

# Attachment D – Program and Special Conditions

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## Program Conditions

1. The Recipient shall demonstrate that progress is being made in completing project activities in a timely fashion.
  - a. Within 120 calendar days of the subgrant award, the Recipient shall complete the following activities:
    - Request approval for all professional service contracts; and
    - Submit an initial payment request for administrative services, if applicable.
  - b. Within 180 calendar days of the subgrant award, the Recipient shall complete the following activities:
    - Complete the environmental review and submit the Request for Release of Funds and Certification (form HUD-7015.15) to DEO for review; and
    - Request a wage decision(s) using DEO form SC-56 for applicable construction activities if points were received on the application for “Readiness to Proceed;”
  - c. The Recipient shall advertise for its construction procurement within 30 calendar days after receiving its Authority to Use Grant Funds (form HUD-7015.16) and DEO’s written acceptance of the plans and specifications if Recipient received points for “Readiness to Proceed” on its Application for Funding.
  - d. If the Recipient did not receive points for “Readiness to Proceed,” it must request a wage decision(s) using DEO form SC-56 at least 30 days before advertising for its construction procurement.

### Financial Consequences:

Failure to comply with any one of the conditions listed above within 15 business days after the specified due date will result in a financial consequence of \$1,000 and \$1,000 per month beyond the due date until the requirement is met; and loss of “Readiness to Proceed” points, where applicable, which will impact the overall score of the application. DEO shall deduct the amount of the assessed financial consequence from the disbursement amount due to Recipient. If Recipient has only one (1) instance of failure to comply with this agreement, DEO, in its sole discretion, may waive assessment of the financial consequence if the submittal is made within 15 business days of the due date.

A justification for the delay and a plan for timely accomplishment shall be submitted to DEO within 15 calendar days of the due date. Any subgrant agreement for which the Recipient has not completed two or more of the activities listed in a. through d. above shall be rescinded unless DEO agrees that the Recipient has provided adequate justification for the delay.

2. The Recipient shall maintain records of expenditure of funds from all sources that will allow accurate and ready comparison between the expenditures and the budget/activity line items as defined in Attachment A - Project Detail Budget and Deliverables and Attachment C - Activity Work Plan.
3. No costs may be incurred prior to the effective date of this Agreement, except for those eligible application preparation costs outlined in the original Small Cities CDBG Application for Funding submitted to DEO, unless pre-agreement costs were approved in writing by DEO.
4. The Recipient shall not exclude any firm from submitting a bid or proposal for any work funded partially or wholly with CDBG funds based on a minimum experience requirement. However, a firm’s experience can be considered as an evaluation factor in the ranking for professional services and taken into account in evaluating the “responsibility” of a firm when determining the “low, responsive, responsible bidder” for services procured through bids, as required by 2 C.F.R. § 200.319(a).

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5. CDBG procurement for consultant services and construction activities requires public notice in a newspaper of general circulation in the county where the Recipient is located. The public notice shall include the following criteria for the procurement process to meet legal requirements and be approved:
  - a. If the notice is published in a newspaper that is located in an Office of Management and Budget (OMB) designated metropolitan statistical area (MSA), only one responsible and responsive bid or proposal is needed to complete the procurement process. If the notice is not published in a newspaper that is located in a MSA, at least three responsible and responsive bids or proposals must be received by the Recipient to complete the procurement process;
  - b. A Recipient, whose newspaper of general circulation is not located in a MSA, may advertise in both a local newspaper and a newspaper in a nearby MSA. In this case, only one responsible and responsive bid or proposal would be needed to complete the procurement process;
  - c. The public notice must be published at least 12 days before the deadline for receipt of the proposals or bids. For construction activities, the public notice period shall conform to section 255.0525, F.S. regarding the numbers of days between publishing the notice and bid opening;
  - d. Nothing in subparagraphs a., b., or c. above shall preclude the Recipient from using additional media to solicit bids related to procurement of professional services and construction activities;
  - e. Each public notice for procurement of CDBG professional services, except for application preparation, must identify either the CDBG funding cycle or the CDBG contract number. In the absence of any identifier, the procurement will be presumed to be for the CDBG funding cycle closest to the publication date of the notice;
  - f. In procuring services for subgrant administration, the public notice or the Request for Proposals must include all the criteria that will be used to evaluate and score the proposals. Any firm that assists the Recipient in developing or drafting criteria used in the Request for Proposals (RFP) shall be excluded from competing for the procurement as required by 2 C.F.R. § 200.319(a); and
  - g. Any RFP which includes more than one service shall provide the following:
    - Proposals may be submitted for one or more of the services;
    - Qualifications and proposals shall be separately stated for each service; and
    - Separate evaluations shall be done on the proposals for each service.

If separate procurements result in one firm being selected for both application and administration services, those services may be combined into one contract provided there are separate scopes of work and a separate fee for each service.
6. A written evaluation, such as a ranking sheet or narrative, shall be prepared for each proposal, ranking or comparing each proposal to the criteria in the published RFP.
7. The Recipient is not required to publish a RFP for subgrant administration if it decides to contract with its Regional Planning Council to administer the subgrant.
8. A Recipient whose application received “Readiness to Proceed” points may use the design engineer for services during construction if DEO determines that the procurement for design services is compliant with 2 C.F.R. part 200 and the RFP specifically included services during construction in the scope of work.
9. For construction procurement, if other funding sources will be included in the bid documents, the activities to be paid for with CDBG funds must be shown separately so that the bid proposal identifies the CDBG activities and the amount of the contract to be reimbursed with CDBG funding.

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10. Construction contracts shall be awarded to the low, responsive and responsible bidder. If all bids exceed the available funds, the Recipient can apply one or more deductive bid alternates to determine the low, responsive and responsible bidder. The Recipient can reject all bids if they exceed the available funds and republish the notice.
11. The Recipient shall request approval of all professional services contracts and/or agreements that will be reimbursed with CDBG funds. Copies of the following procurement documents must be provided to DEO for review:
  - a. A copy of the Request for Proposals (RFP);
  - b. A copy of the RFP advertisement, including an affidavit of publication from the newspaper;
  - c. A list of entities to whom a notification of the RFP was provided by mail or fax (if applicable);
  - d. Documentation of all efforts to get MBE/WBE firms to submit proposals;
  - e. For engineering/architecture contracts, a list of firms that submitted a proposal (only if short-listing procedure was used);
  - f. Completed and signed final evaluation/ranking forms for all firms submitting a proposal and a scoring summary sheet;
  - g. A copy of the cost analysis for administrative services procurements, or if multiple responses to the RFP were received, a copy of the price analysis;
  - h. A copy of a cost analysis for all procurements of engineering services;
  - i. A copy of the minutes from the commission/council meeting approving contract award;
  - j. A copy of the proposed contract;
  - k. Truth-in-Negotiation certification (if not in the contract) for engineering contracts over \$150,000;
  - l. If a protest was filed, a copy of the protest and documentation of resolution;
  - m. The Recipient shall request DEO's approval of a single source procurement if only one firm was considered and the contract exceeds \$35,000. The Recipient shall not enter into a contract to be paid with CDBG funds based on a sole source or single proposal procurement without prior written approval from DEO. Failure to secure prior written approval shall relieve DEO of any obligation to fund the said procurement contract or agreement. DEO shall disallow any payments to the Recipient to fund any contract or agreement based on a sole source or single proposal procurement for which the Recipient has not obtained DEO's approval; and
  - n. If a regional planning council or another local government is selected to administer subgrant activities, the Recipient shall submit only a copy of the contract or agreement and cost analysis information.

DEO will either approve the procurement or notify the Recipient that the procurement cannot be approved because it violates State, Federal, or local procurement guidelines.

The Recipient shall notify DEO in writing no later than 90 calendar days from the effective date of this agreement if it will not be procuring any professional services or if it will be using non-CDBG funds to pay for professional services.

12. Prior to the obligation or disbursement of any funds, except for administrative expenses for all subgrants other than Economic Development subgrants, not to exceed \$5,000, and for Economic Development Grants, not to exceed \$8,000, the Recipient shall complete the following:
  - a. Submit for DEO's approval the documentation required in paragraph 11 above for any professional services contract. The Recipient proceeds at its own risk if more than the specified amount is incurred before DEO approves the procurement. If DEO does not approve the procurement of a professional services contract, the local government will not be able to use CDBG funds for that contract beyond \$5,000 [\$8,000 for Economic Development].

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- b. Comply with 24 C.F.R. part 58, and the regulations implementing the National Environmental Policy Act, 40 C.F.R. §§ 1500-1508. When the Recipient has completed the environmental review process, it shall submit a Request for Release of Funds and Certification. DEO will issue an Authority to Use Grant Funds (form HUD-7015.16) when this condition has been fulfilled to the satisfaction of DEO. **The Recipient shall not commit funds or begin construction before DEO has issued the “Authority to Use Grant Funds.”**
13. The Recipient shall obtain approval from DEO prior to requesting CDBG funds for engineering activities and costs which are additional engineering services as defined in rules 73C-23.0031(1)(a)-(l), F.A.C.
14. The Recipient agrees to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601-4655; hereinafter, the “URA”), implementing regulations at 24 C.F.R. part 42, 49 C.F.R. part 24 and 24 C.F.R. § 570.606(b), the requirements of 24 C.F.R. § 42.325 – 42.350 governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the Housing and Community Development Act of 1974 (42 U.S.C. § 5304(d)), and the requirements in 24 C.F.R. § 570.606(d), governing optional relocation assistance policies.  
If the Recipient undertakes any activity subject to the URA, the Recipient shall document completion of the acquisition by submitting all documentation required for a desk monitoring of the acquisition, including a notice to property owners of his or her rights under the URA, an invitation to accompany the appraiser, all appraisals, offer to the owner, acceptance, contract for sale, statement of settlement costs, copy of deed, waiver of rights (for donations), as applicable. The documentation shall be submitted prior to completing the acquisition (closing) so that DEO can determine whether remedial action may be needed. The Recipient shall provide relocation assistance to displaced persons as defined by 24 C.F.R. § 570.606(b)(2), that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project.
15. For Neighborhood Revitalization, Commercial Revitalization and Economic Development projects, the Recipient shall, prior to being reimbursed for more than \$15,000 for administrative services, provide to DEO a copy of all engineering specifications and construction plans, if required, for the activities described in the Agreement. The Recipient shall also furnish DEO, prior to soliciting bids or proposals, a copy of bid documents for services and/or materials to provide those services and/or materials for construction activities when the bids are expected to exceed \$35,000. Additionally, the Recipient shall not publish any request for bids for construction purposes or distribute bid packages until DEO has provided its written acceptance of the engineering specifications, construction plans, and bid documents.
16. For each procured construction contract or agreement in the Neighborhood Revitalization, Commercial Revitalization and Economic Development categories for which CDBG funding will be requested, the Recipient shall submit the following procurement documents:
- a. A copy of the bid advertisement, including an affidavit of publication;
  - b. Documentation of the Recipient’s efforts made to inform minority- and woman-owned businesses of the opportunity to bid on the construction contract;
  - c. A copy of the bid tabulation sheet;
  - d. A copy of the engineer’s recommendation to award;
  - e. A letter requesting sole source approval, if applicable;
  - f. A copy of the bid bond (five percent of the bid price) for the prime contractor(s) selected to do the work, and;
  - g. Completed copies of the following forms for all prime contractors and subcontractors:
    - Form SC-51 – Bidding Information and Contractor Eligibility;
    - Form SC-37 – Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);

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- Form SC-52 – Section 3 Participation Report (Construction Prime Contractor);
- Form SC-38 (if applicable) – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor);
- Form SC-53 (if applicable) – Section 3 Participation Report (Construction Subcontractor), and;
- Form SC-54 (if applicable) – Documentation for Business Claiming Section 3 Status

For each procured construction contract or agreement in Housing Rehabilitation projects for which CDBG funding will be requested, the Recipient shall submit the following procurement documents for all prime contractors and subcontractors:

- a. Form SC-37 – Certification Regarding Debarment, Suspension, and Other Responsibility Matters (Primary Covered Transactions);
  - b. Form SC-52 – Section 3 Participation Report (Construction Prime Contractor);
  - c. Form SC-38 (if applicable) – Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion (Subcontractor); and
  - d. Form SC-53 (if applicable) – Section 3 Participation Report (Construction Subcontractor).
17. For each procured construction contract or agreement in the Neighborhood Revitalization, Commercial Revitalization and Economic Development categories, if a job classification needed to complete a construction activity is not included in the Davis-Bacon Act wage decision that was previously obtained from DEO, the Recipient shall request an additional classification using Form SC-57 - Employee/Employer Wage-Scale Agreement after the construction contract has been awarded.
  18. For each Commercial Revitalization, Economic Development and Neighborhood Revitalization projects, when the Recipient issues the Notice to Proceed to the contractor(s), copies of the following documents shall be sent to DEO:
    - a. Notice to Proceed;
    - b. The contractor's performance bond (100 percent of the contract price) if the contract exceeds the Simplified Acquisition Threshold as listed in 2 C.F.R. § 200.88; and
    - c. The contractor's payment bond (100 percent of the contract price) if the contract exceeds the Simplified Acquisition Threshold as listed in 2 C.F.R. § 200.88.
  19. The Recipient shall undertake an activity each quarter to affirmatively further fair housing pursuant to 24 C.F.R. § 570.487(b)(4).
  20. All leveraged funds shall be expended concurrently and, to the extent feasible, proportionately with the expenditure of CDBG funds for the same activity. The Recipient shall document the expenditure of leveraged funds required for the points claimed in the application as it may have been amended through the completeness process and as reflected on the Project Detail Budget. All funds claimed for leverage shall be expended after the date that the Authority to Use Grant Funds is issued and prior to Recipient's submission of the administrative closeout package for this Agreement, except for the following costs:
    - Eligible administrative, engineering and environmental review costs expended after the site visit but prior to the date when the Authority to Use Grant Funds is issued, and
    - The CDBG portion of the cost of post-administrative closeout audits.
  21. The resulting product of any activity funded under this Agreement as amended shall be ineligible for rehabilitation or replacement with CDBG funds for a period of five years.

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22. The Recipient shall ensure that a deed restriction is recorded on any real property or facility, excluding easements, acquired with CDBG funds. This restriction shall limit the use of that real property or facility to the use stated in the subgrant application and that title shall remain in the name of the Recipient. Such deed restriction shall be made a part of the public records in the Clerk of Court of the county in which the real property is located. Any future disposition of that real property shall be in accordance with 24 C.F.R. § 570.505. Any future change of use of real property shall be in accordance with 24 C.F.R. § 570.489(j).
23. The Recipient shall comply with the historic preservation requirements of the National Historic Preservation Act of 1966, as amended, the procedures set forth in 36 C.F.R. part 800, and the Secretary of the Interior's Standards for Rehabilitation, codified at 36 C.F.R. 67, and Guidelines for Rehabilitating Historic Buildings.
24. Pursuant to section 102(b), Public Law 101-235, 42 U.S.C. § 3545, the Recipient shall update and submit Form HUD 2880 to DEO within 30 calendar days of the Recipient's knowledge of changes in situations which would require that updates be prepared. The Recipient must disclose:
  - a. All developers, contractors, consultants, and engineers involved in the application or in the planning, development, or implementation of the project or CDBG-funded activity; and
  - b. Any person or entity that has a financial interest in the project or activity that exceeds \$50,000 or 10 percent of the grant, whichever is less.
25. If required, the Recipient shall submit a final Form HUD 2880, to DEO with the Recipient's request for administrative closeout, and its absence or incompleteness shall be cause for rejection of the administrative closeout.
26. Conflicts of interest relating to procurement shall be addressed pursuant to 24 C.F.R. § 570.489(g). Title 24 C.F.R. § 570.489(h) shall apply in all conflicts of interest not governed by 24 C.F.R. § 570.489(g), such as those relating to the acquisition or disposition of real property; CDBG financial assistance to beneficiaries, businesses, or other third parties; or any other financial interest, whether real or perceived. Additionally, the Recipient agrees to comply with, and this Agreement is subject to, chapter 112 F.S., and rule 73C-23.0051(7), F.A.C.
27. Any payment by the Recipient using CDBG funds for acquisition of any property, right-of-way, or easement that exceeds fair market value as determined through the appraisal process established in HUD Handbook 1378 shall be approved in writing by DEO prior to distribution of the funds. Should the Recipient fail to obtain DEO pre-approval, any portion of the cost of the acquisition exceeding Fair Market Value shall not be paid or reimbursed with CDBG funds.
28. The Recipient shall take photographs of all activity locations from multiple angles prior to initiating any construction. As the construction progresses, additional photography shall document the ongoing improvements. Upon completion of construction, final documentation of the activity locations will be provided to DEO with the administrative closeout package for this Agreement.
29. If an activity is designed by an engineer, architect, or other licensed professional, it shall be certified upon completion by a licensed professional as meeting the specifications of the design, as may have been amended by change orders. The date of completion of construction shall be noted as part of the certification. This certification shall be accomplished prior to submission of an administrative closeout package and a copy of the certification shall be submitted with the administrative closeout package.

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30. If necessary, the Recipient shall retain sufficient administration funds to ensure internet access, including email, for the duration of the Agreement, including any time extensions. If the Recipient does not already have a computer designated to the person responsible for grant oversight, which is located in the program office and capable of internet access, administrative funds may be used as needed to obtain, at reasonable cost, a computer to allow internet access.

### **Special Conditions**

(Unlock document and type in special conditions or “Not Applicable.” here.)