

In carrying out its CDBG project, a Grantee may need to procure many different types of goods and services. Each type may require a different procurement and contract procedure; e.g., small purchases, sealed bids (construction), or competitive proposals (professional and non-professional services). The types of contracts that are generally used are discussed below.

*** All CDBG funds used to purchase services and construction must be obligated through a competitive procurement process, unless work is to be done through the Grantee or its public sector agent, or DHCD has given its prior approval.**

*** The Grantee may not execute a contract, obligate any funds or expend any funds before the effective date of the CDBG Agreement unless the Grantee has received prior written approval from DHCD to do so.**

*** A completed *Community Development Block Grant Disclosure Report* must be provided by all contractors and private corporations e.g., non-profits or consultants if the contract will exceed \$50,000, including any change orders. The sole exception is contracts with housing rehabilitation subcontractors. See Appendix 71 for a copy of the report.**

Requirements Related to Small Purchases

Virginia's CDBG program requires that every Grantee adopt a Small Purchase Procedure that is in compliance with the *Virginia Public Procurement Act (VPPA)*. This includes localities with a population of 3,500 or less. Section 2.2-4303.G reads in part:

A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids for single or term contracts for: goods and services other than professional services if the aggregate or the sum of all phases is not expected to exceed \$100,000... However, such small purchase procedures shall provide for competition wherever practicable. Purchases under this subsection that are expected to exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or offerors...

The Grantee's written small purchases procedure will be reviewed by DHCD during the Pre-Contract Activities phase.

Construction and Housing Rehab Contracts

The provisions of construction and housing rehabilitation contracts are covered in Chapter 6: Design and Construction Process and Chapter 9: Housing, respectively.

Goods and Services Contracts

The definition of goods means all material, equipment, supplies, printing, and automated data processing hardware and software. Goods may be procured via a small purchase procedure established by the grantee so long as the total cost of the contract is no more than the \$30,000 limit set by the VPPA.

Services is defined as any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials, and supplies. DHCD allows for services other than non-professional and professional to be procured via the grantee's small purchase procedure. All contracts for services funded with CDBG monies should be structured so that payment for services rendered is triggered by successful attainment of pre-determined performance measures. Every contract negotiation should begin with the outcome in mind, identification of benchmarks necessary to attain to achieve the outcome and pre-determined amounts of compensation to be dispensed when the benchmarks are met. See Appendix 3 for more details about DHCD's pay for performance requirements.

The same private corporation or individual cannot serve as the grant manager or housing program administrator and the engineer, architect or rehabilitation specialist regardless of the funding source. The Grantee must solicit for each service and insure that separate contracts are drawn for each service. Services ineligible for CDBG funding include prior engineering studies and preparation of the Grant Proposal.

Professional Services Contracts

The *Virginia Public Procurement Act* defines professional services as work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering. For CDBG projects, the most frequent type of professional services required is design services (hereafter referred to as Engineer). The procurement of professional services must be done using a competitive negotiation process as outlined in the VPPA Section 2.2-4302.2 where selection is based on

qualifications and professional competence, unless prior DHCD approval is obtained. It is the responsibility of the Grantee, through its Selection Committee, to determine what specific qualifications and experience constitute the level of competence necessary for the project.

The first thing the Grantee should do in procurement of professional services is to step back and contemplate the broad outcome intended from the project. What is it you hope to have when the project is complete? How will the project area be different? What do you think it will take to get there?

Next you need to make sure you understand the type of project you are undertaking. Is it just infrastructure e.g., water, sewer, drainage, streets, etc. or does it include work on buildings? Having grasped the type of project being done, you should then be cognizant of seeking a firm that has the skills necessary to best assist given your project type. For example, you need to know when you need an architect versus an engineer.

You also need to know the type of primary expertise you need. For instance, if it is architecture you need, do you need someone with expertise in new building design and construction, deteriorated building design and renovation or perhaps landscape design and construction? Many times the types of expertise may be varied and in such cases, make sure you hire the best “team” of experts to meet your needs.

Another important determination is to have an understanding as to the timetable for implementation of your project. By what dates do you want critical phases done? You need to mind-map your desired timetable and make that timetable part of the information you convey to the prospective firms that show interest in your project.

Another consideration is the degree to which your project is straight forward versus more challenging. Is it a single activity project or does it include multiple activities? For instance, if it is a downtown project involving architectural and engineering activities as well as multiple interfacing construction activities, you need to seek firms that demonstrate expertise in coordinating multidimensional projects similar to yours. Do not hire a firm without the expertise you need simply because you have an existing relationship with them on other projects totally unlike the one you are about to undertake.

In so doing, the Grantee must abide by the following procurement process:

Typical Architectural/Engineering (A/E) Services

Basic engineering is broken into three phases:

1. **Design Phase:** Includes all surveying, field reconnaissance, engineering analysis, drafting, preparation and assembly of the plans and specifications, securing review and approval by all appropriate regulatory agencies. DHCD considers completion of this phase to represent 70% of the total basic engineering services fee.

2. **Bidding and Contracting Phase:** Includes all services related to the competitive, sealed bid procurement process to hire a construction contractor. DHCD considers completion of this phase to constitute 10% of the basic engineering services fee.
3. **Construction Administration Phase:** Runs concurrent with the construction of the project activities and includes review and approval of shop drawings; review and approval of contractor Requests for Payments, developing and processing construction change orders and field changes, resolving contractor questions and issues during construction, and periodic site visits by the Design Engineer. DHCD considers this phase to constitute 20% of the basic engineering services fee.

CDBG funds in support of Basic Engineering services are capped per the Fee Schedule found at Appendix 3: Project Budget.

Inspection

Generally, the engineering firm that designs the project should inspect the construction work for a specified fee. Inspection is categorized as either resident or periodic. DHCD requires, unless specifically authorized otherwise, the use of Resident Inspection.

1. **Resident Inspection:** Involves the use of a full-time, on-site Resident Project Representative of the Engineer (RPR) at all times the Contractor or subcontracts are working. The RPR is primarily responsible for serving as the liaison between the Contractor and Engineer. In this capacity, the RPR observes the construction, records observations of the construction [including quantity of materials installed] and prepares various reports regarding construction activities. DHCD assumes that resident inspection will take place on all CDBG projects unless the Grantee requests in advance, and receives, DHCD permission to conduct periodic inspection. Qualifications for a RPR must include a general knowledge of the proposed type of construction; and
2. **Periodic Inspection:** This method involves using representatives of the Engineer for spot or milestone inspections. Visits to the construction site either on a schedule or when critical construction elements must be approved before the project can proceed. Generally, qualifications for someone conducting periodic inspections include construction knowledge and training in one or more construction trades and often also includes a bachelor's degree in architecture and/or engineering.

CDBG funds in support of Resident Inspection services are capped per the Fee Schedule found at Appendix 3: Project Budget.

Additional Engineering Services

Some projects will require engineering services other than basic engineering or inspection. Examples of services that would be considered “additional” include geotechnical analysis, surveying for property plats and work for litigation purposes.

✱ Any and all services identified as additional must receive prior written approval from DHCD to be eligible for payment with CDBG funds.

CDBG funds in support of Additional Engineering services are capped at no more than 20% of CDBG participation in Basic Engineering.

Create a Selection Committee

The first step is to establish a Selection Committee, which is tasked with reviewing and ranking all proposals received and interviewing at least the top two (2) candidates. Therefore, the Selection Committee should be comprised of individuals who either have some technical knowledge or who have some responsibility for the project in either an elective or appointive capacity. The Committee might include members of the local governing body, Chief Administrative Officer, Public Services Director, Attorney, Planning Director, and Grant Manager.

The Selection Committee should be engaged in the following tasks:

1. Develop a clear understanding of the project outcome;
2. Establish the selection criteria;
3. Develop an evaluation process;
4. Prepare the RFP Package;
5. Advertise the RFP;
6. Pre-qualify service providers (if desired) with prior approval from DHCD;
7. Evaluate, score and rank proposals;
8. Conduct interviews with the most qualified firms;
9. Prioritize proposals based on interviews and evaluations; and
10. Contract Negotiations with recommended awardee.

Establish the Selection Criteria

The selection criteria must be developed before the RFP package is released. The first step is to clearly determine what the outcome, timeline and budget of the project are as outlined in the Contract Negotiation Record or CDBG Agreement. Using this information, the selection criteria are developed. This criterion serves as the basis on which proposals and firms are evaluated.

Generally speaking, the selection criteria should encompass the following:

- Evidence of the Engineer's understanding of the project outcome i.e., what the project is intended to accomplish, the Engineer's proposed course of action for achieving the project outcome on time and within budget;
- The scope of specific engineering services the Engineer intends to provide, including how and when the Engineer plans to involve the Grantee and end users in the design and completion of the project. The scope of services cannot change the level of benefit. Work activities may be revised, with approval, if benefits and scope of work are not affected;
- The Engineer's opinion as to the adequacy of the estimated project costs based on an understanding of the project and services proposed;
- The qualifications and experience of the individuals the Engineering firm will assign to the project to provide the proposed services;
- Names and addresses of all clients for whom the Engineer has performed similar services within the past 5-10 years;
- Engineer's experience in collaborating with any regulatory agencies involved in the project and how and when the Engineer plans to involve these agencies in the design and construction process;
- Any potential problems the Engineer perceives with the project as proposed;
- The capacity of the Engineering Firm to perform the work within the time limitation, taking into account the current and planned workload of the firm and the staff turnover rate. This would include assurances that the staff assigned to the project will attend the monthly Project Management Team meetings;
- Knowledge and familiarity of the Engineering Firm with the procedures of the Virginia CDBG program; and
- Average time for completion of past projects similar in type and size, from beginning of design to start of construction to completion of construction.

✱ Request for Proposal shall not request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services.

Grantees are cautioned about awarding A/E services to firms that have been previously selected for work under the procurement process known as "retainer" services. There are limitations set forth in section 2.2-4303.1 in the Code of Virginia relating to these contracts. The contracts are limited to a term of one year and may be renewable for four additional one-

year terms. The sum of all contracts performed in a one-year contract term shall not exceed \$500,000. Also, the fee for any single project shall not exceed \$100,000.

Develop an Evaluation Process

Grantees should have in place a method for reviewing and evaluating the proposals received. DHCD recommends that Grantees develop a scoring sheet that adequately and systematically captures information submitted by the offerors responding to the RFP. It is advisable to use a matrix system whereby offerors are scored based on the pre-determined selection criteria so that the selection criteria remain constant throughout the evaluation process.

Prepare the RFP Package

The Request for Proposal is a detailed package of information necessary for design firms. It allows firms to understand the nature of your project, what your professional design services needs are and how to provide to you with the information you need so you can assess the various firms who express interest and ultimately hire the best fit for you given your project. Therefore you need to include those areas of information discussed previously.

The RFP package should include, but not necessarily be limited to, the following.

- Clear statement of Grantee's intended outcome;
 - Let the prospective firms know what is it you hope to have when the project is complete?
 - Tell them how you envision the project area will be different?
- The desired timetable for implementing the project;
- Maps (and/or photographs if applicable) of the project area;
- A statement that the project is being financed, in part, with CDBG monies, a description of what the required benefits to be achieved are, as outlined in the CDBG Agreement, and that the achievement of said benefits *must* take place;
- All estimates of total project costs and the amounts and source(s) of financing for the project;
- The selection criteria to be used to evaluate each firm's proposal;
- The timetable for evaluation of proposals, interviews, negotiations with the highest ranking firm and target date for executing an agreement;

- The fact that the firm will be compensated based on the successful completion of negotiated threshold-based tasks as opposed to time incurred;
- Name of grantee contact person to answer questions pertaining to the RFP;
- The date and time by which proposals must be delivered;
- Number of copies of the proposals to be submitted; and
- The information to be included in the proposals. It should include the following:
(Note – this information will correlate with the “Selection Criteria” from which the firms will be evaluated and ranked.)
 - The approach the firm proposes to achieve your outcome including;
 - A timeline for implementation;
 - A list of concerns relative to project implementation and how the firm proposes to address said concerns;
 - How the firm proposes to address budget shortfalls; and
 - How the firm proposes to keep the Grantee informed and engaged throughout project implementation;
 - The specific individuals who will compose the project team;
 - The qualifications (education and experience) of each team member;
 - The current workload of the team members and how the Grantee’s project will be incorporated into their current backlog of contracted work;
 - A comprehensive list of *all* related projects that the firm and team members have worked on in the past 5 – 10 years;
 - A list of no less than five (5) persons from the above list of related projects that can be contacted for references;
 - The firm’s experience in collaborating with any regulatory agencies involved in the project and how and when it plans to involve them in the design and construction process;
 - What services the firm intends to provide and what services they intend for the Grantee to provide;
 - Knowledge and familiarity of the firm (and more importantly, the assigned team members) with the procedures of the Virginia CDBG program;

- Experience on similar projects including “lessons learned” from those projects that benefit the Grantee’s project; and
- Other pertinent information the firm deems important and relevant to its selection to work on this project.

Advertise the RFP

The *Virginia Public Procurement Act* requires that public notice (advertisement) of the RFP be given a minimum of ten (10) days prior to the date set for receipt of proposals but DHCD recommends that a minimum of three (3) weeks notice be given. This public notice must include the posting of the RFP in a public area normally used for posting of public notices. It must also be published in a newspaper(s) of regional circulation with a daily circulation of at least 15,000. This will provide reasonable notice to the maximum number of offerors who might be anticipated to respond. If the Grantee has a “home page” on the World Wide Web, the notice should be listed there. Proposals may also be solicited directly from potential firms.

To control the costs of public advertising, an abbreviated advertisement example found later in this appendix may be used.

Pre-qualify Service Providers

With prior approval from DHCD, the Grantee may choose to pre-qualify prospective firms and contractors and limit consideration of proposals to those who have been pre-qualified. Pre-qualification procedures must be established in writing, be consistent with section 2.2-4317 of the *Virginia Public Procurement Act* and be developed sufficiently in advance of its implementation to allow potential firms and contractors a fair opportunity to complete the process. Pre-qualification should not curb the competition for services.

Evaluate, Score and Rank Proposals

After the date set for receipt of all proposals, each Selection Committee member should review the proposals independently and score the proposals based on his/her perception of the qualifications for each selection criterion. The totals of each member, per proposal, should be added to determine composite rankings of the committee as a whole. This ranking serves as the basis for determining what firms are to be interviewed.

Because some committee members may lack sufficient knowledge of design procedures and terminology to evaluate proposals, the Selection Committee may find it valuable to review proposals together but to score each proposal independently.

After proposals are evaluated and ranked, the Grantee should conduct interviews with two (2) or more firms whose professional qualifications and proposed services are deemed most qualified to this point. By Virginia statute, at least two (2) firms must be interviewed. For professional services, non-binding estimates of project costs, including life-cycle costing, may be discussed in conjunction with the interview.

The Grantee should keep in mind that all proprietary information from competing firms may not be disclosed to the public or to competitors.

After the interviews, the final ranking must be completed.

Contract Negotiations

The Grantee enters into negotiations with the highest ranked firm. If a contract satisfactory and advantageous to the Grantee can be negotiated at a price considered fair and reasonable, the award must be made to this firm. If not, negotiations with the highest ranked firm should be terminated, and negotiations should begin with the second highest rated firm. This process should continue until a contract can be negotiated at a fair and reasonable price.

For both professional and non-professional services, should the Grantee determine in writing and in its sole discretion that only one firm is fully qualified, or that one firm is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that firm.

*** DHCD must be consulted and issue prior concurrence to award being made under these circumstances.**

The professional services contract is the only type of CDBG contract which may not firmly specify total project-related cost. Consequently, there is a strong necessity to control and justify all costs incurred in the performance of this type of contract. In negotiating the Engineer's fee, the Grantee must comply with DHCD's limitation on how much CDBG funds may be used to pay for the Engineer's services. Maximum CDBG participation is capped using the Engineer's Fee Schedule found at Appendix 3: Project Budget. The Grantee, if it negotiates a higher fee, is responsible for all costs above what the Fee Schedule allows. The following policies govern the Engineer's fee:

- **Increases in fees for redesign or rebid due to bid overruns will not be approved by DHCD.** Any increase in engineering fees for redesign or rebid of a project is the responsibility of the Grantee. Contracts between the Grantee and the Engineer that increase fees beyond what is agreed upon with DHCD approval will result on the increased fees being the responsibility of the Grantee;
- The Fee Schedule applies to the entire construction budget of a project. In the event that CDBG funds represent a portion of the whole (for example 45%) construction budget, CDBG funds will be allocated to the engineering fees at that same portion (45%);
- CDBG funds may not be used to pay up front costs or any of the proportionate share of costs to be paid by Rural Development, EPA, local or other funding sources involved in the project;
- DHCD reserves the right to require the Grantee to divide activities into smaller portions for bidding to expedite the expenditure of CDBG funds and/ or to help in obtaining greater minority and female-owned business participation. However, projects with activities that

can be bid simultaneously are considered as one project for the purpose of computing basic engineering and inspection fees;

Exceptions:

- Well Drilling. Must be identified as a separate activity but construction costs do not need to be included in the total project construction cost when applying the fee schedule. The design fee may be calculated separately for that activity;
- Indoor Plumbing Construction. If design, construction management and inspection services are necessary for indoor plumbing construction and for the house(s) to meet Minimum Dwelling Standards, the fee may be calculated separately without use of the fee schedule. Up to 10% of the total amount of the budget activity may be used for non-construction costs e.g., design survey, legal, and inspection;
- Other activities, which by their nature, must be done prior to or separate from the rest of the construction actions must be approved by DHCD in writing.
- Additional Engineering. Fees for additional engineering services must be based on hourly rates and direct costs incurred by the Engineer. No mark-up of subcontractor costs or direct costs to the Engineer is eligible for CDBG payment. Hourly rates must be per the Standard Billing Rate Schedule included as part of the engineering agreement with the Grantee;

To be eligible for payment with CDBG funds, each and every additionally service to be performed must receive written approval from DHCD prior to incurring the cost this service. DHCD typically considers only geotechnical/subsurface work, surveying, or work completed for litigation purposes as allowable additional engineering costs;

The cost of additional services may not exceed 20% of the CDBG participation in basic engineering; and

Additional service does not include the task of negotiating with property owners for easements. DHCD considers this an administrative task and therefore pays for this task using the administrative portion of the CDBG budget.

Pay for Performance

CDBG compensation for professional design services must be disbursed upon specific pay-for-performance provisions. These provisions must be as follows, unless otherwise negotiated with DHCD prior to the release of the RFP:

1. Layout and specifications complete; presented to owner—30% of basic design services;
2. Plans and specifications submitted to regulatory agencies—50% of basic design services;

3. Plans and specifications approved by regulatory agencies—70% of basic design services;
4. Bidding, contracting and completion of pre-construction conference—80% of basic design services;
5. Start of construction through substantial completion with percentage of remainder tied to construction completion. **This does not include inspection fees.** —up to 95% of basic design services; and
6. "Record Drawings" submitted to the Grantee, along with *Certification of Final Completion and Acceptance*—100% of basic design services.

Contract Provisions

Once negotiations are completed, a contract must be drawn up. Required contract language includes:

- Identify of key personnel assigned to the project and that changes in personnel must be communicated immediately to the Grantee;
- Schedule for completion of the design components;
- Documentation and eligibility of compensation requests must be firmly established in the contract. This section should also specify the method of payment;
- Attendance of Project Management Team meetings;
- Timing and nature of progress reports to Grantee;
- Reference to CDBG Agreement; and
- *Attachment to All Non-Construction Contracts* found later in this appendix must be attached to the contract.

A copy of the CDBG Agreement and *What Engineers Need to Know*, found later in this appendix, should be given to the Engineer.

*** Your Community Development Specialist will review the proposed contract in order to provide technical assistance if requested to do so. However, this review should not be considered a substitute for one done by the Grantee's Attorney.**

Non-Professional Services Contracts

Nonprofessional services are defined as any services not specifically identified as professional services e.g., appraisers, rehabilitation specialists, grant administration

consultants, and demolition contractors. A private corporation e.g., non-profit or consultant may not provide both rehabilitation specialist services (including outreach, inspections, design, and construction management) and general grant administration services. Even if the Grantee hires a private corporation to administer the project, the Grantee is still responsible for all grant requirements and must maintain *active* oversight of the private corporation's work.

As mentioned earlier, the major difference between the procurement of professional and non-professional services is that, in the case of non-professional services, price *can* be considered, but need not be the sole determining factor. The procurement of non-professional services must be done using the same procedure as for professional services up to conduct negotiations, unless prior DHCD approval is received:

1. Create a Section Committee;
2. Establish a section criteria;
3. Develop an evaluation process;
4. Prepare a RFP or Request for Qualifications (RFQ) package;
5. Advertise the RFP or RFQ;
6. Evaluate, score and rank proposals;
7. Conduct interviews with the most qualified firms. This step is not always necessary; and
8. Conduct negotiations with each of the offerors deemed fully qualified and best suited among those submitting proposals, based on the evaluation criteria. Prices shall be considered, but need not be the sole determining factor. However, fees must be reasonable, related to the services provided, and based upon specific pay-for-performance benchmarks. After negotiations have been conducted with each offeror so selected, the Grantee shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The key sections of non-professional services contracts are the same as those for professional services. A "not to exceed" amount must be specified in the contract.

Grant Management Services

The Grant Manager's job is to make sure that the activities outlined in the CDBG Agreement are achieved, completed on time, within budget and in compliance with the program requirements. Therefore, the scope of services for a grant manager will typically include the following activities:

- Preparation of all DHCD-required reports, plans and support documentation including, but not limited to the following:
 - Maintain a current Project Management Plan with implementation schedule, revise the Plan as necessary and submit the revised Plan to DHCD for review and concurrence. The Management Plan is attached and made part of this agreement;
 - Prepare and submit monthly progress reports to DHCD. Said reports shall be submitted in a format to be provided by DHCD. A copy of the progress reports will be submitted at the same time to the Grantee;
 - Prepare and submit, as requested by DHCD, *Annual Activity and Beneficiary Reports, Annual Section 3 Reports, Annual Contract and Subcontract Reports* and *Annual Inactive Program Income Reports*; and
 - Prepare and submit all final reports required to closeout the CDBG grant;
- Attend meetings related to the project, including but not limited to:
 - Meetings with staff and officials of the Grantee, engineers, rehabilitation specialist, DHCD and others as necessary to assist in the implementation of the project;
 - Public and/or neighborhood meetings, as necessary to inform residents of project activities during the implementation process of the project; and
 - DHCD-sponsored workshops, seminars and public meetings related specifically to the project and/or general project management and administration of the CDBG program.
- Develop and maintain a system of project files in compliance with DHCD requirements for an effective filing system;
- Devise a system to track LMI requirements, including developing appropriate record-keeping forms to monitor and document program beneficiaries and progress for each activity with emphasis on low- and moderate-income households served by respective activities. The system will be designed to ensure the confidentiality of all applicant and beneficiary information;
- Serve as the Contract Compliance Officer for all activities required under the *Davis-Bacon Act*, the *Copeland “Anti-Kickback” Act* and the *Contract Work Hours and Safety Standards Act*. These activities include securing wage decisions, verification of contractors’ eligibility, DOL notification, reviewing contractors’ payrolls, securing required reports from contractors, interviewing employees, on-site job inspections and resolving wage restitution, if needed;

- Assist the Grantee in complying with all Federal, State, and local regulations governing the project in the following ways:
 - Serve as liaison between the Grantee and DHCD;
 - Monitor all requirements of the CDBG Agreement to ensure activities are completed in conformance with the Grant Management Manual;
 - Participate in project compliance reviews by DHCD staff and promptly prepare responses to DHCD Compliance Review letters of findings; and
 - Ensure an annual Fair Housing activity is undertaken by the Grantee;
- Ensure that a project sign is installed at the beginning of the project;
- Organize and oversee a neighborhood cleanup campaign to ensure the clearance of all junk, debris, weeds, inoperable vehicles and dilapidated structures from the project area at least once every twelve (12) months; and
- Monitor the project budget and prepare and submit all drawdown requests and budget revisions for review and concurrence by the Grantee prior to submission to DHCD.

Grantees have two options in procuring for grant administration services. They can hire a private corporation e.g., non-profit or consultant through a competitive procurement process as outlined above or they can execute an inter-agency contract as described below. Nevertheless, familiarity with CDBG requirements and experience with the same type of project for which they are being procured should be key selection criteria.

Housing Rehab Program Administrator Services

For various reasons, some Grantees may decide not to have the Grant Manager serve as the Housing Rehab Program Administrator. The scope of services for a Program Administrator will typically include the following services:

- Oversee day-to-day program activities;
- Ensure program activities are carried out in a fair and equitable manner;
- Review all applications to determine eligibility;
- Meet with eligible applicants to discuss the program and loan requirements;
- Perform a preliminary HQS housing inspection independent of the Rehabilitation Specialist;

- Present the applications with recommendations to the Rehab Board;
- Coordinate Rehabilitation Specialist's initial visit to the property and accompany the Rehabilitation Specialist much as possible;
- Review the Rehabilitation Specialist's inspection report and specifications to determine:
 - That all standard violations have been included and addressed;
 - That the specified work relates to HQS and does not include cosmetic repairs;
 - That work items and quality are consistent for all property owners; and
 - That the work can be performed within DHCD's cost limits;
- Oversee the bidding process and make a recommendation to the Rehab Board;
- Conduct the Pre-construction Conference, allowing the Rehabilitation Specialist to address technical issues;
- Once construction has begun, review inspection reports;
- Approve all pay requests and change orders;
- Make site visits to monitor progress of construction;
- Receive all complaints and investigate and make recommendations to solve them; and
- Oversee the loan packaging and disposition.

Rehabilitation Specialist Services

The Rehabilitation Specialist takes primary responsibility for designing, bidding, controlling the quality of the work completed by the housing contractor and ensuring the timely completion of all housing construction contracts. The scope of services for a Rehabilitation Specialist will typically entail the following services:

- Perform an initial DHCD Housing Quality Standards (HQS) inspection for deficiencies for each eligible dwelling, including blower door test, chimney inspection, and electrical inspection. Submit an inspection report with results.

- Completion of work write-ups stipulating repairs, including drawings, when necessary, showing locations of repairs;
- Preparation and submission of a cost estimate of specified repairs;
- Prepare master specifications for contractors and Grantee's files;
- Develop a list of pre-qualified contractors;
- Conduct pre-bid walk through of each property;
- Prepare bid documents;
- Inform the Program Administrator if temporary relocation will be required due to lead-based paint requirements;
- Conduct pre-bid conference and pre-construction conference with owners and contractors, including a discussion of regulatory information;
- Accept and review bids for completeness and accuracy. Determine if the bids are within 10% of the cost estimate and within DHCD's cost limitations. If not, recommend how the Grantee should proceed. Ensure that winning contractor has had "Lead-Safe Work Practices" training, EPA Certified Renovation Firm and Certified Renovator
- Submit a bid tab and contract award recommendation;
- Conduct negotiation with contractors, when necessary, to obtain prices within program limits;
- Perform weekly inspections during construction, including ones at critical times in the construction process e.g., electrical and plumbing rough-in, at 50% and at completion, and submit inspection reports with findings. Ensure that work is done in accordance with lead procedures as outlined in the current Grant Management Manual;
- Approve contractors' request for payment based upon payment inspection and according to a drawdown schedule and Project Management Plan. Submit inspection report with payment approval. The Rehabilitation Specialist will not approve the final payment request until the following documentation, as applicable;
- Submit to DHCD *all* change orders for review and concurrence before execution;
- Communicate with contractors and owners during construction to interpret contract and resolve complaints;

- Prepare punch-list for contractors' completion;
- Conduct final DHCD HQS inspection of project, ensure full compliance with Bid documents and program requirements, including post blower door test, and submit report with results;
- Procure the services of licensed pest control to inspect for the presence of wood-destroying insects to include written report;
- Prepare owner's satisfaction statement for written approval of work and obtain contractor's warranties, lien waivers, etc. prior to final payment. Secure Certification of Final Completion. Submit a copy of the *Register of Assigned Employees* and the *Monthly CDBG Register of Contractors, Subcontractors and Suppliers*. See Appendices 54 and 56 for a copy of the respective Register.
- Assist with Home Maintenance Education Program by providing beneficiaries with warranties and explaining said warranties to beneficiaries. Explain the operation of mechanical systems;
- Attend Management Team, Housing Rehabilitation Program Board and neighborhood meetings, as necessary;
- Provide all related documentation to the Grantee; and
- Submit annually a copy of the Rehabilitation Specialist's current Risk Assessor license as issued by DPOR.

✱ To find out if a Rehabilitation Specialist has a current Risk Assessor license, call 804-367-8511 or go to www.dpor.virginia.gov and click on "License Lookup."

Familiarity with CDBG requirements and experience in the construction business and as a rehabilitation specialist should be key selection criteria.

Risk Assessor Services

Typically any required risk assessor services will be provided by the Rehabilitation Specialist. However, if this is not the case, it is especially important that the contracts with the Rehabilitation Specialist and Risk Assessor state clearly who is responsible for completing risk assessments as part of the initial inspections, how these findings will be incorporated into the job specifications, who will assure use of Lead Safe Work Practices, and who will perform clearance testing.

Appraisal Services

All appraisers must be licensed by the Virginia Department of Professional and Occupational Regulation (DPOR). For properties with an estimated fair market value greater than \$2,500, the Grant must hire an independent appraiser. For residential properties of one (1) to four (4) units with an estimated value under \$250,000, the Grantee must hire a Certified *Residential* Appraiser, as licensed by DPOR. The Grantee must hire an independent Certified *General* Appraiser for all remaining written appraisals. When selecting an appraiser, experience with the same type of appraisal as the one being procured should be a key selection criterion.

A contract must be executed and must specify appraisal report content and other requirements necessary to determine just compensation.

*** To find out if an appraiser has a current DPOR license, call 804-367-8511 or go to www.dpor.virginia.gov and click on “License Lookup.”**

Recordkeeping

The Grantee must ensure that the following documentation is placed in the project files:

- Proof of advertisement;
- A copy of the RFP and RFQ and all offers received;
- A roster of the Selection Committee;
- The Committee’s ranking of the proposals received; and
- Identification of who was interviewed, if applicable.

See Appendix 24: Model Filing System for more details.

Inter-agency Contracts

Inter-agency contracts are generally executed to utilize the expertise of another public entity. Such contracts are with:

1. Redevelopment and Housing Authorities, Public Service Authorities or Planning District Commissions. Such entities are considered quasi-public bodies.

*** The Grantee is also responsible for monitoring to assure that the Agency is complying with all CDBG requirements.**

2. Contracts with other Local Governments. In the case of a Grantee applying for and receiving a grant on behalf of other local governments, the Grantee will be held responsible by DHCD for compliance with all program requirements. In this instance, the contract must address such issues as which locality will be responsible for the environmental review, equal opportunity, fair housing and other responsibilities normally carried out by the locality receiving the funds and in whose boundaries the funds are expended.

The key sections of these contracts are:

1. **Scope.** The Grantee may use either a formal contract or an agreement by memorandum. A clear statement of the project activities must be included in the contract. For physical improvements, the scope should include information relative to the geographic area within which the activity will occur as well as a statement of the expected result or "product" under the contract. For major acquisitions, a detailed site plan should be included in the scope section of the agreement. Other projects may include a series of interrelated tasks e.g., survey, design, demolition, construction, intended to produce a single product. Although a single contract may be used, the scope of each task should be identified. The scope section must include a detailed job description or other statement of duties for each employee assigned. It must also specify the title of the supervisor responsible for approving time sheets and authorizing expenses. Governmental agencies operating within and having a direct statutory relationship with the Grantee may provide both general administration and administering of rehabilitation activities provided that the Grantee's Chief Administrative Official maintains *direct* oversight overall activities and financial charges;
2. **Cost.** Detailed budgetary information must be included in the contract and will constitute the primary project cost control mechanism. A "not to exceed" amount must be specified in the agreement. There must also be a stipulation that invoices must be submitted on a cost reimbursement basis, based upon specific pay-for-payment provisions.

✱ Indirect Costs cannot be recovered by a Grantee unless an Indirect Cost Plan has been submitted to and approved by DHCD (See Chapter 5: Financial Management).

3. **Duration.** A specific starting and ending date must be incorporated into each contract. The ending date must be no later than the time specified in the CDBG Agreement between the Grantee and DHCD.
4. **Compliance.** The compliance provisions that apply to the Grantee by virtue of its CDBG Agreement with DHCD also apply to any CDBG work accomplished by the subgrantee. The *Attachment to All Non-Construction Contracts* must be attached to the contract. A copy of the CDBG Agreement should be given to the Agency.

What Engineers Need to Know

1. **Proposed Project Outcome.**
2. **Objective of the CDBG program.** The primary objective of the project as funded is to provide direct benefits to low-to moderate-income individuals. The most direct benefit is that of housing. Direct benefits are, therefore, the most important and should not be cut. When a project must be cut, those activities which are more indirect, such as drainage or street improvements, must be cut before activities which DHCD deems direct such as bathrooms and residential connections. Any proposed cuts to the project must receive DHCD's prior approval.
3. **Project Area.** The project area is derived from the Grantee's proposal. It is tightly drawn and is not flexible. Changes in the scope of work which affect the level of benefit provided by the project are not allowed.
4. **Contracts.** Contracts for Engineering services or construction services must *not* be executed prior to the issuance to the Grantee of the CDBG Agreement.
5. **Compensation.** CDBG compensation for professional basic design services will be based only on a performance-based methodology. **Increases in fees for redesign or rebid due to bid overruns will not be approved by DHCD.**
 - a) Layout and specifications complete; presented to owner – 30% of basic design services;
 - b) Plans and specifications submitted to regulatory agencies—50% of basic design services;
 - c) Plans and specifications approved by regulatory agencies—70% of basic design services;
 - d) Bidding, contracting and completion of pre-construction conference—80% of basic design services;
 - e) Start of construction through substantial completion with percentage of remainder tied to construction completion. **This does not include inspection fees.**—Up to 95% of basic design services; and
 - f) "Record Drawings" submitted to the Grantee, along with *Certification of Final Completion and Acceptance*—100% of basic design services.

Payment for inspection services will only be made when a full-time, on-site Resident Project Representative of the Engineer (RPR) is present during all construction activities and a weekly report is submitted to the Grantee detailing

activities [including quantity of materials installed], subcontractors present, weather conditions and problems encountered.

6. **Bidding/Breakout of Construction Contracts.** Construction contracts must be bid in such a manner as to be the most advantageous from a cost standpoint to the Grantee. Where practical, projects involving dissimilar trades or multiple work locations should be broken out and bid by divisions and include the option to bid as a total project.
7. **Construction Bidding Alternates.** All work included in the grant contract must be bid as contracted regardless of cost estimates. Extra work or increased sizing (to be paid by the Grantee) of lines or facilities must be bid as an add alternate or deductive alternate.
8. **Re-bidding Projects.** If bids are higher than available funds, either more non-CDBG funding must be obtained, or Indirect Benefit Activities must be adjusted with prior approval of DHCD. Increased costs for re-bidding projects due to initial bid overruns are not eligible CDBG expenses.
9. **Additional Engineering:** These services must be approved by DHCD before the cost is incurred. DHCD typically considers only geotechnical/subsurface work, surveying, or work completed for litigation purposes as allowable additional engineering costs. Requests for additional engineering must be submitted by the Grantee to DHCD and must include a description of proposed services, the reason for the work to be done and a detailed cost breakdown of services to be rendered. Cost plus percentage of cost charges will not be allowed. CDBG participation will not exceed 20% of basic engineering fees.
10. **Contingencies.** Contingencies may not be included in the CDBG budget. Contingencies may be budgeted within the cost element of construction, thereby raising the fee to the maximum to allow for work involved in bidding activities separately, as needed.
11. **Proportionality.** Payments in projects involving other funds must be made in proportion to CDBG funds budgeted in the specific line item. CDBG funds spent out of proportion to non-CDBG funds may be disallowed.
12. **Construction Change Orders.** All Construction Change Orders must be approved, in writing, by DHCD prior to authorization of the work. Failure to receive prior authorization will result in the disallowance of the cost of the change order.
13. **Disputes.** Disputes between the Grantee and the Engineer regarding payments, additional engineering, design completion or CDBG policies should be brought to DHCD's attention immediately with full documentation concerning the issues in dispute.
14. **Project Completion.** The Engineer *must* certify completion when all construction work is properly completed. After the Contractor has satisfactorily completed all

punch list items, the Engineer shall so acknowledge in writing and issue a *Certification of Final Completion and Acceptance*. This Certification constitutes a release of all retainage via the final payment to the Contractor. Such payment should be made upon the Contractor's certification of release of liens, payment in full to subcontractors and material suppliers, and warranty of materials and workmanship.

At this time the Engineer should present "As Constructed Drawings" to the Grantee. Such delivery should constitute a release of final payment to the Engineer's firm for his or her services. If disputes concerning payment or other peripheral issues exist, the Engineer is obligated to certify completion and deal with other issues separately.

Sample RFP—Professional (Engineering) Services

Request for Proposals for Engineering Services in Conjunction with the (Project Name)

1. *Project Outcome*

2. *Project Timeframe*

3. *Description of Proposed Activities (Revise as appropriate)*

The *(Project Name)* includes the construction of water and sewer lines to serve 120 households, of which 100 are classified as having low to moderate incomes, in the *(Neighborhood Name)* section of *(Insert Grantee's Name)*. Attached as part of this RFP are: a map of the proposed services; estimated project budget by line item; and project narrative as outlined in the *(Insert Grantee's Name)*'s application for CDBG funds.

4. *Scope of Services*

- a) **Basic Design Services.** Engineer shall prepare plans and specifications necessary to construct all project activities proposed in section A herein. Said plans and specifications shall comply with all applicable State and Federal rules and regulations and receive all appropriate reviews and approvals required for construction.
- b) **Bidding and Contracting Services.** Engineer shall also assist *(Insert Grantee's Name)* by preparing the advertisement for bids and coordinating the bidding process to include:
 - i) Distribute bid documents to persons/agencies that request them;
 - ii) Conduct a pre-bid conference;
 - iii) Answer questions and clarifying bid documents through the issuance of addenda to the bid documents;
 - iv) Review all bids to verify compliance with the Instructions To Bidders;
 - v) Prepare a Bid Tabulation Form;
 - vi) Recommend award to the Bidder deemed to be the lowest responsible; and
 - vii) Assist Grantee with placing the Contractor under contract including review and approval of all necessary insurance certificates and bonds.

- c) **Construction Administration Services.** Engineer shall conduct construction administration services to include:
 - i) Conduct a Preconstruction Conference;
 - ii) Review and approve of all shop drawings;
 - iii) Review all Contractor Pay Request and recommend payment;
 - iv) Prepare all construction change orders including recommendation of approval; and
 - v) Resolve Contractor inquiries and questions during construction including interpretation of plans and specifications.
- d) **Resident Inspection Services.**
 - i) Be on site during normal working hours throughout the entire construction period;
 - ii) Maintain a hard-bound daily diary with all pages numbered and all entries in ink. All entries shall be entered on a daily basis and begin with the date and weather conditions;
 - iii) Provide (*Insert Grantee's Name*) with a weekly inspection report, containing as a minimum the following:
 - (1) Activities taking place;
 - (2) Percentage of construction completion cumulative and that week;
 - (3) Weather conditions;
 - (4) Worker staff hours on job;
 - (5) Problems encountered; and
 - (6) Subcontractors involved;
 - iv) Advise and consult with (*Insert Grantee's Name*) other interested parties;
 - v) Endeavor to guard (*Insert Grantee's Name*) against apparent defects and deficiencies in the permanent work by the contractor; however, the Resident Inspector does not guarantee the performance of the contractor. Nor is the Resident Inspector responsible for construction means, methods, techniques, sequences or procedures, time of performance, programs, or for any safety precautions in connection with the construction work. The Resident Inspector is also not responsible for the contractor's failure to execute the work in accordance with the contract documents; and
 - vi) Review requests for monthly and final payments to the contractor and provide information for use in preparation of As-Built (or record) drawings.

5. *Proposal Contents*

- a) **Statement of Qualifications.** All respondents must submit a written Statement of Qualifications (SOQ) to include information about the respondent directly related to each of the Selection Criteria outlined in Section E herein. All information should be submitted succinctly. Proposals shall not include estimates of costs or staff hours to perform desired services.; and

- b) **Proposal.** Respondents must provide an explanation of how they propose to accomplish the project outcome within the stated timeframe

6. *Selection Process*

The *(Insert Grantee's Name)* will appoint a Selection Committee to review and evaluate all SOQ's submitted by firm's responding to the RFP. The proposals will be evaluated and ranked based on the Selection Criteria outlined in Section E herein. The *(Insert Grantee's Name)* may ask the top ranked firms to attend a presentation/ interview as part of the evaluation process.

At the conclusion of evaluation process the firms will be ranked in priority order with the highest ranking firm being selected to negotiate a contract with the *(Insert Grantee's Name)*. If a contract satisfactory to both parties cannot be negotiated, the *(Insert Grantee's Name)* will then enter into negotiations with the next highest ranking firm and so on until an agreement is reached.

7. *Selection Criteria*

The respondents will be evaluated based on the following criteria:

- a) The Engineer's understanding of the intended project outcome; i.e., what the intended end product is to be and what the project is intended to accomplish;
- b) The Engineer's proposed approach for achieving the outcome within the stated timeframe;
- c) The scope of specific engineer services the Engineer intends to provide including how the Engineer proposes to involve the Grantee in the design and completion process and the Engineer's overall approach to the project;
- d) The Engineer's opinion as to the adequacy of the estimated project costs based on an understanding of the project and services proposed;
- e) Any potential problems the Engineer perceives with the project as proposed;
- f) Professional qualifications and experience of the individuals the Engineer will assign to provide the planning, engineering and inspection services;
- g) Local government experience of key personnel assigned to this project;
- h) Knowledge and familiarity with Virginia Community Development Block Grant procedures and requirements, including those of the Management Team process;
- i) Familiarity with *(List Names Of Other Funding Agencies)* procedures and requirements;

- j) Capacity of the firm to perform the planning, engineering and inspection work within the given time limitations, taking into consideration the current and planned workload of the firm;
- k) Names, addresses and telephone numbers of clients for whom the firm has performed projects of a similar type and size within the past 5-10 years; and
- l) The average time frame for completion of past projects similar in type and size, from authorization to the beginning of design and through the start of construction, including review by all appropriate permitting agencies.

8. *Submittal*

Respondents should submit (*number*) of copies to the (*Grantee's Name and Street Address*) no later than (*Time and Date*).

-Equal Opportunity Employer-

Request for Proposals for Engineering Services

The *(Insert Grantee's Name)* is in need of professional engineering services for design, construction administration and resident inspection of the *(Project Name)*. The project is being financed with Virginia Community Development Block, and *(List Other Funding Sources)* funds.

Firms interested in receiving a copy of the RFP may contact: *(Name of Grant Manager)*, *(Address and Phone/TDD Numbers)*. Deadline for submittal of proposals is *(Time and Date)*.

Minority and/or female owned businesses or firms and Section 3 businesses or firms are encouraged to apply. The *(Insert Grantee's Name)* is an Equal Opportunity Employer.

Sample Advertisement—Procurement for Management Services

Request for Proposals for Management Services

The *(Insert Grantee's Name)* is in need of consulting management services relative to the implementation of the *(Insert Project Name)*. The project is being financed with Virginia Community Development Block, and *(List Other Funding Sources)* funds.

Parties interested in receiving a copy of the RFP may contact: *(Name of Grant Manager)*, *(Address and Phone/TDD numbers)*. Deadline for submittal of proposals is *(Time and Date)*.

Minority and/or female owned businesses or firms and Section 3 businesses or firms are encouraged to apply. The *(Insert Grantee's Name)* is an Equal Opportunity Employer.

Subpart A: Equal Employment Opportunity

1. Executive Order 11246, as amended (Contracts/subcontracts above \$10,000)
 - a. During the performance of this contract, the contractor agrees as follows:
 - (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 setting forth the provisions of 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 considerations 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, 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 11246, as amended, 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 11246, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency

and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and 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 11246, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. Subcontracts

Each prime contractor or subcontractor shall include the equal opportunity clause in each of its subcontracts.

Subpart B: Title VI of the Civil Rights Act of 1964, as Amended

All parties to this contract hereby agree to comply with the provisions of Title VI of the *Civil Rights Act of 1964* (Public Law 88-352) which provides: that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance of any dollar amount – no minimum threshold.

Subpart C: Section 109 of the Housing and Community Development Act of 1974, as Amended

No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in section 504 of the *Rehabilitation Act of 1973* shall also apply to any such program or activity of any dollar amount – no minimum threshold.

Subpart D: Section 3 of the Housing and Urban Development Act of 1968

(Applicable to all contracts/subcontracts valued at \$100,000 or more in federal funds)

1. The Section 3 area for this PROJECT is designated as the County of _____. Businesses and Residents of this County are considered “local” for project reporting purposes.
2. The work to be performed under this contract is on a project assisted under a program providing direct financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the *Housing and Urban Development Act of 1968*, as amended, 12 U.S.C. 1701 u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area, and that contracts in connection with the project be awarded to business concerns which are located in, and owned in substantial part by persons residing in the project area.
3. The parties to this contract will comply with the provisions of said Section 3 and the procedures for compliance issued pursuant thereto by the Virginia Department of Housing and Community Development set forth in this section to wit:
 - a. The PUBLIC BODY and the CONTRACTOR shall analyze the tasks to be performed under this CONTRACT and identify:
 - (1) The opportunities for training and employment of lower income residents of the project area, and
 - (2) Contracts for construction contracts, non-construction contracts, materials and supplies in connection with the project to be awarded to business concerns which are located in, and owned in substantial part by persons residing in the project area.

- b. After determining what construction contracts, non-construction contracts, materials and supplies will be needed to be procured by the CONTRACTOR to complete the contract:
 - (1) The CONTRACTOR shall fill all employment positions to the greatest extent feasible with residents of the local (Section 3) county to the extent such residents are available and meet the generally accepted qualifications for the position(s) needed to be filled. And, the CONTRACTOR will fill all vacant trainee positions to the greatest extent feasible with residents of the local (Section 3) county to the extent such residents are available.
 - (2) The CONTRACTOR will subcontract to, and procure to the greatest extent feasible all construction contracts, non-construction contracts, materials and supplies necessary for the PROJECT from business concerns located and substantially owned by residents of the local (Section 3) county to the extent that such items are available, and of comparable quality and cost.
- c. The CONTRACTOR shall not circumvent these Section 3 requirements by:
 - (1) Filling vacant trainee or employment positions in its organization immediately prior to undertaking work on the PROJECT; or
 - (2) Entering into procurement contracts immediately prior to undertaking work on the PROJECT.
- 4. The CONTRACTOR will include this Section in every subcontract for work in connection with this PROJECT and will at the direction of the PUBLIC BODY take corrective action pursuant to the SUBCONTRACT upon a finding that the SUBCONTRACTOR is in violation of these provisions. The CONTRACTOR will not subcontract with any SUBCONTRACTOR where it has notice or knowledge that the latter has been found in violation of *Section 3 of the Housing and Urban Development Act of 1968*, and will not award any SUBCONTRACT unless the SUBCONTRACTOR has provided it with a preliminary statement of ability to comply with Section 3.
- 5. Compliance with the provisions of Section 3 and the provisions of this Section are a condition of the Federal financial assistance provided to the PROJECT, binding upon the PUBLIC BODY. Failure to fulfill these requirements shall subject the PUBLIC BODY, its contractors, its subcontractors and its successors to those sanctions specified by the grant agreement or contract through which Federal assistance is provided.

6. The parties to this CONTRACT verify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

Subpart E: Records Retention

The CONTRACTOR shall maintain financial records, supporting documents, statistical records, and all other records pertinent to this contract during the period of this contract and for five (5) years from the date of final payment; except, if any litigation, claim or audit is started before the expiration of the 5-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

Subpart F: Provisions Required by Law Deemed Inserted

The provisions of Article 4 (Ethics in Public Contracting), Chapter 7 of Title 11 of the Code of Virginia, as amended, is hereby incorporated by reference and each and every other provision of law and clause required by law to be inserted herein shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein.

Subpart G: Immigration Reform and Control Act of 1986

The Contractor agrees by signing this contract that he/she does not and will not during the performance of this contract violate the provisions of the *Federal Immigration Reform and Control Act of 1986*, which prohibits employment of illegal aliens.

Subpart H: Access to Records

The Public Body, the Virginia Department of Housing and Community Development, the U.S. Department of Housing and Urban Development, the U.S. Department of Labor, the Inspector General, and the General Accounting Office, 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.

Subpart I: Drug-Free Workplace Act Assurances

The Contractor agrees by signing this contract that he/she will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about -
 - i. The dangers of drug abuse in the workplace;
 - ii. The grantee's policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -
 - i. Abide by the terms of the statement; and
 - ii. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the Virginia Department of Housing and Community Development within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such condition;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted –
 - i. Taking appropriate personnel action against such an employee, up to and including termination; or

- ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).