RACP Key Compliance Guidelines

Please review this material carefully and in its entirety as it is a critical element of the RACP process.

DISTRIBUTION & INCLUSION OF THIS INFORMATION

It is suggested that a copy of this complete document be given to your Project, Construction Manager, and/or Architect so that they are fully aware of the RACP requirements related to each. This document should be included in your bid packages, and should be made an addendum to any and all construction contracts, plans and specifications related to the RACP project.

Compliance with all RACP requirements, including the key items in these guidelines will be monitored frequently throughout the construction phase of your project and will be reviewed once more during the legislatively mandated close-out audit.

1. COMPETITIVE BIDDING REQUIREMENTS

The sole and exclusive bidding requirement for RACP projects is in the Capital Facilities Debt Enabling Act (Act 67 of 2004), which states "Notwithstanding any other provision of law, the solicitation of a minimum of three written bids for all contracted construction work on redevelopment assistance capital projects shall be the sole requirement for the composition, solicitation, opening and award of bids on such projects." Unless the terms of the law change, the Office of the Budget cannot grant waivers for bidding requirements to Grantees.

RACP projects are not subject to separation of trades. You are REQUIRED to solicit a minimum of three (3) bids for "all generally contracted work" being performed within the RACP defined scope of work. You are not required to receive three (3) bid responses. However, you should provide documentation to prove that at least three bids were solicited by providing copies of the solicitation letters (preferably on letterhead of the bidding entity) used in the bidding process. You are not required to select the lowest bidder, but if you do not, you will have to provide a brief written justification for your selection. Note: there is NO threshold level under the RACP program regardless of the size or dollar amount associated with the work to be performed. You need to show that you solicited a minimum of three (3) bids for any contract to be eligible for RACP.

Bidding is acceptable at either the general contractor level (described in option a. below) or at the sub-contractor level (described in option b. below):

a. General Contractor (GC) Level - If you chose to bid at the GC level, please note that the bid should encompass the entire RACP scope of work to be performed including all associated construction work. The dollar amount bid on the project must include 100% of the work to be performed by the GC and the sub-contractors. Bidding at the GC level will require submission of bidding and construction related documents at the GC level only (see Sub-Contractor level below for a distinction)

b. Sub-Contractor Level - If you choose not to solicit three bids for a General Contractor, then you are required to solicit a minimum of three bids for EACH Sub-Contractor covering all trades involved in the project. Note that any self-performed work by a non-bid GC is NOT an eligible cost for reimbursement OR match purposes. Bidding at the Sub-Contractor level will require submission of bidding and construction related documents at the sub level…meaning proof of bidding, construction contracts, payment and performance bonds, insurance etc. will need to be provided for every sub-contractor in the RACP scope.

Professional Services: Professional services associated with the project are not required to be bid as these associated costs are only eligible as match.

Change Orders: Grantees and/or Sub-Grantees are not required to competitively bid out change orders as long as the work was within the RACP scope of the original bid and is less than 20% of the total contract. If a change order is for work beyond the RACP scope of work originally bid, the Grantee will be required to competitively bid out the new scope of work in order to be considered RACP eligible.

2. PENNSYLVANIA STEEL PROCUREMENT ACT

The Office of the Budget cannot grant waivers to the Pennsylvania Steel Procurement Act unless the terms of the law change. All Grantees must comply with the Steel Procurement Act. If a Grantee fails to abide by the Pennsylvania Steel Procurement Act, it does so at its own risk.

In the past, OB only accepted the ST-4 Form (justification for the use of foreign steel) that the Department of General Services (DGS) has exclusively devised to address exceptions linked to the requirements of the Steel Products Procurement Act when it was necessary. Recently, OB has approved the acceptability of two more DGS ST Forms (ST-2, ST-3) with some caveats, providing that the forms are properly filled out. The ST-1 Form will not be accepted by the Office of the Budget. It is not necessary for the ST-2, ST-3, and ST-4 Forms to be notarized.

Please be aware that ST forms are acceptable only in cases where nonstructural steel needs to be addressed. The DGS ST forms do not replace the steel certification forms associated with structural steel. The Office of the Budget will continue to require that steel mill certifications be submitted to demonstrate compliance with the steel requirements.

Visit the DGS website for copies of the three acceptable ST Forms.

It is suggested that the certifications be collected at the time any steel for the project is purchased and delivered for the project to ease the collection process.

Be advised that the Office of the Budget DOES NOT need to approve the ST forms prior to the start of the construction period. The ST forms need to be submitted to demonstrate that compliance, when and where necessary, has been met.

We shall deem as ineligible all contracts that are unable to demonstrate compliance via the submission of steel certifications/ST forms. Therefore, the value of construction contracts associated with non-compliant steel will be removed (both materials and labor costs) from the scope of the project, which may in turn affect the project ability to leverage their full grant amount (project may not receive its full grant).

Recycled products, melted from previously used steel, are acceptable, providing that adequate documentation from the supplier has been furnished. The supplier shall certify that the recycled steel product was produced in the USA.

3. TRADE PRACTICES ACT

In accordance with the Trade Practices Act of July 23, 1968, P.L. 686 (71 P.S. § 773.101 et seq.), the Grantee cannot and shall not use or permit to be used in the work any aluminum or steel products made in a foreign country which is listed below as a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Argentina, Brazil, South Korea, and Spain have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed below, is not permitted:

a. **Argentina**: carbon steel wire rod and cold-rolled carbon steel sheet.
b. **Brazil**: welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; prestressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet; and cold-rolled carbon steel sheet.

c. **South Korea**: welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet; and galvanized steel sheet.
d. **Spain**: certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars; and cold-formed stainless steel bars; prestressed concrete steel wire strand; and certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes; galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars.

Penalties for violation of the above paragraphs may be found in the Trade Practices Act, which penalties include becoming ineligible for public works contracts for a period of three years.

This provision in no way relieves the Grantee of responsibility to comply with those provisions which prohibit the use of foreign-made steel and cast iron products.

4. PUBLIC WORKS CONTRACTORS' BOND LAW (PAYMENT & PERFORMANCE BONDS)

The requirement for 100% payment and performance (P&P) bonds is a state law; the Office of the Budget cannot waive this requirement.

A performance bond must be obtained at 100% of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications, and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded said contract.

A payment bond must be obtained at 100% of the contract amount. Such bond shall be solely for the protection of claimants supplying labor or materials to the Grantee, its contractor or to any of its subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned for the prompt payment of all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

In instances where projects have failed to obtain 100% coverage the State could not release any RACP reimbursements until the project was completely finished and the owner received all final waivers of liens from the various contractors, thereby making the bond coverage moot.

5. PA PREVAILING WAGE ACT

The Office of the Budget cannot grant waivers for the PA Prevailing Wage Act. All Grantees must comply with the act. Grantees that fail to abide by the Prevailing Wage Act do so at their own risk. Please do not assume that PA Prevailing Wage is always consistent with your local union wages.

All projects should apply for a wage determination letter prior to the start of construction by registering the project with the PA Department of Labor and Industry to obtain the prevailing wage rates relevant to your project. This determination sheet will provide the necessary trade classifications for the project, along with their corresponding hourly wage and hourly fringe rates that are required for the certified payrolls required as part of RACP. The wage determination should be obtained within 120 days of the award of construction contracts. If necessary, the Department of Labor and Industry can issue determinations letters after construction has begun.

Prevailing wage information and forms can be found online at the Labor & Industry website.

Certified Payroll Requirements: Grantees and/or Sub-grantees MUST provide **certified payrolls** for all RACP projects to demonstrate compliance with the PA Prevailing Wage Act requirement of RACP. **Certified payroll** reports from all contractors and subcontractors should detail each employee's proper trade classification along with hourly pay rates AND hourly fringe benefit rates, itemized, in compliance with the PA Prevailing Wage Act.

Davis Bacon: If federal funds are included as part of the source of funds in the RACP defined project then Davis Bacon Prevailing Wage Rate requirements would supersede the PA Prevailing Wage rate requirement ONLY if the associated federal funds stipulate that Davis Bacon Prevailing Wage rates are required and the federal funds are not excluded from being able to pay construction cost; for example available only to pay A&E cost; by the project or the grant document.

6. AMERICANS WITH DISABILITIES ACT (ADA)

Typically your architect should provide a letter stating the plans and specs are in compliance with ADA regulations. Additionally, the Grantee agrees to comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the commonwealth through contracts.

7. FIDELITY BONDS

The Grantee shall procure and furnish evidence to OB of fidelity bonds with coverage to be maintained under the administrative title of the position in amounts and for such positions as are reasonably determined by OB. Fidelity Bonding is also commonly known as "Employee Dishonest Insurance." The minimum level of coverage should equal the average monthly RACP reimbursement amount based on the total grant amount.

8. INSURANCE REQUIREMENTS:

a. **Worker's Compensation Insurance** - The Grantee shall provide Worker's Compensation Insurance where required, and shall accept full responsibility for the payment of premiums for Worker's Compensation Insurance and Social Security, as well as income tax withholding and any other taxes or payroll deductions required by law for its employees who are performing services related to the project.

b. **General Liability & Property Damage Insurance** - The Grantee will provide and maintain comprehensive general liability and property damage insurance in the minimum amount of $250,000.00 per person for injury and death in a single occurrence; $1,000,000.00 per occurrence for injury or death of more than one (1) person in a single occurrence; and $500,000.00 for a single occurrence of property damage, and which shall be endorsed to protect the commonwealth.

c. **Flood Insurance** – If the project is wholly or partially within a floodplain, proof of sufficient flood insurance coverage must be provided. In any case, a project is required to provide a copy of a floodplain map of the project area, with the project site being delineated thereon.

Identify Commonwealth as Additional Insured: The commonwealth shall be listed on the above insurance policies as an additional insured. Upon request, the Grantee shall furnish proof of insurance as required by this section to OB.

9. RESTRICTIONS ON GOVERNMENTAL ENTITIES SELLING RACP PROJECTS

Article 8 of the RACP Grant Agreement spells out sale price restrictions for a governmental entity that sells property that was acquired and/or improved with RACP funds. The restrictions are required to insure that the Grantees CANNOT sell the property for a net gain or even recoup the value of the grant in the sale price.