



Hurricane Sandy Disaster Recovery for Historic Properties Grant Program

Grant Program Guidelines & Requirements August 2014

Funded by the U.S. Department of the Interior, National Park Service
Emergency Supplemental Historic Preservation Fund

Administered in the Commonwealth of Pennsylvania by:

Pennsylvania Historical and Museum Commission
Bureau for Historic Preservation
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GRANT PROGRAM GUIDELINES & REQUIREMENTS**Program Purpose**

The purpose of this funding is to provide technical assistance and emergency repairs to historic and archaeological resources impacted by Hurricane Sandy. Only documented hurricane-related damage is eligible for grant assistance.

Process

The process for applying for funding is two-fold:

1. Letter of Interest / Pre-application
2. Grant Application

Property owners that successfully prove to meet the program requirements defined below during Part 1(Pre-application) have been invited to submit this formal grant application (Part 2) for review.

Program Overview

On behalf of the U.S. Department of the Interior, National Park Service, funding is available to individuals and nonprofit organizations for the rehabilitation of historic properties damaged by Hurricane Sandy. Historic properties are defined as those either listed in or eligible for listing in the National Register of Historic Places. Owners of historic properties may apply for grants if the properties are confirmed by the staff of the Pennsylvania Historical and Museum Commission ("PHMC") as meeting the following requirements:

The damage must be shown to be the result of Hurricane Sandy. These grants may not be used to address damage or deterioration that existed prior to the storm. Acquisition of real property is not an eligible cost for assistance. The following are examples of eligible expenses:

- Repairing or replacing roofing damaged by high winds
- Roof or structural repairs caused by fallen trees or limbs
- Repairs to masonry foundations, retaining walls, or interior finishes damaged by heavy rains or flooding during Hurricane Sandy
- Archaeological site stabilization
- The restoration, rehabilitation, stabilization, preservation or protection of a documented historic landscape

Program Requirements

The property must be listed in, or eligible for listing in, the National Register of Historic Places. To determine if your property has been evaluated for the National Register, please consult the PHMC's [Cultural Resources Geographic Information System](#). If you have any questions, please contact the PHMC [Project Manager for Hurricane Sandy Recovery](#).

- For individual properties that are not already listed in the National Register, the PHMC will need to confirm that your building:
 - Is over 50 years old
 - Is historically or architecturally significant
 - Retains its architectural integrity and historic appearance
- The PHMC may request that a Pennsylvania Historic Resource Survey Form be completed to determine the property's National Register eligibility.
- For properties in a National Register listed or eligible historic district, the building must "contribute to" the significance of the surrounding district.

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- **Religious Properties:** As of July 3, 2014, religious institutions may participate in the Hurricane Sandy Disaster Relief Grant Program consistent with the National Historic Preservation Act (NHPA) Section 101(e)(4)(16 U.S.C. §470 (e)(4)), which authorizes certain grants for religious properties in the National Register of Historic Places. Religious properties listed in the National Register are eligible to participate in this grant assistance program because the federal government has a strong interest in preserving all sites of historic significance regardless of their religious or secular character; because eligibility for this program extends to a broad class of beneficiaries defined without reference to religion; and because the criteria for funding is applied neutrally. These elements show that this grant program is aimed solely at preserving historic structures and does not constitute an endorsement of religion by the government.
- Federally owned properties are not eligible for assistance from this grant (see Chapter 13, Part D.14 of the [Historic Preservation Fund Grants Manual](#)).

The PHMC can only reimburse owners for those repair expenses that were *not covered* by the owner's property or flood insurance. Work that was paid for with money from your insurance company is ***not eligible*** for reimbursement. Owners may apply for any difference between the actual cost of the completed work and the insurance settlement.

- This is a reimbursement grant – grantees are paid upon the completion of an eligible project.
- The applicant must have the full funding for the project available and restricted for the purposes of this project as of the date of the application. If an applicant would like to request a phased project, the applicant must have full funding for the first phase of the project.
- PHMC may reimburse applicants for projects that have been completed or where a contract has been signed with a contractor prior to December 1, 2013.
- For all new projects, the applicants must have the funding for the project available and restricted for the purposes of the project by the date of application. If an applicant would like to request a phased project, the applicant must have full funding for the first phase of the project.
- All plans and specifications must be reviewed and approved by the SHPO *prior to work commencing*. The development of plans and specifications are an eligible cost under this grant.

The completed (or proposed) repairs must meet the Secretary of the Interior's [Standards for the Treatment of Historic Properties](#).

- All projects must be documented with photographs showing the building/property before and after the project.
- Projects that have already started or been completed will be evaluated based on those photos and on contractor cost estimates or invoices.
- Repairs that have not yet begun or that are underway need to be described in detail and approved by the PHMC staff before the work may begin or continue. The completed project must then be approved before the final reimbursement can be made.

Grant awards will be based on funding availability. Awards range from \$5,000 - \$50,000. The PHMC has the discretion to award a grant higher than \$50,000 on a case-by-case basis. Special justification must be made in the application for grant requests in excess of \$25,000 and such projects must be reviewed and approved by the National Park Service.

Hurricane Sandy Disaster Recovery grants will be competitive and scored according to a pre-determined set of criteria. See pages 4-5 for the scoring criteria to be used by PHMC staff in evaluating your application for grant funds.

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(Program Requirements, Continued)**

Submission Requirements – Part 1: At the time of the pre-application process, the owner(s) was/were required to submit a letter of interest to the PHMC describing the historic property, the damage, and outlining the needed repairs. Additionally, the following materials were required as part of the pre-application package:

- A street map showing the property's location
- Photographs of the property before the storm (if any)
- Photographs of the damage that occurred during the storm
- Photographs showing any work that has already been completed
- Receipts documenting any work completed
- Documentation of the property's National Register status, if known. (Owners are welcome to submit a letter of interest even if the property's National Register status is unknown or has never been designated.)
- Information on any property insurance claims and settlements related to the storm damage
- Any additional documentation that may be helpful to show the extent of the damage

Additional materials not requested by the PHMC during the pre-application process (Part 1), but which are **required for Part 2, include the following:**

- Insurance and Bonding documentation
 - Proof of insurance letter and copy of current insurance policy (including flood insurance, if applicable)
 - Bonding certificate and copy of current policy, if applicable
- Certain Contracting documentation as required per federal law (see Contracting Selection Process (*Appendix A*) and Construction Contract Requirements (*Appendix B*) for more details)
- Documentation on the use of American-made materials per the Buy American Act (see *Attachment 5*)

The PHMC and its representatives reserve(s) the right to contact applicants for additional documentation as necessary or per the request of the federal grantor agency, the National Park Service.

Other Conditions

- **Grant Application and Grant Agreement:** All grant recipients will be required to complete an official grant application and will be required to enter into a formal grant agreement with the Pennsylvania Historical and Museum Commission.
- **Environmental Compliance:** As this grant program is federally funded, compliance with applicable environmental federal laws, such as Section 106 of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), are required. The NPS and the PHMC will be primarily responsible for carrying out the reviews under these acts, but grant recipients will be part of the consultation. The NPS and PHMC may require additional information from the applicant as the environmental review processes progress.

The NPS may prohibit use of grant funds for projects that will adversely affect historic properties. "Adverse Effect" is defined as altering the characteristics that qualify the Historic Property for the National Register, in a manner that would diminish the property's integrity.

- **Professional Qualifications Standards:** For new projects that involve the rehabilitation of a property or any design work, plans and specifications are required to be completed by a Historical Architect that meets the Secretary of the Interior's [Professional Qualifications Standards](#) under 36 CFR Part 61.
- **Contract Selection Process and Construction Contract Requirements:** Grantees, including those who have already completed the work for which they will receive grant funding, must comply/must have complied with the procedures in **appendices A and B** when selecting contractors and professional consultants for the work to be supported through federal funds under this program.

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(Other Conditions, Continued)**

- **Buy American Act Compliance:** The purchase of supplies, equipment, and construction materials with grant assistance must comply, with the greatest extent practicable, with the requirements of the Buy American Act (43 CFR 12, Subpart E). Subpart E of the Buy American Act may be reviewed in *Attachment 5*. Contractors must be notified of this law when purchasing materials for repair work and as such, language from the law should be included in contracts per §12.730 and §12.830 (as appropriate; note difference between “supplies” and “construction materials”). In instances where exceptions to the law may be permitted per 43 CFR 12.710(d) and (e), and 43 CFR 12.715, these instances must be documented and submitted to the PHMC.
- **Preservation Covenant:** All grantees must agree to assume, after completion of the project, the total cost of continued maintenance, repair and administration of the grant-assisted property in a manner satisfactory to the Secretary of the Interior. Accordingly, the owners of properties receiving grant assistance must sign an Historic Preservation Covenant recorded on the property deed with the State Historic Preservation Officer prior to reimbursement. The term of the covenant is dependent on the grant funding levels as follows:
 - Up to \$50,000 – a five year covenant
 - \$50,001 up to \$99,999 – a ten year covenant
 - \$100,000 and above – a twenty year covenant

A model Covenant which the PHMC will use as a template for preparing a specific document for each grant recipient is provided in *Appendix C*.

Local government fees associated with recording this covenant on the property deed are eligible for reimbursement through this grant program.

- **Acknowledgement of Project Support:** Each grantee must erect a project sign at the project site and be maintained in place throughout the project term. The sign must identify the project, the historic significance of the property, and the support provided by the National Park Service, Department of the Interior and the PHMC. The cost of fabricating and erecting the sign is an eligible cost under this grant program. The PHMC will provide the sign. The grant recipient is responsible for erecting the sign in a visible location for viewing by the general public.
- **Nomination of Non-Listed Properties to the National Register:** Historic properties not already listed in the National Register of Historic Places will be nominated. Private property owners must consent to having their property listed in the National Register.
- **Project Completion Timeframe –** Grant recipients must complete their projects within an eighteen (18) month period. Projects will generally not be extended beyond the eighteen (18) month implementation period. There are a few situations in which the grantee may petition the PHMC for additional time to complete the project. Projects not completed in a timely manner carry the risk of not being reimbursed and funds tentatively allocated for the project may be reallocated by the PHMC.

Project Selection Criteria

Grant applications will be reviewed using the criteria and questions outlined below. The applicant should prepare all application materials in a manner that is mindful of these criteria. Applications will be scored based on a maximum score of 50 points. Each criterion/question is worth 5 points.

1. Is the application accurate and complete? (5 pts.)
2. Are the supporting documents, including the required insurance documentation, thorough? (5 pts.)
3. Is the need for the project clearly presented in the application through narratives and photographs? (5 pts.)
4. Is the proposed work thoroughly described in the application? (5 pts.)

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(Project Selection Criteria, Continued)

5. Does the project appear to be achievable within the grant implementation period of 18 months? (5 pts.)
6. Did/will the project correct the storm-related damage and provide for the long-term preservation of the property? (5 pts.)
7. Is there a detailed and realistic plan for starting and completing this project on time, including a schedule or timetable of work activities? (5 pts.)
8. Is the budget complete, detailed, and accurate? (5 pts.)
9. Is there a plan to promote this project to the public and help to raise awareness of the importance of preserving the community's historic resources? (5 pts.)
10. Does this project have the potential to be a statewide or national model for the recovery of historic resources following a disaster? (5 pts.)

GRANT PROGRAM GUIDELINES & REQUIREMENTS**APPENDIX A: Contract Selection Process**

Grant recipients (**including those who have already completed the work for which they will receive grant funding**) must comply with the procedures below when selecting contractors and professional consultants for the work to be supported through federal funds under this Program. Grant recipients must maintain records sufficient to detail the selection process and provide copies of this material to the PHMC. These records will include, but are not necessarily limited to, the following information:

- Justification for which type of selection process will be used/was followed (see four types below);
- Type of contract to be/was signed (The allowed contract types are: are: cost-reimbursement, firm-fixed-price, fixed-price incentive, or cost-plus-a-fixed-fee); and
- List of bidders and the reasons for their selection or rejection.

Small Contracts (under \$100,000): In order to ensure fair and open competition, grant recipients will:

- Provide evidence that three contractors who are qualified to accomplish the project work were contacted and requested to provide a written quote, and
- If the contract costs are expected to exceed \$10,000, provide contract bidders with a copy of the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity,” (*Attachment 1*).
- When the grant recipient is a state agency, inform all contract bidders that any bid must include wage costs which comply with the federal and state prevailing wage requirements (Davis-Bacon Act (40 U.S.C. 276a to a-7); and the Pennsylvania Prevailing Wage Act of 1961 (P.L. 987, No. 442). NOTE: Other Grant recipients, particularly public entities, should seek advice from legal counsel and/or the Pennsylvania Department of Labor and Industry as to the applicability of these laws to their projects.
- Other bidding requirements may apply, depending on the nature of the services sought.

If all quotes received exceed \$100,000, then the contract must be formally bid following the process for Competitive Sealed Bids. Although not required, it is recommended that an architect or engineer oversee the preparation of the contract documents and the construction process if the nature of the work is complex and the project would benefit from this level of expertise. Such professional services are an allowable grant cost.

Competitive Sealed Bidding (over \$100,000): Projects for which the costs are expected to exceed \$100,000 must be advertised for bid through a competitive bidding process. For this method of choosing a contractor, there should be at least two responsible bidders who are willing and able to compete, and the selection of the successful bidder must be able to be made principally on the basis of price. The services of a professional architect or engineer are required for these projects to help ensure that all contracting requirements are met. Professional consultant fees may be included as part of the project budget. Following is a summary of the requirements for this type of bidding process:

- The formal advertisement must state that the project is supported in part through federal funds and that compliance with all applicable Federal, State, and local laws, rules, and regulations is required.
- The architect/engineer must prepare a written bidding document (specification) which sets forth all requirements which contractors must fulfill as well as any factors to be used in evaluating the bids or proposals including a deadline for completion of project work.
- The bidding document must avoid unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders.
- The “Invitation to Bid” must be publicly advertised at least three times in a major newspaper in the area where the project is located (which can be either three successive times in one publication, or published one time simultaneously in three different publications), as well as through direct mail, and it must clearly define the services needed in order for the bidders to properly respond to the invitation. The Invitation to Bid must also indicate that: the project is funded under a federal grant and subject to compliance with all federal contracting laws; the property is listed or is eligible for listing in the National Register of Historic Places; and all work must be consistent with the Standards. Sufficient time must be allowed between the time of announcing the bid and the date set for opening the bids (usually 20 to 30 days).
- Bid documents must contain a copy of the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity,” (*Attachment 1*).
- Each bid submitted must be accompanied by a certified check or a bid bond payable to the grant recipient equal to 10% of the bid (a percentage rather than a specific dollar amount is acceptable).

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- All bids are to be opened publicly at the time and place stated in the Invitation to Bid.
- After all bids are received, they must be tabulated and summarized in a manner that will facilitate comparison of their relative advantages and disadvantages. In awarding contracts which include additive and deductive bid items, the award procedure should include a disclosure of the selection priority for these items. This tabulation and/or summary must be signed and dated to provide documentation as to the basis for awarding the bid.
- The bid should be awarded to the contractor whose bid conforms to all the material terms and conditions of the invitation for bid, and is the lowest responsible contractor. There may be sound business reasons why the lowest overall bid is not chosen. In making a determination that a contractor is not responsible, the grant recipient may consider contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. The grant recipient's reasons for not choosing the lowest overall bidder must be documented in writing.
- The PHMC must be consulted when there is a failure to receive at least two bids, if there a great disparity in bid quotations, or if the grant recipient intends to award a contract to other than the low bidder.
- Written notice must be sent to all bidders notifying them of the results of the contract selection process. Once the contract is awarded, all bid bonds for non-successful bidders are to be returned.
- All bids may be rejected when there are sound documented business reasons in the best interest of the grant recipient. If all bids are rejected as too costly, and the scope of work is then substantially altered, the work must be re-advertised, after the PHMC has approved the change in scope.
- If no bid or no acceptable bids are received, a contract can be negotiated for the same scope of work if each bidder is given notice of this intent and a reasonable opportunity to negotiate. In such circumstances, notices concerning negotiations should be sent to all bidders, if any, by certified mail with "signed receipt requested" to provide documentation of compliance. Any material change in the invitation to bid, including changes in specifications, would necessitate re-advertising.

Competitive Negotiation: Grant recipients should engage in competitive negotiation when selecting architects or engineers or other professional services. The selection process is carried out by preparing a Request for Proposal (RFP). The RFP is distributed by mail and other appropriate means to an adequate number of responsible sources to permit reasonable competition consistent with the nature of the work. Responses to the RFP from all responsible sources should be encouraged and considered. An RFP must include the following:

- A description of the nature of the work.
- All significant factors to be used in evaluating the RFP and their relative importance.
- Mechanisms for technical evaluation of the proposals received.
- Determinations of responsible firms for the purpose of written or oral discussions and selection of contract award.
- Resumes, references, and past work experiences related to this type of being solicited.

The grant recipient may negotiate with more than one of the sources submitting offers. An award may be made to the firm whose proposal will be most advantageous to the grant recipient, price and other factors considered, and may be either a fixed-price or cost-reimbursable type contract. Unsuccessful firms should be notified promptly.

Non-Competitive Negotiation: Non-competitive negotiation involves selecting a contractor by soliciting from only one source, or if, after soliciting a number of sources, competition is determined inadequate. Prior PHMC approval is required before proceeding with this type of contract selection process.

GRANT PROGRAM GUIDELINES & REQUIREMENTS**APPENDIX B: Construction Contract Requirements**

Contracts are written agreements between the grant recipient and the successful contractor. These detail the responsibilities, standards, and fees as agreed to by the two parties. Contract awards are to be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions that were advertised during the contract selection process. The four contract types allowed under this Program are: cost-reimbursement contracts, firm-fixed-price contracts, fixed-price-incentive contracts, or cost-plus-a-fixed-fee contracts. Certain federal contracting requirements must be adhered to in the contract documents, as indicated.

All Contracts: State laws regarding overtime pay and working conditions apply (see, e.g. Pennsylvania's Minimum Wage Act (35 P.S. § 333.101 et seq.) and 34 Pa. Code § 231.1 et seq). The federal Contract Work Hours and Safety Standards Act (40 USCA sections 3701 et seq.) may also apply.

Prevailing Wage: When the grant recipient is a state agency, in addition to other contract requirements specified herein, contractors must employ a wage scale that is in compliance with federal (Davis-Bacon Act (40 U.S.C. 276a to a-7) and state (Pennsylvania Prevailing Wage Act of 1961 (P.L. 987, No. 442)) prevailing wage requirements.

NOTE: Other Grant recipients, particularly public entities, should seek advice from legal counsel and/or the Pennsylvania Department of Labor and Industry as to the applicability of these laws to their projects.

Contracts which exceed \$10,000: When a federally-assisted construction contract exceeds \$10,000, the contractor and all sub-contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin, and

are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. In such cases, the following documents must be included in the contract:

- Equal Opportunity Clause (*Attachment 2*)
- Standard Federal Equal Employment Opportunity Construction Contract Specification (*Attachment 3*)
- Certification of Non-Segregated Facilities (*Attachment 4*) (to be signed by contractor and each sub-contractor)

Contractors are to provide notice of contract awards exceeding \$10,000 to the Director of Office of Federal Contract Compliance (OFCCP) within ten (10) days after the award. The notice must include the name, address and telephone number of the contractor, employer identification number (EIN), dollar amount of contract, estimated starting and completion dates, contract number, and the geographical area in which the contract is to be performed. Notice is to be sent to OFCCP's Philadelphia Regional Office at: U.S. Department of Labor, OFCCP, Robert N.C. Nix, Sr. Federal Building, 900 Market Street, Suite 311, Philadelphia, PA 19107 (215-587-4121 or fax 215-597-9447). Contractors must comply with the following requirements:

- Provide to OFCCP on a monthly basis the Workforce Utilization Report (Form CC-257);
- Maintain non-segregated facilities;
- Expressly state in all employment solicitation or advertising that the contractor is an Equal Opportunity Employer;
- Display an Equal Opportunity Poster in the workplace; and
- Allow OFCCP personnel access to site, records, and employees for purpose of determining the contractor's compliance status.

Contracts which exceed \$100,000: In addition to the contract requirements specified above, contracts must contain the following:

- Provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanction and penalties as may be appropriate;
- Suitable provisions for termination by the grant recipient, including the manner by which it will be effected and the basis for settlement
- Provisions requiring compliance with certain federal laws and state and federal administrative orders including:
 - Executive Order 11246, entitled " Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60) (see attachments 1, 2, and 3)
 - The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) which prohibits Contractors from inducing employees to give up any part of the compensation to which they are otherwise entitled;

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(APPENDIX B: Construction Contract Requirements, Continued)**

- Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738, and Environmental Protection Agency (EPA) regulations (40 CFR Part 15), which prohibit the use of facilities included on the EPA List of Violating Facilities and a requirement to report violations to both the US Department of the Interior, National Park Service (NPS), and the EPA.
- Provision to the effect that the grant recipient, NPS and their duly authorized representatives, and the PHMC and their duly authorized representatives, must be afforded access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcription for a period of 3 years after final payments have been received and all other pending matters are closed.

After a formal contract is signed, the contractor must provide a performance and payment bond payable to the grant recipient in the amount of 100% of the contract which is conditioned upon compliance with and performance of all terms of the contract and the related plans and specifications, and which includes the following:

- Provision for payment in full to every firm providing material for or performing labor in performance of the contract.
- Provision to indemnify and hold harmless from all costs, damages and expenses growing out of or by reason of the successful contractor's failure to comply with and perform the work and complete the contract in accordance with its terms, the following parties: the Grant recipient, NPS and their duly authorized representatives, and the PHMC and their duly authorized representatives.

Upon receipt of the performance and payment bond, the contractor's certified check or bid bond is to be returned. In addition to the performance and payment bond, each contractor must purchase adequate insurance for the performance of the contract, and agree to indemnify and hold harmless and to defend against all legal and equitable actions brought from all claims of liability which is or may be the result of the contractor's actions during the performance of the contract, the following parties: the grant recipient, NPS and their duly authorized representatives, and the PHMC and their duly authorized representatives.

Contract change orders must not be used to increase the cost of a contract which was deliberately underbid to get the award. Change orders to adjust the cost of the contract without an increase in scope may be adjusted for materials and labor costs only and the fixed fee profit amount must remain the same.

GRANT PROGRAM GUIDELINES & REQUIREMENTS**APPENDIX C: Model Preservation Covenant**

In order to ensure that a public benefit will be derived from the expenditure of federal funds and also that the historic significance and integrity of the qualities which made the property eligible for listing in the National Register of Historic Places are preserved, the owner of the historic property must agree to maintain and repair the historic property in a manner consistent with the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties. To fulfill this requirement, the grant recipient and the PHMC execute an Historic Preservation Covenant that is recorded against the property deed. The Covenant is binding on the current legal owner(s) and all future owners for a period of time that is determined by the amount of the federal grant award, as follows:

- Up to \$50,000 – a five year Covenant
- \$50,001 up to \$99,999 – a ten year Covenant
- \$100,000 and above – a twenty year Covenant

The following is a model Covenant which the PHMC will use as a template for preparing the specific document for each grant recipient.

HISTORIC PRESERVATION COVENANT

THIS HISTORIC PRESERVATION COVENANT, made this the ____ day of _____, 20__, by and between **[Property Owner Name]**, the owner(s) of the subject property, hereinafter referred to as Grantor, and the Pennsylvania Historical and Museum Commission ("PHMC"), hereinafter referred to as Grantee.

WITNESSETH:

WHEREAS, Grantor is(are) the owner(s) of certain real property more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference as if copied fully herein in words and figures;

WHEREAS, Grantor has applied for and has been determined eligible for an award under the Hurricane Sandy Disaster Recovery Grant Program ("Program") for Historic Properties administered by the Grantee's Bureau for Historic Preservation (The Pennsylvania State Historic Preservation Office) pursuant to withdrawals from the Historic Preservation Fund, authorized by the Disaster Relief Appropriations Act, , Pub. L. No. 113-2, hereinafter referred to as the "Act";

WHEREAS, The terms of the Hurricane Sandy Disaster Recovery Grant Program for Historic Properties require the Grantee to hold a protective covenant on any property rehabilitated using funds provided by the Act, as a means of protecting the public's investment in that property;

WHEREAS, Grantee is authorized to accept preservation covenants to protect property significant in national and Pennsylvania history and culture in accordance with the Pennsylvania Historic Preservation Act, 37 Pa.C.S. §§ 501-512 and the Pennsylvania History Code, 37 Pa.C.S. § 101 et seq.;

WHEREAS, In accordance with the program requirements, the Grantor desires to grant to the Grantee, and the Grantee desires to accept, a preservation covenant, (hereinafter referred to as "Covenant") in gross for the period specified herein below;

NOW, THEREFORE, in Consideration of the receipt of grant funds from the Historic Preservation Fund and other good and valuable consideration the receipt of which is hereby acknowledged, and pursuant to the requirements of the Act, the Grantor does hereby voluntarily grant and convey unto the Grantee a preservation Covenant on, to and over the subject property described herein in "Exhibit A," subject to the following terms:

1. Purpose:

It is the purpose of this Covenant to ensure the preservation, stabilization, rehabilitation or repair of the subject property, and to provide planning and technical assistance to preserve the historical and architectural integrity of

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the features, materials, appearance, workmanship, and environment that rendered the subject property eligible for listing in the National Register of Historic Places;

2. The Grantor's Covenant to Maintain:

The Grantor agrees at all times to maintain and repair any structures on the property so as to preserve the historical and architectural integrity of the features, materials, appearance, workmanship, and environment that rendered the subject property eligible for the National Register of Historic Places. The Grantor's obligation to maintain shall require replacement, repair, and restoration by the Grantor whenever necessary to preserve the subject property.

3. Maintenance of Historic Integrity:

- a. The Grantor shall take all reasonable steps to prevent inappropriate, incompatible, and/or irreversible changes to the subject property in the future and agrees for the life of this Covenant, that neither the Grantor, nor his/her heirs, executors, administrators and assigns, shall begin any work, make any modifications or improvements to said subject property without the express written approval of the Grantee, said approval shall not be unreasonably withheld.
- b. In no case shall approval be granted for any proposed work, modifications or improvements that do not comply with the Secretary of the Interior's *Standards for the Treatment of Historic Properties*, as determined by PHMC review.
- c. Before any such approval may be granted, the Grantor shall submit to the Grantee any plans, specifications, designs and/or any other information pertinent to the proposed modification or improvement to the subject property. In addition thereto, the Grantor shall submit a timetable for the proposed modifications or improvements.
- d. The said Grantor, his/her heirs, executors, administrators and assigns, acknowledge, covenant and agree for the life of this Covenant the existing structures shall not be demolished, removed, or razed except as provided herein.

4. Construction and Archaeological Resources:

- a. For modification or improvement to the subject property that involves ground disturbance, the Grantee may require archaeological investigation at the Grantor's expense. In the event that archaeological materials are discovered during ground-disturbing activities, work shall temporarily cease, and the Grantee shall be consulted for instructions prior to proceeding with the work. Any archaeological work shall be conducted in accordance with the Secretary of the Interior's *Standards and Guidelines for Archaeological Documentation* (48FR 447344-37) and any such standards and guidelines as the Grantee may specify.

5. Right of Entry:

- a. That the said Grantor, his/her heirs, executors, administrators and assigns, acknowledge, covenant, and grant unto the Grantee the right to enter unto the subject property upon reasonable notice for the purpose of making periodic inspections of said property to ensure compliance with this Covenant.
- b. The Grantee may, following reasonable written notice to the Grantor, institute suit(s) to enjoin any violation of the terms of this covenant by ex parte, temporary, preliminary and/or permanent injunction,

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(APPENDIX C: Model Preservation Covenant, Continued)**

including prohibitory and/or mandatory injunctive relief, and to require the restoration of the subject property to the condition and appearance that existed prior to the violation. The Grantee shall also have available all legal and other equitable remedies to enforce the Grantor's obligations hereunder.

- c. In the event that the Grantor is found to have violated any of its obligations, the Grantor shall reimburse the Grantee for any costs or expenses incurred in connection with the Grantee's enforcement of the terms and conditions of this Covenant, including, but not limited to, court costs, and attorneys', architectural, engineering, and expert witness fees. In addition thereto, the Grantor shall be liable for the return of all funds awarded under the Act with interest in an amount to be established by a court of competent jurisdiction.
- d. Exercise by the Grantee of one remedy hereunder shall not have the effect of waiving or limiting any other remedy, and the failure to exercise any remedy shall not have the effect of waiving or limiting the use of any other remedy or the use of such remedy at any other time.

6. Public Access:

The Grantor agrees to provide public access to view the grant-assisted work or features no less than 12 days a year on an equitably spaced basis. The dates and times when the Subject Property will be open to the public must be annually published and provided to the Grantee. At the option of the Grantor, the relevant portions of the Subject Property may also be open at other times in addition to the scheduled 12 days a year. Nothing in this agreement will prohibit a reasonably nondiscriminatory admission fee, comparable to fees charged at similar facilities in the area. The Grantor is not required to provide public access to the property if the property is in residential use.

7. Sale of the Property:

- a. The Grantor shall promptly notify the Grantee in writing of any proposed sale of the property and provide the opportunity for the Grantee to explain the terms of this Covenant to potential new owners prior to the closing of the sale. The existence of this Covenant shall be disclosed to any potential purchaser as well as to any real estate professional involved in the listing of the said property.
- b. The obligations imposed by this Covenant shall be effective for _____ years and shall run with the land and be binding on the Grantor, its successors, and assigns. This Covenant shall extend to and be binding upon the Grantor and the Grantee, their respective successors in the interest and all persons hereafter claiming under or through the Grantor or the Grantee, and the words "the Grantor" and "the Grantee" when used herein shall include all such persons, including but not limited to heirs, executors, administrators, successors or assigns.
- c. Anything contained herein to the contrary notwithstanding, an owner of the subject property shall have no obligation pursuant to this instrument where such owner shall cease to have any ownership interest in the property by reason of a bona fide transfer. The restrictions, stipulations, and covenants contained in this Covenant shall be inserted by the Grantor, verbatim or by express reference, in any subsequent deed or other legal instrument by which the Grantor divests himself of either the fee simple title to or any lesser estate in the property or any part thereof, including by way of example and not limitation, a lease of all or a portion of the property.

8. Recording of the Covenant:

- a. The Grantee may convey, assign, or transfer this Covenant to a unit of federal, state, or local government or to a similar local, state, or national organization whose purposes, inter alia, are to promote preservation

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(APPENDIX C: Model Preservation Covenant, Continued)**

of historical, cultural, or architectural resources, provided that any such conveyance, assignment, or transfer requires that the purpose for which the Covenant was granted will continue to be carried out.

- b. The Grantor shall do and perform at its own cost all acts necessary for the prompt recording of this instrument in the land records of the Pennsylvania County in which the property is located and situated.

9. Dissolution of the Covenant:

- a. The Grantor and the Grantee hereby recognize that circumstances may arise that may make impossible the continued ownership or use of the property in a manner consistent with the purpose of this Covenant and necessitate extinguishment of the Covenant. Such circumstances may include, but are not limited to, partial or total destruction of the building(s) resulting from casualty. Extinguishment must be the result of a judicial proceeding in a court of competent jurisdiction. In no event shall the repayment of financial assistance received under the terms of the Act be deemed justification to extinguish this Covenant.
- b. If all or any part of the property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, the Grantor and the Grantee shall join in appropriate proceedings at the time of such taking to recover full value of those interests in the property that are subject to the taking and all incidental and direct damages resulting from the taking. After the satisfaction of prior claims and net of expenses reasonably incurred by the Grantor and the Grantee in connection with such taking, the Grantor and the Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs above unless otherwise provided by law.

10. Enforcement of the Covenant:

The following provisions shall govern the effectiveness, interpretation, and duration of the Covenant.

- a. It is the intention of the parties that the terms of this Covenant be interpreted to advance and affect its purpose of preserving the historical and architectural integrity of the property, and, therefore, any rule of construction designed to limit or restrict the alienation or use of property shall not apply to the construction or interpretation of this Covenant.
- b. This instrument may be executed in duplicate originals, one of which may be retained by the Grantee and the other, after recording, to be retained by the Grantor. In the event of any disparity between the counterparts produced, the recorded counterpart shall govern in all cases.
- c. This instrument is made pursuant to the Act, but the invalidity of such Act regulations or any part thereof shall not affect the validity and enforceability of this Covenant according to its terms, it being the intent of the parties to agree and to bind themselves, their successors, and their assigns for _____ years to each term of this instrument whether this instrument be enforceable by reason of any statute, common law, or private agreement in existence either now or hereafter. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter thereof.
- d. Nothing contained herein shall be interpreted to authorize or permit the Grantor to violate any ordinance or regulation relating to building materials, construction methods, or use. In the event of any conflict between any such ordinance or regulation and the terms hereof, the Grantor promptly shall notify the Grantee of such conflict and shall cooperate with the Grantee and the applicable governmental entity to accommodate the purposes of both this Covenant and such ordinance or regulation.

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(APPENDIX C: Model Preservation Covenant, Continued)**

- e. To the extent that the Grantor owns or is entitled to development rights which may exist now or at some time hereafter by reason of the fact that under any applicable zoning or similar ordinance the property may be developed to a more intensive use (in terms of height, bulk, or other objective criteria related by such ordinances) than the property is devoted as of the date hereof, such development rights shall not be exercisable on, above or below the property during the term of the Covenant, nor shall they be transferred to any adjacent parcel and exercised in a manner that would interfere with the Purpose of the Covenant, without approval of such plans by the PHMC in regard to their impact upon the historic integrity of the property under covenant.

11. Planned Changes to the Property Which May Impact Historic Integrity:

If circumstances arise under which an amendment to or modification of this Covenant would be appropriate, the Grantor and the Grantee may by mutual written agreement jointly amend this Covenant, provided that no amendment shall be made that will adversely affect the qualification of this Covenant or the status of the Grantor under any applicable laws, including the laws of the Commonwealth of Pennsylvania. Any such amendment shall be consistent with the protection of the Preservation values of the property and the purpose of this Covenant; shall not limit its duration; shall not permit additional development on the property other than the development permitted by this Covenant on its effective date; shall not permit any private inurement to any person or entity; and shall not adversely impact the overall historic and architectural values protected by this Covenant. Any such amendment shall be recorded in the land records of the county in which the Covenant is recorded. Nothing in this paragraph shall require the Grantor or the Grantee to agree to any amendment or to consult or negotiate regarding any amendment.

12. Compliance with Federal Laws:

The Grantor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 (d)), the Americans with Disabilities Act (42 U.S.C. 12204), and with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). These laws prohibit discrimination on the basis of race, religion, national origin, or disability. In implementing public access, where applicable, reasonable accommodation to qualified disabled persons shall be made in consultation with the Grantee. The Grantor will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable, which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

13. Indemnification:

It is agreed that the Grantee in no way assumes any liability or obligation for maintaining, repairing, or administering said property and the Grantor shall hold the Commonwealth of Pennsylvania harmless from and indemnify the Commonwealth against any and all claims, demands, and actions based upon or arising out of any activities performed by the Commonwealth, the Grantee, its officials, employees, and agents under this covenant and shall, at the request of the Commonwealth, defend any and all actions brought against the Commonwealth based upon any such claims or demands.

14. Rights and Remedies:

- a. Failure of the Grantee to exercise any rights or remedies granted under this covenant shall not be construed to be a waiver by the Commonwealth of Pennsylvania and the Grantee of its rights and remedies in regard to the event of default or any succeeding event of default.

**HURRICANE SANDY DISASTER RECOVERY PROGRAM
FOR HISTORIC PROPERTIES**

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(APPENDIX C: Model Preservation Covenant, Continued)

- b. The rights and remedies of the Commonwealth of Pennsylvania and the Grantee provided in this covenant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this covenant.

This HISTORIC PRESERVATION COVENANT may be executed in two counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but both of which together shall constitute one instrument. The said Preservation Covenant shall commence on _____ and shall run for _____.

IN WITNESS THEREOF, the Grantor and the Grantee have set their hands under the seal on the days and year set forth below.

WITNESS OUR SIGNATURES on this the _____ day of _____, 20____.

Owner(s)/Grantor(s)

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF _____

This day personally appeared before me _____, (Grantor(s) who having been first duly sworn by me, acknowledged that they signed and delivered the foregoing instrument on the day and year thereon mentioned.

SWORN TO AND SUBSCRIBED BEFORE ME this the _____ day of _____, 20____.

NOTARY PUBLIC

My commission expires:

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(APPENDIX C: Model Preservation Covenant, Continued)

ACCEPTED ON BEHALF of the Pennsylvania Historical and Museum Commission (Grantee) this the _____ day
of _____, 20_____.

Serena G. Bellew
Deputy State Historic Preservation Officer
Director, Bureau for Historic Preservation, Pennsylvania Historical and Museum Commission

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF DAUPHIN

This day personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named
Serena G. Bellew, who having first been duly sworn to me, that she signed this instrument in such capacity accepting for
the Grantee the benefits hereby on the day and year noted.

SWORN TO AND SUBSCRIBED BEFORE ME this the _____ day of _____, 20_____.

NOTARY PUBLIC

My commission expires:

Grantor's Address:

Grantee's Address:

Pennsylvania Historical and Museum Commission
Bureau for Historic Preservation
Commonwealth Keystone Building, 2nd Floor
400 North Street
Harrisburg, PA 17120-0093

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(APPENDIX C: Model Preservation Covenant, Continued)**

EXHIBIT A TO THE HISTORIC PRESERVATION COVENANT

[Legal Description of the Subject Property from the Deed]

**HURRICANE SANDY DISASTER RECOVERY PROGRAM
FOR HISTORIC PROPERTIES**

GRANT PROGRAM GUIDELINES & REQUIREMENTS

ATTACHMENT 1

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity
(Executive Order 11246)**

1. The Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

TIMETABLES	Goals for Minority Participation for Each Trade	Goals for Female Participation for Each Trade
	11-13%	6.9%

These goals are applicable to all the Contractor's construction work (whether it is federal or federally-assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR 60-4 shall be based on the Contractor's implementation of the Equal Employment Clause, specific affirmative action obligations required by the specification set forth in 41 CFR 60-4.3(a), and the Contractor's efforts to meet the goals established for the geographical areas where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor-to-Contractor or from project-to-project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction sub-contract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Sub-Contractor; and the geographical area in which the contract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the Commonwealth of Pennsylvania.

Excerpted in its entirety from the Historic Preservation Fund Grants Manual (National Park Service, 2007)

GRANT PROGRAM GUIDELINES & REQUIREMENTS**ATTACHMENT 2**

Equal Employment Opportunity Clause

The Grant Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor codified as 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees to the following:

5. 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 the Applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.
6. 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.
7. The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and Applicants for employment.
8. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
9. The Contractor will furnish all information and reports required by Executive Order 11246, and by rules, regulations, and orders of the Secretary of Department of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
10. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in that Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
11. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and 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, so that such provisions will be binding upon each Sub-Contractor or vendor. The Contractor will take such the event a Contractor becomes involved in, or is threatened with, litigation with a Sub- Contractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Grant Recipient further agrees to be bound by the above equal opportunity clause with respect to its own employment practices when participating in federally-assisted construction work; provided, that if the Grant Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Grant Recipient agrees to assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and Sub-Contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, to furnish the administering agency and the Secretary of Labor such

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(Equal Employment Opportunity Clause, Continued)

information as they may require for the supervision of such compliance, and to otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Grant Recipient further agrees to refrain from entering into any contract or contract modification subject to Executive Order 11246, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally-assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractors and Sub-Contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order.

In addition, the Grant Recipient agrees that failure or refusal to comply with these undertakings may cause the administering agency to take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant, contract, loan, insurance, guarantee; refrain from extending any further assistance to the Grant Recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Grant Recipient; and refer the case to the U.S. Department of Justice for appropriate legal proceedings.

Excerpted in its entirety from the Historic Preservation Fund Grants Manual (National Park Service, 2007)

GRANT PROGRAM GUIDELINES & REQUIREMENTS**ATTACHMENT 3**

**Standard Federal Equal Employment Opportunity Construction Contract Specifications
(Executive Order 11246)**

1. Definitions as used in these specifications:
 - a. "Covered area" means the geographic area described in the solicitation from which this contract resulted.
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.
 - c. "Employer identification number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Sub-Contractor at any tier, sub-contracts a portion of the work involving any construction trade, the Contractor/Sub-Contractor shall physically include in each sub- contract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which the contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, the Contractor's affirmative action obligations on all work in the Plan Area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Sub-Contractor participating in an approved Plan is individually required to comply with their obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Sub-Contractors toward a goal in an approved Plan does not excuse any covered Contractor's or Sub-Contractor's failure to take good faith efforts to achieve the Plan's goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of this Exhibit. The goals set forth in the solicitation are expressed as percentages of the total hours of employment and training that the Contractor should reasonably be able to achieve for minority and female utilization in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward these goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women, shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Training must be in accordance with training programs approved by the U.S. Department of Labor.

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(Standard Federal Equal Employment Opportunity Construction Contract Specifications, Continued)

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon the Contractor's efforts to achieve maximum results from these actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or the Contractor's union have employment opportunities available, and maintain a record of the organizations' responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's effort to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the areas which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractors' employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b, above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper; annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction is performed.
 - g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Sub-Contractors with whom the Contractor does or anticipates doing business.
 - i. Direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractors shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(Standard Federal Equal Employment Opportunity Construction Contract Specifications, Continued)

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR 60-3.
 - l. Conduct, at least annually, an inventory and evaluation of at least all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment- related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of the affirmative action obligations (7a through 7p). The efforts of a Contractor association, joint Contractor-union, Contractor-community (or other similar group of which the Contractor is a member and participant), may be asserted as fulfilling any one or more of their obligations under 7a through 7p of these specifications provided that:
- a. the Contractor actively participates in the group,
 - b. makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry,
 - c. ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation,
 - d. makes a good faith effort to meet its individual goals and timetables, and
 - e. can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in substantially disparate manner (for example, even though the Contractor has achieved the goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any sub-contract with any person or firm debarred from government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(Standard Federal Equal Employment Opportunity Construction Contract Specifications, Continued)

13. The Contractor, in fulfilling the obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of this Attachment, so as to achieve maximum results from the efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor will proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions thereof as may be required by the Government, and keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other area residents (e.g., those under the Community Development Block Grant Program).

Excerpted in its entirety from the Historic Preservation Fund Grants Manual (National Park Service, 2007)

GRANT PROGRAM GUIDELINES & REQUIREMENTS**ATTACHMENT 4**

Certification of Non-Segregated Facilities

The federally-assisted construction contractor certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction contractor certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she will not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The federally-assisted construction contractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting room, work area, rest rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom, or otherwise. The federally-assisted construction contractor agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he/she will retain such certifications in his/her files.

Signature

Date

Name and Title of Signer (Please Type or Print)

Contractor Business Name and Address:

Excerpted in its entirety from the Historic Preservation Fund Grants Manual (National Park Service, 2007)

GRANT PROGRAM GUIDELINES & REQUIREMENTS

ATTACHMENT 5

43 CFR 12, Subpart E
Buy American Act Requirements for Assistance Programs

Buy American Act – Supplies

§12.700 Scope.

This subpart implements section 307 of the Omnibus Consolidated Appropriations Act of 1997 (Public Law 104-208, 110 Stat. 3009) and section 501 of the Energy and Water Development Appropriations Act, 1997 (Public Law 104-206, 110 Stat. 2984). For awards made under the authority of section 307(a) of Public Law 104-208, this subpart requires that no funds made available in the Act may be expended by an entity unless the entity agrees that in expending the funds the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c; popularly known as the “Buy American Act”). It applies to procurement contracts under grants and cooperative agreements which provide for the purchase of equipment and products. Section 501 of Public Law 104-206, 110 Stat. 2984, only applies to awards made by the Bureau of Reclamation. In addition, for these awards, there is only a requirement that in providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the Secretary, to the greatest extent practicable, will provide to the entity a notice describing a statement within the Act made by Congress. This statement concerns the sense of the Congress that to the greatest extent practicable, all equipment and products purchased with funds made available in the Act, should be American-made. Therefore, for Fiscal Year 1997 awards, only the requirements in Section 12.700 and 12.710 will apply to awards made by the Bureau of Reclamation.

[61 FR 68667, Dec. 30, 1996]

§12.705 Definitions.

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into the end products.

Concern, as used in this subpart, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, to an individual, partnership, corporation, joint venture, association, or cooperative.

Domestic end product, as used in this subpart, means (a) an unmanufactured end product mined or produced in the United States; or (b) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining if an end product is domestic, only the end product and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the end product and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with Section 12.710(d) (3) and (4) are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic. On acquisitions above \$25,000 in value, components of Canadian origin are treated as domestic.

Domestic offer, as used in this subpart, means an offered price for a domestic end product, including transportation to destination.

End product, as used in this subpart, means those articles, materials, and supplies to be acquired for public use under the grant, cooperative agreement, or procurement contract awarded under the grant or cooperative agreement.

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(43 CFR 12, Subpart E – Buy American Act Requirements for Assistance Programs, Continued)

Foreign end product, as used in this subpart, means an end product other than a domestic end product.

Foreign offer, as used in this subpart, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

Instrumentality, as used in this subpart, does not include an agency or division of the government of a country.

Labor surplus area, as used in this subpart, means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

Labor surplus area concern, as used in this subpart, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

United States, as used in this subpart, means the states thereof, the District of Columbia, and the territories and possessions of the United States.

[59 FR 36715, July 19, 1994, as amended at 61 FR 68668, Dec. 30, 1996]

§12.710 Policy.

(a) In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available under Public Law 104-208, it is the sense of Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(b) In awarding financial assistance under Public Law 104-208, 110 Stat. 3009, bureaus and offices excluding the Bureau of Reclamation will provide to each recipient of the assistance the following notice:

NOTICE: Pursuant to sec. 307 of the Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, 110 Stat. 3009, please be advised of the following:

In the case of any equipment or product that may be authorized to be purchased with financial assistance provided using funds made available in this act, it is the sense of the Congress that entities receiving the assistance should, in expending the assistance, purchase only American-made equipment and products.

(c) In awarding financial assistance using funds made available under Public Law 104-206, to the greatest extent practicable, the Bureau of Reclamation will provide to each recipient of the assistance the following notice:

NOTICE: Pursuant to sec. 501 of the Energy and Water Development Appropriations Act, 1997, Public Law 104-206, 110 Stat. 2984, please be advised of the following:

It is the sense of the Congress, that to the greatest extent practicable, all equipment and products purchased with funds made available in this act should be American-made.

(d) The Buy American Act requires that only domestic end products be acquired for public use, except articles, materials, and supplies—

(1) For use outside the United States;

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(43 CFR 12, Subpart E – Buy American Act Requirements for Assistance Programs, Continued)

- (2) For which the cost would be unreasonable, as determined in accordance with §12.715;
- (3) For which the agency head determines that domestic preference would be inconsistent with the public interest; or
- (4) That are not mined, produced, or manufactured in the United States in sufficient and reasonable available commercial quantities, of a satisfactory quality (see §12.720).
- (e) The grantee's contracting officer may make a nonavailability determination under §12.710(d)(4) for a procurement contract awarded under the grant or cooperative agreement if—
 - (1) The procurement action was conducted by full and open competition;
 - (2) The procurement action was publicly advertised; and
 - (3) No offer for a domestic end product was received; or
- (f) The head of the grantee's contracting activity or designee may make a nonavailability determination under §12.710(d)(4) for any circumstance other than specified in paragraph (e) of this section.

[59 FR 36715, July 19, 1994, as amended at 59 FR 65500, Dec. 20, 1994; 61 FR 39084, July 26, 1996; 61 FR 68668, Dec. 30, 1996]

§12.715 Evaluating offers.

- (a) Unless the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines otherwise, the offered price of a domestic end product is unreasonable when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer (see §12.705), inclusive of duty, by—
 - (1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or
 - (2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.
- (b) The evaluation in paragraph (a) of this section shall be applied on an item-by-item basis or to any group of items on which award may be made as specifically provided by the solicitation.
- (c) If an award of more than \$250,000 would be made to a domestic concern if the 12-percent factor were applied, but not if the 6-percent factor were applied, the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official shall decide whether award to the domestic concern would involve unreasonable cost.

§12.720 Excepted articles, materials, and supplies.

- (a) As indicated in the Federal Acquisition Regulation (FAR), one or more agencies have determined that the articles, materials, and supplies on the list referred to in paragraph (b) of this section are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. This referenced list in paragraph (b) of this section is furnished for information only; an article, material or supply listed therein may be treated as domestic only when the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official has made a determination that it is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality. (b) Refer to the current list of excepted articles, materials, and supplies in FAR 25.108 (48 CFR 25.108).

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(43 CFR 12, Subpart E – Buy American Act Requirements for Assistance Programs, Continued)

§12.725 Solicitation provisions and contract clause.

(a) When quotations are obtained orally, vendors shall be informed that only domestic end products, other than end products excepted on a blanket or individual basis (see §12.720), shall be acceptable, unless the price for an offered domestic end product is unreasonable (see §12.715).

(b) The grantee awarding officer shall insert the clause at §12.730, Buy American Act—Supplies, in solicitations for procurement contracts awarded under the grant or cooperative agreement for the purchase of supplies, or for services involving the furnishing of supplies, for use within the United States.

§12.730 Buy American Act—Supplies.

As prescribed in §12.725, insert the following clause:

BUY AMERICAN ACT—SUPPLIES

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

Components, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product, as used in this clause, means an unmanufactured end product mined or produced in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in paragraphs (b)(2) or (3) of this clause shall be treated as domestic.

End products, as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The contractor shall deliver only domestic end products, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that domestic preference would be inconsistent with the public interest; or

(4) For which the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the cost to be unreasonable (see §12.715).

(End of clause)

Buy American Act – Construction Materials

§12.800 Scope.

This subpart implements the Buy American Act (41 U.S.C. 10). It applies to procurement contracts awarded under a grant or cooperative agreement for the construction, alteration, or repair of any public building or public work in the United States.

GRANT PROGRAM GUIDELINES & REQUIREMENTS**(43 CFR 12, Subpart E – Buy American Act Requirements for Assistance Programs, Continued)****§12.805 Definitions.**

Components, as used in this subpart, means those articles, materials, and supplies incorporated directly into construction materials.

Construction, as used in this subpart, means construction, alteration, or repair of any public building or public work in the United States.

Construction materials, as used in this subpart, means an article, material, and supply brought to the construction site for incorporation into the building or work.

Construction material also includes an item brought to the site pre-assembled from articles, materials, and supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this section, means: (a) An unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. (In determining whether a construction material is domestic, only the construction material and its components shall be considered.) The cost of each component includes transportation costs to the place of incorporation into the construction material and any applicable duty (whether or not a duty-free entry certificate is issued). Components of foreign origin of the same class or kind for which determinations have been made in accordance with §12.810(a)(3) are treated as domestic.

Foreign construction material, as used in this section, means as construction material other than a domestic construction material.

United States (see §12.705).

§12.810 Policy.

(a) The Buy American Act requires that only domestic construction materials be used in construction in the United States, except when—

(1) The cost would be unreasonable as determined in accordance with §12.815;

(2) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that use of a particular domestic construction material would be impracticable; or

(3) The head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see §12.720).

(b) When it is determined for any reasons stated in this section that certain foreign construction materials may be used, the excepted materials shall be listed in the agreement. Findings justifying the exception shall be available for public inspection.

HURRICANE SANDY DISASTER RECOVERY PROGRAM FOR HISTORIC PROPERTIES

GRANT PROGRAM GUIDELINES & REQUIREMENTS

(43 CFR 12, Subpart E – Buy American Act Requirements for Assistance Programs, Continued)

§12.815 Evaluating offers.

(a) The restrictions of the Buy American Act do not apply when the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official determines that using a particular domestic construction material would unreasonably increase the cost or would be impracticable.

(b) When proposed awards are submitted to the head of the grantee organization or a designee at a level no lower than the grantee's designated awarding official for approval, each submission shall include a description of the materials, including unit and quantity, estimated costs, location of the construction project, name and address of the proposed contractor, and a detailed justification of the impracticability of using domestic materials.

§12.820 Violations.

Violation of the Buy American Act in the performance of a procurement construction contract under a grant or cooperative agreement is a cause for debarment. Information concerning a failure to comply with the clause at §12.830, Buy American Act—Construction Materials, shall be promptly reported, investigated, and referred, when appropriate to the appropriate U.S. Department of the Interior employee responsible for administering the grant or cooperative agreement. (For debarment procedures, see subpart D of this part).

§12.825 Solicitation provision and contract clause.

The grantee awarding official shall insert the clause at §12.830, Buy American Act—Construction Materials, in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States.

§12.830 Buy American Act—Construction materials.

As prescribed in §12.825, insert the following clause in solicitations for procurement contracts awarded under a grant or cooperative agreement for construction inside the United States:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

Components, used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

Construction material, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

Domestic construction material, as used in this clause, means (a) an unmanufactured construction material mined or produced in the United States, or (b) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to §12.810(a)(3) of 43 CFR part 12, subpart E shall be treated as domestic.

(b) The contractor agrees that only domestic construction material will be used by the contractor, subcontractors, materialmen, and suppliers in the performance of this agreement, except for foreign construction materials, if any, listed in this agreement.

(End of clause)