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ALABAMA CDBG INTERGOVERNMENTAL
POLICY LETTER NUMBER 16

REVISION 1

TO: Persons Interested in State CDBG Program

FROM: John D. Harrison
Director

POLICY ON ADVERTISEMENT FOR COMPLETION OF CONSTRUCTION AND
EFFECT ON CLOSEOUT OF CDBG PROJECTS

Advertisements for Completion of Construction Contracts

Act 97-225 became effective on April 22, 1997. The Act amends the Public Works Law found in Title 39 of the Code of Alabama 1975. All public works contracts in excess of \$50,000 are now subject to the competitive bidding requirements of Title 39 supra.

For our purposes, projects funded under CDBG or CDBG authority, the following interpretation of the Public Works Law shall apply. "The contractor shall immediately after the completion of the contract give notice of the completion by an advertisement in a newspaper of general circulation published within the city or county in which the work has been done, for a period of four successive weeks. A final settlement shall not be made upon the contract until the expiration of 30 days after the completion of the notice."

This does not apply to contractors performing contracts of less than fifty thousand dollars (\$50,000) in amount. In such cases the governing body of the contracting agency, to expedite final payment, shall cause notice of final completion of the contract to be published one time in a newspaper of general circulation, published in the county of the contracting agency and shall post notice of final completion on the agency's bulletin board for one week, and shall require the contractor to certify under oath that all bills have been paid in full. Final settlement with the contractor may be made at any time after the notice has been posted for one entire week."

According to the Public Works Law, "Proof of publication of the notice shall be made by the contractor to the authority by whom the contract was made by affidavit of the publisher and a printed copy of the notice published. **If no newspaper is published in the county where the work is done, the notice may be given by posting at the courthouse for 30 days, and proof of same shall be made by the judge of probate, sheriff, and the contractor.**"

The proof of publication can only be made at the completion of the ad (run for four successive weeks) or at the completion of the posting (posted for 30 days) whichever applies.

The law does not specify what the ad should contain, but it should at a minimum contain the name of the contractor, his business address, name of the project, project location, CDBG project number, and any other identifiers that would allow persons who have provided labor, materials, or equipment for the contract to be aware that this "Notice of Completion" pertains to their labor, materials, or equipment.

Definitions

"Public works" shall mean "the construction, repair, renovation, or maintenance of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvements to be constructed, repaired, renovated, or maintained on public property and to be paid, in whole or in part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise."

"Immediately" shall mean within one week of completion. "After the completion" shall mean one day after the fourth advertisement runs.

"Completion" shall mean when the grantee/owner is satisfied that all work has been finished in accordance with the terms and conditions of the contract, and that no work within the terms and conditions of the contract remains to be done. Additionally, all non-construction contract conditions have been met. The final inspection form shall not be executed until this point is reached.

Effect on Closeout

Advertisement for Notice of Completion may not start until after the Chief Elected Official and the project Engineer/Architect execute the Final Inspection Certification. The Final Inspection Certification may not be executed until all work, including punch list items, has been completed. Additionally, the closeout public hearing may not be held until after the execution of the Final Inspection Certification.

The Alabama Public Works Law requires that construction retainage be held for 30 days after the last Notice of Completion advertisement appears in the local paper. Additionally, the CDBG Budget/Final Financial Form submitted with closeout documents is designed to reflect actual expenditures. Therefore, closeout documents reflecting settlement of all construction contracts should not be submitted until after the 4-week advertisement period and expiration of the 30-day hold from the last advertisement. Additionally, all funds other than administration retainage should have been drawn prior to the submittal of the closeout documents.

Overmatch should be reflected on the CDBG Budget/Final Financial Form submitted at close out and does not require an amended budget. To ensure timely closeout, amendments should be submitted prior to the closeout. The CDBG Budget/Final Financial submitted at closeout should not include budget adjustments other than deobligation of funds and/or overmatch reporting. A clean up budget should not be submitted.

Effective Date: Immediately