

Contract Document Guide for CDBG-Funded Construction Contracts

This Guide may be used to prepare construction bid and contract documents. Attached to the Guide are samples of model and required contract documents.

The purpose of this Guide is to assist CDBG Grant recipients in the preparation of contract documents for construction activities. While portions of the material are advisory, certain portions, due to various statutory requirements, **MUST** be adopted verbatim.

The Guide incorporates the provisions of HUD regulation 24 CFR Part 85, and the provisions of the Virginia Public Procurement Act (VPPA), as amended. When State and Federal requirements address the same issue, the more stringent requirement must be met.

The purpose of the sample language included in this Appendix is to convey the intent of the requirements. Thus, a Grantee may use its own language, provided the intent of the requirement is met. A word of caution--whenever one section of the Guide is modified or deleted, it may affect one or more other sections.

The Grantee and its attorneys are responsible for assuring that the contract documents as issued comply with the CDBG Agreement, 24 CFR Part 85, the Virginia Public Procurement Act, and Federal, State and local laws, regulations and procedures.

A. Issues to be Addressed in Developing an Invitation to Bid

Each of the following issues will need to be addressed by the Grantee prior to the Invitation to Bid. While the design consultants may address these issues, it is the responsibility of the Grantee to ensure compliance with the applicable requirements.

1. Formal Advertising, Sealed Bids and Public Opening

Under the Virginia Public Procurement Act, formal advertising and sealed bids are required for construction contracts in excess of \$50,000. Section 2.2-4301 / of the VPPA states that public notice of the Invitation to Bid must be given at least ten days prior to the date set for receipt of bids; 24 CFR Part 85 also requires that all bids be opened publicly at the time and place stated in the Invitation to Bid.

2. Withdrawal of Bid Due to Error

One of the two procedures stated in §2.2-4300 of the Virginia Public Procurement Act MUST be selected and stated in the advertisement.

3. Contract Pricing Arrangements

The following requirements MUST be met: (1) The contract must be a firm-fixed-price contract (lump sum or unit prices); and (2) The cost plus percentage of cost and percentage of construction cost method of contracting shall not be used.

4. Location of Contract Documents

Bidders MUST be made aware of where the plans and specifications can be obtained and whether a deposit is required and, if required, whether any portion will be refunded.

5. Bid Guarantee

A bid guarantee, or bid bond, is required for all construction projects with bids greater than \$100,000. Terms of the bid guarantee MUST be cited or referenced in the Invitation to Bid (See Section 2.2-4336 of the VPPA).

6. Pre-Bid Conference

A pre-bid conference is optional, but highly recommended.

7. Prequalification of Bidders

Section 2.2-4317 of the Virginia Public Procurement Act states, "Prospective contractors may be pre-qualified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to pre-qualified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process." Section 2.2-4301 provides "... unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors"

HUD regulation 24 CFR Part 85 requires Grantees to "make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources." Consistent with this standard of making awards only to responsible contractors, Grantees MUST either pre-qualify

prospective contractors OR qualify potential contractors during the bid process (the latter method is included in the Sample Invitation To Bid).

8. Contractor License/Registration

Under Title 54.1, Chapter 11 of the Code of Virginia, bidders must be licensed as a Class A contractor or registered as a Class B contractor in the Commonwealth of Virginia per the following definitions under Section 54.1-1100:

- a. Class A Contractors - "perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$120,000 or more, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any 12-month period is \$750,000 or more."
- b. Class B Contractors - "perform or manage construction, removal, repair or improvements when (i) the work performed in such contract is \$10,000 or more, and when the total value referred to in a single contract or project is less than \$120,000, or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any 12-month period is \$150,000 or more, but less than \$750,000."

Section 54.1-1112 states, "All architects and engineers preparing plans and specifications for work to be contracted in Virginia shall include in their invitations to the bidder and in their specifications a reference to this chapter so as to convey to the invited bidder prior to the consideration of the bid (i) whether such person is a resident or nonresident of this Commonwealth, (ii) whether the proper license or certificate has been issued to the bidder, and (iii) the information required of the bidder to show evidence of the proper licensure or certification under the provisions of this chapter."

9. Federal Requirements

Bidders and contractors performing work under this Invitation to Bid are bound, wherever applicable, by the requirements of:

- a. President's Executive Order 11246 as amended by Executive Order 11375;
- b. Title VI of the Civil Rights Act of 1964, as amended;
- c. Section 109 of The Housing and Community Development Act of 1974, as amended;
- d. Section 3 of the Housing and Urban Development Act of 1968;
- e. Immigration Reform and Control Act of 1986
- f. Davis-Bacon Act;
- g. Copeland Anti-Kickback Act;
- h. Contract Work Hours and Safety Standards Act.

10. Erosion Control

If construction will result in a land-disturbing activity, the Grantee should consult Title 62.1, Chapter 3.1, Article 2.4 Erosion and Sediment Control Law of the Code of Virginia to determine whether the activity is exempt from erosion control requirements. Unless the activity meets the exemption criteria of Title 62.1, erosion control measures are required for land-disturbing activities in excess of 10,000 square feet. Exemptions include any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

NOTE: the Grantee may have stricter erosion control regulations which must be complied with.

It is desirable to alert the bidder when erosion control measures are required; although there is no requirement that this be done in the Invitation to Bid.

11. Negotiation with Lowest Responsible Bidder

Section 2.2-4318 of the Virginia Public Procurement Act provides in part that "such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein." For more discussion of this issue see Part B of this Appendix, "Developing Instructions for Bidders," Item 10, "Award of Contract."

12. On Site Project Sign

The contractor must erect a Project Identification Sign at the construction site to identify the locality and project name. If known, the sign should also identify the architect/engineer and contractor. The Virginia Department of Housing and Community Development must be identified by name, logo and amount of funding. Specifications for this sign are included with the required contract inserts transmitted by DHCD along with the wage-decision.

B. Developing Instructions for Bidders

INSTRUCTIONS: THIS GUIDE CONTAINS TWO TYPES OF INSTRUCTIONS TO BIDDERS. THE FIRST INCLUDES THOSE THAT ARE CONSIDERED GOOD CONTRACTUAL PROVISIONS, AND THE SECOND INCLUDES THOSE THAT COMPLY WITH STATE OR FEDERAL REQUIREMENTS. Concerning the latter, the requirements are stated first and then sample wording follows. SINCE ALL OF THESE SECTIONS BECOME AN ESSENTIAL PART OF THE CONTRACT DOCUMENTS, IT IS IMPORTANT THAT EACH

SECTION BE APPROPRIATELY ADDRESSED WHEN THE GRANTEE DEVELOPS ITS INSTRUCTIONS FOR BIDDERS.

1. Addenda and Interpretations

Requirements: Section 2.2-4316 of the VPPA provides that "Every public body awarding Public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract." This section does not, however, apply to towns with a population of less than 3,500. Nevertheless, to meet the Federal requirement that the procurement system be "fair," ALL Grantees MUST comply with Section 2.2-4316 of the VPPA.

SAMPLE

No oral interpretation will be made to any BIDDER as to SPECIFICATIONS or any other part of the CONTRACT DOCUMENTS. Every request for such an interpretation shall be made in writing addressed to _____ at _____ and to be given consideration must be received at least seven days prior to the date fixed for opening of bids. Every interpretation made to a BIDDER will be in the form of an Addendum to the CONTRACT DOCUMENTS, and when issued, will be on file in the office of the PUBLIC BODY and the office of the ENGINEER, at least five days before bids are opened. All ADDENDA will be mailed to each person holding CONTRACT DOCUMENTS, but it shall be the BIDDER'S responsibility to make inquiry as to the ADDENDA issued. All such ADDENDA shall become part of the CONTRACT and all BIDDERS shall be bound by such ADDENDA, whether or not received by the BIDDERS.

2. Inspection of Site and Conditions of Work

SAMPLE

BIDDERS should visit the site of the proposed PROJECT and become fully acquainted with the pertinent local conditions such as location, accessibility and general character of the site or building, and the character and extent of existing work within or adjacent to the site. BIDDERS should thoroughly examine the DRAWINGS, SPECIFICATIONS, and all other CONTRACT DOCUMENTS. Claims, as a result of failure to do so, will not be considered by the PUBLIC BODY.

3. Time for Completion

- a. "TIME FOR COMPLETION" means the number of consecutive days following the receipt of a Notice to Proceed which the CONTRACTOR has to complete the WORK.
- b. There are two methods by which the time for completion may be determined:
 - (1) The Grantee may designate the time for completion in the specifications or other pre-bid documents.
 - (2) The Grantee may request that bidders submit with their bids, on the Form of Proposal or separately, an estimated time for completion. This estimated time for completion shall be a reasonable time within which each bidder thinks he can complete the work. The purpose for allowing bidder to submit estimated time of completion is to encourage lower bids by allowing bidders to compute a bid based upon an efficient use of equipment, personnel, and other assets during construction. It is also intended, however, that work shall proceed continuously and with reasonable rapidity once the Notice to Proceed is given.

Therefore, bids containing estimated times of completion which are unreasonably long may be eliminated from consideration as being unresponsive. The contract shall be awarded to the responsible bidder having the lowest dollar bid, subject to the provisions of Part B of this Section, Item 10 Award of Contract. No consideration will be given to the fact that one or more higher bidders may have submitted a shorter estimated time of completion than the low dollar bidder. Nor will the amount of the dollar bid of any bidder be adjusted in any way to give credit for having a shorter estimated time of completion than any other bidder or bidders, even in situations where liquidated damages will be assessed for late completion. When bidders are requested to submit estimated times of completion, the Grantee and the successful low bidder shall agree upon a time for completion. The time agreed upon may be shorter, but in no case longer, than the successful low bidder's estimated time of completion.

- c. In all cases, whether the time for completion was determined by either of the two methods, described above in this section, the time for completion shall be entered in the Form of Agreement and shall become a binding part of the contract upon which the Grantee may rely in planning the use of the facilities to be constructed and for all other purposes. (For simplicity the time for completion should be converted to a date of completion.) If the contractor shall fail to complete the work within the time for completion set forth in the

contract, he shall be subject to payment of actual damages incurred by the Grantee or liquidated damages, if provided for in the contract.

4. Qualifications of Bidders

Requirements: Prospective contractors may be pre-qualified for particular types of supplies, services, insurances or construction with consideration of bids being limited to pre-qualified contractors. Requirements are in Part A of this section "Issues to be Addressed in Developing an Invitation to Bid."

SAMPLE

Each BIDDER shall upon request of the PUBLIC BODY submit on the form furnished for that purpose (a copy of which is included herein), a statement of the BIDDER'S qualifications, his experience record in constructing the type of improvements embraced in the CONTRACT, his organization and equipment available for the WORK contemplated. The PUBLIC BODY shall have the right to take such steps as it deems necessary to determine the ability of the BIDDER to perform his obligation under the CONTRACT and the BIDDER shall furnish the PUBLIC BODY all such information and data indicated on the form. The right is reserved to reject any BID where an investigation of the available evidence or information does not satisfy the PUBLIC BODY that the BIDDER is qualified to carry out properly the terms of the CONTRACT.

5. Preparation and Submission of Bids

Requirements: The bidder certification concerning equal employment opportunity is a federal requirement. The certification regarding debarment by an agency of the Commonwealth is a DHCD requirement. The State requirement concerning contractor license/registration is found under Part A of this section, "Issues to be Addressed in Developing an Invitation to Bid", Item 8, "Contractor License/Registration."

SAMPLE

(Items a. through e. are one sample.)

- a. Bids shall be submitted in duplicate on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a BID must be explained or noted over the signature of the BIDDER. BIDS containing any conditions, omissions, unexplained erasures, alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the PUBLIC BODY as being incomplete.
- b. Each BID must give the full business address of the BIDDER and be signed by him with his usual signature. BIDS by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or an authorized representative, followed by the signature and designation of the person signing. BIDS by corporations must be signed with the legal name of the corporation followed by the name of the state in which they are incorporated and by the signature and designation of the president, secretary or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A BID by a person who affixed to his signature the word "President," "Secretary," "Agent," or other designation without disclosing his principal, may be held to be the BID of the individual signing. When requested by the PUBLIC BODY, satisfying evidence of the authority of the officer signing in behalf of the corporation shall be furnished.
- c. Each BID must be accompanied by a Certification of Contractor/Subcontractor Regarding Equal Employment Opportunity, and Certification of Bidder Regarding Debarment by Agency of the Commonwealth of Virginia.

BIDS with the BID GUARANTEE shall be enclosed in a sealed envelope which shall be marked and addressed as indicated by the advertisement. If a CONTRACT is for seventy thousand dollars (\$70,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the BIDDER within any twelve-month period is five hundred thousand dollars (\$500,000) or more, the BIDDER is required under Title 54, Chapter 11, Code of Virginia (1950), as amended, to be licensed as a "Class A Contractor." If a CONTRACT is fifteen hundred dollars (\$1,500) or more but less than seventy thousand dollars (\$70,000), the BIDDER is required to be registered as a "Class B Contractor." The BIDDER shall place on the outside of the envelope containing the BID and shall place in the BID over his signature whichever of the following notations is appropriate, inserting his contractor license or registration number:

Licensed Class A Virginia Contractor
No. _____

Registered Class B Virginia Contractor
No. _____

If the BIDDER shall fail to provide this information on his BID or on the envelope containing the BID and shall fail to promptly provide said information to the PUBLIC BODY in writing when requested to do so before or after the openings of BIDS, he shall be deemed to be in violation of Section 54.1-1112 of the Code of Virginia (1950), as amended, and his BID will not be considered.

If CONTRACT is less than \$1,500, licensure is not required under Title 54, Chapter 11, Code of Virginia (1950), as amended; registration as a Class B contractor is required only if work is for land irrigation or construction of a water well to reach groundwater.

d. The PUBLIC BODY reserves the right to disqualify any contractor and refuse to accept the BID of any BIDDER which has been convicted, or entered a plea of guilty or nolo contendere in any federal or state court to any charge involving any unlawful, corrupt or collusive practice involving a public contract either federal, state, or local, or which has been determined in any judicial proceeding to have violated any antitrust bid-rigging or collusive practice statutes in connection with any public contract, or against whom such formal criminal prosecution or other judicial proceeding has been initiated.

6. Bid Bond

Requirements (for bids not exceeding \$100,000): All bids for construction contracts in excess of \$25,000, but not exceeding \$100,000 should be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia. The amount of the bid bond should not exceed five percent of the amount bid. The alternative forms of security provided in Section 2.2-4338 of the VPPA are acceptable.

Requirements (for bids exceeding \$100,000): Section 2.2-4336 of the VPPA requires that all bids for construction contracts in excess of \$100,000 MUST be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid. The alternative forms of security provided in Section 2.2-4338 of the VPPA are acceptable provided that approval shall be only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

SAMPLE

(Items a., b., and c. are one sample.)

- a. Any BID exceeding one-hundred thousand dollars (\$100,000) shall be accompanied by a bid bond from a surety company selected by the BIDDER which is legally authorized to do business in Virginia in the amount of five percent (5%) of the amount of the bid. In lieu of a bid bond, a BIDDER may furnish a certified check or cash escrow in the face amount required for the bond. Such bid guarantee shall be submitted with the understanding that it shall guarantee that the BIDDER will not withdraw his bid during the period of (30-60-90) days following the opening of BIDS; that if his BID is accepted, he will enter into a formal CONTRACT with the PUBLIC BODY in accordance with the Form of Agreement included as a part of the CONTRACT DOCUMENTS, and that the Standard Performance Bond and the Standard Labor and Material Payment Bond will be given. In lieu of a performance bond or a payment bond, a BIDDER may furnish a certified check or cash escrow in the face amount required for the bond. If approved by the attorney of (name of political subdivision) after determining that the alternate form of security proffered affords protection to the (name of political subdivision)'s equivalent to a corporate surety's bond, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. And further, that in the event of the withdrawal of said BID within said period, or failure to enter into said CONTRACT and give said bonds within ten (10) days after he has received notice of acceptance of his BID, the BIDDER shall be liable to the PUBLIC BODY for the lesser of (i) the difference between the BID for which the bond was written and the next low BID, or (ii) the face amount of the bid bond. This amount represents the damage to the PUBLIC BODY on account of the default of the BIDDER in any particular hereof.
- b. The bid guarantees will be returned to all except the three lowest BIDDERS after the formal opening of bids. The remaining bid guarantees will be returned after the PUBLIC BODY and the accepted BIDDER(S) have executed the CONTRACT and the Performance Bond and the Payment Bond have been delivered to the PUBLIC BODY.
- c. If the required CONTRACT and bonds have not been executed within (30-60-90) days after the date of the opening of the BIDS, then the bid guarantee of any BIDDER will be returned upon his request, provided he has not been notified of the acceptance of his BID prior to the date of such request.

7. Receipt and Opening of Bids

- a. It is the responsibility of the BIDDER to assure that his BID is delivered to the place designated for receipt of bids and prior to the time set for receipt of bids. NO BIDS received after the time designated for receipt of bids will be considered.
- b. BIDS will be opened at the time and place stated in the advertisement, and their contents made public for the information of BIDDERS and others interested who may be present either in person or by representative. The officer or agent of the Grantee, whose duty it is to open them, will decide when the specified time has arrived. No responsibility will be attached to any officer or agent for the premature opening of a BID not properly addressed and identified.

8. Errors in Bids

Requirements: Under Section 2.2-4330 of the VPPA, a bidder may withdraw his bid if the price bid was substantially lower than the other bids due solely to a mistake, therein, provided the bid was submitted in good faith, and the mistake was a clerical one as opposed to a judgment mistake and was due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made in the compilation of the bid, which unintentional arithmetic error or intentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The Grantee MUST select one of two procedures, as set forth under Section 2.2-4330, and MUST state the chosen procedure in the advertisement for bids. Under procedure B(2) for the withdrawal of bid due to error, the bidder must submit his original work papers, documents and materials used in the preparation of the bid within one day after the fixed date for submission of bids and at or prior to the time fixed for bid openings either in person or by registered mail. Under this procedure, the bids shall be opened one day following the time fixed by the public body for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined in Section 2.2-4330 of the VPPA and withdraw his bid. Under procedure B(2), the contract shall not be awarded by the public body until the two-hour period has elapsed. The proof of such mistake shall be proved only from the original work papers, documents and materials as delivered.

Under procedure B(1) the bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure. Under procedure B(2) the Grantee must hold bids for a period of one day before opening. Under procedure B(1) the bids are accepted and immediately opened and publicly read allowed at the stated time bids are due. Consequently, procedure B(1) is strongly recommended and included as the sample.

SAMPLE

The BIDDER (for a public construction contract, other than a contract for construction or maintenance of public highways), must submit to the PUBLIC BODY or designated official his original work papers, documents, and materials used in the preparation of the BID within two day after the conclusion of the bid opening procedure. Such work papers must be in an envelope or package separate and apart from the envelopes containing the BID and marked clearly as to the contents and shall be delivered by the BIDDER in person or by registered mail. Such mistake must be clerical as opposed to judgmental and actually due to an unintentional arithmetic error or an unintentional omission that can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used for the preparation of the bid sought to be withdrawn.

Failure of a BIDDER to submit his original work papers, documents and materials used in the preparations of his BID at the time, date and place required shall constitute a waiver by the BIDDER of his right to claim any mistake in his BID.

No bid may be withdrawn due to error when the result would be the awarding of the contract on another BID of the same BIDDER or of another BIDDER in which the ownership of the withdrawing BIDDER is more than five percent (5%).

If a bid is withdrawn due to error, the lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a BID shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the CONTRACT is awarded or otherwise benefit, directly or indirectly, from the performance of the PROJECT for which the withdrawn BID was submitted.

If the public body denies the withdrawal of a bid under the provisions of section 11-54 of the Code of Virginia, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible bidder.

9. Cancellation, Rejection of Bids; Waiver of Informalities

Requirements: Section 2.2-4319 of the VPPA which is consistent with 24 CFR Part 85. Reasons for cancellation or rejection must be made part of the contract file.

SAMPLE

The PUBLIC BODY reserves the right to waive informalities in bids and to cancel or reject any and all bids.

10. Award of Contract

Requirements: Federal requirements prohibit making an award to contractors or subcontractors who are debarred by the Department of Labor or the Department of Housing and Urban Development or who are not in compliance with the Equal Employment Opportunity requirements. The Virginia Department of Housing and Community Development prohibits awards to contractors or subcontracts who are debarred by an agency of the Commonwealth of Virginia.

Both State and Federal requirements provide that a responsive bid from the lowest responsible bidder shall receive the award. However, negotiation with the lowest responsible bidder is acceptable to both levels of government WHEN the Invitation to Bid specifies the conditions. Section 2.2-4318 of the VPPA provides, "unless cancelled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price with available funds. However, such negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein (emphasis added)."

When negotiation is not provided for, bids are non-negotiable. That is, when the lowest bid exceeds the dollars allocated for construction, the Grantee CANNOT negotiate with the low bidder so as to bring the contract within the available funds. To avoid bids exceeding available funds that would necessitate re-advertising, the bid proposal can be so structured that selected items are bid separately and can be deducted, if needed.

SAMPLE - (Negotiation)

Unless cancelled or rejected, the responsive BID from the lowest responsible BIDDER shall be accepted as submitted, except that if the BID from the lowest responsible BIDDER exceeds available funds, the PUBLIC BODY or designated official may negotiate with the apparent low BIDDER to obtain a contract within available funds. However, such negotiation may occur only when the low responsive and responsible BID does not exceed the available funds by more than five (5) percent and such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the Invitation to Bid.

Negotiation only upon eliminating deductive items, may, however, be more restrictive than the intent of Federal and State requirements. In addition to deductive items, what about negotiation with the lowest bidder to lower his bid or reduce unit price or reduction in scope of work? With respect to reduction in scope of work, Grantees should proceed with caution. Where bonds have been sold will the bond holder object and where an agency has given approval or issued a permit pursuant to a complete project, will the agency object to the reduction? In any event, negotiation is allowable ONLY when the conditions and procedures are described in writing and approved by the Grantee prior to issuance of the Invitation to Bid and summarized therein.

SAMPLE - (Negotiation)

Unless cancelled or rejected, if the lowest base responsive BID submitted by a responsible BIDDER does not exceed the amount of funds available, the contract will be awarded on the base bid only. In the event such bid exceeds the amount of funds available, the PUBLIC BODY may consider the deductive items, in the order listed, and apply to all bidders to determine the lowest base responsive BID submitted by a responsible BIDDER.

NOTE: The second sentence in the above sample for non-negotiation applies ONLY when deductive items are called for in the specifications.

NOTE: In listing deductive items, whether under negotiation or non-negotiation, the order of listing has no universal meaning. The specifications should state the order of elimination desired. Furthermore, there is no law or regulation that prohibits the Grantee from reserving the right of not accepting any deduction they choose not to accept, provided such right is stated in the Invitation to Bid or Instructions for Bidders.

11. Additional Language Required Regardless of Whether Negotiation or Non-Negotiation Occurs:

- a. The PUBLIC BODY is prohibited from making an award to contractors or approving an award to subcontractors for any contract/subcontract in excess of \$10,000 who are debarred by the United States Department of Labor, the Department of Housing and Urban Development or by an agency of the Commonwealth of Virginia, or who are not in compliance with the Federal Equal Employment Opportunity requirements.
- b. Approval of a proposed subcontract award cannot be given by the PUBLIC BODY unless and until the proposed subcontractor has submitted the Bidder Compliance Statement, Certification Regarding Equal Employment

Opportunity, and a Certification of Bidder Regarding Debarment by Agency of the Commonwealth of Virginia, subject to the provisions of #11a, above. Although the BIDDER is not required to attach such Certifications by proposed subcontractors to his BID, the BIDDER is herein advised of these requirements so that appropriate action can be taken to prevent subsequent delay in subcontract awards.

C. Form for Bid Proposal

The form for the bid proposal is to be developed by the Public Body. The form should be consistent with the language provided in PART B of this section, "Developing Instructions for Bidders," Item 5, "Preparation and Submission of Bids."

THIS PAGE INTENTIONALLY LEFT BLANK

I. SAMPLE CONTRACT DOCUMENTS FOR CDBG-FUNDED CONSTRUCTION CONTRACTS

INDEX

CD - 1.	Sample Invitation to Bid - Option Number 1
CD - 2.	Sample Invitation to Bid - Option Number 2
CD - 3.	Sample Bid Bond
CD - 4.	Sample Certification of Bidder Regarding Debarment by Agency of the Commonwealth of Virginia
CD - 5.	Sample Agreement
CD - 6.	Sample Standard Labor and Material Payment Bond
CD - 7.	Sample Standard Performance Bond

II. REQUIRED CONTRACT DOCUMENTS (“Goldenrod Inserts”) INCLUDE:

CD - 8.1	General Conditions - Part I required for all construction contracts except housing rehabilitation of less than 8 units.
CD - 8.2	General Conditions - Part II (Required of all contracts for construction except housing rehabilitation of less than 8 units.
CD - 8.3	General Conditions - Part III (Required under certain construction contracts.)



Call your DHCD Community Development Specialist for a copy of the current “Goldenrod Inserts.”

THIS PAGE INTENTIONALLY LEFT BLANK

Invitation to Bid Option Number 1

Applies when Procedure (1) is used for withdrawal of bid due to error, when erosion control measures are not required, and a pre-bid conference is not desired.

Sealed bids in duplicate for the _____
_____ at _____
_____ will be received at the office of
_____ until _____ o'clock, local prevailing time, on _____
and then publicly opened and read aloud. Withdrawal of bids due to error shall be
according to Section 2.2-4330.B.1 of the Virginia Public Procurement Act.

The bidder shall give notice in writing of his claim of right to withdraw his bid
within two business days after the conclusion of the bid opening procedure and shall
submit original work papers with such notice.

Contract is to be awarded on a _____ basis.
Contract documents, including Instructions for Bidders, drawings and specifications, may
be examined at the following locations:

Contract documents may be obtained from _____
upon deposit for \$_____ for each set. Deposits will be refunded to each actual
bidder upon return of the documents in good condition within fifteen (15) days after bid
opening.

Bids must be accompanied by a bid guarantee as specified in the Instructions for
Bidders.

Qualifications of bidders will be required as detailed in the Instructions for
Bidders. Details include: contracts on hand (amount of each contract and anticipated
dates of completion), major equipment available for this contract, experience in

construction similar to this project, credit available, and default on previous contracts or failure to complete any work awarded.

Bidders must be licensed as a Class A contractor or registered as a Class B contractor in the Commonwealth of Virginia. The bidder's attention is directed to the Code of Virginia, Title 54.1, Chapter 11.

This is a federally assisted project. Bidders and contractors performing work under this advertisement are bound by the requirements of President's Executive Order 11246 as amended by Executive Order 11375; Title VI of the Civil Rights Act of 1964; Section 109 of Title 1 of the Housing and Community Development Act of 1974, as amended; Section 3 of the Housing and Urban Development Act of 1968; the Immigration Reform and Control Act of 1986; the Davis-Bacon Act; the Copeland "Anti Kickback" Act; the Contract Work Hours and Safety Standards Act; and Public Law 100 202. The bidder's attention is called to the "Equal Opportunity Clause" and the goals and timetables for minority and female participation in each trade and to the fact that not less than minimum wages set forth in the contract documents must be paid.

By: _____ (*Public Body*)

Invitation to Bid Option Number 2

Applies when Procedure (2) is used for withdrawal of bid due to error, when negotiation may be permitted, when erosion control measures are required, and pre-bid conference is used.

Sealed bids in duplicate for the _____
_____ at _____
will be received the office of _____ until _____
o'clock, local prevailing time, on _____. The bids will be publicly opened
and read aloud (no less than 24 hours after receipt of bids) at _____ o'clock, local
prevailing time, on _____.

Withdrawal of bids due to error shall be according to Section 2.2-4330.B.2 of the Virginia Public Procurement Act. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed. Unless cancelled or rejected, the responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the Public Body or designated official may negotiate with the low bidder to obtain a contract within available funds. Negotiation will occur only when the low responsive and responsible bid does not exceed the available funds by more than 5 percent and will be based only upon eliminating independent deductive items specified in the invitation to bid. Contract is to be awarded on a _____ basis. Contract documents, including Instructions for Bidders, drawings and specifications, may be examined at the following

locations:

Contract documents may be obtained from _____
_____ upon deposit of \$_____ for each set. Deposits will be refunded to each actual bidder upon return of the documents in good condition within fifteen (15) days after bid opening.

Bids must be accompanied by a bid guarantee as specified in the Instructions for Bidders. A pre bid conference will be held on (time and date) in (or at) (location). Qualifications of bidders will be required as detailed in the Instructions for Bidders. Details include: contracts on hand (amount of each contract and anticipated dates of completion), major equipment available for this contract, experience in construction similar to this project, credit available, and default on previous contracts or failure to complete any work awarded. Bidders must be licensed as a Class A contractor or registered as a Class B contractor in the Commonwealth of Virginia. The bidder's attention is directed to the Code of Virginia, Title 54.1, Chapter 11.

This is a federally assisted project. Bidders and contractors performing work under this advertisement are bound by the requirements of President's Executive Order 11246 as amended by Executive Order 11375; Title VI of the Civil Rights Act of 1964; Section 109 of Title 1 of the Housing and Community Development Act of 1974, as amended; Section 3 of the Housing and Urban Development Act of 1968; the Immigration Reform and Control Act of 1986; the Davis-Bacon Act; the Copeland "Anti Kickback" Act; the Contract Work Hours and Safety Standards Act; and Public Law 100 202. The bidder's attention is called to the "Equal Opportunity Clause" and the goals and timetables for minority and female participation in each trade and to the fact that not less than minimum wages set forth in the contract documents must be paid. Construction shall comply with the requirements contained in the (*Locality's Name*) Erosion Control Manual (or the erosion control plan included as a part of the technical specifications).

(Public Body)

By:_____

Bid Bond

KNOW ALL MEN BY THESE PRESENTS: That (Here insert full name and address or legal title of Contractor), as Principal, and (Here insert full name and address or legal title of Surety), as Surety, are held and firmly bound unto the (Here insert name and address of Public Body), as Obligee, in the amount of _____ Dollars (\$_____) being FIVE PERCENT OF THE DOLLAR VALUE OF THE BID, for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted a certain bid attached hereto and hereby made a part hereof to enter into a contract in writing for the _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall not withdraw his bid during the period of (30 60 90) days following the opening of bids, and if his bid is accepted enter into a formal contract in accordance with the Agreement included as a part of the Contract Documents and that the Standard Performance Bond and the Standard Labor and Material Payment Bond be given, then this obligation shall be void; otherwise it shall remain in full force and effect and the Principal and Surety will be liable to the Obligee for the lesser of (1) The difference between the bid for which the bond was written and the next low bid, or (2) The face amount of the bid bond.

Signed and sealed this ____ day of _____, 20__.

(Principal) Seal

(Witness)

By: _____
(Name and Title)

(Surety) Seal

Resident Virginia Agent

By: _____
(Attorney in Fact)

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF _____

_____ of _____, to wit:

I, _____, a notary public in and for the _____ aforesaid, in the State aforesaid, do certify that personally appeared before me in my aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____ and recorded in the Clerk's Office of the _____ of _____, in Deed Book No. _____, page _____, that said power of attorney has not been revoked; that the said company is legally qualified to do business in Virginia, and that the said _____ thereupon, in the name and on behalf of the said company, acknowledged the foregoing writing and its act and deed.

My term of office expires _____, 20__.

Given under my hand this _____ day of _____, 20__.

Notary Public

Registration Number

Certification of Bidder Regarding Debarment by Agency of the Commonwealth of Virginia

This is to certify that this person/firm/corporation has not been barred from bidding on contracts by any agency of The Commonwealth of Virginia, nor is this person/firm/corporation a part of any firm/corporation that has been barred from bidding on contracts by any agency of The Commonwealth of Virginia.

Name of Official

Title

Firm or Corporation

Date

THIS PAGE INTENTIONALLY LEFT BLANK

Agreement

THIS AGREEMENT, entered into as of this _____ day of _____, 20____, by and between _____ hereinafter called the "PUBLIC BODY" and _____ hereinafter called the CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____.
2. The CONTRACTOR will furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the WORK required by the CONTRACT DOCUMENTS on or before a date to be specified in a written "NOTICE TO PROCEED" issued by the PUBLIC BODY and to complete the same within _____ consecutive calendar days thereafter unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS. The CONTRACTOR further agrees to pay, as liquidated damages, the sum of \$_____ for each consecutive calendar day thereafter until the completion and acceptance of the WORK by the PUBLIC BODY as hereinafter provided in Section 25 of the General Conditions: Part I.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$_____, or as shown on the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

- (A) Invitation to BID
- (B) Instructions for BIDDERS
- (C) BID
- (D) BID BOND (or other legal alternative)
- (E) Agreement
- (F) General Conditions: Part I
- (G) General Conditions: Part II
- (H) Special Conditions
- (I) Payment BOND (or other legal alternative)
- (J) Performance BOND (or other legal alternative)
- (K) NOTICE OF AWARD
- (L) NOTICE TO PROCEED
- (M) CHANGE ORDERS
- (N) DRAWINGS prepared by _____
numbered _____ through _____, and dated _____, 20__.
- (O) SPECIFICATIONS prepared or issued by _____
_____, dated _____, 20__.
- (P) ADDENDA:
 - No. _____, dated _____, 20__
 - _____, dated _____, 20__
 - _____, dated _____, 20__
 - _____, dated _____, 20__
 - _____, dated _____, 20__

6. The PUBLIC BODY will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions: Part I such amounts as required by the CONTRACT DOCUMENTS.

7. The CONTRACTOR will receive instructions from and issue WRITTEN NOTICES to the ENGINEER as set forth in the General Conditions: Part I. The ENGINEER shall be designated as (Name of Project Engineer), the Project Engineer representing (Name of Engineering Firm), or an alternate or successor as designated and provided to the CONTRACTOR by WRITTEN NOTICE.
8. The CONTRACTOR will receive instructions from and issue written notices to the PUBLIC BODY as set forth in the General Conditions: Part I and Part II. The authorized representative of the PUBLIC BODY shall be designated as (Name of Project Manager), the Project Manager, or an alternate or successor as designated and provided to the CONTRACTOR by WRITTEN NOTICE.
9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF: The parties hereto have executed or caused to be executed by their duly authorized official, this agreement in (_____) copies each of which shall be deemed an original on the date first above written.

(Public Body):

BY _____
NAME _____
TITLE _____

ATTEST:

NAME _____
TITLE _____

(Contractor):

BY _____
NAME _____
ADDRESS _____

ATTEST:

NAME _____
TITLE _____

THIS PAGE INTENTIONALLY LEFT BLANK

Standard Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH THE PERFORMANCE BOND IN FAVOR OF THE OBLIGEE, CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT. KNOW ALL MEN BY THESE PRESENTS: That *(Here insert full name and address or legal title of Contractor)*, as Principal, and *(Here insert full name and address or legal title of Surety)*, as Surety, are held and firmly bound unto *(Here insert full name and address or legal title of Public Body)*, as Obligee, for the use and benefit of claimants as herein below defined, in the amount of _____ Dollars (\$_____), for the payment thereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated _____, 20____, entered into a contract with Public Body for _____

_____ which contract is by reference expressly made a part of this bond. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and separately agree with the Obligees that every claimant as herein defined, who has not been paid in accordance with the terms of the Contract before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligees shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. Unless claimant, other than having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Obligees, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Obligees or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one (1) year after the date of substantial completion it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this _____ day of _____, 20__.

(Principal)

Seal

(Witness)

By: _____

(Name and Title)

(Surety)

Seal

(Resident Virginia Agent)

By: _____

(Title)

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF _____

_____ of _____, to wit:

I, _____, a notary public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ personally appeared before me in my _____ aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____, and recorded in the Clerk's Office of the _____ of _____ in Deed Book No. _____, page _____, that said power of attorney has not been revoked; that the said company is legally qualified to do business in Virginia, (and when the contract exceeds \$100,000), that the said company is listed in the latest issue of the U.S. Treasury Circular 570 and the penal sum is within the maximum specified for such company in said Circular 570; and that the said _____ thereupon, in the name and on behalf of the said company, acknowledged the foregoing writing as its act and deed.

My term of office expires _____, 20__.

Given under my hand this _____ day of _____, 20__.

Notary Public

Registration Number

THIS PAGE INTENTIONALLY LEFT BLANK

Standard Performance Bond

KNOW ALL MEN BY THESE PRESENTS: That *(Here insert full name and address or legal title of Contractor)*, as Principal, and *(Here insert full name and address or legal title of Surety)*, as Surety, are held and firmly bound unto the *(Here insert name and address of Public Body)*, as Obligee, in the amount of _____ Dollars (\$_____), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS: Principal has by written agreement dated _____, 20____, entered into a contract with Public Body for _____ which contract is by reference expressly made a part of this bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Principal shall promptly and faithfully perform said Contract and the required warranty period is over, then this obligation shall be null and void; otherwise it shall remain in full force and effect. Provided, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Obligee of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alterations, extension, or forbearance being hereby waived.

Signed and sealed this _____ day of _____, 20____.

_____	_____	_____
(Witness)	By:	(Principal) Seal
		(Name and Title)
_____		_____
(Resident Virginia Agent)	By:	(Surety) Seal
		(Attorney in Fact)

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF _____

_____ of _____ to wit:

I, _____, a notary public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ personally appeared before me in my aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____, and recorded in the Clerk's Office of the _____ of _____, in Deed Book No. _____, page _____, that said power of attorney has not been revoked; that the said company is legally qualified to do business in Virginia, (and when the contract exceeds \$100,000), that the said company is listed in the latest issue of the U.S. Treasury Circular 570 and the penal sum is within the maximum specified for such company in said Circular 570; and that the said _____ thereupon, in the name and on behalf of the said company, acknowledged the foregoing writing as its act and deed.

My term of office expires _____, 20____.

Given under my hand this _____ day of _____, 20____.

Notary Public

Registration Number