

## CONSTRUCTION MANAGEMENT

*This chapter will discuss process to employ while managing construction activities.*

The Program Administrator is responsible for a consistent flow of information, monitoring, and eliminating any factors that might jeopardize the quality of work and compliance with state and federal regulations. In order to fulfill these responsibilities, Grantees must document progress and construction activities. The Program Administrator must recognize importance of project documentation. Thorough records help to track construction process, payment schedules, and any concerns related to work paid with CDBG funds. In addition to a good record keeping, grantees shall establish the following:

- ✓ standardized written procedures
  - for the applicants, and
  - for their contractors
- ✓ lines of communication
- ✓ procedures to manage, monitor and document work and progress
- ✓ process to resolve claims and disputes
- ✓ reporting process

### Payment process

It is important to inform the contractor about the process you employ to manage payment requests upon completion of work. Grantees shall design local procedures to maintain consistency. The items to be included in a local procedures manual may specify quality of the work, number of payments per project, conflict resolution process, standard documentation, etc.

There are some CDBG requirements to consider when drafting local policy and procedure's manual:

1. Payment may be made to a contractor ONLY after a Contractor's Payment Request has been completed and signed by all parties (see sample form, page 46)
2. Payment may be made for work done or materials purchased and on site only — NO ADVANCE PAYMENTS.
3. Each request for progress payment shall contain:
  - a. The contractor's certification that the work for which the progress payment has been requested has been performed in accordance with the terms of the contract
  - b. Certification by the CDBG inspector that necessary inspections have been made and the work has been satisfactorily performed in accordance with the contract
  - c. The signature of the CDBG applicant denoting approval of the work for which payment is requested.
  - d. Lien waivers for all work and materials.

4. Upon receipt of a completed Contractor's Payment Request, the Program Administrator shall approve and make payment to the contractor in an amount not to exceed 80% of the amount due the contractor for work satisfactorily completed.

PAYMENT TO CONTRACTORS MUST BE IN THE FORM OF A TWO-PARTY CHECK MADE OUT TO THE CONTRACTOR AND THE PROPERTY OWNER.

The remainder due the contractor shall be withheld pending satisfactory completion of the rehabilitation project and successful final inspection.

## Dispute Resolution

1. In the event a dispute arises between the applicant and the contractor, the Administrator shall use Rehabilitation Contract as the base to make the determination. The rule of thumb is that items not covered by the Rehabilitation Contract are not going to be considered. No changes can be made to the Rehabilitation Contract during the construction period, unless approved in writing by all parties.
2. The State of Wisconsin introduced the “Right to Cure Law”, including the process of disputes between the contractors and their clients. The brochure may be found at <http://dsps.wi.gov/Documents/Industry%20Services/Forms/UDC/Publications/SB-UdcRightCureBrochureV4.pdf>
3. The contractor must be given the opportunity to correct his or her work. If a contractor has demonstrated that he or she is not available to, or capable of, making the appropriate repairs in an adequate or a timely manner, another contractor may be brought in to make the required repairs.
4. Administrator, shall be requested to obtain appropriate corrective action from the contractor. **No payment shall be made on the rehabilitation contract until the contractor has satisfactorily completed the necessary action.**
5. When a second contractor is brought in to repair work done by another contractor, the additional cost of the repairs, if any, must be added to borrower’s loan.

### Note

**No payment may be made for the work improperly done.**

5. When a contractor fails to begin all or a portion of a rehab project, the homeowner must notify the contractor, in writing, that if the project is not begun, or adequate progress made, by a specified date, the contract will be cancelled. The entire project may be re-bid or awarded to the next highest bidder, and the mortgage securing the loan adjusted accordingly. It is recommended that language reflecting this requirement be included in the rehab contract.

6. Although, monitoring of construction activities shall be responsibility of the homeowner, the Program Administrator shall advise the applicant of any noncompliance in the rehabilitation work or of any incorrect invoice submitted by the contractor if the work completed is not in accordance with the requirements of the Rehabilitation Contract.
7. The applicant, with the assistance of the Program Administrator, shall be requested to obtain appropriate corrective action from the contractor. **No payment shall be made on the rehabilitation contract until the contractor has satisfactorily completed the necessary action.**

Note

**Where agreement can't be reached at the local level, the Department of Administration reserves the right to make final decision.**

8. Upon completion of all work, a request for final payment shall be made on the same form as required for progress payments and shall contain the same certification and signatures required for such payments.
9. The contractor's final Request for Payment must include **a lien waiver from the contractor, subcontractor and suppliers, and a copy of each warranty due the owner for the work.** Prior to final payment, the Final Inspection Checklist must be completed and signed by the inspector.
10. Where work is done that triggers compliance with lead-based paint regulations, no payment may be made until the work passes clearance
11. When the property owner is financing part of the rehabilitation work, the property owner shall provide evidence his/her financial capability to do so. If the property owner is financing part of the rehabilitation work, payments to the contractor shall utilize the property owner's money first, and then CDBG funds.
12. If CDBG funds were paid out for work that was not properly done, or for work which had not been adequately inspected and approved, the Grantee must return the improperly issued amount to the CDBG program from the Grantee's general fund. CDBG funds (including CDBG-RLF) may not be used to repay the CDBG program.
13. No payment may be made where the work to be paid for has not been completed properly.

## Termination of Rehabilitation Contract

Rehabilitation contract may be terminated under the following conditions:

- Poor work performance by the contractor and the demonstrated inability to rectify the poor workmanship.
- The cost of repairing poor workmanship and the higher costs of awarding the bid to the next lowest bidder shall be deducted from any amount owed to the initial contractor for work completed. In all cases the contractor shall be given the opportunity to rectify the problem before contract termination procedures are begun. The following procedures shall be used when negotiating a workmanship problem:
  - A meeting shall be held at the job site with the contractors, homeowner, Program Administrator, and CDBG program inspector to attempt to come to a consensus regarding correction of problems.
  - On the second request for correction, the homeowner shall contact the contractor by certified mail notifying the contractor that the workmanship is still poor and specifying the areas that need to be addressed to satisfy the contract. The contractor shall be given a specific time limit by which to make the required repairs.
- Causing undue damages to a homeowner/landlord's property and the inability or unwillingness to correct the damages. The cost of repairing damages will be deducted from any money owed the contractor for work already completed. If the amount owed is insufficient to cover the costs of the damages, the Program Administrator will assist the property owner in filing a claim against the contractor's insurance.
- The inability of the contractor to perform the work within the allotted time.
- Irreconcilable differences between the contractor and the property owner.
- The contractor requests to be removed from the contract. There will be no penalty associated with this request as long as the request is made within 30 days of receiving the Notice to Proceed.
- The contractor has been debarred, suspended, or is otherwise ineligible to work on federal contracts.

## Closeout Procedures

After all funds have been disbursed for the loan, the Program Administrator will prepare a closing statement which shall account for disposition of the CDBG loan. The original signed closing statement shall be retained by the Grantee and a signed copy shall be mailed to the applicant.

The Program Administrator shall review each project file following close out to determine if all documents have been properly executed and are contained in the file.