

Chapter 6

Construction Management





Chapter Six: Construction Management

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Introduction

Chapter 6: Construction Management provides guidance to Grantees of the Community Development Block Grant (CDBG) program with assistance in carrying out statutory and regulatory requirements for procurement of construction contracts. All CDBG Grantees will be monitored to determine whether CDBG funds are expended in compliance with all applicable program requirements and in within the terms outlined in the grant agreement for each project.

Bids must be publicly solicited by a Class II legal advertisement using the language and template provided in **Advertisement for Bids (Attachment 6-1)**. The **Notice of Intent to Bid (Attachment 6-2)**, must be submitted to the WVDO prior to the bid advertisement, along with the **Bid Document Checklist (Attachment 6-3)**, and a digital or bound copy of the project manual/specifications. Upon review and approval of these documents, the WVDO will issue an Authorization to Bid. A sample **Authorization to Bid (Attachment 6-3A)**, and other required attachments, are listed below and provided in this chapter.

The purpose of WVDO prior review is to ensure that all Labor Standards provisions, Equal Opportunity and Section 3 requirements, and other conditions, are properly addressed prior to an advertisement for bids. These documents must be placed in the project file. The bid document checklist will provide the Grantee with an assessment of the bid package for completion and accuracy of technical requirements and will also provide more detailed knowledge concerning the construction of the project.

Supporting Materials

Attachment 6-1	Advertisements for Bids
Attachment 6-2	Notice of Intent to Bid
Attachment 6-3	Bid Document Checklist
Attachment 6-3A	Sample Authorization to Bid Letter
Attachment 6-4	Sample Minutes of Bid Opening
Attachment 6-5	Contract Document Checklist
Attachment 6-5A	Certification of Bidder - Section 3 and Segregated Facilities
Attachment 6-5B	Federal Labor Standards Provisions
Attachment 6-5C	Special Equal Opportunity Provisions
Attachment 6-5D	Section 3 of the HUD Act <ul style="list-style-type: none"> • Section 3 Workforce Needs • Section 3 Business Projects • Section 3 Contractor’s Plan
Attachment 6-5E	Clean Air and Water Acts
Attachment 6-5F	Special Conditions Pertaining to Hazards, Safety Concerns, and Accident Prevention
Attachment 6-5G	Architect’s Certification
Attachment 6-5H	Bonding and Insurance Requirements
Attachment 6-5I	Access to and Maintenance of Records
Attachment 6-5J	Certification of Owner’s Attorney
Attachment 6-6	Debarment Review Certification and Instructions
Attachment 6-7	Sample Preconstruction Conference Checklist
Attachment 6-8	Notice to Proceed with Construction

Procurement Methods

Of the three methods of procurement for construction services, Grantees should select the most appropriate method based upon need and nature of the services required. The following is a summary of the three basic selection alternatives and the requirements associated with each:

a. Small Purchase Procurement Procedures

This is a relatively simple and informal method of procurement used for purchasing goods and materials and construction services.

The WVDO has delegated purchasing authority to Grantees for procurements estimated to cost less than \$25,000 (based on the West Virginia Purchasing Division's small dollar purchase limits) or less than the Grantee's small purchase dollar limit. The award will be made to the lowest responsive and responsible bidder.

A complete review of the state's **Purchasing Levels of Authority** is provided in the following link: www.state.wv.us/admin/purchase/handbook/2007R26/hand3.htm, and are summarized as follows:

- Goods, materials and professional services that are expected to cost **\$2,500 or less** require no bids; however, competition is always encouraged.
- For purchases of **\$2,500.01 to \$5,000**, three verbal bids are required. Grantees must document all verbal bids in writing and place documentation in the project files.
- For purchases **\$5,000.01 to \$25,000**, three written bids are required. Grantees must place copies of all written bids in the project file to document those firms or individuals solicited and their responses. Fax bids are acceptable and should be confirmed with an original copy within two working days.

Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy. For example, if the local small purchase dollar limit is \$15,000, the state small purchase dollar limit is \$25,000, and the federal small purchase limit is \$100,000, the Grantee must follow the most stringent policy - a \$15,000 small purchase dollar limit which is the local policy.

For all purchases of construction services in excess of \$25,000, the Grantee must follow procurement procedures that may include Competitive Sealed Bids or Design-Build Method.

b. Competitive Sealed Bids Procurement Method

Bids must be publicly solicited by a Class II legal advertisement using the language and template provided in **Advertisement for Bids (Attachment 6-1)**. A firm fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bids and is submitted as the lowest price bid. This method must be used for the procurement of all construction contracts. The sealed bid method is the preferred method for procuring construction when the following conditions exist:

1. A complete, adequate and realistic specification or purchase description is available;
2. Two or more responsible suppliers are willing and able to compete effectively for the business;
3. The procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and
4. Selection of the successful bidder can appropriately be made principally on the basis of price.

The advertisement must contain all HUD-related requirements and certifications for Federal Labor Standards, EEO and Section 3, and the advertisement must specifically state that the ad is for a CDBG project.

c. Design-Build Procurement Method

A Design-Build contract is a contract between an agency and a design-build firm to furnish the architectural, engineering and related services as required for a given public project and to furnish the labor, materials and other construction services for the same public project.

The Design-Build method of procurement cannot be used for a water/sewer-related project. For further instructions, please see WV State Code 5-22A at: www.legis.state.wv.us/WVCODE/Code.cfm?chap=05&art=22A#22A. Before attempting a design-build project, the WVDO must be contacted for approval and guidance in proceeding with the project.

Construction Contract Requirements

The Grantee must develop construction contracting procedures that comply with all Federal Labor Standards and Equal Opportunity provisions and compliance procedures. Applicable federal and state wage rates, Labor Standards provisions and Equal Opportunity requirements must be included in the bid specifications and contract documents.

This manual is intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, applicable federal or state regulations will prevail. The Grantee is responsible for compliance with the most stringent of any applicable local, state or federal law or regulation.

The Grantee is responsible for monitoring for compliance. Labor Standards and Equal Opportunity compliance files must be maintained for each project. Labor standards requirements are discussed thoroughly in Chapter 7. Equal Employment Opportunity requirements are discussed thoroughly in Chapter 8.

Bid Package Preparation

The architect or engineer will commonly prepare the technical bid specifications. The specifications must provide a clear and accurate description of the technical requirements for materials, products, and/or services to be provided and for which the work is to be performed. The complete plans and specifications must be stamped or bear the seal of an architect or

engineer registered by the state unless exempted by state law. If plans and specifications are subject to review by other agencies, arrangements should be made to facilitate the review process prior to bidding.

The specifications must contain all applicable HUD CDBG Certifications, as indicated in the **Contract Document Checklist (Attachment 6-5)** and as provided in this chapter. Certain documents required for each bidder as indicated in the following list and in the **Bid Document Checklist (Attachment 6-3)**.

- Attachment 6-5 Contract Document Checklist
- *Attachment 6-5A Certification of Bidder-Section 3 and Segregated Facilities
- Attachment 6-5B Federal Labor Standards Provisions
- *Attachment 6-5C Special Equal Opportunity Provisions
- Attachment 6-5D Section 3 of the HUD Act
 - *Section 3 Workforce Needs
 - *Section 3 Business Projects
 - *Section 3 Contractor's Plan
- Attachment 6-5E Clean Air and Water Acts
- Attachment 6-5F Special Conditions Pertaining to Hazards, Safety Concerns, and Accident Prevention
- Attachment 6-5G Architect's Certification
- Attachment 6-5H Bonding and Insurance Requirements
- Attachment 6-5I Access to and Maintenance of Records
- Attachment 6-5J Certification of Owner's Attorney

***To verify that all bidders will comply with Equal Opportunity and Section 3 Requirements upon the award of a contract for a CDBG project, these certifications are required for each bidder as indicated above.**

Note: Upon completion of the working drawings, a certified architect or engineer must execute a certification to the effect that the project design is in conformance with the minimum standards contained in the American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable By, the Physically Handicapped, Number A-117.1R-1971, as modified by 41 CFR 101-19.603. Such certifications also must be co-signed by the chief elected official of the Grantee.

The bid package must also include cost and pricing formats. For unit cost contracts, the bid specifications should delineate each type of item-estimating quantity, unit price and total cost.

a. Additional/Deductive Alternates

When preparing bid documents for a project that will be funded in whole or in part by CDBG, the project engineer must use additive/deductive alternates. This will simplify the handling of cost overruns and under runs.

The bid document must specify the method and order in which alternatives will be applied in determining the low bid. **Failure to include additive/deductive alternates will require the project to be re-bid if the bid exceeds the amount allocated for the project.** Please note that if deductive alternatives are utilized, caution must be taken to ensure that the amount of low-to-moderate-income residents proposed in the original application are still going to be served.

b. Land Acquisition Requirements Prior to Bidding

The Grantee must obtain all land, rights-of-ways and easements necessary for carrying out the project prior to bidding the project. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are applicable to the purchase of real property and all permanent easements. Please see [HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition](#) for additional information. See Chapter 10: Property Acquisition for additional details.

c. Notification of Public Utilities

All public utilities (gas, water, electrical, sewer, etc.) that might have any underground installations within the project area should be notified. Engineers may contact Miss Utility of West Virginia, Inc. at www.wv811.com or 1-800-245-4848 to assist in this notification. Engineering firms are responsible for contacting utilities and ensuring that underground installations are known and provisions are made in the plans and specifications.

d. Bid Date Clearinghouse

The Contractors Association of West Virginia (CAWV) maintains a clearinghouse to ensure that a project's bid date does not conflict with an already established date for another project. Contact the CAWV at 304-342-1166 or visit www.cawv.org, to schedule a bid date that maximizes the number of firms bidding on a project.

e. Bonding Requirements

Bonds are negotiable instruments from contracting firms or individuals as a form of insurance. The Grantee should follow local and state requirements relating to bid guarantees, performance bonds and payment bonds unless the contract or subcontract exceeds \$100,000.

For those contracts or subcontracts exceeding \$100,000, the minimum requirements are presented in 24 CFR Part 85.36(h) and are as follows:

- **Bid Bond** - an insurance agreement in which a third party agrees to be liable to pay five percent of the total bid amount in the event a selected bidder fails to accept the contract as bid. A "**bid guarantee**" shall consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- **Performance Bond** - an insurance agreement in which a valid surety agrees to be liable to pay 100 percent of the contract price in the event the contractor fails to perform a contract as bid. A "**performance bond**" is one executed in connection with a contract to secure fulfillment of all contractor's obligations under such contract.
- **Payment Bond** - a valid bond submitted by the apparent successful contractor for 100 percent of the contract price to ensure payment of labor and materials purchased or contracted for on behalf of the Grantee in a construction project. A "**payment bond**" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

Bonds may be turned over to the Grantee to protect against situations such as:

- Contractors bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events; or
- Work not completed as specified and/or the contractor's refusing to finish the work without a change order or price escalation; or
- Laborers or subcontractors not being paid for work and suing the Grantee to recover their loss; or
- Payment of liquidated damages arising from labor standards violations.

f. Bid Package Review and Approval

The entire bid package must be reviewed by the Grantee's legal counsel and project administrative staff to ensure compliance with applicable federal, state and local provisions. Bid packages must be reviewed carefully. Contract awards are made on the basis of criteria set forth in the bid package including all contractual terms and conditions applicable to the procurement.

The **Notice of Intent to Bid (Attachment 6-2)**, must be submitted to the WVDO prior to the bid advertisement, along with the **Bid Document Checklist (Attachment 6-3)** and a digital or bound copy of the project manual/specifications.

Upon review and approval of these documents, the WVDO will issue an **Authorization to Bid Letter (Attachment 6-3A)**.

The purpose of this review is to ensure that all Labor Standards provisions, EEO and Section 3 requirements and other conditions have been addressed prior to an advertisement for bids. These documents must be placed in the project file. **The Bid Document Checklist, (Attachment 6-3)** will provide the Grantee with an assessment of the bid package for completion and accuracy of technical requirements and will also provide more detailed knowledge concerning the construction of the project.

Solicitation of Bids

The standard procedure for procurement of construction contracts is through a competitive sealed bid process. This method of procurement requires that specifications be written clearly and accurately and completely describe the requirements. Selection of the successful bidder is made solely on conformity to specifications and price.

a. Request for Authorization to Bid

The Grantee must submit a request for Authorization to Bid. The **Notice of Intent to Bid (Attachment 6-2)** must be submitted to the WVDO prior to the bid advertisement, along with the **Bid Document Checklist (Attachment 6-3)**, and a digital or bound copy of the project manual/specifications. Upon review and approval of these documents, the WVDO will issue an Authorization to Bid. A sample **Authorization to Bid (Attachment 6-3A)** is provided in this chapter.

b. Authorization to Bid/Bid Advertisement

The WVDO must issue an Authorization to Bid Letter (Attachment 6-3A) prior to a bid. Following WVDO authorization to bid, the Grantee must announce by public notice published as a Class II legal advertisement using the language and template provided in **Advertisement for Bid (Attachment 6-1)**.

A Class II legal advertisement must be published once a week for two successive weeks. Bid advertisements must be published not less than one week apart in a local newspaper of general circulation. Also, the bid date must be at least 14 days after the first publication date.

c. Addenda

If it is necessary to amend bid documents during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, no addenda may be issued within five days of bid opening. If an addendum is necessary within the five-day period, the bid opening date must be extended the appropriate time to allow all vendors sufficient time to amend their bids. Also, see provisions for modification of wage rates.

d. Pre-Bid Conference

A pre-bid conference is recommended to review technical materials or legal requirements contained in the bid package. Bidders should specifically be made aware of Federal Labor Standards Provisions, Equal Opportunity Requirements and Section 3 requirements.

A mandatory pre-bid conference may be conducted by the Grantee, provided that the requirement is stated in the bid advertisement and noted in the bid document.

e. Bidder Certifications

To verify that all bidders will comply with Equal Opportunity and Section 3 requirements upon the award of a contract for a CDBG project, certain certifications are required for each bidder as indicated below and in the **Bid Document Checklist (Attachment 6-3)**. All bidders must acknowledge these requirements when bidding CDBG projects. Additional documents in the checklist may be executed upon award of the contract.

Required bidder certification documents should be thoroughly reviewed at the Pre-Bid Conference, provided as supplemental information to bidders, and included on all checklists or addenda, and as follows:

- | | |
|--------------------|---|
| 1. Attachment 6-5A | Certification of Bidder - Section 3 and Segregated Facilities |
| 2. Attachment 6-5C | Special Equal Opportunity Provisions |
| Attachment 6-5D | Section 3 of the HUD Act |
| | <ul style="list-style-type: none"> • Section 3 Workforce Needs • Section 3 Project Business Section 3 Contractor's Plan |

f. Bid Receipt/Bid Opening Minutes

Bids should be opened publicly and read aloud in the presence of one or more witnesses at the time and place designated in the Invitation for Bids, and in accordance with state law. The amounts of each bid, name of vendor, time and date of receipt and other relevant information will be recorded. The Grantee may also choose to have a

legal representative present. See the **Sample of Bid Opening Minutes (Attachment 6-4)** for a sample form.

g. Bid Evaluation

Bids must be evaluated based on the requirements set forth in the Invitation for Bids which may include criteria to determine acceptability such as inspection, testing, quality, workmanship and delivery. No criteria may be used in bid evaluation that is not set forth in the Invitation for Bids. Bids should be evaluated carefully by a review committee, which may consist of the consulting engineer, a legal advisor, project administrative staff and Grantee officials.

Verification of Contractor Eligibility/Debarment Review

Following receipt and review of bids but prior to the award of a contract, the Grantee must verify that the proposed contractor is not on the federal or state list of debarred contractors. Two reviews are required:

1. Federal Debarment Review System:

Grantees should use the System for Award Management (SAM) website, www.sam.gov, to determine if the potential contractor is excluded from receiving federal contracts.

2. State Debarment Review System:

Grantees should use the Division of Purchasing website to determine if the potential contractor is excluded from receiving state contracts.
www.state.wv.us/admin/purchase/Debar.html.

To complete the debarment review in each system, print the search results page(s); and attach the results pages to the completed **Debarment Review Certification and Instructions (Attachment 6-6)**.

Submit the search results, along with the completed **Debarment Review Certification and Instructions (Attachment 6-6)**, the bid tabulations and any review forms, to the WVDO prior to the award of a contract. These documents must also be retained in all project files.

A single certification satisfies both Labor and Equal Opportunity requirements. **This verification must be signed and dated by the reviewer, and placed in the Labor Standards compliance file and cross-referenced in the Equal Opportunity file.**

Construction Contract

a. Contract Award

The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the technical and legal requirements and criteria set forth in the bid documents. A responsible bidder is a bidder who has the technical and financial capacity to secure the necessary resources in order to deliver the goods or services. A responsive bidder is a bidder that submits a bid that conforms exactly to the requirements in the **Invitation for Bids (Attachment 6-1)**.

A bidder's quote is good for the amount of time specified in the bid documents; every effort must be made to award the contract within this time period. However, if a contract has not been awarded within 90 days after bid opening, any wage modifications published in the Federal Register, prior to the award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract.

Exceptions to the above will be considered if the Grantee requests and obtains an extension of the 90-day period from the United States Department of Labor. If the contract is awarded to other than the low bidder, the Grantee must prepare a written statement of explanation which justifies the decision, stating specific reasons why the low bid was rejected, citing nonconformance with the material terms and technical conditions of the Invitation for Bid.

The Grantee's governing body must approve the contract and the chief elected official must be authorized to sign the contract. Please note that a contract is awarded when all parties have signed the contract. It is not the date the Grantee's governing body authorized the contract award. Therefore, it is imperative that the Grantee and contractor sign the contract within the 90-day bid hold period.

b. Cost Overruns

When the lowest bid exceeds the amount allocated for the project, the Grantee cannot negotiate with the low bidder to bring the contract within the amount of available funds. The use of deductive alternatives will decrease the probability of an overrun. The Grantee may take deductive alternatives in the order shown in the bid package until one of the responsive bids, less deductive alternates, results in a price within the amount of funds available; or

If the low bid, with or without deductive alternatives, exceeds the funds available, the Grantee may:

- Provide the additional funds;
- Reallocate CDBG funds; or
- Reject all bids and redesign the project.

c. Cost Underruns

If the total amount of the awarded project contract (or contracts) is less than the approved budget cost for construction, excess CDBG funds cannot be used to add items or activities or change the scope of the project unless additives were used in the bid document. All requests must have prior approval from the WVDO. Grant funds that remain available following a cost underrun or bid underrun is subject to recapture and may be prorated with other funding agencies.

d. Contract Documents

Contract documents must be reviewed carefully and thoroughly prior to signing to ensure that all Federal Labor Standard Provisions, Equal Opportunity provisions and Section 3 requirements are incorporated. Authority to enter into all contracts must be given by resolution from the Grantee in conjunction with requirements of any intergovernmental relations agreement or memorandum of understanding which have been entered into specifically on behalf of the project. Please see the **Contract Document Checklist**

(Attachment 6-5). The Grantee's attorney must complete a **Certificate of Owner's Attorney Form (Attachment 6-5J)**.

e. Pre-Construction Conference

After the award of the contract, the Grantee must notify the WVDO that a contract has been awarded and that a pre-construction conference has been scheduled.

See the **Pre-Construction Conference Checklist (Attachment 6-7)**, for a checklist of items to discuss at this meeting. At the pre-construction conference, the contractor must certify compliance with all applicable Labor Standards, Equal Opportunity provisions, and Section 3 requirements, as well as the Grantee's oversight role in monitoring for compliance. Further, the project administrator must verify the execution of the completed forms contained in the **Contract Document Checklist (Attachment 6-5)**, from the prime construction contractor, as well as the project wage rate sheet. Any additional documents should be obtained and the contractor should be provided with posters for the construction site.

f. Notice to Proceed

Work cannot proceed until projects comply with 24 CFR Part 58 and all evidentiary materials have been submitted to and approved by the WVDO.

Following execution of the contract documents and completion of the pre-construction conference, the Grantee will issue a Notice to Proceed to each prime contractor to begin work. The Notice to Proceed must identify the construction start date, the scheduled completion date and provide the basis of assessing liquidated damages consistent with the terms of the contract documents. A copy of the notice must be sent to the WVDO. A sample **Notice to Proceed (Attachment 6-8)** is provided in this chapter.

g. Contract Change Orders

A change order may be required after contract award to respond to unexpected conditions which arise during construction and are necessary to accommodate or facilitate the completion of construction. Change orders are generally not approved prior to the start of construction.

The Grantee may approve field expedient change orders that add minimally or incidentally to the project cost (\$10,000 or less), provided that approval is based upon a finding that the change is within the approved project scope and is necessary for the successful completion of the project and provided that sufficient funds are on hand to cover the change without jeopardizing the completion of the project. **All work initiated under a change order must be eligible under the CDBG guidelines.** The Grantee assumes responsibility for making eligibility determination prior to state concurrence. **Under no circumstances will the Grantee approve change orders that alter the scope of the project or which adversely affect the project.**

All change orders over **\$10,000** will be prepared by the architect/engineer and will be presented to the Grantee and the WVDO for approval with necessary supporting documentation including estimates, specifications and plans. A change order request must be signed by the engineer, Grantee and contractor. **No action can be taken without the approval of the WVDO.** Any work started prior to approval cannot be reimbursed with CDBG funds.

h. Compliance Files

Comprehensive Labor Standards, Equal Opportunity and Section 3 files must be established for each construction project. The Construction Contract Checklist, Attachment 6-5 and the Bid Document Checklist, Attachment 6-3, referred to previously, have identified all required Labor Standards, Equal Opportunity and Section 3 provisions and compliance certifications which are required to be included in bid documents, solicitations, specifications and contract documents. The Grantee should again review the checklists for familiarity, ensure that all documents are accurate and formulate a strategy for compliance monitoring. All site visitations related to compliance monitoring must be documented in the appropriate files.

i. Direct Benefit and Record Keeping Requirements

The use of CDBG funds for tap fees or assessment fees for public utility connections is considered a Direct Benefit Activity, and must be extended only to LMI households upon verification of eligibility. The intent to include tap fees or assessment fees in a project must be stated in the project application.

If a CDBG projects results in a direct benefit to individuals and households, recipients must self-certify income eligibility and Grantees must verify the data through a third-party administrator. In addition, Grantees must verify the ethnicity and race of those receiving a direct benefit. See Chapter 8: Civil Rights, Record Keeping Requirements, for additional information regarding the collection of data.

Construction Management

During construction, the Grantee is also responsible for construction management. This may be done by the project architect/engineer and, if so, should be included in the scope of services identified in the professional service contract. Construction management includes inspection and general supervision of construction to check the contractor's work for compliance with drawings and specifications and quality and control. Written inspection reports should accompany the contractor's requests for payment. Construction management responsibilities include the following aspects of project review:

- **General Supervision:** Includes monitoring construction to determine the need for adjustments in design as dictated by actual field conditions and the preparation of contract amendments and change orders for the Grantee. All contract amendments or change orders affecting alignment, detail or dimensions shown on drawings must include revised drawings.
- **Quality Control:** Includes quality tests as necessary to verify conformance with technical specifications concerning minimum quality standards.
- **Quantity Control:** Includes verification of in-place quantities and other records reflecting the as-built facility.
- **Certification of Pay Estimates:** Should include inspection reports, copies of field measurement notes and test results used to verify contractor's periodic pay estimate for partial payment and should be attached to and filed with the periodic estimate for partial payment.

- **General Construction Management:** May also include other responsibilities including, but not limited to, providing horizontal and vertical control in the form of benchmarks and base lines to be used by the contractor in staking the construction, review and approval of shop drawings, and project coordination.

a. Progress Monitoring and Progress Payment

Upon completion of agreed quantities of work, the contractor may submit requests for partial or progress payments. Written inspection reports should accompany the contractor's request for payment. Inspection reports, copies of field measurement notes and test results used to verify the contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of Certificates for Partial Payment and necessary documentation, the Grantee must review Labor Standards, Equal Opportunity and Section 3 compliance files to ensure that all payrolls have been received and reviewed, that any necessary restitution has been paid, that employee interviews have been conducted and that all discrepancies have been corrected.

b. Retainage

The state will permit full payment of current monthly progress payments when progress under a construction contract has been determined by the Grantee to be satisfactory. Grantees need not routinely retain funds throughout the term of the contract; decisions to retain may be made on a case-by-case basis as directed by industry standards.

Retainage may be used in the following circumstances:

- Where performance deficiencies have been identified under the contract or past unsatisfactory performance by the contractor has been experienced; and
- As the contract approaches completion to ensure that deficiencies will be corrected and that completion is timely.

The level of retainage withheld, if any, shall not exceed 10 percent in the case of unsatisfactory performance or five percent where the retainee is to ensure satisfactory completion. Upon completion of all contract requirements, retained amounts shall be paid promptly.

c. Inspection, Acceptance, Project Closeout and Final Payment

When construction work has been completed, the contractor must certify completion of work to the Grantee and submit a final request for payment. The Grantee must arrange for a final inspection and notify the WVDO of the date the inspection was completed. The Grantee or architect/engineer will make the final inspections and the Grantee or architect/engineer will prepare a written report of the inspection and issue a final certificate of payment.

Before making final payment, the Grantee must ensure that: all payrolls have been received and checked and any necessary restitutions have been made; all other required Labor Standards, Equal Opportunity and Section 3 provisions have been

satisfied; all contract submissions have been received; all claims and disputes involving the contractor have been resolved; all files are complete; and as-built plans have been filed with the Grantee.

All grantees are required to submit a **Final Performance Report (FPR)** upon project completion.

- The FPR must be submitted with the final drawdown request, excluding final audit costs.
- Only 90 percent of the Administration line item will be paid until a complete and satisfactory FPR is submitted.
- If possible, the final request should only contain administrative and audit costs.
- Upon approval of the FPR, the final drawdown request will be processed for payment.
- Information contained in the FPR is reported in the HUD Integrated Disbursement and Information System (IDIS).

Section 3 Administration and Reporting

Congress established Section 3 policy to guarantee that the employment and other economic opportunities created by federal financial assistance should, if possible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of opportunities for training and employment that arise through HUD-assisted financed project to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area.

Additional information is available at: www.hud.gov/section3. The state's Section 3 Policy is posted to the WVDO website.

The [Section 3 Business Registry](http://www.hud.gov/section3) is a tool to help Grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at www.hud.gov/sec3biz.

Section 3 Certifications and Clauses must be included in the Supplemental General Conditions of all contracts and subcontracts. The project administrator is most often responsible for managing Section 3 compliance for construction projects. Engineers must also ensure that Section 3 clauses and forms are included in bid packages and contract documents to ensure compliance.

Section 3 Hiring Requirements

All CDBG projects have a 30 percent Section 3 goal. This goal was established in 1997, and performance is measured through annual reporting to the WVDO.

Under Section 3, Grantees, contractors and subcontractors must actively work to recruit and hire Section 3 residents and direct economic opportunities to Section 3 businesses. Current regulations require compliance with Section 3 for contractors and subcontractors whose contract amount exceeds \$100,000.

Covered contractors must make a good faith effort to utilize Section 3 area residents as trainees and employees in connection with the project. Targeted recruitment and the selection of Section 3 area residents for available positions are two examples of good faith efforts that meet this requirement.

Covered contractors must make a good faith effort to award contracts to Section 3 business concerns for work in connection with the project. Covered contractors must keep records documenting good faith efforts taken and results of these efforts.

The prime contractor and any subcontractors subject to Section 3 should submit a list of existing employees to the project administrator prior to construction. If additional employees

are needed to complete a project, stringent federal regulations apply to hiring activity. Grantees, contractors and subcontractors each have a role in ensuring compliance.

Section 3 Annual Reporting

All Grantees are required to complete an annual Section 3 Summary Report. If no Section 3 hiring or business activity occurred, the Grantee must document the actions taken to achieve compliance, and explain why these actions fell short of Section 3 hiring or business activity.

Recipients of HUD CDBG funding, and their contractors and subcontractors, are required to provide economic opportunities consistent with existing federal, state, and local laws and regulations.

Which Projects are Covered Under Section 3?

Section 3 applies to contractors and subcontractors performing work on construction projects when:

1. The amount of the assistance exceeds \$200,000; and
2. The amount of the contract or subcontract exceeds \$100,000.

If these thresholds are met, the Section 3 requirements apply to the entire project or activity that is funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered assistance.

Who are Section 3 Residents?

All residents of public housing are considered Section 3 residents. A list of public housing authorities is available from the WVDO. Section 3 residents include:

1. Public housing residents;
2. Low (80 percent of area median income) and very-low income (50 percent of area median income) persons in the metropolitan area or Non-metropolitan County in which a HUD-assisted project is located.

What is a Section 3 Business?

The [Section 3 Business Registry](#) is a tool to help grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. Section 3 businesses include:

1. Businesses that are at least 51 percent owned by a Section 3 resident;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are current Section 3 residents, or within three years of the date of first employment were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all contracts to be awarded to a Section 3 business concern.

What Types of Opportunities are Available under Section 3?

Section 3 opportunities include: job training, employment, and contracts, such as:

Administrative/Management	Services	Construction
Accounting Payroll Research Bookkeeping Purchasing Data Entry	Marketing Janitorial Landscaping Printing Computer/Technology Manufacturing Transportation	Architecture, Engineering Bricklaying Carpentry Cement/Drywall Electrical Excavating Engineering Fencing Heating/HVAC Iron Works Machine Operation Painting Plastering Plumbing Road Work Surveying

Who Receives Priority Under Section 3?

1. Persons in public and assisted housing;
2. Persons in the area where the HUD financial assistance is expended;
3. Participants in HUD Youthbuild programs; or
4. Homeless persons.

Section 3 Hiring Requirements

Every recipient of CDBG funding must submit an annual report to the WVDO which outlines all Section 3 employment and business utilization activity. **All projects have a 30 percent Section 3 goal.**

Employment goals are based on **new hires**, which are defined as full-time employees for permanent, temporary or seasonal employment opportunities, meaning that 30 percent of the permanent, full-time, temporary or seasonal employees hired should be Section 3 residents. Section 3 residents who have been employed for three years can no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires participants to continue hiring Section 3 residents when employment opportunities are available.

Annual Reporting Requirements

Annual Reports are required each year for each open grant. If a Final Performance Report is submitted, reports will include activity through the date of the FPR. The following forms are required on an annual basis, usually at the end of July:

- Section 3 Hiring and Contracting Activity-HUD Report Form 60002
- Minority and Women Owned Business Contracting-HUD Report Form 2516
- Section 3 and Contracting Compilation Form

Common Deficiencies

Equal Opportunity

- Bid specifications/contracts do not contain all applicable Equal Opportunity provisions.
- Section 3 report not submitted annually.
- Contractor and Subcontractor Section 3 Certifications not obtained.
- Contractor and Subcontractor Equal Opportunity Certifications not obtained.
- Contract does not contain female and minority employment goals, or goals are not correct.
- Equal Opportunity Compliance File not complete.

Bid Package

- Federal wage rate modifications were not checked.
- Bid document checklist specifications lack one or more required provisions.
- Advertisements are not timely.
- Addenda are issued within 72 hours.
- Bids are not logged in, seals broken.
- Bid Document Checklist not in files.
- Deductive or additive alternates not used.
- Contractor and Subcontractor Section 3 Certifications not obtained.
- Contractor and Subcontractor Equal Opportunity Certifications not obtained.

Contracts

- Bonding requirements not met.
- Notice to Proceed not sent to the WVDO.
- Pre-construction Report not in files.
- Project Construction File inadequate.
- Applicable Equal Opportunity provisions not contained.
- Contract Document Checklist not utilized.
- All forms contained in **Attachment 6-5** are not completed.

Construction Monitoring

- No construction monitoring responsibility assigned.
- Contractor's failure to submit cost breakdown.
- Schedule of payments not established.
- Construction inspection inadequate.
- Delays in processing requests for progress payments.
- Change orders in excess of \$10,000 were not approved by the WVDO.
- Labor and Equal Opportunity monitoring are behind schedule.