

## CHAPTER 9 -- CONSTRUCTION MANAGEMENT: PUBLIC FACILITIES AND HOUSING

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## CHAPTER 9

### CONSTRUCTION MANAGEMENT: PUBLIC FACILITIES AND HOUSING

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#### I. OVERVIEW

The procedures and practices described in this chapter are designed to:

- Provide for fair and competitive awards of all contracts and subcontracts for
  - construction of public facilities projects,
  - construction of new housing, and
  - housing projects involving the rehabilitation of existing multi-family housing apartment buildings.
- Assure the selection of qualified, experienced contractors at a reasonable cost;
- Ensure that contractors and subcontractors comply with the applicable federal and state requirements such as labor standards, civil rights, and procurement;
- Assure that the construction phase of CDBG funded public facility projects is managed effectively;
- Help CDBG grant recipients provide information about construction contract opportunities;
- Ensure equal treatment of all potential contractors; and
- Help grant recipients meet their responsibility for informing potential contractors of their responsibilities when they accept a contract funded in whole or in part by CDBG dollars.

The fair and competitive procedures for selection of contractors described in this chapter are designed to:

- Ensure the selection of qualified, experienced contractors (for public facilities construction projects and new housing construction projects) at reasonable cost; and
- Assist CDBG grant recipients to achieve compliance with applicable federal and state requirements such as procurement, civil rights, and labor standards which are the responsibility of CDBG grant recipients.

CDBG grant recipients' responsibilities concerning construction management -- in public facilities projects, in new housing construction projects and in projects rehabilitating of existing housing apartment complexes -- can be met by appropriately following the action steps listed below:

1. **Selecting engineering and/or architectural services** -- in accordance with federal/state procurement standards appropriate for competitive negotiation (Step 1).

2. **Preparing design plans and specifications and bid document items** -- including the required federal and state construction contract provisions -- and **receiving all necessary reviews and approvals from CDBG** (Steps 2 and 3).
3. **Providing for the appropriate advertisement of bid solicitation and bid security procedures** (Steps 4 and 5).
4. **Conducting the bid opening in a proper manner and giving appropriate attention to bid review procedures** (Steps 6, 7 and 8).
5. **Awarding construction contracts to the lowest responsible bidder** within the required time (Step 9).
6. **Holding a pre-construction conference** -- to inform the prime contractor and all subcontractors performing contract construction work of their labor standards and civil rights obligations (Step 10).
7. **Providing the required notices when initiating construction activities** (Step 11).
8. **Monitoring contractor activities throughout the construction period** -- to ensure that performance is in accord with the technical specifications and that compliance is maintained with all federal, state, and local standards and the terms of the contract (Step 12); and.
9. **Conducting the final inspection and filing the required notices and reports with the appropriate agencies** (Step 13).

The CDBG Program also recommends that CDBG public facilities construction projects consult the following documents for helpful ideas relevant to the CDBG public facilities project management.

**Building It Right: A Public Facilities Construction Administration Manual** (Second Edition, March, 2004, on-line at <http://comdev.mt.gov/content/Publications/docs/BuildItRightManual.pdf>) published by MDOC's Community Development Division, Community Development Bureau in cooperation with the Montana Water, Wastewater and Solid Waste Action Coordinating Team (*W<sub>2</sub>ASACT*); and

**The Treasure State Endowment Program (TSEP) Project Administration Manual** (Chapter 8, Public Facilities Construction Management, on-line at <http://comdev.mt.gov/TSEP/tsep2009adminmanual.mcp>).

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## II. REQUIREMENTS FOR SELECTION AND AWARDING OF CONSTRUCTION CONTRACTS

**The state and federal requirements that follow describe the principles for selection and awarding of construction contracts (public facilities projects and new housing construction projects and apartment complex rehabilitation projects).** In addition to complying with the

following requirements for selecting and awarding contracts, grant recipients must comply with applicable requirements discussed in all of the preceding and subsequent chapters of this manual that have implications for selecting contractors, awarding contracts and monitoring contractor performance.

**A. FEDERAL REQUIREMENTS FOR SELECTION AND AWARDING OF CONSTRUCTION**

**CONTRACTS:** HUD (U.S. Department of Housing and Urban Development) Administrative Requirements for Grant Recipients, 24CFR, Part 85.36,  
<http://www.nls.gov/offices/cpo/grantees/cfr8536.cfm>

**1. BONDING AND INSURANCE REQUIREMENTS – established by HUD for grant recipients**

HUD federal requirements include a **bid guarantee** from each bidder equivalent to five (5) percent of the bid price.

 However, since this is less restrictive than Montana law, this HUD requirement is superseded by Montana law, which requires a bid guarantee of ten (10) percent.

➤ For contracts exceeding \$100,000 HUD also requires:

- (a) a **performance bond** on the part of the contractor for 100 percent of the contract price; and
- (b) a **payment bond** on the part of the contractor for 100 percent of the contract price.

➤ For contracts for less than \$100,000 you may follow the less-restrictive requirements of Montana state law for contractor performance bonds or payment bonds (MCA 18-2-201 through 203).

- (a) Under Montana law, there are certain **alternatives to surety bonds which may be used**; for example -- certified check, bank draft, or certificate of deposit.
- (b) For contract work under \$50,000: Local governments have the authority to waive all such bonds for contract work under **\$50,000**. Your local government attorney and the Department of Commerce (MDOC) should be contacted for guidance if these procedures are contemplated for your construction contracts.

**2. PROCUREMENT STANDARDS – established by HUD for grant recipients**

HUD regulations (24 CFR Part 85.36) also outline the required procedures for the selection and award of contracts funded in whole or in part by CDBG funds. (See Chapter 3, *Procurement Standards*.) These procedures are designed to:

- a) avoid unnecessary or duplicate purchases,
- b) obtain favorable prices for goods and services without sacrificing quality,
- c) ensure maximum open and free competition, and
- d) promote national HUD/CDBG goals related to equal employment opportunity and affirmative action.

## **B. STATE -- REQUIREMENTS FOR SELECTION AND AWARDING OF CONTRACTS**


### **1. Bid Security**

Sections 18-1-201, et seq., MCA, requires that all bids be accompanied by bid security in the amount of **ten percent** to protect the public authority in the event a successful bidder fails or refuses to enter into a contract.

### **2. Contractor License Fee (1% Tax on Contractor's Gross Receipts)**

Section 15-50-205, MCA, requires contractors on public construction projects pay a **contractor "license fee" of one percent of the contractor's gross receipts from this contracting work** to the Department of Revenue. To guarantee payment of this fee, section 15-50-206, MCA, directs governmental entities to withhold one percent of the payments they owe contractors for public works projects and remit these withheld funds to the Department to be credited against the contractors' license fee obligation. The CDBG grant recipient must retain one percent of the total amount of each partial payment due to the contractor and transmit these funds to the Montana Department of Revenue for the Contractor's Gross Receipts Tax.

**Contracts valued at less than \$5,000 are exempt from this provision.** Copies of the "Contract Award Report" and the "Gross Receipts Withholding Report" are contained in **Exhibit 9-E**.

 **NOTE: There is a possible exemption from the 1% Tax on Contractor's Gross Receipts that might apply to your project:** The Montana Department of Revenue has determined that in the instance where (1) the project construction is funded by a public entity and (2) the building will be maintained and owned by a nonprofit entity, **the project is considered exempt from payment of the 1% Contractors Gross Receipts Tax.**

### **3. MUNICIPAL Contracts and Franchises**

Section 7-5-4302, MCA, <http://data.opi.state.mt.us/bills/mca/7/5/7-5-4302.htm>, requires:

- (a) **competitive bidding** by cities and towns of **construction contracts in excess of \$50,000;**
- (b) **advertising or posting** of such contracts before bids are opened; and
- (c) award of contracts to **the lowest responsible bidder.**

#### **4. COUNTY Contracts**

Section 7-5-2301, MCA, <http://data.opi.state.mt.us/bills/mca/7/5/7-5-2301.htm>, requires:

- a) **competitive bidding** by counties **for construction contracts in excess of \$50,000;**
- b) **advertising or posting** of such contracts before bids are opened; and
- c) award of contracts to **the lowest responsible bidder.**


#### **5. Performance, Labor and Material Bonds**


Section 18-2-201, MCA, **requires contractors to provide a bond that ensures that the contractor will:**

- a) faithfully perform all of the provisions of such contract;
- b) pay all laborers, mechanics, subcontractors, and material men; and
- c) pay all persons who shall supply . . . provisions, material, or supplies for the carrying on of such work.

**This provision may be waived** if the contract is **under \$50,000**. (See Section A.1, above.)

#### **6. Construction Contractor Registration is Required for All Bidders**

 Title 39, Chapter 9, MCA provides that **no Contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry.**

 **No bids shall be considered that do not carry the bidder's Montana Contractor's Registration number on the bid and on the envelope containing the bid.**

- This contractor registration requirement (for bidding and for entering into contracts) ensures that contractors are complying with all employment laws, such as workers' compensation.

- If the contractor is registered, the community (the CDBG grant recipient) can ensure that the contractor has workers' compensation coverage, and therefore, it has protected itself from upward migration of liability.
- If the construction contractor is registered and in good standing on the date the contract begins, the liability for workers' compensation accidents will not be the responsibility of the general contractor or the community (the CDBG grantee).
- While the law exempts construction "independent contractors" without employees from registering, many general contractors will hire only registered contractors to protect themselves from upward migration of liability.
- If a contractor hires an unregistered independent contractor -- even if that person has a workers' compensation exemption -- the contractor still risks the consequences of liability for workers' compensation should an individual be hurt on the job.
- If the contractor from another state is only bidding on a job in Montana, it may ask for a **"Bid Only" registration. Out-of-state contractors bidding jobs in Montana may get a "Bid Only" registration from the Montana Department of Labor.** Construction companies with "Bid only" certificates must upgrade their registration to "Employer" status before they can have employees working in Montana.
- When the contractor actually comes to work in Montana, **the contractor must obtain a workers' compensation policy specific to Montana**, since Montana's workers' compensation law does not allow coverage from other states' workers' compensation plans in the construction industry.


- **Information pertaining to contractor registration procedures may be obtained from:**


**The Montana Department of Labor and Industry Employment  
 Relations Division / Contractor Registration**  
<http://mtcontractor.com>  
 P.O. Box 8011 Helena, Montana 59604  
 (406) 444-7734

**For additional information about contractor registration, see:**

- ☐ **Exhibit 9-H; and**
- ☐ **the Montana Department of Labor website listed above.**

**THE MONTANA CONTRACTOR PREFERENCE STATUTE**  
***and its relationship to CDBG***  
***and other federally-funded***  
**public construction programs**

 The Montana Contractor Preference statute, Section 18-1-102, MCA, is **NOT applicable to Montana public construction contracts funded in whole or part with CDBG funds** -- as determined by the Attorney General in an opinion (Volume 42, number 35) issued during November of 1987.

 This opinion also extends to other federally-funded **public facilities construction programs**, such as those financed by the Economic Development Administration, the Environmental Protection Agency, or USDA Rural Development, which are common sources of matching funds for many types of CDBG-funded public facilities projects.

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### Grants to Montana Counties for Projects within Montana's Indian Reservations

While county governments can apply for and receive grants on behalf of projects on a reservation or to benefit tribal members, there are two important cautions that must be observed:

- 1) The local county government needs to ensure that they have legal authority to carry out activities on a reservation.
- 2) Indian Preference hiring rules apply only to the Indian CDBG Program. It would violate civil rights laws for State CDBG funds to assist an activity where one must be Native American to participate.

- Under federal law, eligible applicants for Montana Department of Commerce's **State CDBG Program** funding are limited to general-purpose local governments -- i.e., counties, incorporated cities and towns, and consolidated city-county governments.
- Among Montana municipalities, only Billings, Great Falls, and Missoula are ineligible to apply to the State CDBG Program because they receive CDBG funds from a separate HUD allocation for communities with populations over 50,000 (the **CDBG Entitlement Communities Program**). You can get information about the Entitlements CDBG Program at: <http://www.hud.gov/offices/cpd/communitydevelopment/programs/entitlement>
- Tribal governments are not eligible under federal law to receive CDBG grants from a state CDBG Program. While Tribal governments cannot apply directly for State CDBG Program



funds, counties can apply for projects to assist unincorporated communities or tribal utility authorities within a reservation boundary. On October 25, 2005, at Montana's request, HUD clarified that it is permissible, under federal law, for a county CDBG recipient to assist projects principally benefiting county residents who are members of an Indian Tribe. When members of an Indian Tribe are also residents of a county, that county can use CDBG funds to assist public facilities or services predominantly used by Indians, including those who live on Indian reservations or on allotted Indian land.

- Therefore, the Montana State CDBG Program now allows State CDBG funds to be awarded to counties that apply on behalf of tribal utility authorities to assist tribal communities, providing all other federal and state CDBG requirements are met. All such applications will be considered during the regular grant competition for public facilities applicants.
- Since 1982, Montana's CDBG Program has been providing infrastructure, affordable housing, and economic development assistance to Montana incorporated cities, towns, and counties. This assistance has included funding for incorporated communities located within Montana's tribal reservations, such as Browning, Lodge Grass, and Poplar. The CDBG program has also assisted county water and sewer districts located on reservations, such as the Ashland Water and Sewer District where Rosebud County agreed to sponsor the project.
  - Montana's Indian tribes also receive CDBG funds from a separate HUD CDBG Program, the **Indian CDBG (ICDBG) Program**, and are not eligible to apply directly to the State program. The ICDBG Program provides eligible grantees with direct grants for use in developing viable Indian and Alaska Native Communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low and moderate income persons.
  - **For more information regarding the Indian CDBG program**, please contact the Office of Native American Programs at the HUD – Denver, Colorado regional office -- (303) 672-5465.

<http://www.hud.gov/offices/pih/ih/grants/icdbg.cfm>

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### III. RESPONSIBILITIES OF CDBG GRANT RECIPIENTS

- The following steps are provided as a guide to implementation of public facilities (and new housing construction) projects. They should be followed along with applicable requirements in preceding chapters.
- CDBG public facilities construction project area also encouraged to consult the March, 2004 second edition of **Building It Right: A Public Facilities Construction Administration Manual**.



## **STEP 1 - SELECT ENGINEERING AND/OR ARCHITECTURAL SERVICES**

- The CDBG grant recipient should follow the instructions in Chapter 3, *Procurement Standards*, for **selecting an engineer or architect** to prepare the final project plans, including drawings and material specifications.
    - Those instructions include compliance with Section 18-8-201 to 212, MCA (*Architectural, Engineering, and Land Surveying Services*) which **exempts architects, engineers, and surveyors from price bidding in response to Requests for Proposals** (described in Chapter 3).
    - Use instead a **Request for Qualifications (RFQ)** process for procuring the services of architects, engineers, and surveyors estimated to cost more than \$20,000.
    - Compensation for these professional services is to be negotiated **after** the firm is selected.
    - This law establishes a qualifications-based selection procedure for architectural, engineering and surveying services costing more than \$20,000 which are funded by state and local public agencies (state agencies, local governments, school districts, special districts or authorities of local governments).
  - Upon tentatively selecting an architect or engineer, the grant recipient must contact their assigned state CDBG liaison to determine whether the individual or firm is eligible to receive federal and/or state funds.
    - CDBG will conduct a review to assure that the individual or firm is not ineligible to participate (listed as “debarred” at the *federal Excluded Parties Lists System*, <https://www.epls.gov/>) in federally-assisted projects as a result of past failures to comply with federal program requirements -- and whether or not the individual or firm is on the *State of Montana list of debarred/suspended vendors*, <http://gsd.mt.gov/ProcurementServices/debarredsuspendedvendors.mcp>x
  - Please see Chapter 6, *Labor Standards* (Section III, Step 5,) for instructions on verifying a contractor’s eligibility (or possible debarment) status.
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## **STEP 2 - PREPARE A BID PACKAGE**


Before inviting bids on any contract, ensure that the bid package contains all the relevant information that bidders will need for their bid (see CDBG’s *Checklist for Review of Construction Bid Documents, Exhibit 9-J.*)


The following initial steps should be taken:

- The architect or engineer should provide to the CDBG grantee a draft set of plans and specifications for the construction project including an accurate and clear description of the technical requirements of the project.
- When construction of a public building is involved, a certification that the design takes into account requirements of *the Architectural Barriers Act* related to *accessibility by handicapped persons* must also be provided. The certification (**Exhibit 9-A**) must be co-signed by a local official and placed in the Public Facilities or Housing contract file.
- Additionally, the plans and drawings must be stamped by an architect or engineer registered or licensed by MDOC.
- Have plans and specifications reviewed and approved by the Department of Environmental Quality, if applicable.
- Acquire any property, easements, or rights-of-way that might be required for construction of the public facility. (See Chapter 7, *Acquisition and Relocation*).
- Obtain information from local public utilities regarding underground installations. Utilities locations should be identified on a map of the project site, which will be included in the bid package. The contractor should be required to verify these locations prior to actual construction and then be held liable for any subsequent damages to underground facilities.
- Be sure to consult with other funding agencies that may be involved in the project regarding their bid format requirements, if any.
- Determine the cost and pricing format. "Cost plus" contracts are **not** allowed (see Chapter 3, *Procurement*). **Contracts may be either lump sum or unit priced. One method is to use deductive alternatives (as described below).**

#### **CONSIDER USE OF THE "DEDUCTIVE ALTERNATES" APPROACH**

**If a CDBG grant recipient has reason to believe that bids may come in higher than available funds, deductive alternates may be used.** For a variety of reasons, a *bidder who is not the low bidder on some item or items* may be able to achieve substantial economies not attainable by the low bidder on one or more components of a project.

 Due to the increasing frequency of bids being submitted which exceed cost estimates, **the MDOC strongly encourages CDBG grant recipients to use deductive alternates for bidding various project components.**

 Under the deductive alternates approach, **the bid proposal would contain several schedules of work items or components to be provided.** This would allow contractors to either bid on one component or all components of work items, providing generally more competition and price efficiency.

**PREPARE THE BID PACKAGE, including at least the following checklist items:**

See CDBG's Exhibit 9-J (**Checklist for CDBG Review of Construction Bid Documents**) for a more detailed list of requirements.

✓	<b>ITEM TO BE INCLUDED IN THE BID PACKAGE</b>
	Advertisement for bids
	Information on the method of bidding, process by which the bids will be evaluated, and the method of contract award
	Bid schedule
	Bid bond requirements and bid bond form
	Information on performance and payment bond requirements and performance and payment bond forms
	Notice of award form
	Notice to proceed form
	Change order form
	Current copy of federal prevailing wages (Davis-Bacon wage rates and zone hourly rates), as applicable
	General conditions
	CDBG's required supplemental conditions as identified in <i>Exhibit 9-B</i> (or in WASACT's Section 00900 document, <i>Funding Agency Special Provisions for Montana Public Facilities Projects</i> ) – on-line at <a href="http://dnrc.mt.gov/cardd/ResDevBureau/wasact/docs/Uniform_Spec_Supplement.pdf">http://dnrc.mt.gov/cardd/ResDevBureau/wasact/docs/Uniform_Spec_Supplement.pdf</a>
	<i>Exhibit 6-A</i> (Federal Labor Standards Provisions, which is the <i>HUD 4010 Form</i> )
	Any required conditions of other funding agencies; and
	In addition to the relevant information needed to prepare a complete bid package, <b>all construction contracts must contain provisions for compliance with federal labor standards and equal opportunity requirements.</b>

The Montana Contractors' Association, <http://www.mtagc.org>, publishes **model bid specifications** entitled **Montana Public Works Standard Specifications** (Fifth Edition, March 2003, including the 2006 Addendum). It includes most of the items listed above. These standard specifications and addendum were prepared in cooperation with the Montana Utility Contractors Association, the Montana Department of Environmental Quality and the Montana Department of Transportation.

The **Montana Public Works Standard Specifications** document is now available on computer diskette, in addition to the traditional books format. The document can be ordered from the Montana Contractors Association (1717 11th Avenue), P.O. Box 5419, Helena, Montana, 59604-5419; (406) 442-4162 and at <http://www.mtagc.org/docs/mpw-order-form.pdf>

**NOTE:**

Under federal law, **the MONTANA CONTRACTOR BID PREFERENCE** included in these **model bid specifications** **CANNOT** be applied to public construction contracts funded with **CDBG** funds.



### **STEP 3 - OBTAIN BID DOCUMENT REVIEW AND APPROVAL FROM CDBG**

To ensure that all of the required provisions are included, **no later than 30 days prior to the initial bid advertisement** project engineers or architects must:

- **complete Exhibit 9-C (Letter of Transmittal of Construction Contract Checklist and Proposed Bid Document)**, and
- **transmit Exhibit 9-C and a copy of the draft bid document** to the project's assigned CDBG Program Specialist **for CDBG review and approval** (with CDBG using **Exhibit 9-J**).



**The bid package must also receive the review and approval of all other applicable state or federal agencies with review and approval authority for the type of project planned.**

- **Once the complete bid package has been assembled, it should be reviewed by the CDBG grant recipient's attorney for completeness and consistency with state and federal laws and regulations.**
  - Montana law (Section 18-2-404, MCA) requires that all public works contracts be approved in writing by the public entity's legal adviser prior to execution.



### **STEP 4 – ADVERTISE A BID SOLICITATION**

An advertisement of the bid should be drafted based on the information included in the "Advertisement for Bid" portion of the bid document. The bid advertisement must be in accordance with the requirements stated in the table below.

#### **OVERVIEW OF MONTANA PUBLIC NOTICE REQUIREMENTS**

<b>Jurisdiction</b>	<b>Statute</b>	<b>Amount of Contract</b>	<b>Advertising Requirements</b>	<b>Notes</b>
<b>Municipalities</b>	7-5-4302, MCA and 7-1-4127, MCA	Contracts over \$50,000	Must advertise twice with at least 6 days separating the advertisements.	The second publication must be not less than five days or more than 12 days before the bid opening.
<b>Counties and Districts</b>	7-5-2301 and 7-1-2121, MCA	Contracts over \$50,000	Must advertise twice with at least 6 days separating the advertisements.	

- Requirements for publication of notices for **municipalities** are set forth in sections 7-1-4127, MCA, **Publication of notice**.

- Requirements for publication of notices for **counties** are set forth in Section 7-1-2121, MCA, **Publication and content of notice**.
- Because section 18-8-203, MCA does not establish a specific time frame or method of publication, this section of the MCA should be read in conjunction with sections 7-1-4127, MCA, **Publication of notice** (for municipalities); for municipalities); and 7-1-2121, MCA, **Publication and content of notice for counties**.
- **In addition to the minimum legal advertising, MDOC strongly recommends** that CDBG recipients **also advertise at least once in a newspaper with regional distribution in their area of the state.**
- The bid solicitation can also be submitted to plan exchanges and bid clearinghouses such as those administered by the Montana Contractors Association. **The more exposure the bid solicitation receives, the more qualified contractors will be aware of it, hopefully resulting in lower and better bid proposals.**
- **Any amendments to the bid package must be mailed as an addendum to each bidder**, and every bidder must be given an appropriate period of time to review and respond.
- **You may wish to have a pre-bid conference and project walk-through.** The place and location of the pre-bid conference should be included in your advertisement for bids.
- **Your bid solicitation process must comply with Disadvantaged Business Enterprise Requirements.**

#### **DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

 Disadvantaged Business Enterprise (DBE) requirements of federal Executive Order 11246 are **applicable to CDBG-funded construction contracts and procedures for compliance discussed in Chapter 5, Civil Rights, and should be followed and documented in your bid solicitation process.**

 The current **Montana Department of Transportation (MDT) Disadvantaged Business Enterprise (DBE) Directory** may be used to locate qualified DBE firms in your area.

The DBE/WBE Directory can be accessed via the *MDT's Internet website*:

<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

-- or by contacting **MDT's DBE Program Bureau** at

(800) 883-5811 or 406.444.6337

TTY: 800.335.7592 | Fax: 406.444.7685



**CURRENT DAVIS-BACON WAGE RATE DETERMINATIONS MUST BE INCLUDED IN THE SOLICITATION FOR BIDS:**

- A copy of the current federal wage rate determinations provided by the project's CDBG Program Specialist must be included in any solicitation for bids.
  - CDBG staff will provide the current Davis-Bacon Wage Rate Determinations to you upon request. (See **Exhibit 6-B** and **Chapter 6, Labor Standards**).
- Current federal Davis-Bacon wage rate determinations for each county in Montana can be found at <http://www.access.gpo.gov/davisbacon/mt.html>, the U.S. Department of Labor's Davis-Bacon website.
- CDBG grant recipients need to verify (via contact with CDBG) that the wage rate determination is the most current available. Weekly advance notice of upcoming changes are posted every Friday at <http://www.gpo.gov/davisbacon/advanced.html>
  - Therefore, **not less than fifteen work days prior to the bid opening** your project's CDBG Program Specialist must be **contacted by telephone or in writing to find out if the wage rate decisions included in the bids solicitation are still current.**



Modifications to the wage rate determinations that are posted by HUD at the Davis-Bacon website **ten days before bid opening** need to be utilized.



Modifications to the wage rate determination that are posted at the Davis-Bacon webpage **less than ten days before bid opening** do **not** have to be used.

- In those instances where the U.S. Department of Labor has issued a modification of an earlier wage determination ten days before the scheduled bid opening, MDOC will require you to provide the new rate decision to all potential bidders by addendum, since this is a reasonable amount of time allowed for this procedure.



**DOCUMENTING ON-GOING DAVIS-BACON COMPLIANCE**

To regularly document that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid all during the course of a project, you are required to include the following as part of the documentation you submit to CDBG with all your requests for drawdown of "Activity budget" funds:

- a) copies of the required labor compliance interviews of contractors' employees, and
  - b) certification (on Exhibit 6-P) that you have completed and maintained documentation of the completion of your weekly reviews of weekly payroll documents.
- See Chapter 6 (pages 6-13 and 6-14), Exhibit 6-K, and Exhibit 6-P.



### **STEP 5 - LOG EACH BID RECEIVED**

Upon receipt, each bid should be logged as to time and date of receipt. The bids should remain sealed and safely stored until the bid opening.



### **STEP 6 - CONDUCT THE BID OPENING**

Public construction contracts must be awarded fairly and in a manner that ensures public funds are used as efficiently as possible. These objectives may be accomplished only if all bidders are required to respond to the same project specifications.

The bid opening should be conducted in a businesslike manner with each bid being opened and reviewed **prior** to reading aloud the dollar amounts. The CDBG grant recipient's attorney should participate in the bid opening.

**IRREGULARITIES:** If any irregularities are found, the amounts should not be read or considered and the bid should be returned to the bidder. Should a bidder identify an error in the bids, in any form, the CDBG grant recipient's attorney should review the State of Montana statutes governing bid irregularities before proceeding further. ***When all matters of bid irregularities are resolved, the low bidder will be determined.***

Examples of **IRREGULARITIES CALLING FOR REJECTION OF A BID** include:

- ☐ a contractor submitting a bid is not registered;
- ☐ bid proposals not submitted on specified forms, or altered in form by a bidder;
- ☐ bid proposals not submitted on time;
- ☐ unsigned bid proposals;
- ☐ bid proposals not accompanied by the specified guarantee (bid bond, etc.);
- ☐ bid proposals by unqualified or improperly licensed entities, contrary to specifications or law;
- ☐ qualifying a bid or bid items in a bid proposal contrary to the specified requirements of bid items or bidding documents;
- ☐ bid proposals which omit items required by the specifications;
- ☐ altering a bid as to specified time of commencement or completion of work; and
- ☐ bid proposals that fail to acknowledge an addendum to the original call for bids.



Examples of **MINOR BID IRREGULARITIES THAT MAY BE WAIVED** include:

- ❑ omission of date signed or title of person signing;
- ❑ failure to initial erasures (assuming other information is legible);
- ❑ failure to acknowledge an addendum which does not affect quantity, quality, time or price;
- ❑ submission of a bid in an unsealed envelope;
- ❑ omission of a subcontractor's or supplier's name at bid submission time;
- ❑ unit price bid proposals which include correctable, reconcilable arithmetic errors if the unit price does not change; and
- ❑ lump sum bid proposals that include correctable, reconcilable arithmetic errors if the amount on which the award will be based does not change.

**IF ALL BIDS RECEIVED EXCEED THE AMOUNT OF FUNDS AVAILABLE** for the construction project, the CDBG grant recipient has two options:

- ▶ (1) Use additional local financing resources -- such as general revenues or bond proceeds; or
- ▶ (2) Modify the bid package and repeat the entire bid process as outlined above. In re-doing bid solicitation, consider use of the deductive alternative method, described above.

**▶▶▶▶ Under no circumstances can CDBG grant recipients negotiate with the low bidder to bring the offer in line with the project budget.**

**IF ALL BIDS RECEIVED ARE LESS THAN THE APPROVED BUDGET** for the construction project: In the event that all bids received are less than the approved budget (as found in the signed CDBG contract) for the construction project, MDOC will share proportionately in any savings with all funding sources – and the savings (i.e., funds that would be unused because of the lower bids) are to be returned to CDBG and other funding sources.

**POSSIBLE EXCEPTION:** If, after the bidding process is completed, a balance of budget funds remain that could **possibly** be used in the project for additional or lower-priority public facilities construction, the CDBG grant recipient's representative should immediately send the project's CDBG Program Specialist a written request, including a full rationale for the change in the scope of work and cost details. MDOC review and approval to amend the grant contract for the proposed additional activities is necessary for such changes of scope. If this request is

denied by MDOC, the amount of the low bid plus ten percent (10%) contingency will be allowed as the revised or final construction budget.

#### **FINALIZING THE CDBG PROJECT BUDGET:**

- **Within 15 days after bids are received on all project activities, a final project budget** needs to be established with MDOC.
- When approved by CDBG, the final project budget becomes part of the MDOC contract with the grant recipient.



#### **STEP 7 - REVIEW THE LOW BID**

Following the bid opening the low bid should be reviewed to ensure that:

- the bid submission was **technically and legally responsive to the solicitation for bids**; and
- **the contractors and all subcontractors are qualified and have the capacity to carry out the project as scheduled.**



If, in the opinion of the project engineer and the CDBG grant recipient's attorney, the low bid **proves to be unsatisfactory for any reason, and the CDBG grant recipient chooses to use the next lowest bidder -- a statement of justification must be sent to the low bidder with a copy retained in the construction contract file.**



#### **STEP 8 - OBTAIN A CDBG DEBARMENT (ELIGIBILITY) REVIEW OF THE LOW BIDDER**

**Prior to awarding any construction contract, the CDBG grant recipient must provide notice to the CDBG liaison of the name of the prospective contractor firm and its principal owner(s). See sample letter, Exhibit 6-D.**

- The CDBG liaison conduct a federal and state debarment check.
  - CDBG will check the U.S. General Services Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" (see the website at <https://www.epls.gov/>) and also the State of Montana's list of debarred vendors (on-line at <http://gsd.mt.gov/ProcurementServices/debarredsuspendedvendors.mcp>x to determine if the names of the prospective contractor firm and its principal owner(s) and of the identified subcontractors are listed.
- DUNS numbers for all selected contractors must be provided to CDBG as well so that CDBG can conduct the required federal debarment check. This new requirement, effective January 1, 2009, was listed in Appendix Q of the 2009 CDBG Housing and Public Facilities Grant Application Guidelines, on line at <http://comdev.mt.gov/CDBG/requiredappforms.mcp>x

- The requirement that the local government's DUNS (Data Universal Numbering System) Number must be provided by all applicants is a compliance requirement of the Federal Funding Accountability and Transparency Act of 2006 which went into effect January 1, 2009. **You can get a DUNS number from the Dun & Bradstreet (D&B) Government Customer Response Center, <http://fedgov.dnb.com/webform/displayHomePage.do>**
- Getting a DUNS number can be done on the Web at the address above, and it can also be obtained over the phone (call 1-866-705-5711).
  - See [http://fedgov.dnb.com/webform/pages/reqDuns\\_phone.jsp](http://fedgov.dnb.com/webform/pages/reqDuns_phone.jsp)
- CDBG staff will provide the CDBG grant recipient with a notice of the contractor's eligibility or ineligibility.
  - **CDBG funds will be withdrawn from any contract entered into with a listed or otherwise ineligible contractor.**
  - Contractor eligibility reviews are discussed in greater detail in Chapter 6, *Labor Standards*.
  - After a successful debarment review by CDBG staff, no further MDOC approval of the contractor is required.


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## **STEP 9 - AWARD THE CONTRACT(S) FOR CONSTRUCTION**

- The CDBG grant recipient should make the contract award within 30 days of the bid opening unless special circumstances exist.
- A sample "Notice of Award" is included in the **Montana Public Works Standard Specifications** document cited above.
- Generally, a bid is valid beyond sixty days only with the agreement of the low bidder (but other possible options for the length of bid validity are possible and can be included in the bid solicitation document).
- As discussed in Chapter 6, *Labor Standards*, **there are also time limitations on Davis-Bacon prevailing wage determinations.** If a delay of longer than 60 days is anticipated (in getting the contract signed), CDBG grant recipients should contact their project's CDBG Program Specialist for guidance.

**THE COMPLETE CONTRACT PACKAGE should consist of an executed contract document that includes the following attachments:**

- all items included in the bid package;
- contractor's bid proposal;
- bond and insurance forms; and
- signed contractor certifications.

 **A complete copy of the signed contract and contract package should be sent to your CDBG liaison.**



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## **STEP 10 - HOLD A PRE-CONSTRUCTION CONFERENCE**

- The pre-construction conference should be held soon after the contract award. The CDBG grant recipient and prime contractor should include all subcontractors in the discussions to ensure that the subcontractors are aware that they must also comply with federal labor standards and civil rights provisions.
  - The CDBG liaison for your project should be invited.
  - The conference represents a key opportunity prior to beginning project construction for the CDBG grant recipient to give instructions to the contractor. These instructions should include a review of:
    - the project and timetable;
    - method for payment; and
    - contractor responsibilities related to civil rights, labor standards, and other federal, state, and local requirements.
  - **At this pre-construction conference, the contractor should be provided a summary of the basic CDBG requirements as listed in Exhibit 6-E of Chapter 6. Labor Standards, provides additional information on pre-construction conferences).**
  - Minutes of the pre-construction conference, including a list of those persons attending, should be placed in the construction contract file and copy should be sent to your CDBG project liaison. See the CDBG Pre-construction Conference Planning Guide, **Exhibit 6-E**.



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## **STEP 11 - ISSUE NOTICE TO PROCEED**

- Upon execution of the contract and holding the pre-construction conference, the CDBG grant recipient may then provide the prime contractor(s) with a **Notice to Proceed**.
  - This notice establishes the construction starting date and the estimated date of completion.
  - A sample "Notice to Proceed" is included in the Montana Public Works Standards Specification document cited previously.
  - **A copy of the Notice to Proceed must also be sent to your project's CDBG liaison when it is issued to the contractor.**
  - **Additionally, the CDBG grant recipient must send CDBG a Notice of Contract Award and Pre-construction Conference, including the date on which construction will start. (Please see Exhibit 9-D.)**

- **In the event a contractor is unable to complete a construction project, the CDBG grant recipient may assess the contractor for the costs the CDBG grant recipient must incur in order to complete the project.**
  - This assessment generally takes into account the work actually performed by the original contractor and the total amount of any contracts needed to satisfactorily complete the construction. These provisions must be consistent with the corresponding elements of the contract.

## **STEP 12 - THE LOCAL GRANTEE MONITORS CONTRACTORS' ACTIVITIES**

### **Monitoring of the Contractor(s) by the CDBG Grant Recipient:**

- ❑ Throughout the construction period, **the CDBG grant recipient is responsible for monitoring the contractor(s) for performance regarding the project's technical specifications and for compliance with all federal, state, and local standards and the terms and conditions of the contract(s).**
- ❑ **The grant recipient's local grant administrator/project manager must conduct regular compliance monitoring for civil rights, labor and other requirements on an ongoing basis.** See Chapter 5, *Civil Rights*, and Chapter 6, *Labor Standards*, for guidance.
- ❑ **There are specific reporting requirements of contractors to demonstrate compliance with civil rights regulations.** These include the Contract Reporting Form, **Exhibit 5-J**, which must be completed by the CDBG grant recipient from information supplied by the contractor.
- ❑ In addition -- in coordination with the project manager/grant administrator -- the CDBG grant recipient's architect or engineer should **conduct performance monitoring of the construction contractor(s) that would include the following elements:**
  - ❑ **General supervision**, including identifying the need for any construction adjustments and preparation of contract amendments.
  - ❑ **Change orders that (1) affect the approved scope of work as described in the CDBG contract with the CDBG grant recipient and/or (2) exceed \$5,000 require prior CDBG review and approval before such change orders are signed.** This also involves reviews of major changes to the estimated construction schedule.
  - ❑ **Quality control** -- to ensure compliance with technical specifications and conformance with codes and standards.
  - ❑ **Quality control** -- to ensure that the contractor is providing materials and products consistent with the quantities identified in the design and specifications; and

- ❑ **Certification of pay estimates** -- to be used by the grant recipient's financial officer to verify estimated costs for partial payments to the contractors.
- ❑ **Labor standards monitoring and documentation.** As part of the documentation you submit to CDBG with all your requests for drawdown of Activity budget funds, during the construction period, include:
  1. copies of the required labor compliance interviews of contractors' employees;
  2. certification (on Exhibit 6-P) of your completion of weekly reviews of weekly payroll; and
  3. documentation of weekly payroll reviews that you have conducted (maintaining copies in the local project records as well). See Exhibit 6-P and Chapter 4, page 4-5.
- ❑ **Maintain in your local project files documentation that you have assured that all during the project that the proper federal Davis-Bacon wages (and hourly zone rates, if applicable) are being paid.** See Chapter 6 (pages 6-13 and 6-14) and Exhibits 6-K and 6-P.
- ❑ **The architect or engineer should also obtain evidence that the contractor has made partial payments to any subcontractor or suppliers.**
- ❑ **Where the project was awarded based on a fixed-price bid,** the contractor should prepare a cost breakdown showing the amount of funding associated with each element of the construction contract.
  - ❑ This information can be then be used by the architect or engineer for performance monitoring and for determining the accuracy of requests for payments.
  - ❑ A copy of this information, which is usually incorporated into the contractor's payment request form, should be included in each of the CDBG grant recipient's draw requests to facilitate MDOC's financial review requirements.

<b>RETAINAGE: Questions Concerning Contractor Retainage in the CDBG Program</b>
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**Questions sometimes arise concerning retainage for contractors.** Local project financial officers wanted to know: **(a)** *whether* retainage should or could be drawn from CDBG funds *throughout the life of the project*; and **(b)** if Yes to “a”, should the retainage be kept in a separate bank account; and **(c)** if Yes to “a” and “b,” could that account draw interest?


The Denver HUD Office has clarified this issue for Montana CDBG: **The answer to question “a” is No**, and thus **the answers to “b” and “c” are also No**. HUD has indicated that:

1. **Retainage cannot be drawn from CDBG funds until the local government is ready to disburse the retainage after the project has been satisfactorily completed.**
2. **To hold a retainage in any kind of local bank account would violate the HUD and CDBG “\$5,000 / 3-day” rule.**
3. **To hold retainage in an interest-bearing account would also violate the prohibition against earning interest on HUD funds.**

- In summary, local governments should **not** request a drawdown of **CDBG** funds **for retainage until:**
- **the contractor has completed the project, and**
- **the local government is ready to release the retainage to the contractor.**

*For other federal or state programs, their own individual, specific retainage rules would apply, but this clarifies the use of CDBG funds in relation to retainage.*

- Partial payments by local project authorities to contractors may generally be made **up to 95 percent** of the total amount of compensation in the contract.
  - **Payment of the remaining five percent (or retainage amount) is to be held pending the final inspection and acceptance of work.**
  - The actual amounts retained may vary, depending on the amount of the contract, progress of construction, and other specific instructions in the contract.

 **NOTE: There is a possible exemption from the 1% Tax on Contractor's Gross Receipts that might apply to your project:** The Montana Department of Revenue has determined that in the instance where (1) the project construction is funded by a public entity and (2) the building will be maintained and owned by a public nonprofit entity, **the project is considered exempt from payment of the 1% Contractors Gross Receipts Tax.**

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## **STEP 13 - CONDUCT FINAL INSPECTION**

- Upon completion of the construction activities, **the architect or engineer must provide the grant recipient and/or sub-recipient with a set of “as-built” plans** with the request for final payment.
- Before making the final payment less the retainage, the grant recipient must conduct a final inspection of the construction work.
- **Additionally, there should be a determination of whether all federal and state requirements (e.g., civil rights and labor standards) have been satisfied, and that all contract files are complete.**
- A written acceptance of work can then be issued and final payment made less the retainage. After 45 days and upon submission of a lien release from all contractors and suppliers, the retainage may be released.
  - If after 45 days there remain claims or liens against the contract, appropriate action must be taken which includes making payments from the retainage and/or the performance and payment bonds as prescribed by the laws of the State of Montana.

- Within 90 days after completion of construction activities (and prior to release of any retainage) the Montana Department of Environmental Quality requires "as-built" plans to be submitted by your engineer for all water and sewer projects. Your engineer also must certify that these activities were completed in accordance with the initially approved plans and specifications.
- **Decision concerning final acceptance:** A CDBG recipient that enters into a contract after October 1, 1999, for the construction of a building (as described in 18-2-101, MCA) must -- unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance -- **decide whether or not to make final acceptance**, 18-2-306, MCA.
- **Final acceptance** means that the building has been certified by the project engineer that it has been constructed in accordance with the terms and conditions of the contract documents.
  - **Within 30 days after final acceptance by the CDBG recipient, the CDBG recipient must make the final payment of the contract price specified in the contract to the other party to the contract.** (Chapter 439, Session Laws 1999)

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## **STEP 14 – MAINTAIN RECORDS: Labor Standards and Construction**

**For each prime contract, the grant recipient should maintain a Construction Contract file and a Labor Standards file with the following documentation inserted as required by this chapter and Chapters 5 (Civil Rights) and Chapter 6 (Labor Standards).**

**Note:** Information to be retained in the **Labor Standards file** is **noted with an asterisk (\*)** and all other documents should be retained in the **Construction Contract** file, as follows.

- ☐ design and cost estimates
- ☐ evidence of easements and acquisition
- ☐ bid documents, including required civil rights, labor, and other provisions
- ☐ evidence of bid advertising
- ☐ minutes of bid opening including tabulation of bids
- ☐ evidence of low bid review
- ☐ letter of request for contractor eligibility (\*)
- ☐ MDOC notice of contractor eligibility (\*)
- ☐ copy of Notice of Contract Award
- ☐ executed contracted documents with attachments
- ☐ Notice of Contract Award and Pre-construction Conference (**Exhibit 9-E**) (\*)
- ☐ minutes of pre-construction conference (\*)
- ☐ copy of Notice to Proceed
- ☐ monitoring and inspection reports
- ☐ contract reporting form (**Exhibit 5-J**) (\*)
- ☐ contractors' weekly payrolls and signed Statements of Compliance (\*)



- ❑ evidence of weekly review of payrolls by the grantee's designated reviewer (as listed in the approved Project Management Plan; See Chapter 6, page 6-17 and 6-18) (\*)
- ❑ records of construction worker interviews (\*)
- ❑ evidence of any violations and resolutions of violations (\*)
- ❑ evidence of the final inspection
- ❑ notice of acceptance of work
- ❑ lien releases from all contractors and suppliers; and
- ❑ evidence of disposition of outstanding claims.

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#### IV. SPECIAL CONCERNS AND REQUIREMENTS REGARDING PUBLIC FACILITIES PROJECTS

The following items are special concerns and requirements regarding CDBG public facilities projects, in addition to the standards applicable to all CDBG projects:

1. ***If a project has a Water, Sewer, or Solid Waste District as a sub-grant recipient***

During the past decade, the Montana Legislature has broadened the legal authority for water and sewer districts to use a variety of financing mechanisms to construct and operate systems to serve unincorporated communities. Water and sewer districts also have the authority to adopt user charges to assure adequate long-term maintenance and to require metered water use to encourage water conservation and more equitable rates.

**If a project has a Water, Sewer, or Solid Waste District as a sub-grant recipient, CDBG guidelines require:**

- a. **Formation of a County Water, Sewer, or Solid Waste District, so that legal authority can be established for the long-term operation and maintenance needs of an unincorporated community's water and/or sewer system.** Water or sewer users associations, because they are private, nongovernmental entities must first be established as county water or sewer districts (pursuant to Title 7, Chapter 13, Parts 22 and 23, MCA) **before** making an application for CDBG funds through a county government.
  - b. Proposed improvements to stand-alone independent rural water or sewer systems that are to be entirely operated and maintained through **an RSID** must first be legally created as a county water and sewer district **before** an application to CDBG may be submitted.
  - c. **Adoption of an Interlocal Agreement** ("sub-recipient agreement") between a County and a Water and Sewer District, where the County is the CDBG grant recipient. (See the Sample Interlocal Agreement, **Exhibit 9-G**).
- **Thus, CDBG Public Facilities Application Guidelines require the formation of the County Water, Sewer, or Solid Waste District prior to applying for grant funds in order to avoid any delays** in project start up and project construction, except under the

special circumstances described here:

- **In limited circumstances, counties can apply for funding without the proposed project area being established as a county water and sewer district.** To be eligible, the proposed area where the project would take place would be required to be connected to an existing or proposed system owned and operated by an incorporated municipality or a county water and sewer district. In addition, the municipality or county water and sewer district must provide a written commitment that it will assume responsibility for the long-term operation and maintenance of the proposed improvements upon completion of the project.
- **Incorporated municipalities can apply for funding for an area outside a city or town without the proposed project area being established as a county water and sewer district, provided the applicant municipality states its intent to annex the proposed area to be connected to the municipality's system by a specified future date.** The municipality must provide a written commitment stating its intent to assume responsibility for the long-term operation and maintenance of the proposed improvements.
  - An example of this situation would be where a proposed project area is adjacent to a municipality or a county water and sewer district, and the proposed project area is not prepared or could not be annexed or included within the boundaries of the municipality or a county water and sewer district during the term of the CDBG project.
  - In this example, a rural special improvement district (RSID) would be created to assist with the financing of the project, so that those properties benefited by the improvements are paying for the improvements. Since a RSID is not eligible to apply for funding, the city would apply on its behalf.

2. ***If a project has a non-profit organization or a for-profit organization as a sub-grant recipient, CDBG requires:***

- **The adoption of an Interlocal Agreement between the city/county and the non-profit organization (or the for-profit organization) --** where the City/County is the CDBG grant recipient and a local non-profit or for-profit organization is the entity for which the county or city submitted the successful CDBG grant application. (See Sample Sub-Recipient Agreements, **Exhibit 9-I** and **Exhibit 9-F**).

3. ***If a project involves the use of CDBG funds to pay for system assessment costs or hook-up costs for LMI rental households:***

- If a project utilizes CDBG funds to defray system upgrade assessments (or hookup costs) for landlords who agree to rent to LMI families at or below the Fair Market Rents established by HUD, **a mechanism must be put in place to recapture CDBG funds, if a landlord fails to meet the obligations set out under a Landlord Deferred Repayment Assistance Agreement.** (See **Exhibit 9-N**). This Agreement will need to be secured with a lien on the property to insure compliance with the agreement. (See **Exhibit 9-O**).

- **For more information and details about paying assessments and hookups for LMI households in CDBG public facilities projects), see:**
  - the CDBG Public Facilities Application Guidelines (Chapter V, Section C, ); and
  - CDBG's handbook, Documenting Benefit to Low and Moderate Income Persons for Economic Development, Housing, and Public Facilities Projects: Exhibit H (Targeting LMI Benefits for CDBG Public Facility Projects), and Exhibit L (Sample CDBG Public Facilities Targeting Plan for A Project with Direct Benefit to LMI)

4. ***If a project involves Construction of or Modifications to Structures.***

Structures modified or constructed with CDBG funds are subject to the State of Montana **building code** and **flood plain insurance** requirements.

- a. **Building Code Requirements.** Structures modified or constructed with CDBG funds must meet or exceed requirements contained in current editions of the following:

- ❑ National Electrical Code, as amended;
- ❑ Uniform Plumbing Code, as amended;
- ❑ International Mechanical Code; and
- ❑ International Building Code

Permits must be obtained from the MDOC Building Codes Bureau for all electrical and/or plumbing work undertaken with CDBG funds unless the grant recipient has been certified by the Bureau to enforce the codes cited above. In such cases, permits will be obtained locally.

In addition, in those cases where the Building Codes Bureau has not certified the grant recipient, permits must be obtained from the Bureau for general building and mechanical work involving any commercial or public buildings.

- b. **Floodplain Requirements.** Because drinking water and wastewater treatment facilities are frequently located in proximity to surface waters or low-lying areas, special attention should be paid to requirements related to floodplains and wetlands. The CDBG grant recipient must determine whether a proposed project is located in or will affect a floodplain or wetlands area. If assistance is needed in determining whether the project is located in or would affect a floodplain, please contact:

Floodplain Management Section, Water Operations Bureau  
Montana Department of Natural Resources and Conservation  
48 N. Last Chance Gulch  
Helena, Montana 59620  
Phone Number: (406) 444-6654

- c. **Federal Flood Insurance.** The purchase of federal floodplain insurance is required if a structure assisted in part with CDBG funds is constructed within a designated floodplain. For the assistance of CDBG recipients, a publication titled Further Advice on Executive Order 11988, Floodplain Management, is available from MDOC.
- d. **Permits are needed if a project involves construction of structures or improvements below the low water mark of navigable water bodies.** The placement and construction of structures or improvements, such as bridges, below the low water mark of navigable water bodies requires a permit from the Montana Department of Natural Resources and Conservation. This requirement applies to any lake or streambed that has a history of commercial use or navigation.

The structures covered by the requirement include bridges, roads, pipelines, power lines, telephone lines, diversion structures and riprap. For information regarding compliance with the state permit requirements, contact:

Trust Land Division  
Montana Department of Natural Resources and Conservation  
P.O. Box 201601  
1625 Eleventh Avenue  
Helena, Montana 59620-1601  
Phone Number: (406) 444-2074

- e. **If Wetlands and Streambanks are affected:** U.S. Environmental Protection Agency approval or a U.S. Army Corps of Engineers "404" permit may be required if wetlands will be affected. A "310" permit from the County Conservation District may also be necessary if construction work will affect a streambank.

5. **Other Special Conditions and Circumstances:**

Additional special conditions might also need to be incorporated into the grant contract depending on the specific type of public facilities or housing project. Special conditions that might need to be added to a CDBG contract with a grant recipient include:

- ❑ **Adoption of an LMI Targeting Plan** – a plan document which provides the details and specifics concerning how and under what conditions assistance to low and moderate income (LMI) households within a designated project where assessments or hookup charges would be paid directly for qualifying LMI households.
- ❑ **Adoption of a subrecipient agreement** between the CDBG grant recipient and a private nonprofit corporation (e.g., senior citizens organization) or a for-profit organization -- where the sub-grant recipient will own and/or operate the completed facility area.
- ❑ **Publication of the Section 3 Public Notice: Economic Opportunities for Low-Income and Moderate Persons (Exhibit 5-B, or its equivalent).** In order to inform the community of employment and business opportunities and to demonstrate compliance with Section 3 requirements, Exhibit 5-B should be published when an advertisement of the bid is

published. To document the Section 3 requirements **Exhibit 9-L**, Section 3 Summary Report, must be completed by the CDBG grant recipient and submitted to the CDBG program. Further discussion of the Section 3 requirement is discussed in Chapter 5, Civil Rights.

- **Capital Improvements Plan:** The CDBG program in FY 2007 dropped the requirement (in effect from FY1998-FY2006) that grantees without a (CIP) must prepare a CIP during the course of their project.
  - In the FY1998 -FY2006 period the CDBG program required that grant applicants that were awarded CDBG public facility that did not have a capital improvements plant had to develop during a CIP that covered at least a 5-year period.
    - A stated above that requirement has been dropped. **However, CDBG public facilities grants applicants are still encouraged to complete a comprehensive CIP to encourage more effective long-term planning for the construction, maintenance, and financing of local public facility projects.**
    - In some circumstances creation of an updated Comprehensive Capital Improvements Plan might be set forth as a requirement in the CDBG contract with the grantee.
    - **Local governments, if they wish, can still use CDBG funds to pay for the preparation of the comprehensive CIP as part of the CDBG-funded project and can include funds for the CIP in the proposed project budget.** Funds reserved for the preparation of a comprehensive CIP (up to \$25,000) would not be included in the scoring of benefit to low and moderate income persons.
    - An applicant to CDBG's public facilities grant competition will continue to typically receive more points during the ranking process if a comprehensive CIP has been adopted -- especially if the criteria used by CDBG in ranking Public Facilities applications as set forth in Chapter V of the *CDBG Grant Application Guidelines*, <http://comdev.mt.gov/CDBG/requiredappforms.mcp>

## **CHAPTER 9**

### **EXHIBITS**

- 9-A Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped**
- 9-B CDBG Supplemental General Conditions (Exhibit 9-B) *and* Federal Labor Standards Provisions (See Exhibit 6-A, the HUD 4010 Form)**
- 9-C Transmittal of Construction Contract Checklist and Proposed Bid Document, Checklist of Required Clauses for CDBG Construction Contracts, and Executive Order 11246 Clause**
- 9-D Notice of Contract Award and Pre-construction Conference**
- 9-E Contract Award Report and 1% Gross Receipts Withholding Report (Miscellaneous Tax Division, Montana Department of Revenue)**
- 9-F Sample Sub-Recipient Agreement for an Affordable Housing Project with Multiple Funding Sources**
- 9-G Sample Interlocal Agreement for a County and Rural Water and Sewer District**
- 9-H Construction Contractor Registration Law**
- 9-I Sample Sub-Recipient Agreement**
- 9-J Checklist for CDBG Review of Construction Bid Documents**
- 9-K Contractor Reporting Form**
- 9-L Section 3 Summary Report (Economic Opportunities for LMI Persons)**
- 9-M Public Facility Construction (and New Housing Construction) Management Checklist**
- 9-N Sample Agreement (Concerning LMI Assessment Payments) For Owners of Low and Moderate– Income Occupied Residential Property**
- 9-O Notice of Security Interest in Real Property to Secure Repayment of A Wastewater Upgrade Assessment Assistance**