

## V. EQUAL OPPORTUNITY

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#### A. INTRODUCTION

The Civil Rights Laws and related laws and regulations are designed to protect individuals from discrimination on the basis of race, national origin, religion, color, sex, age, handicap, or familial status. As they apply to the CDBG-EAP program, they protect individuals from discrimination in housing, employment, business opportunities and benefits created by CDBG-EAP projects.

The population groups specifically protected by the provisions of these laws include:

1. Minorities (specifically Blacks, Hispanics, Asians and Pacific Islanders, American Indians, and Alaskan Natives).
2. Women.
3. Groups distinguished by age.

4. Handicapped persons.
5. Households with children.

These laws and regulations provide for nondiscrimination, equal opportunity and affirmative action (to redress past discrimination).

## B. APPLICABLE LAWS

The key regulations that apply are contained in the Equal Opportunity/ Fair Housing section of the CDBG-EAP contract. They include:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides that no person shall be excluded from participation, denied the benefits, or subjected to discrimination on the basis of race, color or national origin under any program or activity receiving federal financial assistance.
2. Title VIII of the Civil Rights Act of 1968 (P.L. 90-284), as amended including the Fair Housing Amendments Act of 1988 (P.L. 100-430), which prohibits discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin. It requires that HUD programs be administered in a manner that affirmatively promotes fair housing.
3. Section 109 of the Housing and Urban Development Act of 1974, as amended, which provides that no person shall be excluded from participation (including employment), denied benefits or subjected to discrimination on the basis of race, color, national origin or sex, under any program or activity, funded in whole or in part under Title I (Community Development) of the Act.
4. Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual shall, solely, by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds.
5. Age Discrimination Act of 1975, as amended, which provides that no person shall be excluded from participation, denied program benefits or subjected to discrimination, on the basis of age, under any program or activity receiving federal funds.
6. Executive Order 11063, which provides that no person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in housing (and related facilities) provided with federal assistance or lending practices with respect to residential property when such practices are connected with grants insured or guaranteed by the federal government.
7. Executive Order 11246, as amended, which provides that no person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any place of employment during the performance of federally-assisted construction contracts in excess of \$2,000.
8. Section 3 of the Housing and Urban Development Act of 1968, as amended, which provides that, to the greatest extent feasible, opportunities for training and employment shall be given to lower income residents of the project area, and that contracts,

in connection with the project, be awarded to business concerns located in, or owned in substantial part, by residents of the project area.

## C. EQUAL OPPORTUNITY COMPLIANCE

### 1. Introduction.

Although the CDBG-EAP-Small Cities Housing program is State administered, these federal regulations apply, and each grantee has the responsibility to: assure that all CDBG-EAP-funded activities are carried out in a manner that will not cause discriminatory effects.

Generally, in order to fulfill these equal opportunity obligations, the grantee must:

- a. Develop and maintain demographic profiles of the community relating to race, ethnicity, sex, age and head of households (HOH).
- b. Develop and maintain racial, ethnic, gender, age, handicap and familial status data showing the extent to which these categories of persons have participated in, or benefited from, CDBG-EAP programs and activities.
- c. Document all equal opportunity-related activities including compliance monitoring.
- d. Include all applicable equal opportunity language in bidding specifications and contract documents.
- e. Complete and submit the required equal opportunity reports.

### 2. Title VI and Section 109 - NONDISCRIMINATION.

By contracting for the CDBG-EAP program, the grantee is committing itself under Title VI of the Civil Rights Act of 1964 and Section 109 of the Housing and Community Development Act of 1974 to administer its programs and activities in a manner to assure that no person, on the grounds of race, color, national origin, sex, age, handicap or familial status is excluded from participation in, is denied benefits of, or is otherwise subjected to discrimination. Even in the absence of prior discrimination, a community should take affirmative action to overcome the affects of conditions which would otherwise result in limiting participation by persons of a particular race, color, national origin, sex, age or handicap.

- a. To meet the Title VI and Section 109 obligations, the grantee must:
  - 1) Maintain community demographic profiles.
  - 2) Maintain racial, ethnic, gender, age, handicap and familial status data to enable one to determine the actual number and the general categories of beneficiaries of each activity or program.
  - 3) **Include the following language in all CDBG-EAP bidding and contract documents:**

Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the ground of race, color, national origin, sex, age or handicap 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.

- b. Some examples of specific actions a grantee may take to implement Title VI and Section 109 include:
- 1) Conduct a study of the location by census tract of the community's total number of minorities and female heads of households (FHOH).
  - 2) Conduct a survey of the needs of the community's minorities, handicapped persons, FHOHs and families with children.
  - 3) Establish minority, female, and handicapped person participation on committees and policy boards affecting the CDBG-EAP Program comparable to their percentages in the population, or demonstrate progress toward achievement of those percentages.
  - 4) Affirmatively market its programs and services among members of the protected classes including:
    - a) the use of minority and women's media to advertise CDBG-EAP programs; e.g., bilingual radio stations, minority newspapers and League of Women Voters publications.
    - b) the broad distribution of pamphlets and other materials on the CDBG-EAP program that would include minority/female organizations; e.g., Urban League, United Migrant Opportunity Services and League of Women Voters.
    - c) the inclusion of minority/female organizations on the regular CDBG-EAP mailing list.
  - 5) Make presentations on the CDBG-EAP program and its equal opportunity aspects. (Documentation regarding where, when and for whom the presentation was made would need to be kept on file.)
  - 6) Maintain lists of organizations and/or persons using facilities funded in whole or in part under the CDBG-EAP program.

3. Title VIII and EO 11063 - FAIR HOUSING.

In contracting for a CDBG-EAP program, the grantee committed itself to administer all programs and activities relating to housing and community development in a manner to prevent discrimination in housing. The sale or rental of housing, the financing of housing and the provision of brokerage services are some examples on how to take action to affirmatively further fair housing. The grantee also agreed to develop and maintain records of its efforts to assure fair housing.

These requirements apply to all grantees, regardless of size and/or racial or ethnic characteristics. The fair housing provisions apply to a community as a whole, and are an essential part of its CDBG-EAP responsibilities.

**Meaningful steps to further fair housing must be taken every year.**

The following are examples of specific actions a grantee may take to prevent discrimination in housing and to further fair housing under Title VIII and related regulations:

- a. Enact or strengthen a local fair housing law, providing for effective investigatory and enforcement powers and sanctions with adequate funding to administer the law.
- b. Acquire sites and/or existing housing units for assisted family housing outside of minority-concentrated areas.
- c. Make areawide zoning revisions to facilitate the dispersal of multi-family housing outside of minority-concentrated areas.
- d. Initiate or fund any studies examining current housing opportunities for minority persons, handicapped persons and families with children and have these studies form the basis of an affirmative action program providing greater housing opportunities for minorities, handicapped persons and families with children.
- e. Send letters from the chief executive of the local government to those in the business of selling, renting or financing housing, encouraging them to adhere fully to the fair housing law.
- f. Have the local government chief executive publicly endorse the principle of fair housing and of adherence to the fair housing law in the form of a proclamation, resolution or similar publicized statement of importance.
- g. Improve community facilities and public services in racially integrated neighborhoods to help preserve their mixed character.
- h. Provide information and positive assistance to minority group persons in locating housing in non-minority areas.
- i. Contract with fair housing groups or human relations bodies, to provide assistance to minorities in locating housing in non-minority areas (e.g., counseling,

referrals), and to promote understanding and a positive attitude toward fair housing.

- j. Initiate a public education program on fair housing, involving, for example, representatives of fair housing groups, human relations bodies, minority organizations, the real estate industry and government, through the local media. This could include talks on the community's housing opportunities. Documentation must be on file regarding where, and for whom each presentation was made.
  - k. Fund a fair housing organization (such as NAACP, UMOS, Urban League, CHRB, local fair housing council) to conduct studies and/or to investigate aggressively rental and/or real estate practices.
  - l. Require use of affirmative marketing and advertising practices by private developers as a condition for obtaining local licenses and permits.
  - m. Enlist the participation of local associations (realtors, real estate brokers, home builders and mortgage lenders) in approved voluntary programs to promote affirmative fair housing marketing and to review mortgage credit and underwriting criteria that may have an adverse impact on minorities, women, handicapped persons and families with children.
4. Executive Order (EO) 11246 - EQUAL EMPLOYMENT.

To meet the EO 11246 requirements, which provide for equal employment opportunities, the grantee must develop procedures for securing and monitoring contractor compliance. Basically, the grantee must include the applicable equal employment opportunity language in all bid specifications and contract documents, secure required documentation, and monitor compliance.

The applicability of these requirements is the same as that of the federal labor standards requirements.

Ultimate responsibility for EO 11246 compliance rests with U.S. Department of Labor (DOL). For answers to specific EEO related contract questions, contact the appropriate Department of Labor area office at:

Milwaukee District Office  
310 West Wisconsin Avenue, #1115  
Milwaukee, WI 53203  
414/297-3821

The bid and contract language required depends on the dollar amount of the contract. Certain language is required for contracts/subcontracts of \$10,000 or less (Attachment 1). Other language is required if the contract/subcontract exceeds \$10,000 (Attachments 2, 3 and 4). Note especially the Notice of Requirement for Affirmative Action (Attachment 3) which must be included and which requires the insertion of minority and female goals. The female goal applies nationwide while the minority goal is specifically determined for each county (Attachment 5).

The grantee is responsible for sending the required notices to DOL, advising contractors of their equal opportunity responsibilities, particularly at the pre-construction conference, monitoring on-site and maintaining equal opportunity compliance files for each project.

5. Section 3: Local Employment and Contracting.

Section 3 is a Federal policy that applies to housing rehabilitation, new housing construction and other construction projects that are paid for, in whole or in part, with funds from the U.S. Department of Housing and Urban Development (HUD). The purpose of Section 3 is to ensure that the employment and other economic activities that this federal assistance generates will, to the greatest extent possible, be directed toward low-income people (below 80% of county median income).

All recipients who use HUD funding for housing rehabilitation or new construction, including the construction or rehabilitation of homeless shelters and transitional living quarters, are required to make an effort to recruit low-income people for job openings. In addition, if a recipient is awarding competitive subcontracts of more than \$100,000, the recipient must attempt to recruit businesses as bidders that are "Section 3 business concerns."

Implications for Recipients

As a recipient of HUD funds for housing rehabilitation and/or new construction, you need to put in place certain policies that will fulfill your obligations under Section 3. These obligations are:

- a. Filling new or vacant positions, related to the rehabilitation/construction, in which all or part of the salary is paid with your Division of Housing contract:
  - You need to **advertise** your job openings not only in local newspapers but also by sending notices of the job openings to: social service agencies, employment and training centers, community centers and similar organizations that have frequent contact with low-income people.
  - Notify Youthbuild programs in your area, if applicable, of job opportunities. (Youthbuild is a HUD-funded employment and training program for low-income young adults, who learn on-site skills creating affordable housing and rehabilitating homeless shelters.)

- If you are receiving **\$200,000 or more** for **housing rehabilitation & other construction**:
    - You need to establish a preference policy for hiring low-income residents and Youthbuild participants/graduates. This policy can be as simple as:
      - “If two (or more) candidates are considered to be equal in ability, preference in hiring will be given in this order:
        - 1) low-income residents of the area of service [municipality or county];
        - 2) graduates of or participants in Youthbuild programs;
        - 3) other low-income persons.”
    - In order to determine which candidates are low-income and have Youthbuild experience, you will need to request this information during the hiring process (see Attachment 7 for suggested request form).
- b. Expanding existing employees’ hours, or covering a portion of an existing employee’s hours with these DHIR funds:
- If you are receiving **\$200,000 or more** for **housing rehabilitation and other construction**:
    - You will need to ascertain whether the employees’ household is low-income at the time your contract begins (see Attachment 7 for suggested request form).
- c. Awarding subcontracts:
- If you will be awarding a subcontract with a value of **\$100,000 or more** to businesses (including non-profit corporations) through a competitive process:
    - You need to establish a preference policy for “Section 3 businesses.” These are businesses in which:
      - 51% or more of the owners are low-income residents of the area of service (for non-profits, 51% or more of the Board of Directors’ members are low-income residents);
      - among its permanent full time employees, at least 30% are currently low-income residents of the area of service, or within three years of their date of hire were low-income residents;
      - it provides evidence of a commitment to subcontract greater than 25% of its dollar award in all subcontracts to businesses that meet the qualifications in the above categories.
    - You need to make bidding companies aware of this policy in the Request for Bids materials.
    - You need a mechanism to allow companies to self-declare that they are Section 3 businesses (in other words, you do not need to determine whether or not they qualify). If a company falsely claims to be qualified, it could face federal penalties.
- d. Subcontracting with another entity for \$100,000 or more (whether through competition or “sole source”):
- You need to let them know that they will also be responsible for completing Section 3 reports on employment on a quarterly basis.
  - You need to include the “Section 3 clause” in your subcontract. A copy of this clause can be found in Attachment 6.

6. Minority and Women's Business Enterprises.

There is a national policy to award a fair share of federal contracts to minority and women's business firms. Accordingly, grantees are urged to take affirmative action to encourage contracting with such business enterprises. This is especially important if these businesses are located in the community.

Grantees must report quarterly on the contracts and subcontracts awarded to minority and women's business. The reports will enable DHIR to track the number and dollar amounts of CDBG-EAP contracts and subcontracts awarded to minority and women's businesses.

Each grantee must maintain the appropriate records to document the numbers and types of contracts and subcontracts awarded (whether for construction, supplies, or services), the dollar value of each award, and the gender and ethnic/racial status of the management/ownership of the business.

Some specific voluntary actions a grantee may take to promote the use of MBEs and WBEs are:

- a. Develop and maintain a reference file of MBEs and WBEs, including the type of work performed, which are routinely sent invitations to bid or requests for proposals.
- b. Develop a strategy to promote the use of MBEs and WBEs in the CDBG-EAP program. Include ways to encourage such use by contractors.
- c. Develop a procurement policy which provides that, where possible, contracts for work or supplies be obtained from MBEs or WBEs.
- d. Maintain a log of follow-up phone contacts and personal visits to MBEs and WBEs.

D. RECORDKEEPING, REPORTING AND MONITORING

Each grantee should recognize that while the State administers the CDBG-EAP Program, the Federal Government, through HUD and DOL, continues to be responsible for the enforcement of the equal opportunity obligations. Those agencies may choose to investigate directly a grantee's EO compliance. Therefore, it is essential that each grantee have a recordkeeping and reporting system to document nondiscrimination, equal opportunity and affirmative action in its CDBG-EAP program.

**A major Equal Opportunity file must be maintained which contains a number of subfiles. The following items must be included:**

1. Demographic profiles of the community relating to race, ethnicity, sex, age and head of household (HOH).

2. Racial, ethnic, gender, age, handicapped persons and familial status data showing the extent to which these categories of persons have participated in, or benefited from, the CDBG-EAP programs and activities.
3. Copy of the local Fair Housing ordinance and documentation of all actions taken to achieve fair housing.
4. Evidence of efforts made to promote the use of local businesses and the identification, training and/or employing of lower-income residents. Attachment 7 should be completed, if any persons are hired as a result of CDBG-EAP funds.
5. Record of all CDBG-EAP contracts and subcontracts (by name, address, number and dollar amount) awarded to minority business and women's business enterprises.
6. Grantee employment data which shows employment patterns in the agencies or departments using CDBG-EAP monies (Attachment 8 or current EEO-4).
7. Records relating to equal opportunity monitoring.

These additional items are to be included if they apply:

1. Copy of the local equal employment opportunity policy and/or affirmative action plan.
2. Data which record affirmative action in employment.
3. Evidence of attempts to identify and solicit minority and women contractors and vendors.
4. Studies of special needs of minorities and women.

Individual files must also be maintained for each work project. These must show that the appropriate EO language is contained in the bid and contract documents and that the grantee performs its EO related tasks, including on-site contractor compliance reviews, in a timely and responsible manner.

Reports on EO performance required by Commerce are minimal. The quarterly report instructions (described in Chapter IV, Attachment 13) contains a Section B in which you must report MBE/WBE activity, as well as program beneficiary data for the quarter. In addition, the grantee is expected to report any EO related problems or successes in the narrative portion of the quarterly report.

All grantees will be monitored for EO compliance (using the checklist shown in Chapter XI). In addition, a sampling of communities will undergo a more in-depth review by the DHIR Equal Opportunity Specialist to assure nondiscrimination, equal opportunity and affirmative action in their CDBG-EAP activities.

## ATTACHMENT 1

### SPECIAL EQUAL OPPORTUNITY PROVISIONS

#### Activities and Contracts Not Subject to Executive Order 11246, as Amended.

(Applicable to federally-assisted construction contracts and related subcontracts \$10,000 and under.)

During the performance of this contract, the contractor agrees to follow:

- A. The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor shall take affirmative action to ensure that applicants for employment 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.
- B. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this nondiscrimination clause. The contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

## ATTACHMENT 2

### Section 202 Equal Opportunity Clause for Contracts/Subcontracts Above \$10,000 (Executive Order 11246)

During the performance of this contract, the contractor agrees as follows:

- A. 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.
- B. The contractor will, in all solicitations or advertisement for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- E. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, 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 Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and others.
- F. 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 in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractor will include the provisions 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 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department 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 Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for Government contracts and federally-assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to take any or all of the following actions: cancel, terminate or suspend in whole or in part this grant (contract, grant, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurances of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings.

**ATTACHMENT 3**

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000.)

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation	Goals for female participation
<i>(insert goals)</i>	<i>(insert goals for current year)</i>

These goals are applicable to all the contractor's construction work (whether or not it is federal or federally-assisted) performed in the covered area. If the contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- C. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction sub-contract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the sub-contract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

## ATTACHMENT 4

### Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

- A. As used in these specifications:
1. "Covered area" means the geographical area described in the solicitation from which this contract resulted.
  2. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
  3. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  4. "Minority" includes:
    - a. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- D. The contractor shall implement the specific affirmative action standards provided in paragraphs G.1. through 16. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonable be able to achieve in each construction trade in which it has employees in the covered areas. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
1. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

4. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under G.2. above.
6. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.
8. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.
9. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.
  14. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  15. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.
  17. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G.1. through 17.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G.1. through 17. of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to document which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligations shall not be a defense for the contractor's noncompliance.
- I. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goal for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

- J. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
- K. The contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- L. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- M. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g. of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- N. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, states (e.g., mechanic, apprentice trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### Certification of Nonsegregated Facilities (Over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that s/he does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that s/he does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. S/He certifies further that s/he will not maintain or provide for employees any segregated facilities at any of his/her establishments, and s/he will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, transportation (parking lots, drinking fountains, recreation or entertainment areas) and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. S/He further agrees that (except where s/he has obtained identical certifications from proposed subcontractors for specific time periods) s/he will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that s/he will retain such certifications in his/her files; and that s/he will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

## ATTACHMENT 5

### GOALS FOR WOMEN AND MINORITY UTILIZATION IN CONSTRUCTION

These goals apply to all federally-assisted construction contracts and subcontracts in excess of \$10,000 (EO 11246). All hours of work (federal and nonfederal) in each trade, regardless of the location of work, are subject to these goals.

A. Goals for Women--6.9 percent (this goal applies nation wide).

B. Minority Goals--percentage listed for each county:

Adams	1.7	Iowa	1.7	Polk	2.2
Ashland	1.2	Iron	1.2	Portage	.6
Barron	.6	Jackson	.6	Price	.6
Bayfield	1.2	Jefferson	7.0	Racine	8.4
Brown	1.3	Juneau	.6	Richland	1.7
Buffalo	.6	Kenosha	3.0	Rock	3.1
Burnett	2.2	Kewaunee	1.0	Rusk	.6
Calumet	.9	La Crosse	.8	St. Croix	2.9
Chippewa	.5	Lafayette	.5	Sauk	1.7
Clark	.6	Langlade	.6	Sawyer	.6
Columbia	1.7	Lincoln	.6	Shawano	1.0
Crawford	.5	Manitowoc	1.0	Sheboygan	7.0
Dane	2.2	Marathon	.6	Taylor	.6
Dodge	7.0	Marinette	1.0	Trempealeau	.6
Door	1.0	Marquette	1.7	Vernon	.6
Douglas	1.0	Menomonie	1.0	Vilas	.6
Dunn	.6	Milwaukee	8.0	Walworth	7.0
Eau Claire	.5	Monroe	.6	Washburn	.6
Florence	1.0	Oconto	1.0	Washington	8.0
Fond du Lac	1.0	Oneida	.6	Waukesha	8.0
Forest	1.0	Outagamie	.9	Waupaca	1.0
Grant	.5	Ozaukee	8.0	Waushara	1.0
Green	1.7	Pepin	.6	Winnebago	.9
Green Lake	1.0	Pierce	2.2	Wood	.6

## ATTACHMENT 6

### SECTION 3 CLAUSE - 24 CFR 135.38

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitment under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7 (b) requires that to the greatest extent feasible (1) preference and opportunities

for training and employment shall be given to Indians, and (2) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7 (b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7 (b).

**ATTACHMENT 7**

**FORM FOR REQUESTING HOUSEHOLD INCOME DATA FROM JOB APPLICANTS AND EMPLOYEES**

NAME: \_\_\_\_\_

CITY/VILLAGE/TOWN OF RESIDENCE: \_\_\_\_\_

POSITION TITLE: \_\_\_\_\_

The salary for this position is supported by funding from the United States Department of Housing and Urban Development (HUD). As a recipient of HUD funding, we are required to abide by Section 3 of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that the employment and other economic activities that this federal assistance generates will, to the greatest extent possible, be directed toward low-income people (below 80% of county median income).

We request that you complete and sign the form below.

I certify that:

- I reside in public or Indian housing.
- I receive Section 8 rental assistance.
- For the past year, my household's income has been at or below (use sample survey income question):

Household Size	1	2	3	4	5	6
Income						

- None of the above apply.

In addition, I  have  have not participated in a Youthbuild program.

My signature below indicates that this information is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTACHMENT 8**

GRANTEE EMPLOYMENT

Contract # \_\_\_\_\_

JOB CATEGORIES	TOTAL # IN CATEGORY	# MALE		# FEMALE	
		MINORITY	NON-MINORITY	MINORITY	NON-MINORITY
Officials/ Administrators					
Professionals					
Technicians					
Protective Service					
Para- Professionals					
Office/Clerical					
Skilled Craft					
Service/ Maintenance					
Other					

