontractor's company name:	CCB #
Physical address:	Tax ID #
Specialty trade:	Subcontract Amount: \$
Check all that apply:	·MBE ·WBE ·Section 3 Business ·Certified Renovator Firm
Contact person:	Phone:
Title:	Email:

Subcontractor's company name:	CCB #
Physical address:	Tax ID #
Specialty trade:	Subcontract Amount: \$
Check all that apply:	·MBE ·WBE ·Section 3 Business ·Certified Renovator Firm
Contact person:	Phone:
Title:	Email:

SECTION 7: SECTION 3 REQUIREMENTS of the Housing and Urban Development Act

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 (implemented through HUD's regulations at 24 CFR Part 75) that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very low-income residents in connection with projects and activities in their area (e.g. Linn County).

Section 3 requirements are not imposed on a recipient unless the project receives \$200,000 or more from any HUD Housing or Community Development Program (including CDBG/HOME, etc.) that is expended for work arising in connection with a Section 3 covered project as defined below, or \$100,000 in assistance from the Lead Hazard Control and Healthy Homes programs. <https://www.ecfr.gov/current/title-24/subtitle-A/part-75>

What is a Section 3 covered project? Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement),

- Housing construction (including reconstruction, conversion); or
- Other public construction projects assisted under HUD programs that provide housing and community development financial assistance to the including other buildings or improvements, regardless of ownership, assisted with federal housing or community development assistance.

The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

Subrecipients should encourage contractors and subcontractors to make best efforts to award contracts to Section 3 Business Concerns.

A Section 3 Business Concern means:

- (1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
 - a. It is at least 51 percent owned and controlled by low- or very low-income persons;
 - b. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
 - c. It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
- (2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.
- (3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Businesses that believe they meet the Section 3 Business requirements may register here: <http://www.hud.gov/Sec3Biz>.

Contractors and Subcontractors must self-certify as to their qualification for Section 3 preference using the Certification Form provided by HUD or the City CDBG staff at the time of bid/proposal. If in doubt and for the purpose of promoting fair competition, you, or the City of Albany Planning Division, may request supporting evidence.

Section 3 Worker means:

- (1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
 - a. The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
 - b. The worker is employed by a Section 3 business concern.
 - c. The worker is a YouthBuild participant.

- (2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
- (3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Targeted Section 3 Worker for housing and community development financial assistance means:

A Section 3 worker who is:

- (1) A worker employed by a Section 3 business concern; or
- (2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - (i) Living within the service area or the neighborhood of the project, as defined in [§ 75.5](#); or
 - (ii) A YouthBuild participant.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

SECTION 3 PROVISIONS for Housing and Community Development Financial Assistance [24 CFR Part 75.19]

(a) Employment and training.

- (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located. (Linn County or Benton County)
- (2) Where feasible, priority for opportunities and training described in [paragraph \(a\)\(1\)](#) of this section should be given to:
 - (i) Section 3 workers residing within the service area or the neighborhood of the project, and
 - (ii) Participants in YouthBuild programs.

(b) Contracting.

- (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.
- (2) Where feasible, priority for contracting opportunities described in [paragraph \(b\)\(1\)](#) of this section should be given to:
 - (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
 - (ii) YouthBuild programs.

SECTION 3 SAFE HARBOR BENCHMARKS for CDBG-funded projects:

- (a) **General.** Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:
 - (1) Certify that they have followed the prioritization of effort in [§ 75.19](#); and
 - (2) Meet or exceed the applicable Section 3 benchmark as described in [paragraph \(b\)](#) of this section.
- (b) **Benchmarks for housing and community development financial assistance.**

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers.

(2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at 24 CFR Part 75.21.

Section 3 benchmarks will consist of the following two ratios:

- The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.
- The number of labor hours worked by Targeted Section 3 workers as defined in [§ 75.21\(a\)](#), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

SECTION 3 REPORTING [24 CFR PART 75.25]

(a) Reporting of labor hours.

(1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

- (i) The total number of labor hours worked;
- (ii) The total number of labor hours worked by Section 3 workers; and
- (iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to [§ 75.31](#).

(3) The labor hours reported under [paragraph \(a\)\(1\)](#) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to [paragraph \(a\)\(4\)](#) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under [paragraph \(a\)\(1\)\(ii\)](#) of this section, and labor hours by Targeted Section 3 workers, under [paragraph \(a\)\(1\)\(iii\)](#) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under [paragraph \(a\)\(1\)\(i\)](#) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance-based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) **Additional reporting if Section 3 Benchmarks are not met.** If the recipient's reporting under [paragraph \(a\)](#) of this section indicates that the recipient has not met the Section 3 benchmarks described in [§ 75.23](#), the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

- (1) Engage in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- (2) Provide training or apprenticeship opportunities.
- (3) Provide technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- (4) Provide or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- (5) Hold one or more job fairs.
- (6) Provide or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, child care).

- (7) Provide assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
 - (8) Assist Section 3 workers to obtain financial literacy training and/or coaching.
 - (9) Engage in outreach efforts to identify and secure bids from Section 3 business concerns.
 - (10) Provide technical assistance to help Section 3 business concerns understand and bid on contracts.
 - (11) Divide contracts into smaller jobs to facilitate participation by Section 3 business concerns.
 - (12) Provide bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
 - (13) Promote use of business registries designed to create opportunities for disadvantaged and small businesses.
 - (14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.
- (c) Reporting frequency. Unless otherwise provided, recipients must report annually to the City on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

CONTRACT PROVISIONS [24 CFR 75.27]

- (a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.
- (b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of [§ 75.19](#), regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

NOTIFY AND FIND SECTION 3 & TARGETED SECTION 3 WORKERS

Contractors and subcontractors should employ several active strategies to notify Section 3 workers and Targeted Section 3 workers of Section 3 job opportunities, including:

1. Clearly indicating Section 3 eligibility on all job postings with the following statement: "This job is a Section 3 eligible job opportunity. We encourage applications from individuals that are low income and/or live in Public Housing and/or receive a Section 8 voucher";
2. Including the Section 3 Worker and Targeted Section 3 Worker Self-Certification Form in all job postings
3. Working with the Section 3 Coordinator to connect Section 3 worker and Targeted Section 3 workers in the [recipient/grantees] database with opportunities and/or utilize the Section 3 Opportunity Portal to find qualified candidates
4. Establishing a current list of Section 3 eligible applicants
5. Contacting affordable housing non-profits, Linn Benton Housing Authority, employment agencies, and other local community organizations in the project area and provide them with job postings for Section 3 eligible applicants
6. Coordinating a programmatic ad campaign, which results in widespread job posting across diverse ad networks including:
 - (a) Advertising job opportunities via social media, including LinkedIn and Facebook;
 - (b) Advertising job opportunities via flyer distributions and mass mailings and posting ad in common areas of housing developments and all public housing management offices

Contacting resident councils, resident management corporations, and neighborhood community organizations to request their assistance in notifying residents of available training and employment opportunities

SUBRECIPIENT OVERSIGHT

1. Notify all potential contractors for Section 3-covered projects of the Section 3 contracting requirements and include the required Section 3 clause in all Section 3-covered contracts.
2. Have contractors to include Section 3 Worker and Targeted Section 3 Worker Self-Certification Form in all job postings.
3. Inform contractors about the HUD Section 3 Opportunity Portal <https://hudapps.hud.gov/OpportunityPortal/>
4. Require contractors to submit a list of core employees (including administrative, clerical, planning and other positions pertinent to the construction trades) at the time of contact award.
5. Assist and actively cooperate with HUD and the City of Albany in obtaining contractor/subcontractor compliance with Section 3 requirements.
6. Do not award contracts to any contractor who has been found to have violated the Section 3 requirements.
7. Take appropriate remedial action against contractors who fail to comply with the Section 3 requirements (e.g. termination).
8. Provide employment and training opportunities for Section 3 residents by meeting the percentage goals in 24 CFR 75.19 projects provided housing and community development assistance (includes CDBG).
9. Document actions (including results and impediments) taken to comply with Section 3 requirements.
10. Submit a Section 3 report which documents that you have met Section 3 numeric goals and/or explains your best efforts to provide employment and training opportunities to Section 3 workers in the priority order in 75.25 (b) if Safe Harbor benchmarks are not met.

The following forms have been developed to document compliance with Section 3 requirements. These forms should be used in conjunction with the City of Albany Section 3 Policy. Prior to executing the funding agreement, an organization that is subject to the Section 3 requirements should meet with Albany CDBG staff to discuss your project and your organizations approach to ensure compliance.

- HUD Section 3 Clause Certification
- Application For Certification as a HUD Section 3 Business Concern
- HUD Section 3 Employment Forecast Report
- HUD Section 3 Prime Contractor's Report
- HUD Section 3 Hiring Report
- HUD Section 3 Project Employee Survey Report
- HUD Section 3 Sample Outreach Letter

What types of economic opportunities are available under Section 3?

- Job training
- Employment
- Contracts

Who receives priority under Section 3?

For training and employment:

- Persons in public and assisted (e.g. your project) housing
- Persons residing within the Albany MSA (Linn County)
- Participants in HUD YouthBuild programs
- Homeless persons

For contracting: Businesses that meet the definition of a Section 3 business concern

Will HUD require compliance? Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

SECTION 8: PROPERTY ACQUISITION AND REQUIREMENTS OF THE UNIFORM RELOCATION AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970, AS AMENDED (49 CFR PART 24)

PROPERTY ACQUISITION

Site control is an important issue in the City's consideration of funding proposed projects. Projects without control of a site, either through ownership, an option to purchase, or an earnest money agreement, will likely be at a competitive disadvantage.

If an applicant does not already own a property prior to applying to the City for funding, a **purchase option** must be used to obtain site control for purposes of your funding application. The option should provide adequate time (six months to a year, at least) to allow your funding application to be reviewed by the City, funding decisions made by the City, environmental reviews to be completed, funding agreements executed, and your property transaction to close. Please keep in mind that other funding sources (e.g., private loan funding for acquisition) may also have time frames that need to be taken into account in determining the length of your purchase option agreement.

The City does not use its power of eminent domain to acquire properties under its CDBG program, so in every case ***you must acquire the proposed property by following the URA's voluntary acquisition procedures.***

You will need to be able to demonstrate that the seller's decision to sell you their property is voluntary. To help document a voluntary sale you will need to deliver and have the seller sign one or more specifically-worded acquisition notices. You will need to inform the seller that, although the project may be assisted with federal funds, your agency does not have the power of eminent domain. In addition, you will need to provide a fair market value to the seller. Your fair market value is contingent upon and ultimately must be substantiated by a value appraisal. This appraised value will need to be disclosed to the seller with an option to continue with the negotiated terms, void the sale, or reenter negotiations to reach a new, amicably determined sales price. In most cases, your purchase price must be the lesser of either the fair market value or an agreed upon sales price and may not exceed the appraised fair market value of the property.

The following notice information must be provided to the owner prior to making an offer to purchase their property (contact City CDBG staff to get sample notices):

- You do not have the power of eminent domain and therefore will not acquire their property if you and the owner fail to reach an amicable agreement or the owner does not wish to sell.
- The owner must be notified of the estimated market value of their property. This value shall be based on a reasonable determination of value provided by a comparative market analysis completed by a licensed real estate broker or an estimation of value from a professional appraiser.

By providing this information to the owner prior to making an offer, you and the owner can then negotiate a sales price that is higher or lower than the market value provided in the notice. ***Failure to provide the owner with this information prior to making an offer on the property will trigger further URA acquisition requirements. These additional requirements include but are not limited to the following:***

- The owner must be informed of the fair market value of their property as determined by an appraisal conducted by a professional appraiser. Once the owner is notified of the appraised value, the owner must be given the opportunity to withdraw from the transaction without penalty, even if there is a purchase agreement in place. The owner may elect to reconvene negotiations in an attempt to reach an amicable agreement, based on the appraised value.
- If negotiations resume and an amicable agreement is reached below the appraised value, the owner shall certify to the City that they acknowledge the fair market value of the property but elect to voluntarily sell the property at below market rate.

UNIFORM RELOCATION AND REAL PROPERTY POLICIES ACT REQUIREMENTS

The CDBG program is covered by the federal Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (URA). HUD consolidates its guidance regarding URA in the *Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)*, henceforth referred to as Handbook 1378, and which is available through HUD's relocation website www.HUD.gov/relocation.

Under the URA, all persons (families, individuals, businesses, not-for-profit organizations and farms) that are required to relocate temporarily as a direct result of rehabilitation, demolition or acquisition (privately undertaken or public) for a CDBG-assisted project are entitled to relocation payments. Permanently displaced residential tenants are also entitled to replacement housing payments. It is the policy of the City to encourage project sponsors to pursue only those projects that will not permanently cause displacement.

Consistent with the goals and objectives of the URA, the CDBG recipient must ensure that all reasonable steps have been taken to minimize the permanent displacement of persons as a result of a project assisted with federal funds. To the greatest extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy the same or another suitable, decent, safe, sanitary and affordable dwelling unit in the building/complex upon completion, and perhaps during the course of the project.

Displacement not only includes the physical displacement of persons, it also includes "economic displacement" which means that as a direct result of the project, the existing tenant is not able to afford a new, higher rent for their current unit. If a CDBG applicant intends to rehabilitate an occupied property, the issue of economic displacement needs to be of particular concern.

Acquisition of Tenant-Occupied Properties:

In most cases the more complex elements of the URA will come into play when residential rental properties are being acquired and/or rehabilitated. Applicants intending to acquire and/or rehabilitate tenant-occupied structures must follow the process outlined below. *If you, the applicant, are planning to acquire the property, you must advise the current owner that you will be providing notices to their tenants. Agreement from the property owner that they will not require tenants to move, except for cause, must be obtained. All new tenants (once the first contact with tenants has been made) must be advised of the project in writing, and documentation must be maintained showing both that prospective tenants have been so notified, and that tenants moving from the property did so voluntarily.*

For tenant-occupied properties, the seller must also allow the acquiring agency to send the following Relocation Notices to tenants.

REQUIRED DOCUMENTATION

Agencies or city departments conducting activities subject to the requirements of the URA or Section 104 (d) must keep records in sufficient detail to demonstrate compliance with these requirements. These records must be retained until at least three (3) years after the latest of:

1. The date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment for which they are entitled;
2. The date the project has been completed; or
3. The date required by the application program regulations.

Records will be submitted to the Housing and Community Development division for retention. The records maintained by the city and/or the agency to demonstrate compliance with the requirements of the URA and/or Section 104 (d) are confidential and will not be made available as public information without written authorization from the Albany City attorney's office.

All required correspondence should be sent by certified mail or hand delivered in order to obtain evidence of receipt. At a minimum, the following records must be maintained:

A. Real Property Acquisition records

1. Evidence of official decision to pursue acquisition
2. Preliminary acquisition notice, date of transmittal to owner, and evidence that owner has received it
3. Written invitation to owner to accompany appraiser
4. Original copy of each appraisal report
5. Documentation showing the determination of just compensation
6. Written purchase offer of just compensation, including all basis terms and conditions, and date of delivery to owner
7. Statement showing the basis for just compensation and an indication that it was delivered to the owner with the written purchase offer
8. Purchase agreement, deed, and other documents used in conveying the property
9. Copy of the settlement cost reporting statement
10. Evidence that owner received the purchase payment; and,
11. Copy of the notice giving 90 days to surrender possession of the premises.

B. Displacement/Relocation Records

1. Name, address and relocation needs of each person or business to be displaced
2. Description of the services and assistance provided, including referrals to alternate housing or business locations, a description of that property and its price or rent
3. Copy of the payment voucher or statement of relocation payments
4. Address, inspection sheet and date for each housing referral, including amount of rent and utilities
5. Claim forms and supporting documentation signed by person displaced
6. Documents used to determine eligibility for relocation payments and number of payments ,
7. Copy of any grievance filed and description of actions taken to resolve it.

HUD brochures which should be provided to the owner and/or displaced during the acquisition and relocation process (available through the Housing and Community Development division):

- "When a Public Agency Acquires Your Property" (HUD Brochure HUD -1041-CPD);
- "Relocation Assistance to Tenants Displaced from Their Homes" (HUD Brochure HUD-1042- CPD);
- "Relocation Assistance to Displaced Homeowners" (HUD brochure HUD-1044-CPD); and,
- "Relocation Assistance to Displaced Businesses; Nonprofit Organization and Farms (HUD Brochure HUD-1043-CPD).

MONITORING FOR COMPLIANCE WITH THE REQUIREMENTS OF THE URA

The Housing and Community Development division is responsible for monitoring federally assisted activities that are subject to the requirements of the URA to assure compliance. Because of the substantial monetary liabilities which can be imposed in the event of non-compliance with these requirements, those agencies or city departments conducting acquisition, rehabilitation and/or demolition activities are encouraged to closely coordinate these activities with the staff of the city's Housing and Community Development Division.

Original copies of the required documentation must be submitted to and retained by the Housing and Community Development division. If subsequent audits or monitoring results in the disallowance of certain costs and/or the determination that additional payment(s) are required, the agency or city department conducting the activity will be held responsible for the payment and/or reimbursement.

All sub recipient agreements and departmental work orders authorizing activities subject to the URA and/or Section 104 (d) requirements include language establishing these responsibilities in addition to language which authorizes the Housing and Community Development division of the City of Albany, HUD or the General Accounting Office (GAO) to review the records of the agency and to contact all parties to the transaction including the seller(s) and current and former tenant-occupants.

PROCEDURES FOR THE ACQUISITION OF REAL PROPERTY

STEP 1: PLAN THE PROJECT

- A. Is acquisition an allowable use of funds under the intended funding source?
- B. Is the acquisition necessary for the activity or are there other alternatives such as rental or leasing?
- C. What is the total estimated cost of the acquisition?
- D. Is there adequate funding available?
- E. Are the staff knowledgeable of the requirements of the URA and Section 104 (d)? If not, can training be obtained within a reasonable period of time?
- F. Are record keeping systems in place that meet the requirements of the URA and Section 104 (d)?
- G. Submit request for preliminary approval from city's Housing and Community Development division.

STEP 2: SELECT GENERAL AREA OR NEIGHBORHOOD AND POTENTIAL SITES SUITABLE FOR PROJECT

- A. Is the planned use of the property permitted by local zoning ordinances? Will a conditional use permit or a variance be required?
- B. Does the site lend itself to the intended use?
- C. Is the property subject to any obvious environmental problems (flooding, wetland, historic property contamination from storage of hazardous chemicals, etc.)?
- D. What are the current or prior uses of the intended site?
- E. Submit request to Housing and Community Development division for environmental review.
- F. Will CDBG funding to be used in this project? If so, will Section 104 (d) be triggered by demolition, rehabilitation or conversion? How will the one-for-one replacement requirements be met?

STEP 3: DETERMINE IF THE TENANT-OCCUPANTS ARE LOCATED ON THE PROPERTY

If tenant-occupants are located on the property, consider the following:

- A. Have the required steps been taken to plan for relocation?
- B. How much will the relocation cost?
- C. Does the cost of the relocation make the project prohibitive?
- D. How will the relocation costs be paid?

STEP 4: INFORM OWNER OF AGENCY'S INTEREST IN ACQUIRING THE PROPERTY

- A. Provide owner with written notification that agency is only interested in acquiring property as a voluntary transaction and will not use (or does not have) the power of eminent domain.
- B. Provide owner with agency's estimate of the fair market value of property prior to executing a contract for purchase. If this is not feasible, the owner must be provided with an opportunity to withdraw from the contract after the results of appraisal have been obtained.

STEP 5: SUBMIT REQUEST FOR WRITTEN AUTHORIZATION TO PROCEED FROM CITY CDBG STAFF

- A. Provide CDBG staff with current tenant list.
- B. CDBG staff will conduct tenant interviews, provide general information notices and notices of non-displacement (if applicable) to all tenant-occupants at the initiation of negotiations.

STEP 6: DETERMINE LEGAL INSTRUMENT TO BE USED FOR PURCHASE OFFER

- A. Earnest Money Agreement

- B. Option to Purchase Agreement
- C. Lease with Option to Purchase
- D. Other

STEP 7: SECURE AN INDEPENDENT FEE APPRAISAL

- A. Invite owner to be present during appraiser's inspection of property.
- B. Submit original copy of appraisal report to Housing and Community Development division for review.
- C. Provide owner with results of appraisal if applicable, re-negotiate agency's offer of just compensation and/or provide owner an opportunity to withdraw from the contract for sale.

STEP 8: SECURE EVIDENCE OF MARKETABLE AND INSURABLE TITLE TO PROPERTY

- A. Request that owner(s) provide agency with preliminary commitment for title insurance.
- B. Submit preliminary commitment for title insurance to Housing and Community Development staff for review.

STEP 9: PREPARE TO TAKE POSSESSION OF PROPERTY

- A. Schedule closing date.
- B. Obtain insurance binder.
- C. Request funds for closing. If funds are being requested from the city, submit the preliminary estimate of closing costs prepared by the closing agent.

STEP 10: SUBMIT ORIGINAL COPIES OF REQUIRED DOCUMENTATION TO CITY FOR RETENTION

- A. Real property acquisition records.
- B. Displacement/Relocation records
- C. Other necessary information as requested

SECTION 9: CONTRACT CLAUSES REQUIRED IN CDBG PROJECT CONTRACTS

Construction/Rehabilitation Contracts

The following language is required for all CDBG contracts and subcontracts.

Acknowledgement of HUD Funding

The project described herein is being funded in whole or in part with funding from the U.S. Department of Housing and Urban Development through the City of Albany Community Development Block Grant program.

Conflict of Interest

No employee, agent, consultant, officer, elected official or appointed official of the city or county grant recipient or any of its sub-recipients (sub-grantees) receiving CDBG funds who exercise or have exercised any functions or responsibilities with respect to CDBG activities who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity or have an interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom that have family or business ties, during their tenure or for one year thereafter, in accordance with 24 CFR Part 570.489(h).

Access to Records and Retention of Records

The CDBG recipient, the City of Albany, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to this contract, for the purpose of making audit, examination, excerpts, and transcriptions. All required records must be maintained by the contractor for three years after the recipient makes final payments and all other pending matters are closed.

Access to the Work

The City of Albany and its representatives (e.g. Building Inspector) shall at all times have access to the work while it is in preparation or progress. If the specifications, the instructions, laws, ordinances or any public authority requires any work to be specially tested or approved, the Contract shall give the City timely notice of the date fixed for such inspections. Required certificates of inspection shall be secured by the Contractor and made evident, upon request, to Owner and the City of Albany.

Debarment and Suspension

Contractor certifies that neither it nor any of its employees or subcontractors are parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549.

Minority and Women-owned Business Enterprise

Before the final payment to Contractor is made, Contractor shall submit the "Minority, Women and Emerging Small Business Activity Report".

Affirmative steps must be taken to assure that minority and women-owned businesses are used when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

1. Include any such qualified firms on solicitation lists.
2. Assure that such firms are solicited whenever they are potential sources.
3. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit such firms maximum opportunities for participation through subcontracting.

4. Where possible, establish delivery schedules which will encourage such participation.
5. Use the services and assistance of the Small Business Administration, the Office of Minority, Women and Emerging Small Business (State of Oregon) and other sources when appropriate.

Prohibition on the Use of Federal Funds for Lobbying

As evidenced by execution of this contract, Contractor certifies, to the best of their knowledge and belief that:

1. No federal funds have been paid or will be paid, by or on behalf of the City of Albany, 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 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 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 local government shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Equal Employment Opportunity

Contractor shall comply with the requirements of Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Orders 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

Copeland "Anti-Kickback" Act

Contractor shall comply with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). Contractor and all subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

Federal Labor Standards Provisions and Davis-Bacon Wage Rates *(Applicable to CDBG contracts for construction or rehabilitation of housing containing 8 or more CDBG assisted units, any public facility or public improvement project.)*

Construction contracts in excess of \$2,000 and all subcontracts under a prime contract that exceeds \$2,000) **The Federal Labor Standards Provisions (HUD-4010), must be attached to this contract.**

All laborers and mechanics employed by contractors or subcontractors on construction work assisted under this part shall be paid wages 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 (40 USC 276a-276a-5), and shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act (40 USC 327-333), and the contractors and subcontractors shall comply with all regulations issued pursuant to these Acts and with other applicable Federal laws and regulations pertaining to labor standards.

Lead-Based Paint

The use of lead-based paint on any interior or exterior surface is prohibited. And, if applicable: The construction or

rehabilitation of residential structures built prior to 1978 with assistance provided under this Agreement is subject to the revised HUD Lead-based Paint regulations at 24 CFR Part 35 which was published September 15, 1999 and took effect in Albany on January 10, 2002; and to the Environmental Protection Agency's Renovation, Repair, and Painting Rule as co-administered by the Oregon Health Authority and the Oregon Construction Contractors Board as stipulated in Oregon Administrative Rules Divisions 69 and 70.

Clean Air Act and the Federal Water Pollution Control Act (for contracts/subcontracts of \$100,000 or more)

This contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1318 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

Contractor and any of its subcontractors agree to the following requirements:

- a. A stipulation by the contractor and subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 32;
- b. Agreement by the contractor to comply with all requirements of Section 114 of the Clean Air Act, as amended (42 USC 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines thereunder;
- c. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA list of Violating Facilities; and
- d. Agreement by the contractor that he will include or cause to be included the criteria and requirements in paragraph (1) through (4) of this section in every non-exempt subcontract and requiring that the contractor will take such action as the government may direct as a means of enforcing such provisions.

In no event shall any amount provided under this contract be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

Indemnification

Contractor and Owner shall indemnify, defend, and hold harmless the City of Albany and its officers, divisions, employees and members, from all claims, suits or actions of any nature arising out of or relating to the acts or omissions of Contractor, its officers, subcontractors, agents or employees under this Contract.

Termination of Contract

A. Termination By Owner

- i. Without Cause. This contract and the work it will carry out is being funded in whole or in part with funding from the U.S. Department of Housing and Urban Development through the City of Albany CDBG program. The owner may terminate this contract:
 - In the event that CDBG funding has been rescinded in part or in whole; or
 - If the work is stopped under an order of any court, or other public authority, for a period of thirty (30) calendar days, through no act or fault of the owner, owner's employees, or legal representatives.
- ii. With Cause. The owner may terminate this contract if the contractor is in substantial breach of the provisions contained in the contract documents and/or repeatedly fails to:
 - Comply with federal, state, and local laws and regulations;
 - Provide for the safety of all occupants and public at large during the execution of the work;
 - Properly pay subcontractors or suppliers for material or labor;
 - Correct defective work; or

- Progress in a timely manner which demonstrates that the contractor can complete the project within the specified time-frame.

The contractor, upon receipt of written notice from the owner to terminate this contract, shall:

- Cease operation in a manner that protects and preserves work already performed.
- Instruct all subcontractors to cease work and cancel all special orders with suppliers.
- Leave the work site in a condition that is free of hazards to occupants and public.

If the owner terminates the contract, the contractor may be eligible to receive payment for all work completed, and for material orders already in progress and for which cancellation is not possible. Payment is contingent upon the same inspection and approval procedures by owner and funder as specified for progress payments. If the owner terminates this contract with cause, the owner may withhold payment until all work is otherwise completed by reasonable means determined by owner. If the unpaid balance of this contract is not sufficient to cover reasonable costs incurred by the owner to complete the work, the contractor shall pay the difference to the owner. If the unpaid balance of this contract is in excess of the reasonable costs incurred by the owner to complete the work, then the owner shall pay the difference to the contractor. Reasonable costs include architect fees, administrative fees, and other expenses made necessary by the above causes.

- B. Termination by Contractor. Contractor may terminate this contract if:
- Work is stopped under an order of any court, or other public authority, for a period of thirty (30) calendar days, through no act or fault of the contractor, contractor's employees, subcontractors, or other persons or agents performing work under direct or indirect contract with the contractor;
 - Work is stopped due to a declared state of emergency by government action;
 - Owner fails to make payment within the time-frame and conditions stated in the Contract Documents;
 - Owner repeatedly, through no fault of the contractor, contractor's employees, subcontractors, or other persons or agents performing work under direct or indirect contract with the contractor, causes delay of the work; and such delay constitutes in excess of 100 percent of the total number of days scheduled for completion of the work specified in the Contract Documents.
- C. Termination by Mutual Consent. Both parties may terminate this contract by mutual written consent.

Section 3 of the Housing and Community Development Act (when applicable per SECTION 7 of this Manual, generally when the CDBG-supported project's total costs are \$200,000 or more)

- The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (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.
- The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, 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 75 regulations.
- The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, 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 75. 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 75.
- Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of [§ 75.19](#), regardless of whether Section 3 language is included in recipient or subrecipient

agreements, program regulatory agreements, or contracts.

- 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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.
- F. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

Additional Recommended Contract Language/Conditions:

Execution

Owner acknowledges that this contract was procured by the Owner and that the Owner has assumed responsibility for the procurement of the Contractor by selecting the Contractor and negotiating the price. Owner acknowledges that the City of Corvallis (hereinafter called Funder) is not responsible for the performance of the Contractor. The Owner is responsible for enforcing the provisions of and satisfactory performance of the Contract. The Funder has responsibilities as specifically described in the Contract documents.

The Construction Contract shall be signed in triplicate by Owner and Contractor. One copy to be retained by each party and another to be kept in Funder's project file.

List of Subcontractors and Suppliers

Prior to start of work, the Contractor shall provide to the Owner and Funder a list of all subcontractors and suppliers to be used in completing the project. The list will include the amount of each subcontract and total cost of materials anticipated for each supplier. The Contractor will provide timely updates to this list as subcontractors and suppliers are added to or deleted from participation in the project or as monetary amounts may change.

Funder Status/Funder Supervision

Funder may make periodic inspections to verify the progress and quality of work and to determine in general if the work is proceeding in accordance with the Contract Documents. Funder will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work and will not be responsible for Contractor's failure to carry out the construction work in accordance with the Contract Documents. During such visits and on the basis of observations while at the site, the Funder will maintain a Project file documenting the progress of the Project. When at the site, if a construction defect is noted by Funder, Funder shall notify Owner and Contractor. Funder shall have authority to stop work whenever such stoppage may be necessary in its opinion to ensure the proper execution of the Contract, Funding Agreement or to protect occupant or public safety.

Correction of Work Before Substantial Completion

Contractor shall remedy construction defects, work not conforming with recognized construction standards, due to faulty materials or workmanship declared by Funder, or Owner, as failing to conform to the Contract, whether incorporated or not, and Contractor shall promptly rectify the work and make good the materials in accordance with the Contract and without expense to Owner and shall bear the expense of making good all work destroyed or damaged by such removal or replacement.

Resolution of Claims and Disputes

For claims or disputes by the Owner regarding the Contractor, the Owner reserves the right to file a claim with and seek the assistance of the Oregon Construction Contractors Board. Funder may, at Funder's discretion, intervene in any dispute as to protect Funder's interest in the completion of the Project, as to comply with the Funding Agreement.

Payment Process

Work performed or materials supplied prior to the issuance of a City grant or loan award are not eligible for

reimbursement with CDBG program funds. Program funds cannot be disbursed for advance payments. Progress payments will be made at the discretion of the Funder. Owner will submit the completed Payment Request with a request for a project inspection to verify the quantity and quality of the work performed and materials supplied. All progress payments are subject to the Funder's inspection and final approval of work performed, materials supplied and that the amount requested is proportionate to the amount of work performed and materials supplied. Funder will facilitate payments by issuing an Authorization to Pay (ATP), signed by Owner and Funder, to the escrow company. Contractor will acknowledge, in writing, all payments received. Per Funding Agreement, Funder has 30 days to release funds but will make every effort to process the ATP within 15 days. Progress payments shall not exceed ninety percent (90%) of the value of the Contract price.

Final contract payment will not be released until all inspections related to permits issued for work under this contract are completed and passed, the work has been approved by Owner and Funder, and Contractor provides evidence of payment-in-full to all subcontractors and suppliers who have issued a notice of right to lien.

Change Orders

Funder shall have final approval of change if such change affects the amount of the funding award, deviates from the stated use of funds, or substantially alters the scope of work. Owner will forward all such change orders to the Funder in a timely fashion for approval. Approval will not be unreasonably withheld. Contractor will not proceed with such work until a change order, signed and dated by Owner and Contractor, and approved in writing by Funder, has been obtained. The only exception to such written, signed, and approved change order requirements shall be in the case of an emergency endangering life or property.

Lien Waiver

Upon payment, the original contractor, hereby waives any lien or right to lien, under the construction lien statutes of the State of Oregon, which contractor may have against the described property. Contractor warrants to save harmless, the property owner and the City of Albany from any lien or liens which are now in existence as a result of the services or materials that the contractor has provided. Furthermore, contractor absolutely, unconditionally, and irrevocably guarantee that if any construction liens should be filed, or should attach, with respect to the project by reason of the services or materials provided by contractor, to immediately cause the removal of such liens, or post security against the consequences of their possible foreclosure and procure an endorsement(s) to the title policy insuring owner and the City of Corvallis against the consequences of the foreclosure or enforcement of such lien(s).