

Contract Provisions for Federally-Assisted Construction/Rehab Projects

INTRODUCTION

This project is being financially supported by federal funds awarded by the U.S. Department of Housing and Urban Development under the Community Development Block Grant (CDBG) or HOME Programs. The City of Rome Community Development Department administers the local CDBG/HOME Programs. As a result of using federal funds on this project there are a number of regulations that must be adhered to in order to receive prompt payment for work done under the program.

The information provided on the following pages outlines a number of conditions that the Contractor must abide by in order to enter into a contract for the work described in the specifications and contract drawings.

The following conditions take precedence over any conflicting conditions in the contract:

SEC. 1. APPLICATION TO SUBCONTRACTORS No money under this contract shall be disbursed by the Contractor to any sub-contractor or agency except pursuant to a written contract which incorporates the conditions listed below to the extent they are applicable.

SEC. 2. DEFINITIONS As used in this contract:

"HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his behalf.

"DCA" means the Georgia Department of Community Affairs or a person authorized to act on his behalf.

"City" means the Rome City Commission or a person authorized to act in their behalf.

"Act" means Title I of the Housing and Community Development Act of 1974, as amended, unless otherwise specified.

SEC. 3. ACCESS TO RECORDS AND RECORDS RETAINAGE

A. **Records to be Kept**. Records shall be maintained in accordance with requirements prescribed by HUD or the City with respect to all matters covered by this contract. Except as otherwise authorized by HUD, such records shall be maintained for a period of five (5) years after receipt of the final payment under this contract.

B. **Documentation of Costs** All costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, orders, or other accounting documents. All documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible.

C. **Inspection of Records** At any time during normal business hours and as often as the City, HUD and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available to the City, HUD and/or representatives of the Comptroller General for examination all of its records, with respect to all matters covered by this contract, and will permit the City, HUD and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records including contracts, invoices, materials, payrolls, records of personnel, conditions of employment and any other data relating to matters covered by this contract.

SEC. 4. LOBBYING The Contractor certifies, to the best of his or her knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, 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, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements.
4. This certification is a material representation of fact upon which reliance was placed when this contract was made or entered into. Agreement to this certification is a prerequisite for making or entering into this contract imposed by Section 1352, title 31, U.S. Code. Any person or agency that makes an expenditure prohibited by this section is subject to a civil penalty from \$10,000 up to \$100,000 for each failure. This penalty also applies to any person or agency that fails to submit or amend the disclosure form (LLL), when required. Failure to submit the required certification may result in payment under this contract being delayed or denied.

SEC. 5. DISCRIMINATION Contractors shall comply with all relevant requirements of the following federal laws and regulations dealing with discrimination in federally assisted programs:

- A. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. 20000d)** which provides that no person shall, on the ground of race, color, or national origin, be excluded from employment or participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- B. **Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309) and regulations at CFR 570.602** which provide that no person shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, be denied employment in, or be subjected to discrimination under any CDBG/HOME program or activity.
- C. **Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794)** which provides that no otherwise qualified handicapped individual shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, be denied employment in, or be discriminated against under any program or activity receiving federal assistance.
- D. **Age discrimination Act of 1975, as amended (42 U.S.C. 6101)** which provides that no person shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance.
- E. **Equal Employment Opportunity Executive Order 11246, as amended by Executive Order 12086, and regulations in 41 CFR 60,** which provides 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 federally-assisted construction contracts and subcontracts. Contractors and subcontractors shall take affirmative action to ensure fair treatment in employment, including recruitment, training, promotion, demotion, transfer, layoff, termination, and pay.

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions in this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advertising the labor union or worker's representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, and orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontractor or purchase order as the contracting agency, and may direct the subcontractor or vendor as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

F. **Section 3 Clause** Projects involving construction where federal funding exceeds \$200,000 and any contract or subcontract exceeds \$100,000, the Contractor shall comply with the provisions of **Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u), and regulations at 24 CFR Part 135.**

1. Section 3 requires that, to the greatest extent possible:
 - a. Training and employment opportunities shall be made available to low-income residents of the metropolitan area in which the project is located; and
 - b. Subcontracts shall be awarded to businesses owned by low income residents or to businesses in which at least 30% of their permanent employees are low-income residents.
2. Contractors and subcontractors shall be required to provide to the City plans for complying with these provisions and reports on the extent to which they have met them.
3. The Contractor will include this Section 3 clause in every subcontract for work in connection with the project. The Contractor will not subcontract with any subcontractor where it has notice that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided a preliminary statement of ability to comply with the requirements of these regulations.

SEC. 6. (Section 6 –LABOR/Davis Bacon has been omitted as it does not apply to this project)

SEC. 7. Clean Water, Clean Air, E.O. 11738 and EPA Regulations Provision Compliance with Air and Water Acts apply to assisted construction contracts and related subcontracts exceeding \$100,000. In compliance with Section 306 of the Clean Air Act, as amended, (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act, as amended, (33 U.S.C. 1368), Executive Order 11738, and the Regulations (40 CFR, part 15) of the Environmental Protection Agency with respect thereto the Contractor agrees that:

1. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
2. They will comply with all requirements of Section 306 of the Clean Air Act, as amended, and Section 508 of the Clean Water Act, as amended, and all regulations and guidelines issued thereunder.
3. They will promptly notify the City of any notification received from the EPA Office of Federal Activities, 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.
4. They will include the provisions of paragraph 1 through 4 of this subpart in every nonexempt subcontract, and take such action as the Government may direct as a means of enforcing such provisions.

SEC. 8. LEAD BASED PAINT The use of lead-based paint in the federally assisted construction or rehabilitation of residential structures (including day cares, senior centers, and community facilities) is prohibited by Section 401(b) of the Lead-Based Paint Poisoning Prevention Act [42 U.S.C. 4831(b)] and regulations in 24 CFR 35B. To the extent that contracted work involves residential structures, the Contractor and subcontractors must follow the new regulations issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X ("ten") of the Housing and Community Development Act of 1992.

Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally associated housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

1. The Contractor and subcontractors shall not use lead-based paint in residential structures and shall eliminate any lead-based paint hazards in residential structures rehabilitated.
2. At a minimum the Contractor and subcontractors must comply with the Lead Hazard Reduction Methods in 24 CFR 35.1330 and 1325.
3. All workers involved in the disturbance of lead-based paint bearing surfaces should be trained in lead safe work practices.
4. At the conclusion of residential rehabilitation, the property must pass a lead hazard clearance test by a certified technician and lab. The lead level must meet the federal and North Carolina standard lead level threshold for Childhood Lead Exposure Act of North Carolina and the Environmental Protection Agency. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in 24 CFR 35.1350(d).

SEC. 9. USE OF DEBARRED, SUSPENDED OR INELIGIBLE CONTRACTORS CDBG/HOME funds shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any Contractor or subrecipient during any period of debarment, suspension or placement in ineligibility status under the provisions of 24 CFR Part 24. (Government Debarment and Suspension Regulations).

SEC. 10. CONFLICT OF INTEREST

A. Interest of Members, Officers, or Employees of the Recipient, Members of Local Governing Body, or Other Public Officials No member, officer, or employee of the recipient, subrecipient, or its agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercise any functions or responsibilities with respect to the program during his/her tenure or for one year thereafter, shall have any financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. This provision shall be incorporated in all such contracts or subcontracts.

B. Contractor's Responsibilities The Contractor shall take appropriate steps to assure compliance with paragraph (A) of this section, and will incorporate the following provision into every sub-contract:

"Interest of Sub-Contractor and Employees The Sub-Contractor covenants that no person who presently exercises any functions or responsibilities in connection with the Community Development Block Grant Program has any personal financial interest, direct or indirect, in this Contract. Any interest on the part of the Sub-Contractor or his employees must be disclosed to the Recipient and the City, provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area."

SEC 11. DEBARRED CONTRACTORS: CDBG/HOME funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension or placement of ineligibility status. The

City will check all contractors, subcontractors, lower-tier contractors and subrecipients against the Federal publication that lists debarred, suspended and ineligible contractors.

SEC. 12. DISPUTES, DEFAULT AND TERMINATION

A. **Disputes** In the event of dispute arising under this Contract, the Contractor shall notify the City promptly in writing of their contentions and submit the claim. If the dispute arises before performance of the related work, the written notice shall be submitted prior to commencing such work. In any event, the Contractor shall proceed with such work in compliance with the instructions of the City; such compliance shall not be a waiver of the Contractor's rights to make a claim, provided they have notified the City in writing as above stipulated.

B. Default and Remedies

1. Default shall consist of any failure by the Contractor to perform under this contract or written amendments thereto or any breach of any covenant, agreement, provision or warranty provided by the Contractor as a part of this contract. Actions which constitute a default include, but are not limited to:

- a. Failure to submit to the City reports which are required pursuant to this contract or the submission of required reports that are incorrect or incomplete.
- b. Submission of requests for payment or reimbursement of amounts that are incorrect or incomplete.
- c. The failure of the Contractor to accept any additional conditions which may be provided by law, by executive order, by regulation or by other policy announced by the Town/County, the state or any federal agency.
- d. Failure to perform any activity required by this contract.

2. Upon occurrence of any default, the City shall advise the Contractor in writing of the action constituting the default, and specify the actions that must be taken to cure the default. The City may suspend payment under the contract. If a default is not cured within 30 days from receipt of written notice of such default by the Contractor, the City may continue the suspension or, by written notice of termination, may terminate the contract.

3. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damage sustained by the City by virtue of any default or breach of the contract; and the City may deduct the amount of damages from any outstanding payments to the Contractor or may withhold payments until such time as the exact amount of the damages is determined.

C. Termination

1. If federal funding for this project is terminated and no other funding is available for continuation of this project, the City will not be obligated to continue funding for the services contained in this contract and may terminate the contract.

2. In the event of termination, all property and finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by or purchased with CDBG/HOME funds by the Contractor under this contract shall, at the option of the City, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

SEC. 13. GEORGIA LIEN LAW, O.C.G.A. 44-14-361.5, provides that not later than 15 days after the Contractor physically commences work on the City's property, the City will file a "Notice of Commencement" in the Superior Court of Floyd County. Once a Notice of Commencement is filed, a potential lien claimant that does not have a contract with the owner must provide a "Notice to Contractor" to the City and the contractor within 30 days from the day it first furnishes labor or materials, or from the day the Notice of Commencement was filed, whichever is later. If the Notice to Contractor is not given, the potential lien claimant loses its lien rights. The Notice to Contractor must include the name, address and telephone number of the person providing the labor or materials, the name and address and telephone number of the person providing the labor or materials, the name and address and telephone number of the person providing the labor or materials were furnished, and a description of the labor or materials being provided. The Notice must also include the contract price or anticipated value of the labor or materials.