

# Supplemental Conditions for Construction Contracts

The following Supplemental Conditions are hereby made a part of the contract to which they are appended, supplementing that contract and superseding any of its articles with which they are in conflict.

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11. Title VII of the Civil Rights Act of 1964
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16. Uniform Federal Accessibility Standards
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## 1. Montana Contractor Registration Requirements

Title 39, Chapter 9, Part 2, MCA, provides that no contractor may submit a bid unless properly registered with the Montana Department of Labor and Industry. No bids will be considered that do not carry the bidder's Montana contractor's registration number on the envelope containing the bid and on the bid.

MCA 39-9-201 through 39-9-211 sets out contractor registration requirements with the State of Montana. Contractors and any of the contractor's subcontractors doing work on a project are required to register with the Department of Labor and Industry. Forms for registration are available from the Department of Labor and Industry, P.O. Box 8011, 1805 Prospect, Helena, Montana 59604-8011. Information on registration can be obtained by calling 406-444-7734.

All laborers and mechanics employed by the contractor or subcontractors in performance of the construction work shall be paid wages at rates as may be required by the federal Davis-Bacon prevailing wage and reporting requirements. The contractor must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex or national origin.

## 2. 1% Gross Receipts Withholding Requirement (Contractor's License Fee)

Pursuant to Section 15-50-206(2)(3), MCA, the owner is required to withhold 1% of all payments due the contractor and is required to transmit such moneys to the Montana Department of Revenue as part of the public contractor's license fee. In like fashion, the contractor is required to withhold 1% from payments to subcontractors.

### 3. Pre-Construction Conference

After the contract(s) have been awarded, but before the start of construction, a conference will be held for the purpose of discussion requirements on such matters as project supervision, coordination with city or county officials, onsite inspections, progress schedules and reports, payrolls, payments to contractors, contract change orders, insurance, safety and other items pertinent to the project. The contractor shall arrange to have all supervisory personnel connected with the project on hand to meet with representatives of the engineer and owner to discuss any problems anticipated.

### 4. Reports and Information

The contractor, at such times and in such forms as the owner may require, shall furnish the owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

### 5. Access to Records

The owner, the Inspector General of the United States, the U.S. Department of Housing and Urban Development, the U.S. Department of Labor, the General Accounting Office and the Montana Department of Commerce shall be permitted by the contractor to have full access to, and right to examine any pertinent books, documents, papers and records of the contractor involving transactions related to this contract, during the period of the project and for three years from the date of final payment or until all findings have been resolved to the satisfaction of the State of Montana.

## 6. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting is prohibited by federal law and shall not be used.

## 7. Federal Labor Standards Provisions (HUD-4010 Form)

The HUD-4010 form, Federal Labor Standards Provisions, must be attached to these Supplemental Conditions.

## 8. Schedule of Minimum Hourly Wage Rates (Davis-Bacon Wage Determination)

The applicable federal Davis-Bacon Wage Determination provided by Commerce's Program must be attached to these supplemental conditions.

## 9. Equal Opportunity Provisions

- a) Equal Employment Opportunity, 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, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for

employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. 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 or national origin.
- c. The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by Commerce's contracting officer advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 of Sept. 24, 1965, 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 Sept. 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 Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by Commerce and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such 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 Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of Sept. 24, 1965,



or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.

- g. The contractor will include 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 Sept. 24, 1965, so that each provision will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as Commerce may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the contractor becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by Commerce, the contractor may request the United States to enter into such litigation to protect the interest of the United States.
- b) Title VII of the Civil Rights Act of 1964 provides that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving federal financial assistance.
- c) 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 or sex be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.”
- d) Section 3 of the Housing and Urban Development Act of 1968: The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this Commerce-assisted project will be

extended to project area residents. Further, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

- e) **Minority Business Enterprise:** Under the provisions of Executive Order 11246, contractors on federally funded projects are required to take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services. Additionally, the contractor must document all affirmative steps taken to solicit minority businesses and forward this documentation along with the names of the minority subcontractors and suppliers to the owner upon request.
- f) **Nondiscrimination Provision in all Public Contracts Pursuant to Section 49-3-207, MCA:** The Contractor certifies that all hiring will be on the basis of merit and qualifications and there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin.

## 10. Uniform Federal Accessibility Standards

All design specifications for the construction of any building shall provide access to the physically handicapped in accordance with the Uniform Federal Accessibility Standards and HUD regulations 24 CFR Part 8, "Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of HUD."

## 11. Compliance with Federal Clean Air and Water Acts

(Applicable to federally assisted construction contracts and related sub-contracts exceeding \$100,000.)

During the performance of this contract, the contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq.; the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq.; and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR 15, as amended.

## 12. Contractor Eligibility

The contractor certifies that the contractor's firm and the firm's principals are not debarred, suspended, voluntarily excluded or otherwise ineligible for participation in federally assisted contracts under Executive Order 12549, "Debarment and Suspension" (24 CFR 24.505).

## 13. Conflict of Interest

The contractor covenants that it presently has no interest and will not acquire any interest, direct or indirect, in the Commerce project that would conflict in any manner or degree with the performance of its services hereunder. The contractor further covenants that, in the performance of this contract, it will employ no person who has any such interest.

## 14. Workers' Compensation Insurance

The contractor certifies that workers' compensation insurance will be maintained as required by the Montana Workers' Compensation Act (39-71-101, MCA). The contractor further certifies that the contractor will comply at all times with occupational disease and health and safety laws and regulations to the full extent applicable.



## 15. Montana Contractor Preference Statute

The Montana Contractor Preference statute, Section 18-1-102, MCA, is not applicable to Montana public construction contracts funded in whole or part with Community Development Block Grant and/or HOME Investment Partnerships Program funds.

## 16. Copeland Antikickback Act

The contractor shall not induce, by any manner whatsoever, any person employed in the construction, prosecution, completion or repair of any building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which they are entitled under contract of employment.

## 17. Build America, Buy America

The contractor, subcontractors and subrecipient entities must comply with the requirements of the Build America, Buy America Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the owner's project. Pursuant to HUD's Notice, "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates are subject to BABA requirements, unless excepted by a waiver.