

## EXHIBIT 6-E

### PRECONSTRUCTION CONFERENCE PLANNING GUIDE

#### PRE-CONFERENCE PLANNING

1. **Identify and notify conference participants of the time and place of the preconstruction conference. Invite your project's CDBG liaison.**
2. **Prepare the materials that will be needed for the conference** (e.g., agenda, notes, forms, posters, expected participants roster, and current approved wage determination).
3. **Organize the materials into individual packets for each conference participant.**

#### PRECONSTRUCTION CONFERENCE MODEL AGENDA

1. **Identify the official representatives of participating organizations and how they can be contacted for official roster** (include with minutes).
2. **Identify the responsibilities of the architect or engineer, if applicable** (responsibilities may include construction supervision, initial review of contractor payrolls, and certification of partial payment request, etc.).
3. **Identify the responsibilities of the grantee (local government)** (responsibilities may include on-site employee interviews, posting of appropriate posters, and resolution of labor complaints, etc.).
4. **Identify the responsibilities of the contractor** (responsibilities include conformance to prevailing wage determination, and other labor standards, civil rights regulations, Section 3 requirements, MBE/WBE requirements, and timely submission of required reports, etc.).
5. **General discussion of contract terms** (e.g., timing of requests for partial payments, etc.).
6. **Outline and discuss schedule for construction completion** (contractor should provide timeframes for sequences of major construction activities from beginning of construction to final project completion).
7. **Describe responsibilities of subcontractors** (primarily the same responsibilities as contractor -- e.g., prevailing wage rates and labor standards, etc.).
8. **Project inspection** (responsibilities of grantee's Labor Standards Officer, and architect/engineer should be discussed).
9. **Compliance with federal labor standards** (refer to checklist supplement).
10. **Compliance with civil rights regulations** (refer to checklist supplement).
11. **Notices that are required to be posted** (refer to checklist supplement).
12. **Forms the contractor must submit** (refer to checklist supplement).
13. **Contractor's Receipt of Required Program Materials** (to be signed at the conference).

## PRECONSTRUCTION CONFERENCE FEDERAL REQUIREMENTS

### LABOR AND CIVIL RIGHTS REQUIREMENTS

The grantee should include the following information concerning federal labor standards and civil rights compliance during preconstruction conferences for construction projects involving CDBG funds.

#### A. WAGE DETERMINATION AND EMPLOYEE CLASSIFICATION

**Davis-Bacon Act is applicable to all construction contracts awarded by grantees in excess of \$2,000.** (The rehabilitation of less than eight residential units under one contract is exempt from this requirement. See Chapter 6, pages 6-5 and 6-6.)

1. Laborers, mechanics, apprentices, and trainees must receive no less than the prevailing wages, plus fringe benefits paid for similar work in the locality. Conference participants should be provided with a copy of the current wage determination that has been approved by the Montana Department of Commerce and included in the contract document.
  - a. Workers are covered by the Davis-Bacon Act while working at the site, transporting materials to and from the site and manufacturing or furnishing articles, supplies, or equipment on-site.
  - b. Apprentices or trainees may be paid less than journeyman wages if they are enrolled in an apprenticeship or training program approved by the U.S. Department of Labor (or State Apprentice Council recognized by the Department of Labor's Employment and Training Administration).
2. If the contractor needs laborers or mechanics whose classifications do not appear on the wage determination, the local CDBG administrator or designated Labor Standards Officer must make a request for an appropriate classification to the MDOC CDBG Project liaison Officer. (The CDBG staff will then propose a classification and submit it to the U.S. Department of Labor, which will advise the State as to the acceptability of the request within 30 working days. See **Exhibit 6-C** for a sample Report of Additional Classification and Wage Rate Form, #HUD-4230A, and instructions.)
3. Employees or supervisors working at other than their assigned classifications for 20 percent or more of their time must be paid and shown on the payrolls for each classification or, paid for all hours at the higher wage scale.
4. If the wage determination lists fringe benefits, the contractor must either provide them or pay the hourly equivalent in cash, in addition to the predetermined basic wage.
5. Claims and disputes should be reported in writing to the DOC CDBG Program Officer. Resolution of all claims and disputes must be reported to the U.S. Department of Housing and Urban Development (HUD), Labor Relations Office. HUD may be called upon by the State to investigate and settle claims and disputes, or may enter of their own volition if the need arises.
6. Laborers and mechanics must be paid no less than once per week.

## **B. WORK HOURS, OVERTIME, AND SAFETY STANDARDS**

**Contract Work Hours and Safety Standards Act, As Amended is applicable to all contracts awarded by local grantees in excess of \$2,000 for construction projects employing mechanics or laborers.**

1. Forty hours is the standard workweek.
2. One and one-half times the basic hourly rate of pay, exclusive of fringe benefit payments, must be paid for all hours over forty in a work week.
3. No worker shall be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to health and safety.

## **C. DEDUCTIONS**

**Copeland "Anti-Kickback" Act is applicable to any federally assisted contract subject to Davis-Bacon standards.**

1. Full wages earned must be paid.
2. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, or accident insurance, vacation or holiday pay, and defraying costs of apprenticeship or similar programs.

## **D. CONTRACTOR REPORTING REQUIREMENTS**

**In conjunction with the previously described labor and civil rights requirements the contractor is required to periodically submit several forms to the grantee's designated Labor Standards Officer. The prime contractor is fully responsible for providing all reports required from subcontractors.**

1. Each contractor (prime and sub) must submit (through the prime contractor) Certified Payroll Forms (WH-347) for each week of work from the time the project begins through completion. If the contractor prefers to use a form other than WH-347, it must contain identical information. Weekly payrolls should be numbered sequentially, and be submitted to the grantee no later than seven days following the end of the pay period. **Exhibit 6-I** contains a blank Certified Payroll Form WH-347 and a completed example of WH-347.
2. A completed Statement of Compliance with Labor Standards and Prevailing Wage Requirements (**Exhibit 6-P**) must be submitted with each Certified Payroll Form. Certified payrolls must be submitted for each week that work is done on the project. Final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state: "No work performed from pay period ending (date) \_\_\_\_\_ through (date) \_\_\_\_\_." The Statement of Compliance appears on the back of form WH-347 or as form WH-348 if WH-347 is not used. **Exhibit 6-I** contains a sample Statement of Compliance (WH-348).

3. The first week after work on the project begins the grantee's designated Labor Standards Officer should be supplied with the names of anyone (other than owner or officer) who is authorized to sign payrolls for each contractor (prime and sub).
4. The prime contractor should supply the grantee's designated Labor Standards Officer with the names of all subcontractors working on the project prior to the preconstruction conference. Each subcontractor may then be informed of the conference. The names of any new subcontractors must be supplied immediately after they begin work on the project. (Contractors and subcontractors need to be reviewed and cleared by CDBG on the federal and state lists of debarred and excluded contractors. DUNS numbers for contractors are required. DUNS: See Chapter 6 of the CDBG Manual, page 6-14.)
5. In accordance with E.O. 11246 each contractor (prime and sub) engaged in work totaling \$10,000 or more is required to submit a Minority Contract Reporting Form, as well as any documentation regarding affirmative action efforts to the local grantee. **Exhibit 5-J** contains a sample Contract Reporting Form for use by the CDBG grantee).
6. **WORKING SUBCONTRACTORS.** Contractual relationships between contractors and alleged subcontractors (who perform mechanics' work) which are formed for the purpose of evading the application of prevailing wage requirements are expressly prohibited and may provide a basis for debarment. Where there is any doubt as to the bona-fide nature of a self-employed subcontractor who has no other employees, the following must be checked:
  - a. Does the subcontractor have a registered trade name and is there a telephone listing under that name?
  - b. Does the subcontractor have a license?
  - c. Does the subcontractor have liability insurance or a subcontractor's bond?
  - d. Does the subcontractor have a Federal Tax Identification Number?

Any of these criteria in conjunction with a signed contract containing HUD Federal Labor Standards Provisions from each such subcontractor should be sufficient to establish that he or she is a bona-fide subcontractor. Such a subcontractor will submit payrolls indicating only that he/she is the owner, the hours worked and the classification. The phrase "self-employed owner" shall be written under the name, address, and Social Security Number (See Column 1 on Form WH-347). Nonbonafide self-employed subcontractors must be carried as employees on the payroll of the contractor who engaged him/her, and must be paid the prevailing wage rate for the classification of work performed.

## **E. JOB SITE NOTICES**

**The prime contractor is required to post the following notices in a manner that is conspicuous to all workers engaged in the construction project:**

1. A copy of the Department of Labor's Notice to Employees Working on Federal or Federally Financed Construction Projects (Form WH-1321), and the appropriate wage determination; (**Exhibit 6-F** provides a sample Notice to Employees.)
2. A copy of the Montana Department of Commerce's Equal Employment Opportunity poster (**Exhibit 6-G**); and
3. A copy of the Department of Labor's Job Safety and Health Protection poster (**Exhibit 6-H**).

## **F. MONITORING AND SANCTIONS**

**The grantee's designated Labor Standards Officer is responsible for monitoring the construction project to assure compliance with all relevant labor and civil rights requirements.**

1. On-site inspections must be conducted by the grantee's Labor Standards Officer to ensure that required notices are posted.
2. Weekly payroll reports of the prime contractor and all subcontractors must be examined by the grantee's Labor Standards Officer to ensure compliance with labor standards. (See Chapter 6 of the CDBG Grant Manual, pages 6-16 through 6-18.)
3. At least once per month the grantee's Labor Standards Officer must conduct interviews with construction employees of the prime contractor and subcontractors. The interviews should be scheduled early into the first month of construction to assure initial compliance with labor standards, and on shorter projects, conducted midway towards completion. A representative of each classification of mechanic and laborer, and at least 10 percent of the work force should be interviewed. **Exhibit 6-K** contains a sample Record of Employee Interview, and instructions for conducting employee interviews.
4. Violations of the Davis-Bacon and related acts may result in restitution of wages to employees, suspension of the project payment, contract termination, and/or suspension or debarment of the contractor or subcontractor.
5. Violation of the Contract Work Hours and Safety Standards Act makes contractors liable for unpaid wages and for liquidated damages to the federal government in the sum of \$10.00 per worker per day for each violation. Intentional violations are a federal misdemeanor, punishable for each and every offense by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or both.
6. Violations of the Copeland Anti-Kickback Act could be the basis for contract termination and could result in criminal prosecution by the federal government.

## **G. CONTRACTOR AFFIRMATIVE ACTION**

**Executive Order 11246, as amended by Executive Order 11375, requires nondiscrimination in employment under federally assisted contracts and requires affirmative action to ensure equality of opportunity in all aspects of employment.**

The prime contractor and all subcontractors must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

**Disadvantaged Business Enterprises: Executive Order 12432 establishes the development of Disadvantaged Business Enterprises (DBEs) as a national priority.**

1. The grantee should supply a list of area DBEs that the prime contractor can use for contacting such businesses.

2. In cases where subcontracts are still available, the prime contractor must make and document a good faith effort to contact qualified DBEs.

**Section 3 of the Housing and Urban Development Act of 1968 provides that to the extent feasible, opportunities for training and employment must be given to lower-income residents of CDBG assisted project areas, and that contracts for work in connection with such projects be awarded to business concerns which are located in, or are owned in substantial part, by "project area" residents.**

The grantee should inform the contractor of this requirement. The "project area" is defined as the county in which the project takes place.

**HUD Administrative Requirements for Grants, 24 CFR part 85.36, establishes procurement standards to be followed in federal assistance programs.**

Whenever possible, small, minority and women-owned businesses should be solicited as potential sources of supplies, construction and services.

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## PRECONSTRUCTION CONFERENCE CHECKLIST

### PRE-CONFERENCE PLANNING

- \_\_\_\_\_ 1. **Identify, and notify conference participants of the time and place of the preconstruction conference. Invite the CDBG Project liaison.**
- \_\_\_\_\_ 2. **Prepare the materials that will be needed for the conference.**
- \_\_\_\_\_ 3. **Organize the materials into individual packets for each conference participant.**

### PRECONSTRUCTION MODEL AGENDA

- \_\_\_\_\_ 1. **Identify the official representatives of participating organizations, and how they can be contacted for official roster.**
- \_\_\_\_\_ 2. **Identify the responsibilities of the architect, or engineer if applicable .**
- \_\_\_\_\_ 3. **Identify the responsibilities of the grantee (local government).**
- \_\_\_\_\_ 4. **Identify the responsibilities of the contractor.**
- \_\_\_\_\_ 5. **General discussion of contract terms.**
- \_\_\_\_\_ 6. **Schedule for construction completion.**
- \_\_\_\_\_ 7. **Subcontractors.**
- \_\_\_\_\_ 8. **Project inspection (responsibilities of grantee (local government), and architect or engineer).**
- \_\_\_\_\_ 9. **Compliance with federal labor standards.**
  - \_\_\_\_\_ Contractor's Guide to Davis Bacon Requirements and Certified Payroll Forms
  - \_\_\_\_\_ Federal Davis-Bacon Act
  - \_\_\_\_\_ Contract Work Hours and Safety Standards Act
  - \_\_\_\_\_ Copeland Anti-Kickback Act
- \_\_\_\_\_ 10. **Compliance with civil rights regulations.**
  - \_\_\_\_\_ Executive Order 11246 as amended by Executive Order 11375
  - \_\_\_\_\_ Minority and Women-Owned Business Enterprises: Executive Order 12432
  - \_\_\_\_\_ Section 3 of the Housing and Urban Development Act of 1968

\_\_\_\_\_ 11. **Notices that are required to be posted.**

- \_\_\_\_\_ Department of Labor's Notice to Employees Working on Federal or Federally Financed Construction Projects (**Exhibit 6-F**)
- \_\_\_\_\_ Appropriate wage determination
- \_\_\_\_\_ Montana Department of Commerce's Equal Employment Opportunity poster (**Exhibit 6-G**)
- \_\_\_\_\_ Department of Labor's Job Safety and Health Protection poster (**Exhibit 6-H**)

\_\_\_\_\_ 12. **Forms the contractor must submit.**

- \_\_\_\_\_ Certified Payroll Forms (WH-347) (**Exhibit 6-I**), or equivalent
- \_\_\_\_\_ Statement of Compliance with Labor Standards and Prevailing Wage Requirements (WH-348) (**Exhibit 6-I**)
- \_\_\_\_\_ Copy of the approved plan or program, if fringe benefits will not be paid in cash
- \_\_\_\_\_ Apprenticeship or training program agreement, if any apprentices will be working on the project
- \_\_\_\_\_ Names of persons authorized to sign payrolls
- \_\_\_\_\_ Names of all subcontractors
- \_\_\_\_\_ Contract Reporting Form (**Exhibit 5-J**)

\_\_\_\_\_ 13. **Forms to be signed at preconstruction meeting.**

- \_\_\_\_\_ Contractor's Receipt of Required Program Materials (**Exhibit 6-N**)