

EQUAL OPPORTUNITY / NON-DISCRIMINATION CONTRACT CLAUSES FOR CDBG PROJECTS (6-A)

FEDERAL EQUAL OPPORTUNITY COMPLIANCE CONTRACT REQUIREMENTS

(Applicable to prime contracts and subcontracts for the CDBG Project)

1.0 Compliance with 24 CFR Part 570.607 Employment & Contracting Opportunities Requirements:

In accordance with [24 CFR Part 570.607](#), to the extent that they are otherwise applicable,* grantees and their subrecipients, contractors and subcontractors shall comply with:

- (a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 ([3 CFR](#) 1964-1965 Comp. p. 339; [3 CFR](#), 1966-1970 Comp., p. 684; [3 CFR](#), 1966-1970., p. 803; [3 CFR](#), 1978 Comp., p. 230; [3 CFR](#), 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), [67 FR 77141](#), [3 CFR](#), 2002 Comp., p. 258; and the implementing regulations at [41 CFR Part 60](#)

2.0 Compliance with Civil Rights Act of 1964 Requirements:

The following equal opportunity and Civil Rights compliance laws* for which the associated requirements apply to CDBG project contracts:

1. Executive Order 11246 (as amended by EO 11375, EO 11478, EO 12086, EO 12107)
2. Title VI of the Civil Rights Act of 1964
3. Title VIII of the Civil Rights Act of 1964 (The Fair Housing Act)
4. Restoration Act of 1987
5. Section 109 of Title 1 of the Housing and Community Development Act of 1974:
6. Fair Housing Amendment Act of 1988
7. Housing for Older Persons Act of 1995 (HOPA)
8. Section 504 of the Rehabilitation Act of 1973
9. Age Discrimination Act of 1975
10. Americans with Disabilities Act of 1990 (ADA)
11. Executive Order 11063
12. Executive Order 11259
13. Section 109 of Title I of the Housing and Community Development Act of 1974
14. Equal Employment Opportunity Act
15. Immigration Reform and Control Act (IRCA) of 1986
16. Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978
17. Section 3 of the Housing and Urban Development Act of 1968, as amended
18. Vietnam Era Veterans' Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002)
19. 2 CFR Part 200.321 and 2 CFR Part 200 Appendix II(C)

As a condition of receipt of federal funding under this contract, the contractor provides the following assurances with respect to the fulfillment of the contract:

1. **Title VI of the Civil Rights Act of 1964.** The contractor must endure current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin ([42 U.S.C. § 2000d et seq.](#)), as implemented by the Department, Title VI regulations at [31 CFR Part 22](#) and other pertinent executive orders, directives, circulars, policies, memoranda, and/or guidance documents.
2. **Civil Rights Act Contract Clause.** The contractor agrees to provide the requirements to any subcontractors, successors, transferees, and assignees to ensure compliance by incorporating the following language in all its contracts and agreements subject to Title VI laws and regulations:

Civil Rights Act Subcontract Clause:

The subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or

otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement).

3. The contractor shall cooperate with the owner of this contract, the CDBG grantee, and the State of Wisconsin CDBG in any enforcement or compliance review activities by the Department of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions.

3.0 Compliance with Equal Opportunity Executive Orders / 41 CFR Part 60:*

Per [2 CFR 200 Appendix II\(C\)](#), except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of "federally assisted construction contract" in [41 CFR Part 60-1.3](#) must include the equal opportunity clause under [41 CFR Part 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), "Equal Employment Opportunity" ([30 FR § 12319](#), [12935](#), [3 CFR Part. 1964-1965](#) Comp., p. 339), as amended by [Executive Order 11375](#), "Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity," and implementing regulations at [41 CFR Part 60](#), "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," as follows:

Federally assisted construction contracts.

Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at [41 CFR Part 60](#), which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) 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.

(6) 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 administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided 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.

**Laws and Executive Orders listed may be added, amended, or revoked during the contract period upon issuance by the U.S. Federal Government. Grantees, subrecipients, contractors, and subcontractors are subject to the laws and orders, as mandated by federal and state government authorities, as issued and amended.*

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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 comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, 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 assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**Laws and Executive Orders listed may be added, amended, or revoked during the contract period upon issuance by the U.S. Federal Government. Grantees, subrecipients, contractors, and subcontractors are subject to the laws and orders, as mandated by federal and state government authorities, as issued and amended.*

EQUAL OPPORTUNITY 2 CFR Part 200.321 & WISCONSIN GUIDANCE & GOALS CONTRACT REQUIREMENTS

1.0 Consideration for Small Businesses, Women-Owned, Minority-Owned, Veteran-Owned/ Disabled Veteran-Owned Businesses and Labor Surplus Area Firms:

The contractor and their subcontractors (all tiers) shall take all affirmative steps to ensure small businesses, woman-owned, minority-owned, veteran-owned, and disabled veteran-owned businesses, and labor surplus area firms are considered for sources of supplies and services in accordance with [2 CFR Part 200.321](#) and Department policy, and as defined below:

- **Small Business** – A business firm that matches the revenue and employment status of a small business in their industry, as specified in [13 CFR Part 121.101](#) and the [North American Industry Classification System \(NAICS\)](#). Registered small businesses may be found in directories available on the [U.S. Small Business Administration website](#).
- **Minority-Owned Business Enterprise- (MBE)*** – A firm that is at least 51% owned, controlled, and actively managed by one or more members of an eligible minority group member; is a sole proprietorship, corporation, LLC, or joint ventures; is organized in a for profit basis and currently performing a useful business function; and is not held in trust. If the business is a subsidiary or affiliate, the parent company must be at least 51% owned by a minority or minority owners. Eligible racial ethnic categories include: American Indian, Asian-Indian, Asian-Pacific, Black, Eskimo or Aleut, Hispanic, and Native Hawaiian [[Wis. Stat. § 16.287\(1\)](#) and [Wis. Admin. Code §§ 84.01\(29\)\(a-e\)](#)].
- **Women-Owned Business Enterprise (WBE)*** – A firm that is at least 51% owned, controlled, and actively managed by one or more women; is a sole proprietorship, corporation, LLC, or joint ventures; is organized in a for profit basis and currently performing a useful business function; and if held in trust, it must be a woman or women as the owner, beneficiary, and trustee of the trust. If the business is a subsidiary or affiliate, the parent company must be at least 51% owned by a woman or women owners.
- **Veteran-Owned Business (VOB)** – A business with ownership that meets the definition of a veteran-owned business according to the [U.S. Small Business Administration](#) and [87 FR § 73400](#).
- **Disabled Veteran-Owned Business (DVB)*** – A firm that meets the State of Wisconsin definition or federal definition of a disabled veteran-owned business.

State definition: A firm that is least 51% owned, controlled, and actively managed by one or more service-disabled veterans; is a sole proprietorship, corporation, LLC, or joint ventures; is organized in a for profit basis and currently performing a useful business function; and is not held in trust. If the business is a subsidiary or affiliate, the parent company must be at least 51% owned by a service-disabled veteran owner or service-disabled veteran owners. The headquarters must be located in Wisconsin. A disabled veteran is defined as having a Certificate of Release or Discharge from Active Duty (Form DD214); being a resident of Wisconsin; having a Disability Rating of at least 0% with the Department of Veteran's Affairs or an Armed Services Branch [[Wis. Stat. § 16.283\(1\)\(b\)](#) and [Wis. Admin. Code § 82.22](#)].

Federal definition: A firm with ownership that meets the definition of a disabled veteran-owned business according to the [U.S. Small Business Administration](#) and [87 FR § 73400](#)

- **Labor Surplus Area Firm** – A business that operates in a “labor surplus area” as designated by the U.S. Department of Labor (USDOL). USDOL publishes a list of LSAs on a fiscal year basis on the [USDOL Labor Surplus Area website](#) [<https://www.dol.gov/agencies/eta/lssa>].

*A directory of MBE, WBE and DVB firms may be accessed on the [Wisconsin Supplier Diversity Program](#) website [<https://supplierdiversity.wi.gov/Pages/Home.aspx>].

2.0 State of Wisconsin Equal Opportunity Goals

The [Wisconsin Supplier Diversity Program \(SDP\)](#) certifies Minority-Owned (MBE), Service-Disabled Veteran-Owned (DVB) and Woman-Owned (WBE) businesses to provide better opportunities for them to do business with the State of Wisconsin and to assist the State of Wisconsin in achieving its goals for purchasing, including:

A. Minority-Owned Business Enterprises (WBEs): 5% of all State purchasing; and

B. Disabled Veteran-Owned Businesses (DBVs): 1% of all State purchasing.

CDBG grantees and contractors may also consider these goals for contracting for the grant funded project.

NONDISCRIMINATORY CONTRACTS WIS. STAT. § 16.765 COMPLIANCE CONTRACT REQUIREMENTS

(Applicable to prime contracts and subcontracts exceeding \$10,000)

- (a) **Law and Provisions.** Except as otherwise provided under *Wis. Stat. § 16.765*, if the contractor has been awarded a construction contract exceeding \$10,000 for the publicly funded CDBG project, then the contractor shall comply with, and include in all construction subcontracts that exceed \$10,000 for the CDBG project, the equal opportunity clause provided in this section.
- (b) **Contract Language.** Except as otherwise provided, the CDBG grantee, grant subrecipient, each prime contractor and each subcontractor is required to agree to the terms and include the following language as a condition of any contract for the CDBG project:

As used in these specifications: (*Wis. Stat. § 16.765*)

1. Grantees, subrecipients, contractors and subcontractors shall include in all contracts executed by them a provision obligating the contractor not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in *§ 51.01 (5)*, sexual orientation as defined in *§ 111.32 (13m)*, or national origin and, except with respect to sexual orientation, obligating the contractor to take affirmative action to ensure equal employment opportunities.
2. Grantees, subrecipients, contractors and subcontractors shall include the following provision in every contract executed by them:

“In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in *§ 51.01 (5)*, sexual orientation or national origin. This provision 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. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The contractor agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause”. Pursuant to 2019 Wisconsin Executive Order 1, the contractor agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract or subcontract because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.
3. Subsections (1) and (2) of *§ 16.765* shall not apply to contracts to meet special requirements or emergencies, if approved by the Department.
4. Grantees, subrecipients, contractors and subcontractors shall take appropriate action to revise the standard contract forms under this section.
5. The chief elected official of the grantee and the owner(s) or chief executive officer of a prime contractor shall be primarily responsible for obtaining compliance by contractors and subcontractors with the nondiscrimination and affirmative action provisions prescribed by this section, according to procedures recommended by the granting entity. The grantee shall provide any recommendations from the State granting agency to the subrecipient, contractors and subcontractors for improving and making more effective the nondiscrimination and affirmative action provisions of contracts. The Department of Administration (DOA), referred to as “the Department” hereafter, and the Division of Energy, Housing and Community Resources (DEHCR), as the granting agency, shall promulgate such rules as may be necessary for the performance of the State’s functions under this section.
6. The Department may receive complaints of alleged violations of the nondiscrimination provisions of such contracts. The Department shall investigate and determine whether a violation of this section has occurred. The Department may delegate this authority to DEHCR or the grantee for processing in accordance with the Department’s procedures.
7. When a violation of this section has been determined by the Department, it will be handled and processed by the Department and DEHCR in accordance with *Wis. Stat. § 16.765*.

8. The Department shall refer any individual complaints of discrimination which are subject to investigation under [Subch. II of Ch. 111](#) to the Wisconsin Department of Workforce Development.
9. A violation by a prime contractor shall not impute to a subcontractor nor shall a violation by a subcontractor impute to a contractor.
10. The contractor shall under this contract, if it exceeds \$10,000, submit an Affirmative Action Plan or a Request for Exemption from Submitting an Affirmative Action Plan and a Contractor's Subcontractor List to the Department of Administration (DOA) Division of Enterprise Operations, P.O. Box 7867, Madison, WI 53707-7867 or via email at DOADEOSBOPPrograms@wisconsin.gov within fifteen (15) working days after the execution of their contract. Failure to comply with the conditions of this requirement may result in the declaration of contractor ineligibility, the termination of the contract, and/or the withholding of funds.

Cross-reference: See also [Ch. Adm 50, Wis. Adm. Code](#). Cities, counties, and other local governmental entities are not "contracting agencies" under sub. (1). 68 Atty. Gen. 306.

- (c) **Subcontracts.** Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.
- (d) **Inclusion of the equal opportunity clause by reference.** *[This is **not** a provision allowable for or applicable to CDBG project construction contractors and subcontractors.]*
- (e) **Incorporation by operation of the order.** By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.
- (f) **Adaptation of language.** Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.