



OFFICE OF  
LONG-TERM  
RESILIENCY

HURRICANE IRMA  
INFRASTRUCTURE  
SUBRECIPIENT  
POLICIES AND  
PROCEDURES

MARCH 2021

# Preface

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On September 10, 2017, the state of Florida was subjected to the powerful destructive force of Hurricane Irma (DR-4337). In the wake of this natural disaster, Florida came together to recover and rebuild, but significant unmet needs still remain. Recognizing this, Congress appropriated and the U.S. Department of Housing and Urban-Development (HUD) allocated a total of \$616 million in funding to support long-term recovery efforts following Hurricane Irma through the Florida Department of Economic Opportunity's (DEO) Community Development Block Grant Disaster Recovery (CDBG-DR) Program. This funding is designed to address needs that remain after other assistance has been exhausted, including federal assistance as well as private insurance. The Florida Department of Economic Opportunity (DEO) is the responsible entity for administering the CDBG-DR funds allocated to the state. DEO has competitively procured IEM to assist with program and contract administration services for disaster recovery programs associated with Hurricane Irma.

DEO recognizes its fiscal and regulatory responsibility to administer these funds consistent with all federal and state requirements. DEO's initial step toward securing this funding on behalf of the state of Florida was the successful creation and submission of the State of Florida CDBG-DR Action Plan (Action Plan), which HUD approved on June 28, 2018. With the subsequent HUD allocation of \$157 million in August 2018, DEO developed and submitted Action Plan Substantial Amendment 1, and one non-- substantial amendment approved by HUD on March 1, 2019. This will result in the obligation of the full \$774 million for the benefit of Floridians. The Action Plan is the guiding framework for how DEO will administer the funds to implement programs for disaster recovery.

In order to ensure that the funds assist the most-impacted areas, 80 percent must be expended on disaster recovery in HUD-identified "most impacted and distressed" areas for eligible disaster-related activities. The unmet needs assessment evaluates three core aspects of recovery - housing, infrastructure and economic development - as the basis for the Rebuild Florida Program framework.

This Rebuild Florida Disaster Recovery Policy Manual is intended to identify applicable federal regulations that govern CDBG-DR funds, provide individual program summaries with program-specific policy and procedures referenced in appendices, and delineate state-level responsibilities for DEO Office of Long-Term Resiliency (OLTR) staff members from subrecipients. DEO will provide technical assistance for each subrecipient applying for disaster recovery assistance funding and will monitor those subrecipients who are successful in obtaining funding.

This manual supports DEO's ability to help homeowners, owners of rental housing, and communities achieve long-term recovery by providing compliance requirements that will keep Florida in good standing with HUD while delivering services to Floridians. It is intended to provide for consistent and efficient application of procedures across all disaster recovery activities for Irma, regardless of where and by whom these activities are conducted.

DEO anticipates that circumstances will arise where the application of the policies and procedures outlined in this manual may lead to an unintended consequence and that some circumstances may not fit within the policy and procedure framework. In these cases, deviations may be justified and necessary. Any deviation from policies and procedures must be clearly documented and included in the specific file for the project requiring such deviation.

## Version Policy

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Version history is tracked in the Version History Table (page iii), with notes regarding version changes. Dates of each publication are also tracked in this table.

Substantive changes in this document that reflect a policy change will result in the issuance of a new version of the document. For example, a substantive policy change after the issuance of Version 1.0 would result in the issuance of Version 2.0, an increase in the primary version number. Non-substantive changes such as minor wording and editing or clarification of existing policy that do not affect interpretation or applicability of the policy will be included in minor version updates denoted by a sequential number increase behind the primary version number (i.e., Version 2.1, Version 2.2, etc.).

## Policy Change Control

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Policy review and changes for the State of Florida Irma Community Development Block Grant - Disaster Recovery Program are considered through a change-control process. Policy clarifications, additions, or deletions are needed during the course of the program to more precisely define the rules by which the Program will operate. Program staff will document policy-change requests that will be tracked in the program files. Requests are compiled and brought before supervisory staff in a policy meeting. Subject matter experts working in a particular policy area or task area that will be affected by the policy decision may be invited to assist in policy evaluation, if necessary. Policy meetings will be held as frequently as is necessary to consider policy decisions critical to moving the Program forward in a timely manner. Policy decisions will be documented and will result in the revision of the Department of Economic Opportunity's Policies and Procedures Manual



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# 1.0 Purpose

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This Policies and Procedures Manual for the Office of Long-Term Resiliency is provided to assist program staff, subgrantees and subrecipients in implementing and managing disaster recovery grants. It provides guidance regarding the general requirements that apply to units of local government. It is the responsibility of the Department of Economic Opportunity's disaster recovery staff to ensure that subgrantees comply with all provisions of this manual, state and federal rules and regulations, and the grant award agreement. Subgrantees and subrecipients must also carry out proper and efficient grant administrative practices. The Policies and Procedures Manual is intended to provide clear areas of responsibility to ensure consistent application of the procedures outlined in the manual. It is anticipated that circumstances will arise that will require deviations from the processes outlined in this manual. In those instances, the reason for the deviations need to be clearly documented and included in the subgrantees file. In some cases, these circumstances will require amending the Policies and Procedures Manual to include new or revised policies or procedures to accommodate these situations.

If there are any questions, subgrantees and subrecipients should contact the Florida Department of Economic Opportunity's Office of Long-Term Resiliency at:

Florida Department of Economic Opportunity  
Disaster Recovery  
107 East Madison Street  
Caldwell Building, MSC 400  
Tallahassee, FL 32399  
(850)-717-8466

## 2.0 Introduction

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The U.S. Department of Housing and Urban Development (HUD) provides supplemental Community Development Block Grant (CDBG-DR) funds appropriated by Congress to assist in the recovery of areas declared by the President of the United States as disaster areas. The public notice regarding supplemental appropriations is included in the Federal Register and specifies the disaster or the time period of the disaster declaration(s) for which funding is available, as well as any special provisions that will apply. Grant funds are generally based on unmet disaster recovery needs and made available to states and units of general local government, Indian tribes, and insular areas, unless otherwise specified in the supplemental appropriation legislation. HUD generally awards noncompetitive, nonrecurring disaster recovery grants by a formula that considers the amount of damage received by the area and the amount of unmet need that remains after considering other federal disaster assistance programs.

Grant recipients receiving funding directly from HUD, must prepare an Action Plan that outlines the overall plan for recovery, the proposed use of the funds, how the funds will be distributed, and how the grant will be administered.

Disaster Recovery grants often supplement disaster programs of the Federal Emergency Management Agency (FEMA), the Small Business Administration (SBA) and the U.S. Army Corps of Engineers (Corps). In addition, Home Investment Partnership (HOME) funds can provide an important resource for providing affordable housing to disaster victims. The HOME program is administered by the Florida Housing Finance Corporation.

Eligible activities must meet at least one of three program national objectives: (1) benefit persons of low to moderate-income, (2) aid in the prevention or elimination of slum or blight, or (3) meet other urgent community development needs because existing conditions pose a serious and immediate threat to the health and welfare of the community where other financial resources are not available. Unless otherwise restricted by statute or provided by waiver, the funds may be used for any activity eligible under Section 105(a) of the Housing and Community Development Act of 1974, as amended, that meets a national objective under Section 104(b)(3) of the Act, and the activities must be related to the covered disaster. Generally, at least 51 percent of the beneficiaries are to be persons of low- to moderate- income.

Typically, subgrantees and subrecipients may use CDBG-DR funds for recovery efforts involving housing, economic development, infrastructure repair, and prevention of further damage to affected areas.

Eligible activities must be specified in a grant recipient's Action Plan and funded activities cannot duplicate funding available from other sources such as FEMA, SBA, insurance, or any other sources of public or private funding that is available to undertake the same activity. Examples of eligible activities include:

1. Buying damaged properties in a flood plain and relocating residents to safer areas;
2. Relocation payments for people and businesses displaced by the disaster;
3. Debris removal not covered by FEMA;
4. Rehabilitation of homes and buildings damaged by the disaster;
5. Buying, constructing, or rehabilitating public facilities such as streets, neighborhood centers, and water, sewer, and drainage systems;
6. Homeownership activities such as down payment assistance, interest rate subsidies and loan guarantees for disaster victims;
7. Public services;
8. Helping businesses retain or create jobs in disaster impacted areas; and
9. Planning and administration costs.

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Federal requirements state that the funds can be used only for disaster relief and long-term recovery in communities affected by the specified disaster(s) and directed to areas with the greatest unmet need. Funds cannot be used for a project or activity that was underway prior to the Presidential Disaster Declaration. All projects must be directly related to one or more of the disaster events defined in the Presidential Disaster Declaration. Activities that are reimbursable by the FEMA, the National Flood Insurance Program (NFIP), private insurance, private or public donations, dedicated tax revenues, or available through the SBA cannot be reimbursed with these funds.

## 3.0 Overview of CDBG-DR

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Before federal disaster recovery funds are made available to the State of Florida, the state must agree to accept CDBG-DR funds from HUD and prepare an Action Plan for HUD's approval. The Action Plan outlines how the funds will be used, describes the method of distribution to the recipient local governments, delineates the state's grant-administration process, and defines when changes to the Action Plan are considered Substantial Amendments requiring public review and comment.

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*DEO's Office of Long-Term Resiliency monitors subrecipients' activities for compliance with program and grant-agreement requirements.*

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OLTR has the responsibility of notifying local governments of the amount of funding they can receive, preparing an application form that local governments can use to apply for funding; and preparing an application-review checklist. UGLGs have their own set of responsibilities in applying for, obtaining, and managing funding. These requirements are more fully laid out within this manual. UGLGs are encouraged to contact OLTR if further guidance is required.

HUD provides guidebooks for grantees and subrecipients under the CDBG Program Section on its website at <https://www.hudexchange.info/programs/cdbg-dr/toolkits/>.

## 4.0 National Objectives

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The core purpose of CDBG-DR is the ability of the state and its subrecipients to meet a national objective through an eligible activity related to Hurricane Irma.

### 4.1 Meeting a National Objective

All projects funded under CDBG must address at least one of the following three national objectives of the CDBG Program:

- Primarily benefit low- to moderate-income (LMI) persons,
- Meet an urgent need. A project that meets a community need having an urgency because an existing condition poses a serious and immediate threat to the health or welfare of the community and no other financial resources are available.

Seventy percent of the overall funding benefit must meet the first national objective, i.e., it must be for the benefit of LMI persons. For any project to count toward the 70 percent LMI national objective goal, at least 51 percent of beneficiaries on an area basis must be LMI individuals or households. For the 20- percent set-aside allocation, 100 percent of funds must be used to benefit LMI persons or households for both direct- and indirect-benefit projects.

Subrecipients must identify the national objective of each proposed project and the percentage of LMI persons or households that will benefit from each project. OLTR will determine the eligibility of an activity and whether a national objective is obtained as a part of the application-review process. See 24 Code of Federal Regulations (CFR) 570.483 for more information about national objectives.

*Urgent need* is a seldom-used category in CDBG implementation, but it plays a more significant role in CDBG-DR/Urgent need can be difficult to justify and should be thoroughly reviewed with the OLTR

### 4.2 National Objective Documentation and Records

Subrecipients must maintain records showing that funded activities meet one of the three national objectives. This information will also be useful in reporting performance measures information.

Documents required to be maintained for purposes of demonstrating that a national objective is being met are as follows:

- LMI service-area boundaries
- Census data, including total persons and percentage of LMI households
- Evidence that the area is primarily residential
- Income-verification survey documentation (if applicable)

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***Under CDBG regulations, a project is not considered having met a national objective until it has provided complete documentation the verifies the national objective has been met. Subrecipients must be aware of the national objective category and document compliance throughout the life of the project or program***

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**LMI Limited Clientele:** Documentation that beneficiaries are of LMI or presumed to be of LMI is as follows (see 24 CFR 570.208):

- LMI job creation and retention number of jobs created or retained
- Type and title of jobs created or retained
- Income of persons benefiting from jobs created or retained

**LMI Housing Direct Benefit:** Documentation should include households' income verification using the Adjusted Gross Income [AGI] definition of "household income"), including source documentation.

**Urgent Need:** Documentation should support decision to classify activity as urgent need and should include the following:

- Documentation of urgency of need and timing
- Certification that other financing resources were unavailable and that CDBG is the only available funding source

## 5.0 Federal Register Notices

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Federal Register Notices explain the Congressional legislative intent of funding allocations. Generally, Federal Register Notices contain the specific disaster event, the amount of funding, the geographic location of the areas to be assisted, and broad parameters for implementation. For Hurricane Irma, the Federal Registers are as follows:

- Federal Register- Docket No. FR-6066-N-01, Volume 83, Number 28
- Federal Register - Docket No. FR-6066-N-01, Volume 83, Number 157

This notice may be found on DEO's website at <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative>

## 5.1 Citizen Participation

Citizen participation is a key element of CDBG-DR. Subrecipients are required to adopt Citizen Participation Plans that outline broad CDBG processes, including citizen-complaint procedures, amendment procedures, advertising requirements, and other basics of public participation. The requirement is found in 24 CFR 91.105. Subrecipients are required to maintain records related to citizen participation, including the following:

- Copies of all notices of public hearings held and proofs of publication relating to the CDBG-DR program
- List of persons attending public hearings and minutes of the meetings
- Citizen inquiries and complaints and correspondence responding to inquiries and complaints
- Copy of the Citizen Participation Plan with adopting resolution
- Records documenting implementation and compliance with the Citizen Participation Plan
- Citizen-complaint procedures

## 5.2 Beneficiaries

All CDBG-DR activities (except for planning and administration) are required to provide benefit to the community. If CDBG-DR funds are spent and, at the time of closeout, there are no beneficiaries, then the cost is disallowed. Therefore, all activities must be completed and must provide the benefit as outlined in the contract documents. Benefit may be either direct (e.g., housing rehabilitation) or indirect (e.g., infrastructure, public facilities).

When subrecipients report beneficiaries, they must maintain files that demonstrate the source of beneficiary data. For example, if a subrecipient reports beneficiaries from 100 housing rehabilitations, OLTR staff should be able to readily determine the validity of that data through the subrecipient's record keeping. Similarly, for projects qualified based on census or surveys, the completed project must correspond with the parameters of the project approved in the application. It is generally acceptable to exceed the number of beneficiaries outlined in the application, but it is inadvisable to reduce beneficiaries without prior approval from OLTR.

Seventy percent of the overall funding benefit must meet the first national objective, i.e., it must be for the benefit of LMI persons. For any project to count toward the 70-percent LMI national objective goal, at least 51 percent of beneficiaries on an area basis must be LMI individuals or households. CDBG funds allocated through the 20-percent set-aside must benefit 100 percent LMI beneficiaries. Indirect activities such as infrastructure must meet the 51-percent LMI threshold, while direct benefit activities such as housing must meet the 100-percent threshold.

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Subrecipients must identify the national objective of each proposed project and the percentage of LMI persons or households that will benefit from each project. OLTR will determine the eligibility of an activity and whether a national objective is obtained as a part of the application-review process. See 24 CFR 570.483 for more information about national objectives.



## 6.0 Subrecipient Applications

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DEO has designed this CDBG-DR program in compliance with the National Program objectives and will ensure that assistance is prioritized toward the most disadvantaged populations to address unmet housing needs. Florida intends to spend a minimum of 70 percent of program funds on activities that benefit the Low-and-Moderate Income (LMI) population. LMI status is determined by evaluating income as a percentage of the Area Median Income (AMI) in the region in which the applicant lives.

In addition, a minimum of 80 percent of funding will be spent in HUD-identified most-impacted and distressed areas, with the 20 percent of funding spent in state-identified most-impacted and distressed areas. Proposed projects dealing with drinking water, drainage and sewage, storm water and wastewater will be given priority due to their critical nature.

### 6.1 Tie to the Storm

Before any activity can be funded in whole or in part with CDBG-DR funds, the activity must be determined eligible under Title I of the Housing and Community Development Act (HCDA), as amended. Federal requirements clearly state that funds may be used only for disaster relief and long-term recovery in communities affected by the specified disaster. Requirements provide that funds be directed to areas with the greatest need. All CDBG-DR funded eligible activities must tie to storm damage as specified in and not prior to the Presidential Disaster Declaration 4377 for Irma on September 10, 2017 (<https://www.fema.gov/disaster/4337>). All projects must be directly related to Hurricane Irma.

### 6.2 Eligible Applicants

Eligible applicants in the following counties and zip codes may apply for funding based on the terms and conditions in this application:

Eligible Counties and Zip Codes that Experienced Storm Damage					
Alachua	Collier*	Hardee	Lee*	Okeechobee	Sarasota
Baker	Columbia	Hendry	Levy	Orange*_	Seminole
Bradford	DeSoto	Hernando	Manatee	Osceola*	St. Johns
Brevard *	Dixie	Highlands	Marion	Palm Beach*	St. Lucie*
Broward*	Duval*	Hillsborough *	Martin	Pasco	Sumter
Charlotte	Flagler	Indian River	Miami- Dade *	Pinellas	Suwannee
Citrus	Gilchrist	Lafayette	Monroe*	Polk*	Union
Clay*	Glades	Lake	Nassau	Putnam	Volusia*

\*Most Impacted and Distressed Counties

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MID Zip Codes and Descriptions	
32084	In St. Johns County, primarily northwest of St. Augustine
32091	Primarily in Bradford County, with portions to the east in Clay County
32136	In Flagler County at Flagler Beach and abutting northeastern Volusia
32145	In southwestern-most St. Johns County, at Hastings .and east of Putnam County
32771	In Seminole County, between southwest Volusia and northern Orange Counties including Sanford
33440	Comprises approximate eastern half of Hendry County, extending slightly east of Clewiston
33523	In northeastern-most Pasco county, primarily northeast and northwest of Dade City
33825	In Highlands County, including Avon Park, and extending north and west into Polk and Hardee Counties
33870	Abuts 33825 in Highlands County, including Sebring and Lorida
33935	Straddles southwest Glades and northwest Hendry Counties, including LaBelle
34266	Comprises most of Desoto County and extends west into Sarasota County

Units of General Local Government (UGLG) including counties, municipalities, water management districts, and water authorities located in the eligible areas that experienced Hurricane Irma storm damage are eligible to apply for funding based on the terms and conditions in this application.

## 6.3 Eligible Activities

To be eligible for consideration of funding, UGLGs must propose programs or projects that align with CDBG-DR and DEO requirements and priorities as outlined in the action plan and the Federal Register, including but not limited to those set forth below:

- Projects must demonstrate tie-back to Irma.
- Projects must primarily serve LMI populations.
- Projects for infrastructure must support LMI housing.
- Projects must not duplicate benefits.

### Infrastructure

- Restoration of infrastructure damaged by Hurricane Irma (including water and sewer facilities, streets, provision of generators, removal of debris, drainage, bridges, etc.);
  - Water and sewer facilities have been identified as areas of critical importance.
- Public facilities such as emergency community shelters;
- Demolition, rehabilitation of publicly or privately owned commercial or industrial buildings;

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- Economic revitalization which includes any CDBG-DR eligible activity that demonstrably restores and improves some aspect of the localeconomy.

Subrecipients must identify how unmet housing needs will be addressed or how its infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.

## **7.0 Site Visits**

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### **7.1 Pre-Award Applicant Site Visits**

OLTR may visit applicants prior to an award of funds. The Pre-Award Site Visit is a fact-finding trip to evaluate application materials for accuracy and viability. OLTR staff will interview local government staff, design professionals, and consultants responsible for the application. During this visit, OLTR staff may also visit the project site. OLTR may use the information gained from the Pre-Award Site Visit to determine if a project activity is eligible, meets a national objective, and can be funded.

### **7.2 Initial Subrecipient Site Visits**

Site visits are initial on-site visits from OLTR once an application is received, ranked, and funded. The purpose of the site visit is to determine the subrecipient's readiness to proceed and compliance with the grant agreement. OLTR will issue letters to each subrecipient outlining documentation that will be required during the site visit.

### **7.3 Application Documentation**

During the site visit, OLTR will review documentation used to support the application. This will include items such as service-area maps and field visits, claims made in the application regarding the project's location and purpose, budgetary information, key staff, and other items. In most cases, this review will be similar to the review conducted during the Pre-Award Site Visit. However, between the Pre-Award Site Visit and execution of the subrecipient agreement, application documentation will probably be clarified and improved with additional information (better maps, engineering plans, service area refinements, tie-back to the storm, etc.).

### **7.4 Local Policies Review**

Required local policies will be reviewed for compliance with state and federal requirements.

### **7.5 Site Visit Report**

Once OLTR has conducted a site visit, the subrecipient will receive a report containing a summary of the outcome. The report may require additional documentation, or the visit may be satisfactory without the need for further follow-up.

## 8.0 Subrecipient Agreement

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Following application reviews, site visits to verify the information in the application, and completion of the risk analysis, the subrecipient award process is initiated. During this process, contract numbers are provided by the Operations Unit and initial information regarding the subrecipient is entered into the Subrecipient Enterprise Resource Application (SERA) system, DEO's grants management system. The subrecipient agreement is prepared based on the subrecipient agreements used in the Small Cities CDBG program, including scope of work and other attachments, but it is modified to meet the needs of the CDBG-DR program. This subrecipient agreement template is prepared within OLTR and then reviewed by OLTR's Budget, Grants, and General Counsel's offices. Subrecipient agreements are sent unsigned to the subrecipient for review and approval. The subrecipient signs and returns the agreements to the department. A final review is completed, and the contract is executed by the department, and the requisite information is entered into the SERA and IDIS systems.

### 8.1 Amendments

During the term of the subrecipient agreement, changes may need to be made to the agreement. If the subrecipient agreement requires revisions, the Subrecipient Agreement Modification form is used (this form is available online or may be sent to the subrecipient by OLTR staff). This form is filled out by the subrecipient and submitted to the grant manager for review and approval by OLTR. Typical modifications include extending the subrecipient agreement, budget revisions, and scope of work revisions. These amendments, along with procedures for requesting and reviewing these amendments, are discussed below.

- **Extension of Timeline** This type of amendment must be requested when the subrecipient determines that all project work cannot be completed prior to the subrecipient agreement expiration-date.
- **Budget Revisions:** This type of amendment must be requested for the following:
  - A need to revise the number of proposed accomplishments or beneficiaries
  - Transfer of excess administrative funds to an approved project activity
  - Transfer of unobligated funds from a completed activity to another activity
  - Transfer of funds from one activity to another activity
- **Scope of Work:** This type of amendment must be requested when expanding or reducing the approved scope of work to be performed. For instance, if a project was approved to rehabilitate 20 homes, but the subrecipient has enough funds to rehabilitate additional homes, an amendment must be submitted. Approval of project amendments is subject to the availability of funds remaining in the project's approved budget. In addition, all amendments must be reviewed by CDBG's environmental staff to determine if the amended scope of work requires in additional environmental review. Changing the scope of work usually involves a budget modification as well. However, increasing the scope of work without an increase in the budget does not generally require an amendment.

### ***8.1.1 Procedures for Submitting and Acting on an Amendment Request***

Requests for amendments must be submitted by the subrecipient no later than 45 days prior to the subrecipient agreement expiration date. All amendments must be submitted on the Modification to Subrecipient Agreement form along with a transmittal letter explaining the need and providing a justification for the proposed amendment. The transmittal letter must be signed by the chief elected official or authorized designee. If an authorized designee is used, 00R must have a designated authorized signee document on file approving the designee.

OLTR will provide written notification of approving or disapproving the subrecipient agreement request. All approved amendments will become a part of the original project award and will be subject to all applicable terms of the original subrecipient agreement.

**Note:** If OLTR finds that a request for amendment is for an action that has already taken place, the amendment may not be approved.

## **8.2 Subrogation Agreement**

All subrecipients will be required to sign a subrogation agreement. All duplicative funding received by a subrecipient must be remitted to or accounted for by the subrecipient regardless of when the applicant receives it. If a subrecipient receives additional funding for the same purpose as the CDBG-DR-funded grant award even after an award is executed, the applicant is required to report the additional funding to the state. By accepting the award, subrecipients that they will report any duplicative funds to the state. Upon receipt of a report that additional benefits have been received, the state will recalculate the applicant's award and provide instructions as to whether such funds must be used in construction prior to additional funding by the state and the subrecipient are expended or whether the applicant must remit such amounts to the state and the subrecipient as reimbursement. In the event a subrecipient uses CDBG-DR funds on HUD unallowable costs the subrecipient would be subject repayment to the state of funds.

## **9.0 SERA System**

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The Subrecipient Enterprise Resource Application (SERA) is OLTR's web-based reporting and grants management system. SERA is designed to be the system of record for both the financial and the programmatic components of CDBG-DR. This system is the means by which subrecipients draw funds and reconcile online budgets. OLTR will provide each subrecipient with SERA training. A detailed guide to SERA is available, separate from this manual, from OLTR.

## 10.0 Financial Management

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Financial management and control of CDBG-DR funds is the sole responsibility of the subrecipient that accepts the funds. This chapter describes accounting procedures that must be followed to comply with state and federal requirements for financial management. The subrecipient is required to have a financial management system that provides the following:

- Effective control over and accountability for all funds, property, and other assets
- Accurate, complete, and timely disclosure of the status and financial results in accordance with specified requirements
- Records that adequately identify (by activity) the source and use of funds for each CDBG-DR- supported project, including "reasonableness, allowability, and allocability" of costs
- Procedures to comply with the timely distribution of funds

The subrecipient's responsibility is often divided between the local office that has primary responsibility for CDBG-DR program administration and the finance officer. The subrecipient program administrative office is usually responsible for reviewing and approving all transactions involving CDBG-DR funds before the transactions are processed by the finance officer. The administrative office's responsibilities include the following:

- Approval of purchase orders and contracts to be paid with CDBG-DR funds
- Receipt and approval of invoices
- Assurance that transactions involving CDBG-DR funds are properly coded
- Review and approval of requisitions for payments involving CDBG-DR funds

The finance officer is usually responsible for maintaining official CDBG-DR financial records and for posting account transactions. Official records may be maintained in either an automated or a manual format. The finance officer's responsibilities may also include such things as the following:

- Control of accounting documents once they are approved for processing by the program department
- Preparation of financial reports (based on accounting records)
- Preparation of Requests for Funds (subject to review by the administration office)
- Entry of transactions into the accounting system
- Assisting the local government's auditor in preparing an annual financial audit

Federal requirements that are applicable to financial management may be found in 2 CFR 200 and should be reviewed for more detailed information and for other additional information, including special circumstances.

OLTR staff uses the Financial Management I Monitoring Checklist: System Review and the Financial Management II Monitoring Checklist: Transaction Testing Checklist during monitoring visits, which are forms based on HUD's monitoring checklists and which can be found online at DEO's CDBG-DR website. The first financial management checklist is used on the first pre-award and the initial onsite monitoring visit to review the subrecipient's internal controls, separation of duties, the accounting system used by the subrecipient, and procedures for determining allowable costs and housing escrow accounts with staff from the local government. The Transaction Testing checklist is usually used at the second onsite monitoring visit to review



the subrecipient's accounting records and checks a sampling of invoices, contracts, distributions, and bank statements to ensure that the local government is complying with federal regulations and state laws.

## 10.1 Internal Controls

Internal controls consist of policies and procedures, job responsibilities, qualified personnel, and records management that are designed to safeguard assets such as cash, property, and other assets. The subrecipient must establish a system of internal controls that meets the following minimum requirements:

- A single individual must not be allowed to exercise complete control over all phases of any significant transaction. This means, for example, that the same person cannot purchase materials, receive materials, authorize payment for the materials, and write the check to pay for materials.
- Record keeping must be separate from operations and handling and custody of assets.
- Monthly reconciliation and verification of cash balances with bank statements must be made by employees who do not handle or record cash or sign checks.
- Actual lines of responsibility must be clearly established and a single person identified to assume responsibility for management oversight of the entire financial management system.
- The person who prepares payrolls should not handle related paychecks. If signature stamps are used, they should not be under the control of the same individual who retains blank checks.

An adequate system of internal controls, with specific program and financial management responsibilities, will enable recipients to maintain records necessary to comply with Florida law and federal requirements. Where possible, accounting policies and procedures of the local government should mirror requirements of the Office of the Auditor General.

## 10.2 Financial System

Source documents should provide all details of a transaction. The information contained in source documents is necessary for accounting purposes and is recorded in one of the books of original entry before being filed. A variety of source documents and records are needed to properly account for CDBG- DR transactions. Supporting documentation is necessary to show that costs charged against CDBG-DR funds were incurred during the effective period of the subrecipient's agreement with the state, were actually paid out (or properly accrued), were expended on allowable items, and had been approved by the responsible official(s) in the subrecipient's organization. These documents include the following:

- **Purchase Orders** may be prepared in the same format as other purchase orders except that appropriate CDBG-DR program classification data should be coded on the document. Purchase orders should be approved by the subrecipient's program office. After approval, one copy should be retained by the program administrative office to verify receipt of goods, and remaining copies must be forwarded to the finance officer.
- **Contracts** should be filed in the CDBG-DR program administrative office. Each contract must identify the activity, program, or project to be charged. If multiple contracts are issued for each project or if non-contractual charges are recorded against a project, a separate record must be maintained for each contract to provide readily available information on contract balances. There should be a separate obligation for each contract relating to the same activity to prevent overpayment of any contract. In addition, a Cash Control Register should be maintained to provide summary information for all CDBG-DR contracts.
- **Vendor Invoices** to be paid with CDBG-DR funds should be referred to the program administrative office, compared to the purchase order, checked for appropriateness and accuracy, approved, and

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coded as necessary. Approved vendor invoices and appropriate supporting documents may then be forwarded to the finance officer for payment.

- **Time-distribution Sheets** for all employees paid from CDBG-DR funds. Employees must complete time sheets that indicate the number of hours worked on CDBG-DR projects, other grant projects, local government activities, and job duties, Time sheets are then referred to the finance department so that charges to the correct programs and projects can be computed and properly charged. Payroll expenses can only be paid from CDBG-DR funds based on time and attendance records.
- **CDBG Financial Files** that demonstrate the program's financial soundness and regulatory compliance. To maintain an orderly record of CDBG-DR transactions that will withstand the scrutiny of an audit, there must be a logical system for maintaining financial files. Two broad categories of files are recommended: *process files and permanent files* (see below).
- **Space and Utilities:** Space costs must be supported by documentation such as rental or lease agreements. Utility costs will be supported by bills from utility companies. Both types of expenses will be supported by canceled checks if the cost of space or utilities is split between the CDBG-DR program and other sources, a reasonable method must be in place to allocate the charges fairly among the sources.
- **Supplies** documentation includes purchase orders or requisition forms initiated by an authorized representative of the subrecipient, invoices from vendors that have been signed off by the subrecipient to indicate goods were received, canceled checks from vendors demonstrating payment was made, and information regarding where supplies are being stored and for what cost objective(s) they are being used.

Administrative funds are not available to subrecipients under this program. Therefore, all overhead costs must be allocated to projects. OLTR will provide guidance on the exact procedure for allocating costs.

## 10.3 Process Files

Process files are working files that are used until source documents are processed and posted. They include the following:

- **Open Purchase Order File:** All purchase orders that have been issued but not yet filled by vendors should be filed sequentially by purchase-order number. When goods are delivered, invoice received, and all appropriate approvals obtained, the purchase order should be removed and filed with related invoices and the receiving report in the pending payments file. This file contains encumbrances against the project budget.
- **Pending Payments File:** All source documents that will generate a cash disbursement are stored in the pending payments file and are maintained by due date. If a discount is offered for early payment, early payment should be made. A schedule of bills payable from approved invoices and the account to be charged is also kept in this file.
- **Pending Receipt File:** This file contains copies of outstanding bills and requests for funds submitted to the CDBG-DR program that have not yet been recorded in the Cash Receipts Journal or posted to the CDBG-DR Cash Control Register.
- **Personnel Payroll File:** This file contains a record for each employee who works on CDBG-DR activities and includes the rate at which the employee's salary can't be charged the CDBG-DR program. Time sheets showing the amount of time each employee spends on CDBG-DR activities must be kept on file. This file is maintained in addition to the local government's official personnel records.

## 10.4 Permanent Files

These files must be maintained for all source documents and other records once they have been processed or posted to books of original entry. Documents removed from process files are placed in the permanent files after all processing is complete (i.e., placing bank verifications or CDBG-DR contract payment transactions in a CDBG-DR Receipt File).

Purchase requisitions, purchase orders, and related invoices are filed together; contracts, related invoices, payment vouchers, and check copies are filed together; and grant fund receipt documentation is filed together. Permanent files contain the documents necessary for undertaking an audit of the program. A single individual should be assigned responsibility for file maintenance.

## 10.5 CDBG Accounting Records

CDBG-DR records are used to accumulate CDBG-DR accounting information for financial reporting. The required CDBG-DR accounting records are listed and discussed below.

**Cash-receipts Journal:** All receipts of cash that are deposited into the CDBG-DR account(s) are recorded in the cash receipts journal. Receipts may include contract payments to the subrecipient from the CDBG-DR program, receipts from the disposition of land, program income, and any other cash received. The general procedure for using this journal is to record every CDBG-DR receipt by date in the order that it was received and indicate the source of the funds received, account or activity line item to be credited, receipt number, and date. A notation regarding final disposition for all funds received must also be included in the journal.

**Cash-disbursements Journal:** All encumbrances and expenditures for program costs are entered into the cash-disbursements journal. *Encumbrance* is a term used in government accounting to mean a reservation of funds against an appropriation for a future expenditure. An encumbrance is not necessarily an obligation; it is a commitment of funds. While encumbrances are not normally recorded in a disbursements journal, the practice is recommended for the CDBG-DR program to conform to the accrual basis required for reporting information to the CDBG-DR program. When goods or services are received by the local government, an obligation has been incurred. If the local government uses a warrant or other schedule for bills payable, it need not maintain a separate cash-disbursements journal but must maintain copies of individual warrants.

**Property Register:** This is a listing of all property acquired in part or entirely using CDBG-DR funds. It must be maintained to comply with state and federal standards relating to acquisition, control, and disposition of real and personal property. Examples of property that would be recorded include both real property and office equipment.

**Detailed Activity Ledger:** A subrecipient may have several ongoing projects (e.g., Smith Street sewer-line installation and Jones Street repaving). To maintain accounting control, a detailed project ledger must be established for each project. All financial transactions relating to a particular project should be recorded in this ledger.

## 10.6 Cash Control Register

In addition to the above control procedures, CDBG-DR financial reporting and control is enhanced by the use of the CDBG-DR Cash Control Register. This register is used to document and control the following:

- State of Florida funds received
- Requests for payment (drawdowns on grant reservation)

- Balance of CDBG-DR cash on hand
- Balance of CDBG-DR grant funds available by line item
- Collections, refunds, and miscellaneous receipts
- Disbursements

This register is important because it summarizes the status of CDBG-DR cash on hand. It should be reviewed daily to determine compliance with CDBG-DR rules and regulations relating to cash on hand. The register also serves as a cross-reference to the journal accounts such as cash receipts and disbursements and the detailed project ledger.

## 10.7 Accounting for Cash Receipts

Cash receipts for the CDBG-DR program come primarily from the state as contract payments based on Requests for Funds. Local sources of cash receipts may include loan repayments, payment for services provided, rent from CDBG-DR property, and other miscellaneous receipts. Other sources may include federal or state agencies participating in project funding such as Rural Development. All cash receipts must be logged in the Cash Receipts Journal, CDBG-DR Cash Control Register, and detailed Project Ledger.

## 10.8 Accounting for Cash Disbursement

The local government should establish specific days on which it will disburse CDBG-DR funds. The frequency of these payment dates depends on transaction volumes and staff capacity. One payment date every 1 or 2 weeks may be sufficient. To allow time for orderly processing and requisitioning of CDBG-DR contract funds, cut-off dates for receipt of invoices to be paid the next pay date should be established. All cash disbursements must be supported by source documentation, such as invoices, time sheets, and payroll vouchers, that fully explain the reason for the disbursement.

Contractor payments should be made only after determining that the contractor is performing in accordance with contract provisions and time schedules and that any problems identified by the subrecipient during compliance monitoring or inspections have been corrected. To facilitate adequate contract management, a CDBG contract management control card should be maintained. All cash disbursements must be entered in the CDBG Cash Disbursements Journal, the CDBG Cash Control Register, and Detailed Activity Ledger.

## 10.9 Subrecipient Financial Management

The information provided in this policies and procedures manual is provided as a general guide. Each subrecipient will have its own financial management system that must adhere to federal requirements as outlined in 2 CFR Part 200.

## 10.10 Allowable Costs

The standards for determining reasonableness, allowability, and allocability of costs incurred as part of CDBG-DR-financed activities are found in 2 CFR 200.403. According to general guidelines contained in 2 CFR 200.403, a cost is allowable under the CDBG-DR program as follows:

- The expenditure is necessary, reasonable, and directly related to the grant.
- The cost conforms with any limitations or exclusions established in 24 CFR 200 Subpart E (Cost Principles) or the CDBG-DR award.
- The expenditure is consistent with policies and procedures that apply uniformly to both federally funded and other activities of the state or the subrecipient.

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- The cost is accorded equal treatment. For example, a direct cost cannot be assigned if in other similar circumstances the cost was allocated as an indirect cost.
- The cost is in accordance with generally accepted accounting principles, except for states, local governments, and tribes only, as otherwise provided for in 2 CFR 200.416 and 2 CFR 200.417 (Cost Allocation Plans and Indirect Cost Proposals), and 2 CFR 200.417 (Interagency Service).
- The cost is not used to meet cost-sharing or matching requirements of any federally funded program. See 2 CFR 200.306(b) regarding cost sharing and matching.
- Costs must be adequately documented. See 2 CFR 200.300 through 2 CFR 200-309 for more information.

For more information about allowable costs, see 24 CFR 570 and the HUD's *State Community Development Block Grant Program: Guide to National Objectives and Eligible Activities*, December 2014.

## 10.11 Reasonable Costs

Reasonable costs are described in 2 CFR 200.404: "A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost." In determining reasonableness of a given cost, consideration must be given to the following:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-federal entity or the proper and efficient performance of the federal award
- Restraints or requirements imposed by such factors as sound business practices; arm's-length bargaining; federal, state, local, tribal, and other laws and regulations; and terms and conditions of the federal award
- Market prices for comparable goods or services for the geographic area
- Whether individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-federal entity, its employees, its students or membership (where applicable), the public at large, and the federal government
- Whether the non-federal entity significantly deviates from its established practices and policies regarding incurrence of costs, which may unjustifiably increase the federal award's cost.

## 10.12 Allocable Costs

Allocable costs are described in 2 CFR 200.405: "A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received." This standard is met if the cost:

- Is incurred specifically for the federal award;
- Benefits both the federal award and other work of the non-federal entity and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the non-federal entity and is assignable in part to the federal award in accordance with the principles in this subpart (2 CFR 200, Subpart E, Cost Principles).

### 10.12.1 Program Income

Program income means gross income received by a state, a unit of general local government, or a subrecipient of a UGLG that was generated from use of CDBG funds that exceeds \$35,000 received in a single year (24 CFR

570.489(e)2). Examples of program income include the following:

- Proceeds from the sale or long-term lease of real property purchased or improved with CDBG funds
- Proceeds from disposition of equipment purchased with CDBG funds
- Gross income from use or rental of property acquired by the subrecipient or its subrecipient with CDBG funds, less the costs incidental to the generation of such income
- Gross income from use or rental of property owned by the subrecipient or other entity that was constructed or improved with CDBG funds, less any costs incidental to the generation of such income
- Payments of principal and interest on loans made using CDBG funds
- Proceeds from the sale of loans made with CDBG funds
- Proceeds from the sale of obligations secured by loans made with CDBG funds
- Interest earned on program income, pending the disposition of such program income
- Funds collected through special assessments made against nonresidential properties owned and occupied by households not of low and moderate income, where such assessments are used to recover all or part of the CDBG portion of a public improvement

Program income received by a subrecipient must be recorded in the subrecipient's financial records system and must be recorded in the same activity line item as generated the program income. Program income must be spent first on subsequent expenditures; remaining program income after closeout or generated after closeout is returned to OLTR.

## 10.13 Common Deficiencies

The most common record-keeping deficiencies that are encountered during program audits are as follows:

- Inadequate financial records
- Inadequate source documentation
- Inadequate procedures for verification of cost allowability
- Inadequate procedures for certifying operating agencies' financial systems
- Delays between drawdown and expenditure of funds
- Inadequate process to prevent overpayment of an activity budget line item
- Inadequate accounting of program income
- Inadequate or untimely financial reports

## 10.14 Contract Funding Process

Prior to transmission of contract funds, the subrecipient must complete and submit to the CDBG-DR program a SERA Access Authorization Form. This form is used to inform OLTR of the names of persons permitted to sign Requests for Funds. Requests for Funds forms must be signed by one or more of the authorized individuals identified on the form. The Signature Authorization must identify the financial institution, its mailing address, telephone number, and the account number to which CDBG-DR funds should be transmitted.

There cannot be any erasures or corrections on the SERA Access Authorization Form. Three copies, each having original signatures, must be submitted to OLTR. Should it be necessary to change or update

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information on the Signature Authorization Form, the same instructions apply.

The local government must use a separate non-interest-bearing bank account for CDBG-DR funds. Any interest paid on the account must be remitted to OLTR by the local government for return to the U.S. Treasury.

A subrecipient cannot expend or obligate more than \$15,000 for administration, prior to receiving a Release of Funds from the CDBG-DR program. The release will clearly state that environmental conditions have been removed and funds have been released for expenditure. Furthermore, a subrecipient cannot draw funds for any activity that has been conditioned in the contract agreement until a Removal of Special Conditions is granted by OLTR. Subrecipients should check their contract award agreement for special conditions prior to obligating or requesting funds.

## **10.15 Record Keeping**

In the simplest terms, CDBG financial transactions involve receiving cash (such as contract funds from OLTR's CDBG-DR program or program income) and spending cash for eligible activities. Every CDBG-DR financial transaction must be recorded in the accounting records as soon as possible. To do this, there must be appropriate source documents, files, and accounting records. Records must be maintained for 3 years from the date of the receipt of the audit for the year in which the grant was closed out (2 CFR 200.333).

## 11.0 Civil Rights

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Recipients of CDBG funds must comply with federal and state civil rights, fair housing, equal opportunity, and equal employment opportunity regulations and requirements. These laws are designed to ensure that members of protected groups are treated fairly by avoiding discrimination, providing equal opportunity, and taking affirmative action to correct past discrimination based on race, color, religion, gender, national origin, age, disability, and/or family status,

By signing the assurances in the CDBG-DR application and the subrecipient award agreement, the subrecipient agrees to the following:

- Comply with civil rights laws and conduct the CDBG DR program in a non-discriminatory manner.
- Take affirmative action where discrimination has been found in the past to overcome the effects of discrimination.
- Ensure equal opportunity in employment and contracting opportunities connected with the CDBG-DR program.
- Maximize choice within the community's total housing supply; lessen racial, ethnic, and economic concentrations of housing; and administer the CDBG-DR program in a manner that affirmatively furthers fair housing.
- Develop and maintain records of efforts undertaken to ensure fair housing and conduct four quarterly activities. each year to further fair housing.
- Facilitate desegregation and racially inclusive patterns of occupancy and use of public facilities.

The Civil Rights Checklist is used to monitor subrecipients for compliance with civil rights issues discussed in this section.

### 11.1 Fair Housing Requirements

The first step in developing a fair housing program is to determine the needs of the community. This can be done by preparing the HUD-required *Analysis of Impediments to Fair Housing Choice*. The State of Florida prepared an *Analysis of Impediments to Fair Housing Choice* that is currently in effect. The analysis identified potential impediments to fair housing choice and includes actions to be undertaken to help overcome these impediments. These potential impediments include the following:

- Local planning and zoning and land-use controls
- Lending practices of financial institutions serving the community
- Real estate sales and rental practices within the community
- Areas of minority population concentrations
- Quality of services provided to areas with high concentrations of minority persons

Fair housing activities that can be taken by the subrecipient depend on the type and the fair housing needs in an area, but consideration should be given to the following:

- Adopting a local fair housing ordinance that is equivalent to the federal fair housing law and
- Revising formal and informal policies and practices of the local housing authority



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- Modifying local planning, zoning, and land-use laws to permit construction of multi-family housing and less expensive single-family housing
- Revising zoning ordinances and comprehensive plans to insure they promote deconcentration of assisted housing units
- Creating a local housing authority
- Advertise the community as a "fair housing community"
- Developing a public information and education program to promote fair housing and a fair housing assistance program for special needs populations such as minorities, single women, persons with disabilities, and large family households
- Provide information concerning housing services and activities that can be disseminated through agencies and organizations that routinely provide services for protected groups
- Meeting with community financial institutions to encourage broad lending practices
- Working with developers and residents to ensure that new assisted housing is located outside areas of minority or low-income concentrations
- Assisting local housing developers in developing outreach programs to attract minorities and woman-owned businesses
- Working with real estate brokers to promote non-discriminatory practices in real estate transactions
- Include a "fair housing" logo on community stationary
- Sponsoring housing-seminars and campaigns

Recipients of CDBG-DR grants will be required to undertake at least four fair housing activities each year (one activity per quarter) to affirmatively further fair housing within the community during the time the subrecipient agreement is open. The subrecipient will need to carefully document these activities because documentation will be required to demonstrate these activities were undertaken during monitoring visits include enforcement provisions

## **11.2 Equal Employment Opportunity Requirements**

Local governments should strive to set a high community standard for providing equal employment opportunities. Suggested actions for furthering such opportunities at the local level include the following:

- Preparing accurate job descriptions for basing all employment-selection and testing criteria
- Establishing a network of contacts, including workforce boards, newspapers, and radio and television stations, and notifying them of all CDBG-DR-related position openings and requesting assistance in the recruitment process
- Distributing recruitment literature to women and minority organizations and organizations that assist persons with disabilities and older workers and where appropriate, translating materials into other languages
- Identifying minority, women, and staff persons with disabilities to assist with applicant interviews and providing these staff persons with training in proper interviewing techniques
- Encouraging employees to refer qualified minority and women candidates for job openings, training, promotions, and transfers
- Evaluating local recruitment, hiring, and other personnel policies and materials to ensure that they do not contain or perpetuate discriminatory intent, practices, or procedures

- Reviewing job turnover to determine vacancy patterns and plan appropriate recruiting efforts
- Establishing entry-level professional positions to provide career opportunities for employees, particularly for minorities and women
- Working with the private sector to fill job openings that result from economic development activities and establishing procedures that facilitate nondiscrimination and increased opportunities for women, minorities, persons with disabilities, and lower-income residents
- Taking affirmative action to overcome the effect of past discrimination
- Advertising as an equal opportunity employer in bid solicitations
- Soliciting bids from minority, women, and locally owned businesses
- Maintaining a list of locally owned businesses that were awarded contracts
- Informing contractors of equal opportunity requirements at the pre-construction conference or through other means of notification

Monitoring contractor compliance at work sites

## 11.3 Section 3 Requirements

Section 3 of the Housing and Urban Development Act of 1968 requires recipients, to the maximum extent feasible, to ensure that area Section 3 residents and businesses receive priority for employment and contracts generated by CDBG projects. Suggested actions include the following:

- Developing lists of minority-owned, women-owned, and local businesses in construction trades, business services, and professional services
- Contacting minority-owned, women-owned, and contractor associations to obtain information on skill and resource capabilities
- Establishing an action plan and goals for the use of minority-owned, women-owned, and local businesses, including opportunities for subcontracting in procurement and construction contracting-related activities
- Establishing goals and taking steps to provide opportunities for minority equity investments in funded projects
- Notifying minority-owned and women-owned firms of contract opportunities, including the date Request for Proposal or bid packages will be available or when Statements of Interest and Qualifications are due
- Requiring a Section 3 of the HUD Act of 1968 clause in all contracts

## 11.4 Section 3 Documentation and Record Keeping

Local governments must maintain records documenting compliance with fair housing, equal opportunity, and civil rights requirements. Documentation must be obtained concerning the following:

- Employment in each local government operating unit that performs CDBG-funded projects.
- The local government's affirmative actions to further fair housing
- For direct benefit activities, records relating to persons who have participated in any CDBG- funded program
- For area-wide activities, information on the area and the services provided and the race and ethnic

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character of the service area

- Race, ethnic character, age, disability status, gender *of* heads of households, and number of elderly benefiting from the project
- Race and ethnic character of households and disability stats of persons displaced as a result of CDBG activities
- Actions undertaken to meet Section 3 requirements and the written Section 3 Plan
- Information on the racial and/or ethnic character of each business that receives a contract or subcontract of \$10,000 more paid with CDBG funds, including identification of women-owned businesses
- Affirmative actions the local government has taken to overcome the effects of prior discrimination in administering a CDBG-funded program

## 11.5 Reporting

Following a grant award to a local government, OLTR is required to review recipient performance relating to civil rights requirements. The areas of the review include the following:

- Current employment and personnel policy
- Civil rights profile
- Job advertisements
- Employment discrimination complaints
- Employment data that indicates that persons are not being denied benefits or treated differently because of their race, color, sex, national origin, or disability status
- Documentation of steps taken to further fair housing during the year and the annual fair housing activity
- Housing discrimination complaints and documentation describing the process used to handle such complaints
- Board minutes indicating when the local fair housing ordinance was adopted
- The title of the civil rights compliance officer

## 12.0 Procurement of Professional Services and Contract Requirements

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This section establishes standards and guidelines for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services. These standards are provided to ensure that such goods and services are obtained efficiently and economically and in compliance with the provisions of applicable federal and state laws and executive orders.

This section provides an overview of the following federal and state requirements. These regulations should be reviewed for more detailed information:

- 2 CFR 200, Subpart D (federal procurement-regulations)
- 24 CFR 135 (Section 3 of the Housing and Urban Development Act to guide economic development to low- and very-low income local residents and the businesses that hire them)
- Minority and Woman-Owned Business Enterprise reporting requirements
- Section 255.0525, Florida Statutes (advertising for competitive bids or proposals)
- Section 287.055, Florida Statutes (Consultants Competitive Negotiations Act)
- Section 287.133, Florida Statutes (public entity crimes)

These standards do not relieve the subrecipient of any contractual responsibilities under its contracts. The subrecipient is responsible, in accordance with good administrative practice and sound business judgment, for settlement of all contractual and administrative issues arising out of procurement for goods and services entered into in support of the subrecipient. These include, but are not limited to, sole source evaluations, protests, disputes, and claims.

The Procurement Desk Monitoring Checklist, the Construction Procurement Monitoring Checklist, the Planning and Design Specifications Checklist, the Property Acquisition Monitoring Checklist, and the Housing Rehabilitation Monitoring Checklist address procurement. Section 3 and minority- and woman- owned business requirements are all resources used by OLTR to ensure compliance with federal requirements.

### 12.1 Procurement

Disaster recovery grant managers are responsible for monitoring of subrecipients to ensure procurement methods and contractual requirements and other reporting requirements are met. Plans and specifications, procurement for professional services, and construction procurement will be monitored by the disaster recovery grant manager.

Subrecipients are required to adopt local procurement procedures that meet local, state, and tribal laws (as applicable) and conform to the minimum federal requirements outlined in 2 CFR 200.318 if CDBG funds will be used to procure for goods or services. These procurement procedures must be submitted by OLTR program staff. The requirements in 2 CFR 200.318 that must be addressed in subrecipient procurement procedures are as follows:

- Written standards of conduct must be in place covering conflicts of interest that prohibit employees, officers, or agents from participating in selection, award, or administration of a contract if the individual has a real or apparent conflict of interest due to the individual or the individual's immediate family, partner, or an organization that employs or is about to employ any of the individuals has a

financial or other interest in or a tangible benefit from a firm considered for a contract. The policy should prohibit solicitation or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontractors. Disciplinary actions must be included for violations of these standards of conduct.

- In situations where a non-federal entity has a parent, affiliate, or subsidiary organization that is not a state or local government or tribe, procurement procedures must include written standards of conduct covering organizational conflicts of interest.
- Procedures must be in place to avoid acquisition of unnecessary duplicative items. Consideration should be given to requiring consolidation or division of procurements for more economical purchases, lease-versus-purchase alternatives, and value-engineering clauses.
- Contracts should be awarded only to responsible contractors able to successfully meet the terms and conditions in the contract. Consideration will be given to contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. Also applicable is 24 CFR 200.213, which restricts awards, subawards, and contracts with parties that are disbarred, suspended, or otherwise prohibited from participation in federal assistance programs or activities.
- Records should be maintained to detail the history of the procurement, including the rationale for the procurement method, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- Procedures should be developed to handle and resolve disputes relating to the subrecipient's procurement actions.

See 2 CFR 200.318.

## 12.2 Competition

All procurement transactions must ensure fair and open competition. Examples of practices that limit competition that are to be avoided include the following:

- Establishing unreasonable requirements that would favor one firm over others
- Requiring unnecessary experience and excessive bonding
- Noncompetitive pricing practices between firms or between affiliated companies
- Noncompetitive contracts to consultants on retainer contracts
- Organizational conflicts of interest
- Requiring use of "brand name" products instead of allowing products that are as good and more economical
- Any arbitrary action in the procurement process

Geographical preference requirements are not allowed unless federal statutes mandate or encourage geographic preference. In contracting for architectural and engineering services, geographical location may be used as a selection criterion provided there are a sufficient number of qualified firms to compete for the contract.

Written procedures for procurement must ensure that solicitations include clear and accurate descriptions for the goods and services to be procured and ensure that all requirements that must be fulfilled and factors to be used in the evaluation process are identified.

Prequalified lists of persons, firms, or products must be current and include a sufficient number of sources to ensure open and free competition.

See 2 CFR 200.319.

## 12.3 Methods of Procurement

- **Micro-purchases:** This method encompasses procurement of supplies or services where the aggregate dollar amount does not exceed the micro-purchase threshold established in 2 CFR 200.67, which at the date of this manual is \$3,000:
- **Small purchases:** This method refers to procurement of services, supplies, or other property that does not exceed the Simplified Acquisition Threshold, currently set at \$150,000.
- **Sealed bid:** Bids are solicited through formal advertising, and the fixed price contract is awarded to the lowest, responsive, responsible bidder. This procurement method is the method of choice for construction contracts. Any and all bids can be rejected based on justified documentation.
- **Competitive proposals:** This method is used if the sealed bid process cannot be used. The fixed price or reimbursement contract is awarded to the firm whose proposal is the most advantageous to the program and includes consideration of price and other factors.
- **Noncompetitive proposals:** This method can be used when there is no other feasible procurement method available to select a vendor. This "single-source" or "sole-source" contract is permitted when the item is only available from a single vendor; public exigency or emergency will not allow a delay resulting from a competitive solicitation; or after solicitation from a number of sources, competition is determined inadequate. Note: Any sole-source, single-source, or noncompetitive contract exceeding \$25,000 must be approved by OLTR staff. For contracts below \$25,000, the subrecipient must document the justification for the award and maintain it in the grant file for review during the next OLTR onsite monitoring visit.

Advertisement requirements for construction procurements are found in Section 255.0525, Florida Statutes, Florida Administrative Code.

See 2 CFR 200.320.

## 12.4 Methods of Procurement for Professional Services

Required procurement of professional services must comply with Rule 73C-23.0051(3) of the Florida Administrative Code and federal procurement regulations (2 CFR 200.320(d)(5)). This federal statute allows use of competitive proposal procedures for selection of architectural or engineering professional services based on qualifications, subject to negotiation of fair and reasonable compensation.

Procurement of professional services must also comply with Florida Statutes Chapter 287.055, also known as the "Consultant's Competitive Negotiation Act." Procurement of grant administration services must be a separate process from any other procurement process for services and must comply with all program requirements if CDBG reimbursement for these services will be requested.

## 12.5 Contracting with Small and Minority Businesses, Women Business Enterprises and Labor Surplus Area Firms

Subrecipients must take affirmative actions to assure the use of minority businesses, women business enterprises, and labor surplus area firms when possible. Affirmative actions include the following:

- Placing small and minority businesses and women-business enterprises on solicitation lists

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- Solicit small and minority businesses and women-business enterprises when they are potential sources
- When economically feasible, divide requirements into smaller tasks or quantities to encourage participation
- When possible, establish delivery schedules that encourage participation
- Use services and assistance of organizations such as the SBA and the Minority Business Development Agency of the U.S. Department of Commerce
- Require prime contractors to take affirmative steps, such as those described above, when subcontractors will be used

See 2 CFR 200.321.

## 12.6 Debarment and Public Entity Crimes

Florida Statutes Section 287.133 defines "Public Entity" as the State of Florida, any of its departments or agencies, or any political subdivision. It defines "Public Entity Crime" as a violation of any state or federal law by a person with respect to and directly related to transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States-including to any bid, proposal, reply, or contract for goods or services; any lease for real property; or any contract for the construction or repair of a public building or public work-involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

The System for Award Management (SAM) is a federal search tool located at <https://www.sam.gov/portal/SAM/##11>. A Convicted Vendor List, maintained by the Florida Department of Management Services, includes names of persons or affiliates (including firms) convicted of a public entity crime. The Florida Department of Management Services also publishes a quarterly of convicted vendors in the Florida Administrative Register.

All invitations to bid, requests for proposals, and contract documents for procurements exceeding the threshold for Category Two (presently \$35,000) (Section 287.017, Florida Statutes) must contain a statement that no person or affiliate on the Convicted Vendors List, for a period of up to 36 months after being placed on the list, may submit a bid on a contract or request for proposals or be awarded or perform work as a contractor, supplier, subcontractor, or consultant.

## 13.0 Lead-based Paint, Asbestos, and Mold

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Lead-based paint, asbestos, and mold are factors that affect the environmental review and contracting process. Lead-based paint has clear rules and regulations, whereas asbestos and mold are less codified. Nonetheless, these are requirements pertaining to the health and well-being of families and children that must be evaluated in conjunction with building rehabilitation or repair and demolition projects. Key among them is the evaluation for the presence of lead-based paint, which is discussed in this section.

Also, of importance is determining the presence of asbestos and mold and effectively removing these environmental and health issues.

### 13.1 Lead-Based Paint

The presence of lead-based paint in housing units constructed prior to January 1, 1978, is a concern in any housing rehabilitation or demolition project and must be addressed in any activity receiving CDBG funds. Housing units assisted with disaster recovery funding must comply with the federal regulations in 24 CFR Part 35 and be addressed as part of the environmental review of the project. Subrecipients are required to include an assessment of the presence of lead-based paint in their environmental documentation submitted to DEO. If lead-based paint is present, its safe removal and disposal must be addressed.

The subparts of 24 CFR 35 that apply to the disaster recovery program are as follows:

- Subpart A-Disclosure of Known Lead-based Paint and/or Lead-based Paint Hazards Upon Sale or Lease of Residential Property
  - Subpart B-General Requirements and Definitions
  - Subpart J-Rehabilitation
  - Subpart K-Acquisition, Leasing, Support Services, or Operation
  - Subpart R-Methods and Standards for Lead-based Paint Hazard Evaluation and Reduction Activities
- Exemptions to 24 CFR 35 Subparts B, L, K, and R are described in 24 CFR 35.115 and include the following:
- Residential construction completed on or after January 1, 1978
  - Zero-bedroom dwelling units, including single-room-occupancy dwelling units
  - Housing exclusively for elderly or persons with disabilities, unless a child under the age of six resides or is expected to reside in the dwelling unit
  - Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with requirements outlined in 24 CFR 115(5)
  - Unoccupied dwelling units or residential properties pending demolition that will remain unoccupied until demolition
  - Property or a part of a property that will not be used for human residential habitation • Entryways, hallways, corridors, passageways, or stairwells serving both residential and nonresidential uses in a mixed-use property shall not be exempt.
  - Any rehabilitation that does not disturb painted surfaces
  - Emergency actions immediately necessary to safeguard against imminent danger to human life, health,



or safety, or to protect property from further damage

- Occupants must be protected from exposure to lead in dust and debris generated from the emergency actions to the extent practical.
- Property seized by a federal law enforcement agency that the agency has owned for fewer than 270 days
- Required evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface is delayed due to weather conditions or unsuitable conventional construction activities.
- If requested by the State Historic Preservation Office, property is listed or has been determined to be eligible for listing on the National Register of Historic Places or contributing to a National Register Historic District
- Interim controls and maintenance and reevaluation must be conducted as required in 24 CFR 35.115(13).

In addition, Subpart K does not apply if assistance being provided is for emergency rental assistance or foreclosure prevention assistance. This exemption expires no later than 100 days after initial payment or assistance.

For more information, see 24 CFR 35.115.

Subparts B, J, K, and R is referred to as the Lead Safe Housing Rule and require different approaches to addressing lead-based paint hazards in different housing rehabilitation projects based on the amount of funding assistance. The funding levels are up to and including \$5,000 per unit; more than \$5,000 up to and including \$25,000 per unit; and more than \$25,000 per unit. The method for calculating these threshold amounts can be found in 24 CFR 35.915, and applicable evaluation and hazard reduction requirements are located in 24 CFR 35.930.

Monitoring for lead-based paint is included in the Housing Rehabilitation Monitoring Checklist.

## **13.2 Asbestos**

The subrecipient is required to address asbestos in its environmental evaluation of a housing rehabilitation or demolition project in the environmental documentation submitted to OLTR.

HUD does not have a specific regulation related to asbestos as it does for lead-based paint. Nonetheless, to ensure housing units are decent, safe, and sanitary, which is a HUD requirement, housing rehabilitation and demolition projects need to determine if asbestos is present, especially in structures built before 1978. Federal requirements that apply to asbestos removal and safe disposal of asbestos containing materials can be found in the U.S. Environmental Protection Agency's air pollution standards, particularly the Clean Air Act and Occupational Safety and Health Act requirements.

In addition to federal regulations discussed above, asbestos-abatement requirements are located in Florida Statutes Chapter 469. A qualified asbestos inspector must be used to undertake a comprehensive evaluation of the housing unit for the presence of asbestos.

## **13.3 Mold**

HUD does not have a specific regulation related to mold. Nonetheless, to ensure housing units are decent, safe, and sanitary, which is a HUD requirement, housing rehabilitation projects need to determine if mold is present. Mold can be a significant problem in homes that receive water damage due to a qualifying storm event. The U.S. Environmental Protection Agency has published two useful guides on mold and cleanup: "A Brief Guide to Mold, Moisture and Your Home" and "Mold Remediation in Schools and Commercial Buildings."

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Additional information can be found at: <http://archives.hud.gov/news/2004/pr04-087.cfm>

Florida Statutes Chapter 468 addresses licensing and qualifications for individuals conducting mold assessments.

## 14.0 Environmental Review

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The purpose of the environmental review is to analyze the effect the proposed project will have on the people and the natural environment within the project area. This process examines a project relative to the National Environmental Policy Act of 1969 (NEPA), which was established to ensure environmental protection for federally funded projects. All CDBG funds are subject to provisions of HUD regulations implementing NEPA.

This section covers environmental regulations that must be followed on all CDBG-funded projects. The environmental review must be completed prior to submission of the Environmental Review Record to DEO. The type of project a Responsible Entity is completing will determine the level of review and the necessary documentation that will be required.

Three basic steps environmental reviews must follow to correctly complete the review process are as follows:

1. **Project Aggregation:** The Responsible Entity should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. The project scope should include any related activities necessary to accomplish the project.
2. **Determine the Level of Review:** The Responsible Entity must determine which level of environmental review is appropriate for each identified activity within the project scope.
3. **Documentation:** The Responsible Entity must complete all documents necessary for the appropriate level of environmental review as the process is comprehensive and detailed. The amount of information needed to complete the review depends on the type of project the Responsible Entity is proposing.

### 14.1 Project Aggregation

The Responsible Entity is responsible for the environmental review. Typically, the Responsible Entity designates a Grant Administrator to complete the environmental review process.

The Grant Administrator should evaluate the entire scope of the project and include all funding sources that may be used in conjunction with the project. Defining the project should include determining all integrally related activities designed to accomplish a specific objective. The project should be described fully and include all details, including all infrastructure being developed in conjunction with the project, regardless of whether additional portions of the project are funded with CDBG funds.

Most projects funded under the CDBG program entail more than one activity. For example, updates to a wastewater treatment plant would have both administration and construction-related activities. The administrative activities are considered exempt from funding, whereas the construction-related activities require an environmental review.

### 14.2 Determine the Level of Review

The Responsible Entity must ensure the level of environmental review is appropriate for the project in order to correctly complete the necessary documentation. Determining the activity classification is the responsibility of the Responsible Entity. To do this, the Grant Administrator must list all activities associated with the project and match the activities to the appropriate classification.

Each level of environmental review is defined by HUD. The five environmental classifications are:

- Exempt;
- Categorically Excluded Not Subject to § 58.5 (CENST);

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- Categorically Excluded Subject to § 58.5 (CEST);
- Environmental Assessment (EA); and
- Environmental Impact Statement (EIS).

The EIS is a comprehensive review for those projects that are larger in scope and will have a significant environmental impact.

Regardless of the number of activities associated with the project, it is only necessary to complete one environmental review due to project tiering. However, if activities have separate classifications, the Responsible Entity must follow the review steps listed under the most stringent classification.

## 14.3 Exempt Activities

An activity is *exempt* and will not require an environmental review when there are no effects on the physical environment. Project activities that fall under this classification include the following:

- Environmental and other studies, resource identification, and development of plans and strategies
- Information and financial services
- Administrative and management activities
- Public services that will not have a physical impact or result in any physical changes, including services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation, and welfare or recreational needs
- Inspections and testing properties for hazards or defects
- Purchase of insurance
- Purchase of tools
- Engineering or design costs
- Technical assistance and training
- Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deteriorations
- Payment of principal and interest on loans made or obligations guaranteed by HUD
- Any of the categorical exclusions listed in § 58.35(a) provided that there are no circumstances which require compliance with any other federal laws and authorities cited in § 58.5

If the proposed project only entails exempt activities, the Responsible Entity will not have to publish a Notice of Intent/Request for Release of Funds (NOI/RROF).

For exempt activities, the Responsible Entity is required to submit the following:

- Certificate of Exemption for HUD-funded projects
- Documentation of compliance with 24 CFR Part 58.6 (a-d) Form
- Request for Release of Funds and Certification (7015.15) form (a state requirement to track funding)

## **14.4 Categorically Excluded Activities Not Subject to § 58.5**

A project classified as CENST requires a limited environmental review. Activities that qualify under this classification include the following:

- Tenant-based rental assistance
- Supportive services, including healthcare and housing services; permanent housing placement; daycare; nutritional services; short-term payments for rent, mortgage, and utility costs; and assistance in gaining access to local, state, and federal government benefits and services
- Operating costs, including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs
- Economic development activities, including equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations.
- Activities to assist homebuyers to purchase existing dwelling units or dwelling -unit construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in transfer of title
- Affordable housing pre-development costs, including legal, consulting, developer, and other cost related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities that do not have a physical impact
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under § 58.47.

If the proposed project is determined to be CENST, the Responsible Entity will not have to publish a NOI/RROF.

For CENST activities, the Responsible Entity is required to submit the following:

- Certificate of Categorically Excluded and Not Subject to 24 CFR Part 58.5
- Documentation of Compliance with 24 CFR Part 58.6 (a-d) form
- Request for Release of Funds and Certification (RROF) Form (this is a state requirement to track funding)

## **14.5 Categorically Excluded Activities Subject to §58.5**

A project that is considered CEST requires a limited environmental review. Activities that qualify under this classification include the following:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when facilities and improvements are in place and will be retained in the same use without change in size and capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and side-walks, repaving of streets)
2. Special projects directed to removal of material and architectural barriers that restrict mobility of and accessibility to elderly and handicapped persons

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3. Rehabilitation of buildings and improvements when the following conditions are met: a. In the case of a building for residential use (with one to four units):
  - a. Density is not increased beyond four units and land use is not changed.
    - i. In the case of multifamily residential buildings:
  - b. Unity density is not changed more than 20 percent;
    - i. The project does not involve changes in land use from residential to non-residential; and
    - ii. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
  - c. In the case of non-residential structures, including commercial, industrial, and public buildings:
    - i. Facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - ii. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
4. An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or
5. An individual action on a project for five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.
6. Paragraphs 4 and 5 immediately above do not apply to rehabilitation of a building for residential
7. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use
8. Combinations of the above activities

## 14.6 Environmental Assessment Activities

A project that cannot be classified as exempt or categorically excluded (either CENST or CEST) will require completion of an EA under 24 CFR 58.36. These activities are usually those that have a greater potential for a direct impact on the physical environment. Activities that require an EA include the following:

- Change in use
- Any new construction
- Major rehabilitation
- A change in size or capacity by more than 20 percent
- New single-family housing in which 5 or more homes are located within 2,000 feet of one another

If the proposed project entails an EA activity, the Responsible Entity must prepare and maintain a written record of the environmental review undertaken for the project. This written record is called the Environmental Review Record (ERR).

## 14.7 Environment Review Process

For CEST and EA activities, the Responsible Entity is required to accomplish the following:

- Determine the appropriate level of review based on effects or activities of the project.
- Contact appropriate federal, state, and local agencies.
  - Provide a minimum 30 days from the date of receipt for agency comments or concerns. Some agencies may require 45--60 days.
  - It is suggested letters mailed are sent by "certified mail, return receipt;"
  - Letters included in an email should request a delivery and read receipt.
  - Only the Responsible Entity may formally contact and consult with the State Historic Preservation Office (SHPO) and Native American Indian Tribes. Letters sent to these agencies must be on the Responsible Entity's official letterhead and signed by the Responsible Entity (e.g., by the mayor).
    - ◆ If a response regarding a project raises concerns or requires further documentation and/or study, it is the Responsible Entity's responsibility to address the issue and to obtain necessary documentation, clearances, and/or permits prior to submitting the ERR to DEO.
    - ◆ Example: SHPO may require a Cultural Resource Survey to be performed in an undisturbed area where construction is proposed. In this event, the Responsible Entity must complete the survey and receive clearance from SHPO.
- Complete all requirements of Part 58 associated with the project or activity; (e.g., conduct the 8-Step Decision Making Process under 24 CFR Part 55 for projects located in a floodplain and/or wetland).
- Include color maps of the project location; (e.g., FIRM or floodplain map).
- Provide a detailed scope of work. This should include all HUD- and non-HUD-funded portions of a project or activity.
- At the conclusion of the environmental review, the Responsible Entity will certify the project meets the appropriate level of review (e.g., CEST or EA). The signature of the Responsible Entity must occur prior to publication or posting of the NOI/RROF or concurrent public notice.
- Provide the appropriate public notice based on the review conducted.
- The RROF (7015.15) form is signed by the Responsible Entity
- Submit the ERR.

## 14.8 Public Notices

The required public notice affords the public the opportunity to be informed of the upcoming project or activity. Notices that are published must be in a news medium that reaches the local community in which the project will be located. The publication of notices shall be followed by a comment period counted in calendar days. A comment period may not end on a weekend or holiday. If this occurs, the official last day to comment is moved to the next weekday. The following public notices are required:

- Early Notice and Public; Review of a Proposed Activity in a 100-year Floodplain or Wetland
  - Public comment period: 15 days (publication required)
- Final Notice and Public Review Explanation of a Proposed Activity in a 100-year Floodplain or Wetland
  - Public comment period: 7 days (publication required)

- Notice of Intent to Request Release of Funds (NOI/RROF)
  - Public comment period: 7 days (published); 10 days (posted)
- Concurrent Notice-Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds
  - Public comment period: 15 days (published); 18 days (posted)

The ERR is to include a copy of the public notice and a notarized statement from the news medium verifying date of publication. Notices that are posted must be located in multiple locations (e.g., post office, community center, government offices) and include a notarized statement verifying posting locations

## 14.9 Environmental Impact Statement

If the proposed project is determined to have a potentially significant impact on the physical and/or human environment, an Environmental Impact Statement (EIS) is required. This determination is based upon environmental responses collected from applicable agencies.

In the event this situation does occur, the Responsible Entity must use recommended format of Council on Environmental Quality regulations (40 CFR 1502.10).

## 14.10 Procedures for Making Determinations on Floodplain and Wetland Management

Projects located within a floodplain or within a designated wetland are subject to Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) respectively. HUD regulations describe measures for protecting floodplains and wetlands. The required eight-step process is explained below:

1. Determine whether the proposed action is located in a 100-year floodplain and/or wetland. This is determined by looking at wetland maps and FEMA floodplain maps. If no maps are available, use the best available information. If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required. Categorically excluded (CENST and CEST) projects are not excluded from this process.
2. Notify the public at the earliest possible time of a proposal to consider an action in a floodplain and/or wetland and involve the affected and interested public in the decision-making process. This is accomplished by publishing the Early Public Review Notice.
  - a. Public notices required in this section may be combined with other project notices wherever appropriate. All notices must be published in an appropriate local printed news medium.
  - b. A minimum of 15 calendar days shall be allowed for comment on the public notice.
  - c. A notice under this paragraph shall state the name, proposed location, and description of the activity; the total number of acres of floodplain and/or wetlands involved; and the name of the chief elected official and phone number to contact for information. The notice shall indicate hours and address of the UGLG's main office at which a full description of the proposed action may be reviewed.
3. Identify and evaluate practical alternatives to locating the proposed action within the floodplain and/or wetland.
  - a. Consideration of practical alternatives to the proposed site or method may include:
    - i. Locations outside the floodplain and/or wetlands;



- ii. Alternative methods to serve the identical project objective; and
    - iii. A determination not to approve any action.
  - b. In reviewing practical alternatives, the Responsible Entity shall consider feasible technological alternatives, hazard-reduction methods and related mitigation costs, and environmental impacts.
4. Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain and/or wetland.
5. Where practical, design or modify the proposed action to minimize potential adverse impacts within the floodplain and/or wetland and to restore and preserve its natural and beneficial values.
6. Re-evaluate the proposed action to determine:
  - a. Whether it is still practical in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains and/or wetlands, and its potential to disrupt floodplain and/or wetland values; and
  - b. Whether alternatives preliminarily rejected at Step 3 of this section are practical in light of the information gathered in Steps 4 and 5 of this section.
7. Publish the Final Notice of Explanation.
  - a. If the re-evaluation results in a determination that there is no practical alternative to locating the proposed project in the floodplain and/or wetland, the Responsible Entity shall publish the Final Notice of Explanation that includes"
    - i. The reasons why the project must be located in the floodplain and/or wetland;
    - ii. A list of the alternatives considered; and
    - iii. All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.
  - b. In addition, a minimum of 7 calendar days shall be provided for public comment before the approval of the proposed action. This notice may be run concurrent with either the Finding of No Significant Impact (FONSI)/RROF or the NOI/RROF.
8. Upon completion of the decision-making process in Steps 1 through 7, implementation of the proposed action may proceed. There is a continuing responsibility to ensure that mitigating measures identified in Step 7 are implemented.

See 24 CFR 55.20.

## **14.11 Re-evaluation of Previously Cleared Projects**

Sometimes projects are revised, delayed, or otherwise changed such that a re-evaluation of the environmental review is necessary. The purpose of the re-evaluation is to determine if the original findings are still valid. If the original findings are still valid but the data and conditions upon which they were based have changed, the Responsible Entity must update its ERR by including this re-evaluation and its determination based on the changed circumstances. The re-evaluation is to be submitted to the state for clearance and should include the following:

- A written statement on the Responsible Entity's letterhead explaining why the re-evaluation must occur and how it was conducted
- Reference to the original ERR and the issuance of funds (7015.16)
- Description of both old and new project activities

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- Maps delineating both old and new project areas
- All correspondence when agencies are contacted
- Cost of the project and funding source(s)
- Determination if the original FONSI is still valid
- Indications whether comments or concerns were received during the initial environmental review

The written statement is signed and dated by the Responsible Entity.

If it is determined that the original findings are no longer valid and the re-evaluation indicates potentially significant impacts, the Responsible Entity must prepare an EA or EIS.

## 15.0 Construction Bids and Contract- Administration Requirements

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A critical responsibility of subrecipients is the bid and contracting process for construction. OLTR will assist subrecipients with these requirements. The primary responsibility for compliance with federal and state requirements is, however, the subrecipient's.

- **Advertisements:** Bids should be advertised to garner interest from a pool of qualified contractors, and the process must be fair and open. To that end, the subrecipient may advertise via the means that best suits its needs, generates an adequate pool of contractors, and is in accordance with local policy and federal and state procurement guidelines.
- **Required Bid Documents:** Bid document must include the scope of work, a bid form, required federal conditions (standard language and wage decisions, if applicable), bidding instructions, basic bid information (time, place, due date, etc.).
- **Scope and Cost Estimates:** The subrecipient will prepare scope and cost estimates prior to issuance of the bid. The scope is necessary to develop the bid documents, and cost estimates are a guide for evaluation of bids received. Cost estimates are the basis for the rejection of bids that are deemed to be non-responsive (i.e., too low).
- **Pre-construction Conference:** A preconstruction conference may be held to discuss the project and field questions. All questions will be answered and everyone in attendance at the pre- construction conference will be provided with the answers.
- **Bid Bond:** Bid bonds are required for bids in excess of \$150,000 or according to local policy.
- **Bid Submission and Bid Opening:** Sealed bids are submitted by a certain time and to a certain place and are opened in public: Vendors and the public may be present at bid openings.
- **Bid Tabulation and Award:** Bids are tabulated and awarded according to the procurement policy of the subrecipient and in accordance with federal and state guidelines. Awards are to the lowest bidder unless a valid reason is provided.
- **Payment and Performance Bond:** Payment and performance bonds are required for contracts in excess of the simplified purchase threshold of \$150,000, or local policy, whichever limit is lowest. In some cases, DEO may approve alternative bonding, but this requires advance notification and planning. Not all vendors or subrecipients may be approved for alternative bonding.

### 15.1 Required Contract Clauses

The following contract language must be included on all construction contracts by reference. Please note that the wage decision, if applicable, must be included into the contract document.

#### 15.1.1 Laws and Regulations

The CDBG-DR allocation to the State of Florida is governed by the following laws and regulations:

- The Housing and Community Development Act of 1974
- Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C.5155), as amended

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- Section 18 of the Small Business Act, as amended (14A U.S.C. 647) 44 CFR 206.191 Duplication of Benefit
- Duplication of Benefits Federal Register, Vol. 76, No.221, November 16, 2011 (76 FR 71060) Public Law 113-2
- Disaster Relief Appropriations Act, 2013 (at HR 152-34)
- The HUD Federal Register Notice at 78 FR 14329 published March 5, 2013
- HUD Federal Register Notice at 78 FR 23578 published April 19, 2013
- HUD Federal Register Notice at 78 FR 76154 published December 16, 2013
- The applicable laws of the State of Florida
- By laws and regulations promulgated by the State of Florida for the CDBG-DR program

In addition to the citations noted, the CDBG-DR allocation is also subject to "cross-cutting" federal requirements referenced herein and contained in 2 CFR 200 Sub-part F.

### ***15.1.2 Federal Changes***

The subrecipient shall at all times comply with all applicable federal regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in this contract between the State of Florida DEO and the subrecipient, as such federal regulations, policies, procedures, and directives may be amended or promulgated from time to time during the term of this contract. The subrecipient's failure to so comply shall constitute a material breach of this contract.

Reference: 49CFR Part 18

### ***15.1.3 Assignability***

The subrecipient will not assign or transfer any interest in this agreement without prior written consent of the DEO, provided, however, that claims for money due or to become due to the subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

### ***15.1.4 Access to Records***

The subrecipient agrees that the federal awarding agency, Inspectors General, the Comptroller General of the United States, the State of Florida, or any of their authorized representatives have the right of access to any documents, papers, or other records of the subrecipient that are pertinent to the federal award in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents.

Reference 2 CFR 200.336)

### ***15.1.5 Record-retention Requirements***

The subrecipient agrees that financial records, supporting documents, statistical records, and all other subrecipient records pertinent to a Federal award shall be retained for a period of 6 years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or the State of Florida in the case of a subrecipient. Federal awarding agencies and the State of Florida may not impose any other record retention requirements upon the subrecipient. The only exceptions are the following:

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- If any litigation, claim, or audit is started before the expiration of the 6-year period, records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken
- When the subrecipient is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or the State of Florida to extend the retention period
- Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition.
- When records are transferred to or maintained by the federal awarding agency or the State of Florida, the 3-year retention requirement is not applicable to the subrecipient.

Reference: 2 CFR 200.333

### ***15.1.6 Remedies for Noncompliance***

If a subrecipient fails to comply with federal statutes, regulations, or terms and conditions of a federal award, the federal awarding agency or the State of Florida may impose additional conditions, as described in 2 CFR 200.207 Specific Conditions. If the federal awarding agency or the State of Florida determines that noncompliance cannot be remedied by imposing additional conditions, the federal awarding agency or the State of Florida may take one or more of the following actions, as appropriate in the circumstances:

- Temporarily withhold cash payments pending correction of the deficiency by the subrecipient or more severe enforcement action by the federal awarding agency or State of Florida.
- Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- Wholly or partly suspend or terminate the Federal award.
- Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and federal awarding agency regulations (or, in the case of the State of Florida, recommend such a proceeding be initiated by a federal awarding agency).
- Withhold further federal awards for the project or program.
- Take other remedies that may be legally available.

Reference: 2 CFR 200.338

### ***15.1.7 Breaches and Dispute Resolution***

- **Disputes:** Disputes arising in the performance of the contract that are not resolved by agreement of the parties will be decided in writing by the DEO Administrator's authorized representative or designee. This decision is final and conclusive unless, within 10 calendar days from the date of receipt of its copy, the subrecipient mails or otherwise furnishes a written appeal to the Administrator or designee. In connection with any such appeal, the subrecipient shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Administrator or designee will be binding upon the subrecipient, and the subrecipient will abide by the decision.
- **Performance During Dispute:** Unless otherwise directed by the State of Florida Department of Capital Planning and Resiliency, the subrecipient shall continue performance under the contract while matters in dispute are being resolved.
- **Claims for Damages:** Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents, or others for whose

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acts he is legally liable, a claim for such damages will be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

- **Remedies:** Unless the contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between DEO and the subrecipient arising out of or relating to this agreement or its breach will be decided by arbitration in the State of Florida DEO, if the parties mutually agree, or in a court of competent jurisdiction within the state in which the DEO is located.
- **Rights and Remedies:** Duties and obligations imposed by contract documents and rights and remedies available under the contracts shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the State of Florida Department of Capital Planning and Resiliency, the subrecipient shall constitute a waiver of any right or duty afforded any of them under the contract, nor will any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

References: 49 CFR Part 18

## 15.1.8 Termination

The federal award may be terminated in whole or in part as follows:

- By the federal awarding agency or the State of Florida, if a subrecipient fails to comply with the terms and conditions of a Federal award
- By the federal awarding agency or the State of Florida for cause
- By the federal awarding agency or the State of Florida with the consent of the subrecipient, in which case the two parties must agree upon termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated
- By the subrecipient upon sending to the federal awarding agency or the State of Florida written notification detailing the reasons for such termination, the effective date and in the case of partial termination, the portion to be terminated. However, if the federal awarding agency or the State of Florida determines in the case of partial termination that the reduced or modified portion of the federal award or sub-award will not accomplish the purposes for which the federal award was made, the federal awarding agency or the State of Florida may terminate the federal award in its entirety.

When a federal awarding agency terminates a federal award prior to the end of the period of performance due to the subrecipient's material failure to comply with the federal award terms and conditions, the federal awarding agency must report the termination to the integrity and performance system designated by the Office of Management and Budget accessible through SAM.

- The information required under the immediately preceding paragraph is not to be reported to designated integrity and performance system until the subrecipient either:
  - Has exhausted its opportunities to object or challenge the decision (see §200.341 Opportunities to object, hearings and appeal's); or
  - Has not, within 30 calendar days after being notified of the termination, informed the federal awarding agency that it intend-sto appeal the Federal awarding agency's decision to terminate.
- If a federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently learns that any of that information is erroneous, the federal awarding agency must correct the information in the system within 3 business days.
- If a federal awarding agency, after entering information into the designated integrity and

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performance system about a termination, subsequently obtains an update to that information that could be helpful to other federal awarding agencies, the federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

- Federal awarding agencies shall not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the subrecipient asserts within 7 calendar days to the federal awarding agency who posted the information that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the federal awarding agency who posted the information must remove the posting within 7 calendar days of receiving the assertion. Prior to reposting the releasable information, the federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

When a federal award is terminated or partially terminated, both the federal awarding agency or the State of Florida and the subrecipient remain responsible for compliance with requirements in 2 CFR 200.343 Closeout and 2 CFR 200.344 Post-closeout Adjustments and Continuing Responsibilities. References: 2 CFR 200.339; 78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43309, July 22, 2015)

### ***15.1.9 Insurance Requirements***

The subrecipient assumes all risks incident to or in connection with its purpose to be conducted herein under and shall indemnify, defend, and save the State of Florida harmless from damage or injuries of whatever nature or kind to persons or property arising directly or indirectly out of the subrecipient's operations and arising from acts or omissions of its employee and shall indemnify, defend, and save harmless the State of Florida from any penalties for violation of any law ordinance, or regulation affecting or having application to said operation or resulting from the carelessness, negligence, or improper conduct of Contractor or any of its agents or employees.

In this connection, the subrecipient shall carry Insurances in the following amounts:

**Contact your DEO representative when this section needs to be used. In most cases you will use local requirements.**

The State of Florida shall be furnished with a certificate of insurance that shall provide that such insurance shall not be changed or canceled without 10 days prior written notice to the State of Florida. Certificates of Insurance shall be delivered to the State of Florida prior to the commencement of the agreement. The policy shall list the State of Florida as co-insured or additional insured.

### ***15.1.10 Equal Opportunity***

The following equal employment opportunity requirements apply to the underlying contract:

- **Race, Color, Creed, National Origin, Sex:** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the subrecipient agrees to comply with applicable equal employment opportunity requirements of U.S. Department of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The subcontractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall

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include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the subrecipient agrees to comply with any implementing requirements HUD may issue.

- **Age:** In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the subrecipient agrees to comply with any implementing requirements HUD may issue.
- **Disabilities:** In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the subrecipient agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. In addition, the subrecipient agrees to comply with any implementing requirements HUD may issue.

References: Executive Order 11246 September 24, 1965 as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations 41 CFR Chapter 60

### ***15.1.11 Civil Rights***

- **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the subrecipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the subrecipient agrees to comply with applicable federal implementing regulations and other implementing requirements HUD may issue,
- The subrecipient agrees to comply with nondiscrimination policies in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. Applicable nondiscrimination provisions in Section 109 of the Housing and Community Development Act of 1974 are still applicable.
- The subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

References: 29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Parts 60 et seq.

### ***15.1.12 Conflict of Interest***

Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State of Florida or of any of its subsidiaries who exercises or has exercised any functions or responsibilities with respect to CDBG activities assisted or who is in a position to participate in a decision-making process or gain inside information with regard to such activities may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for him or herself or those with whom he or she has business or immediate family ties, during his or her tenure or for



1 year after such decision-making responsibilities have ended.

Reference: 2 CFR 200.112

### ***15.1.13 Copyrights***

The State of Florida DEO reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use for Federal Government purposes the copyright in any work developed under the contract and to any rights off copyright to which a subrecipient purchases ownership with grant support.

Reference: 24 CFR Subtitle A. 85.34 Copyrights

### ***15.1.14 Lobbying***

Subrecipients who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an office or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that federal contract, grant, or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the State of Florida Department of Capital Planning and Resiliency.

References: 31 U.S.C. 1352 as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65; 49 CFR Part 19, 49 CFR Part 20

### ***15.1.15 Intellectual Property***

This section of the CFR ([2 CFR 200.488](#)) outlines payment of patents and royalties associates with intellectual property. While this is not a common occurrence in the CDBG-DR program, it is a required citation for contracts.

## **15.2 Subcontractor Documentation**

Any subcontractors not identified in bid documents should provide the data or necessary information to verify eligibility, sign required certifications, provide assurance to comply with Section 3 of the Housing and Community Development Act of 1968, as amended, and other responsibilities outlined in the prime contract.

## **15.3 Notice to Proceed**

After execution of the contract documents and notification of the subrecipient(s) and subcontractor(s) responsibilities, a Notice to Proceed should be issued to each subrecipient. The notice should state the construction start date and scheduled completion date. Onsite work cannot proceed until the environmental review is completed and a notice of release of funds is issued by OLTR.

## **15.4 Monitoring Contractor Progress**

The purpose of this task is to monitor construction contracts to ensure compliance with technical specifications and state and federal requirements, maintain adequate cost and budget controls, and process necessary contract changes to bring the construction project to completion on time.

### ***15.4.1 Change Orders***

The following activities must occur for change orders:

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- Change orders must be prepared and recommended by the architect or engineer overseeing the project.
- Costs associated with change orders must be assessed for "cost reasonableness."
- A supporting statement that describes why the proposed change is deemed necessary must accompany each change order.
- The fully executed change order must contain the signatures of the architect or engineer, contractor, and subrecipient representative authorized to sign change orders.
- A copy of the fully executed change order must be maintained within the project file.

### ***15.4.2 Inspecting and Accepting the Work and Final Payment***

When construction work has been completed, the following steps must be taken:

1. The contractor must certify completion of work to the subrecipient and submit a final request for payment.
2. The subrecipient must then arrange for a final inspection by its project manager.
3. The subrecipient and the subrecipient's architect or engineer should attend the final inspection and prepare a written report of the inspection prior to the subrecipient's issuance of a final certificate of payment.
4. An engineer's certification that the construction work is final, complete and in substantial conformance with approved plans and specifications and a certificate of occupancy for housing units and other buildings are required to be submitted before final payment.

Before making final payment (less retainage), the subrecipient must ensure the following:

- All weekly payrolls and statements of compliance have been received and checked and any discrepancies have been resolved.
- All discrepancies identified via onsite interviews have been resolved.
- All other required equal employment opportunity and labor standards provisions have been satisfied.
- All subrecipient agreement conditions, terms, reports and other submission requirements have been received.
- All claims and disputes involving the contractor have been resolved.
- All files are complete.
- As-built information has been provided to the engineer.
- A Final Wage Compliance Report is drafted and placed in the Labor Standards Compliance file.

### ***15.4.3 Inspections***

When construction work has been completed; an inspection is required:

- The contractor must certify completion of work to the subrecipient and submit a final request for payment.
- The subrecipient must then arrange for a final inspection by its project manager.
- The subrecipient and the subrecipient's architect or engineer should attend the final inspection and prepare a written report of the inspection prior to the subrecipient's issuance of a final certificate of payment.

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- An engineer's certification that the construction work is final, complete, and in substantial conformance with the approved plans and specifications and a certificate of occupancy for housing units and other buildings are required to be submitted before final payment.

#### ***15.4.4 Record Keeping***

The subrecipient is responsible for keeping accurate construction records. The files should include complete invoicing backup, labor standards, Equal Employment Opportunity compliance, excluded parties compliance, a current and executed contract with all executed change orders, notice to proceed, purchase orders, inspection reports, final inspections, warranties, and correspondence.

## 16.0 Davis-Bacon Act Labor Standards

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The Davis-Bacon Act (DBA) applies to all construction contracts greater than \$2,000 unless the program's authorizing legislation contains exceptions. It requires that all workers or mechanics working on projects covered by the act be paid minimum hourly wages and fringe benefits according to the wage decision(s) applicable to that contract. If any portion of a contract requires DBA, then all work performed under the contract is subject to DBA. In the CDBG-DR program, only rehabilitation of residential property containing less than eight housing units is exempt from DBA. Work done by a local government's employees (force account) is not subject to DBA.

Additionally, contractors must comply with the Contract Work Hours and Safety Standards Act (CWHSSA) and the Copeland Anti-Kickback Act (Copeland Act). CWHSSA requires that, for any project in which the prime contract exceeds \$100,000, workers must be paid one-and-one-half their normal hourly rate for any hours worked in excess of 40 hours weekly, based on a workweek of 7 consecutive days.

The Copeland Act prohibits any person from inducing a worker on a federally funded project to give up any part of the compensation to which the worker is entitled. No payroll deductions are permitted that are not specifically listed in the Copeland Act unless the contractor has obtained written permission from the employee as specified in 29 CFR 3.5 for otherwise permissible payroll deductions.

### 16.1 Construction Categories

Under DBA, construction work is categorized as residential, building, heavy, or highway work. Wage decisions are based on the category or categories of work to be performed. Each construction contract to which DBA applies must contain the wage decision(s) for the appropriate category or categories of work. A separate wage decision for a Category is not required if the value of work (as bid) in that category does not exceed 20 percent of the total "as bid" construction cost. The actual bid cost, not the estimated project cost, determines whether a separate wage decision is used. If more than one wage decision is used, payrolls must reflect which wage decision is applicable unless all workers are paid at least the highest hourly rate possible under either wage decision.

### 16.2 Wage Decisions

Subrecipients are required to determine which wage decision applies to their project. To find a wage decision, subrecipients should go to the U.S. Department of Labor's Wage Determinations Online site (<https://beta.sam.gov/>). After determining the correct wage decision, the document should be included in bid and contract documents.

The contract, the wage decision number and version used for each project, the date of bid opening, and the date of award must be uploaded into SERA.

### 16.3 Certified Payroll Review

During project construction, the local government must monitor compliance with DBA, CWHSSA, and the Copeland Act by reviewing contractor and subcontractor payrolls. DBA applies to laborers and mechanics working on any project when the primary contract exceeds \$2,000. It does not apply to supervisory staff if 80 percent of their time during the workweek is spent performing supervisory duties. Supervisory personnel who fall below the 80-percent threshold are subject to DBA for non-supervisory hours worked during that particular work week.

Self-employed owners are not exempt from DBA and must submit a payroll report reflecting the hours worked on the project, the type of work performed, and that they are the owner of their business. Hourly rates need not be reported if this information is not known, but the amount of the subcontract should be indicated.

Supply contracts are not subject to the DBA. A supply contract is one that furnishes equipment, materials, or supplies with no (or only "incidental") construction activities performed at the project site. Construction is "incidental" if it does not exceed 13 percent of the contract or subcontract price. There must be documentation to support this percentage.

## 16.4 HUD Form 11 and Onsite Posters

During project construction, the local government must also conduct interviews with the contractors' and subcontractors' workers to verify the accuracy of payroll information. Interviews must cover a representative sample of each classification used by the contractor or subcontractor. Onsite interviews should be conducted whenever possible, but mail interviews are acceptable if onsite interviews cannot be performed. Discrepancies between information gained in the interviews and payroll data must be resolved in a timely manner. Additionally, interviews and resolution of discrepancies should be conducted in such a manner as to shield the identity of the worker(s). The form used is HUD Form 11 "Record of Employee Interview," which can be found online at the HUD website.

If a contractor or subcontractor is required to pay a cumulative total of more than \$100 in back wages during the contract period, the local government must submit an enforcement report to OLTR. Any corrective actions by a contractor must be documented in the project files. For back wages greater than \$10, there must be a copy of the front of the wage-restitution check and a signed acknowledgment from the worker stating the amount of that check and that it was received. If there are overtime violations, the local government must assess contractor-liquidated damages of \$10 per day per worker for those who should have received overtime. Restitution is also required. The contractor may request waiver of liquidated damages through DEO.

The contractor must also post the wage decision on site and a Labor Standards poster that outlines the requirements of labor standards. The poster and wage decision should be in an area protected from the weather as much as possible, such as inside of a job box or in a construction trailer.

OLTR will monitor compliance with labor standards until the project is complete. During monitoring visits, special attention will be given to the following:

- Ensuring payroll information is being submitted and reviewed in a timely manner
- Ensuring all labor classifications are included in the wage decision or have been confirmed and/or added with DEO approval.
- Ensuring *trainee* and *apprentice* labor classifications are applied in accordance with regulations for those titles
- The Florida Office of Apprenticeship and Training must certify the helper, trainee, or apprentice program. If trainees or apprentices are used, the contractor must provide a copy of the state certification to the subrecipient and the DEO Disaster Recovery grant manager.
- Ensuring signed authorizations are on file for any employees with "other" payroll deductions
- Ensuring interviews have been conducted with the prime contractor's and any subcontractor's employees
- HUD Form 11 can be used for interviews.
- In the case of multiple wage decisions, investigating payrolls to ensure that they distinguish which wage

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was applied to each worker

- Posting of the wage-rate decision in a conspicuous location the project site and posting a copy of "Notice to All Employees Working on Federal or Federally Financed Construction Projects" (a copy of this poster and other required posters are available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>)

Typical findings from past monitoring activities include the following:

- Inappropriate use of the *apprentice* and *trainee* classifications
- Use of a classification that is not in the wage decision or is vague (i.e., "operator")
- Failure to obtain subcontractor payrolls
- Lack of signed authorizations from workers with "other" deductions
- Lack of interviews, including not covering enough classifications or not interviewing subcontractors
- "Salaried" workers covered by DBA not treated as hourly workers for regular and overtime purposes
- Using one wage decision when two are required based on the type of work in each category
- Payrolls failing to reflect which wage decision(s) is applicable to which worker, particularly if two wage decisions are used, and workers are not paid the highest hourly rate possible for that classification

## 16.5 Reporting

Every 6 months, OLTR must report to HUD on all covered contracts awarded and on all enforcement actions taken. The Semi-Annual Report form (HUD-4710) and instructions for the form (HUD-4710i) are available on HUD's website: <https://www.hudexchange.info/resources/documents/HUD-Form-4710-Semi-Annual-Labor-Standards-Enforcement-Report.pdf>

Additional labor standards information can be found in these HUD publications:

- Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects <http://portal.hud.gov/hudportal/documents/huddoc?id=4812-LRguide.pdf>
- *Making Davis-Bacon Work: A Practical Guide for States, Indian Tribes and Local Governments* (<https://www.hudexchange.info/resources/documents/Making-Davis-Bacon-Work-Guide-States-Indian-Tribes-Local-Agencies.pdf>)
- Basically CDBG for States (<https://www.hudexchange.info/resource/269/basically-cdbg-for-states/>)
- Community Development Block Grant Toolkit on Crosscutting Issues, Module 3: Federal labor Standards ([http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_15953.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_15953.pdf))

OLTR is working to incorporate these reporting requirements into S-E A so that the information may be entered once along with the contract documents. This will streamline the reporting process.

## 17.0 Acquisition and Relocation

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In undertaking disaster recovery CDBG projects, subrecipients may need to acquire real property to complete specific activities. Use of federal funds involving the acquisition, rehabilitation, or demolition of real property, the Uniform Relocation Assistance (URA) and Real Property Acquisition Act of 1970 (as amended) may apply. Section 104(d) of the Housing and Community Development Act of 1974 may be applicable if CDBG disaster funds are involved in demolition or conversion of lower-income dwelling units.

It is the responsibility of the subrecipient to ensure that any activities undertaken meet applicable URA requirements. OLTR will provide technical assistance as needed for acquisition and relocation activities.

URA requirements are in 49 CFR Part 24, and Section 104(d) requirements are found in 24 CFR part 42 Subpart C. Additional regulations are found in 24 CFR 570.606. A useful guide to these requirements and their applicability is HUD's "Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)", located at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips/handbooks/cpd/13780](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780)

## **18.0 Duplication of Benefit**

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Duplication of Benefit is a component of the Stafford Act, which governs disaster recovery. Essentially, Duplication of Benefit prohibits recipients of federal disaster funds from being paid twice for the same activity (i.e., for repairs). Disaster recovery subrecipients who have already received funds from private insurance, flood insurance, or other sources for disaster repairs may not also receive CDBG-DR funds for the same repairs. Please refer to the Irma Duplication of Benefits document on the Office of Long-Term Resiliency webpage



## 19.0 Uniform Relocation Act Requirements

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### 19.1 Requirements under 24 CFR 570.606

Some of the activities identified in Hurricane Irma CDBG-DR may trigger requirements of the Uniform Relocation Assistance Act (URA), a government-wide law that governs acquisition of real property and displacement of tenants, businesses, and property owners. This regulation establishes HUD's policy that efforts are to be taken to minimize displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) because of activities undertaken with CDBG funds. It also provides that relocation assistance will be provided to a displaced person based on requirements in 49 CFR 24. In the discussion that follows, it is important to remember that the grantee is the State of Florida CDBG-DR program and the subrecipient is the local government that receives a subrecipient agreement from the state under the disaster recovery program.

A displaced person is defined in 24 CFR 570.606(2) as "any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of rehabilitation, demolition, acquisition for any activity assisted under this part."

URA requirements are complex, and HUD has excellent resources to assist in the URA process. Handbook 1378 is available on the HUD website at

<https://www.hud.gov/programoffices/commplan/ning/libra/rv/relocation/policyandguidance/handbook1378>. Subrecipients should consult this comprehensive resource for detailed guidance. In addition, OLTR staff are a resource for assistance prior to undertaking acquisition and relocation activities.

### 19.2 Requirements under 49 CFR 24

The Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs is established in Title 49 CFR Part 24. It consists of Subparts A through G. Subpart A establishes that the purpose of the regulations is to ensure owners of real property acquired for federal or federally assisted projects and persons displaced because of these projects are treated fairly and consistently. In addition, the purpose of the regulations is to ensure that agencies that implement the regulations do so in a manner that is efficient and cost effective.

#### 19.2.1 Subpart A: General Requirements

In addition to the purpose above, this subpart includes the following elements:

- Definitions and acronyms
- Prohibition of a person from receiving URA payments if payments are received under federal, state, or local laws or insurance that are determined to have the same purpose and effect as a URA payment
- Requirements that the state must provide assurances that it will comply with URA if a project is undertaken with federal assistance that will result in acquisition of real property or displacement and is subject to monitoring by HUD and must take measures to minimize fraud, waste, and mismanagement
- Requirements for information to be contained in notices and how those notices are to be written and delivered
- Guidelines for administration of jointly funded projects when two or more federal agencies provide financial assistance to a non-federal agency

- Authority for a federal agency to waive regulations
- Lists of other federal laws and regulations with which the implementation of the URA must ensure compliance
- Requirements for record keeping in sufficient detail to demonstrate compliance with the URA requirements, 3-year retention, confidentiality of records, and submitting reports every 3 years or as URA requires on real-property acquisition *and* displacement activities
- NOTE: OLTR requires records retention for 6 years.
- Appeal procedures

## ***19.2.2 Subpart B: Real Property Acquisition Requirements***

Subpart B encompasses the following:

- Applicability of acquisition requirements
- Basic acquisition policies
- Criteria for appraisals
- Review of appraisals
- Acquisition of tenant-owned improvements
- Expenses incidental to transfer of title to the subrecipient
- Certain litigation expenses
- Donations

## **19.3 Requirements under 24 CFR 42**

Requirements of 24 CFR 42 are applicable to CDBG-funded programs or activities when lower-income (LMI) housing units, whether occupied or vacant and occupiable, are demolished or converted to a use other than LMI dwelling units. The requirements include the following:

- Demolished or converted units must be replaced on a one-for-one basis with comparable lower-income dwelling units.
  - Replacement units must be in the subrecipient's jurisdiction and, to the extent possible, within the same neighborhood.
  - Replacement units must be of sufficient number and size to house the number of occupants that could have occupied the units being demolished or converted. Replacement housing cannot be smaller than the units they are replacing (i.e., replacing two-bedroom units with one-bedroom units) unless it is demonstrated that the smaller units are consistent with the needs assessment in the HUD-approved consolidated plan. Non-entitlement local governments that do not have a consolidated plan must make available public information demonstrating that the replacement housing is consistent with the housing needs of lower-income households in its jurisdiction.
  - Units must be in standard condition. Replacement housing can be obtained from substandard units improved to standard condition provided no person was displaced from the unit and the unit was vacant for 3 months before an agreement was executed with the property owner.
  - Units must initially be made available for occupancy at any time during the period beginning 1 year before the subrecipient makes public the information demonstrating that replacement

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housing is not required,(see above) and ending 3 years after the completion of the demolition or rehabilitation related to the conversion.

- Units must remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement housing may include public housing or existing housing receiving Section 8 project-based assistance.
- Before the subrecipient enters into a contract to provide funds to demolish or convert lower-income dwelling units, the subrecipient must make the following available to the CDBG-DR program:
  - A description of the proposed assisted activity
  - A map of the location identifying the number of dwelling units by size (number of bedrooms) that will be demolished or converted
  - A time schedule for commencement and completion of the demolition or conversion
  - A map of the location and the number of dwelling units by size (i.e., number of bedrooms) that will be provided as replacement units
    - ◆ If the information is not available, include the general location on a map, identify the approximate number of dwelling units by size, and provide information as to when the specific location and number of units by size will be submitted and disclosed to the public.
  - The source of funding and the time schedule for providing the replacement units
  - The basis for concluding the replacement units will be available to lower-income households for at least 10 years from the date of initial occupancy
  - Information demonstrating that any proposed smaller units used as replacement units are consistent with the needs assessment in the HUD-approved consolidated plan.
    - ◆ For non-entitlement local governments that do not have a consolidated plan, information should be made available to the public demonstrating that the replacement housing is consistent with the housing needs of lower-income households in its jurisdiction.
- Replacement housing is not required if the HUD field office determines, based on objective data, that there is an adequate supply of vacant lower-income units in standard condition and available on a non-discriminatory basis within the area. The subrecipient must submit the required information to the CDBG-DR program staff to support the conclusion the replacement housing is not required. The submitted information must be made public and inform interested parties that they have 30 days from the date of submission to provide the state opposing information. If the state agrees with the request, the state must provide its recommendation and supporting information to the field office. Similar requirements must be met if the state intends to demonstrate that replacement housing is not required.
- Anyone who disagrees with a displaced-person determination or the amount of relocation assistance received can file a written appeal with the subrecipient. If the appeal is not resolved with the subrecipient, the appealing individual may submit a written request for the state to review the determination. Similarly, in the instance where the state has directly undertaken an activity that results in an individual that disagrees with the state's displaced-person determination or the amount of relocation assistance provided, a written appeal can be filed with the state. If the appeal is not resolved with the state, the appealing individual may submit a written request for HUD to review the determination. If full relief is not granted, the individual must be advised, by the subrecipient or the state, as appropriate, of his or her right to seek judicial review.

## 20.0 Monitoring and Risk Assessment

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### 20.1 Risk Assessment

The purpose of the risk assessment is to define the scope and focus monitoring efforts, including establishing a framework for determining the appropriate level of monitoring for subrecipients consistent within available resources. The risk assessment documents decisions and recommendations regarding where to apply staff and travel resources for monitoring, training and/or technical assistance to be directed to those subrecipients most in need of assistance to prevent potential problems, or to quickly resolve problems that arise.

The Risk Assessment is used to determine the risk category as high, medium or low. Based on the Risk Assessment, an individual subrecipient monitoring plan is developed that includes the method of monitoring (i.e., onsite or from the grant manager's office), specific areas of the program to be monitored, the frequency of monitoring, and areas where technical assistance and training may be needed.

Prior to closeout, at least one onsite review should be conducted of all programs and projects implemented by the subrecipient. Project and program monitoring should occur early enough during program or project to provide adequate time for technical assistance and/or corrective action to resolve problems.

A Monitoring Plan has been developed to assist OLTR in conducting monitoring visits, and subrecipients may benefit from reviewing the plan as well as this policy.

### 20.2 Monitoring Overview

Monitoring is an important component of grant management. It ensures that activities specified in the subrecipient agreement progress toward timely completion and allows for early identification of potential issues and problems so that they can be prevented or corrected. The OLTR monitoring program includes desk monitoring and onsite monitoring. Monitoring will be conducted in accordance with the OLTR Monitoring Plan for CDBG-DR: Irma and at the discretion of the grant manager.

#### *Desk Monitoring*

A desk review assesses compliance with program, contractual, HUD, CDBG, and other federal, state and local requirements without visiting the subrecipient. A desk review can assist with identifying potential problems early, preventing compliance violations, and helping improve performance. Typical desk monitoring includes review of contracts, procurement documents, and requests for payments and often the review of environmental documents. Risk Assessment results may be used to identify specific areas of concern and to determine the frequency of desk reviews.

Desk monitoring includes the following:

- Review of procurement procedures used to select professional and construction services
- Wage decisions
- Contractor clearances
- Plans and specifications
- Subrecipient policies related to fair housing, equal opportunity, compliance with the Americans with Disabilities Act

- Responses to monitoring reports
- Requests for funds
- Financial audits and management decisions
- Review of periodic reports

## ***Onsite Monitoring***

Onsite monitoring activities are those activities conducted at a site where program or project records are maintained, production occurs, or both. Onsite monitoring is an effective way to validate desk review results, identify and/or research discrepancies, and more closely monitor high-risk program components.

OLTR staff will conduct a minimum of three onsite monitoring visits. The first monitoring visit includes a site visit to confirm information in the application and to conduct a review of the subrecipient's administrative and financial capabilities, including the subrecipient's capacity to monitor contractors, work progress, and any subrecipients (e.g., disaster recovery funds provided to the county that are passed through to the municipalities). The second monitoring visit will be conducted to evaluate work progress, compliance with Davis-Bacon requirements, and Duplication of Benefits records and review the subrecipient's financial transcriptions and records, among other considerations. The third monitoring visit is conducted to verify completion of activities and prepare for closing out the subrecipient.

Additional monitoring visits will be scheduled based on the risk assessment and on the results of previous monitoring visits.

Typical on-site monitoring includes the following:

- Program administration
- Financial management
- Housing rehabilitation activities
- Public infrastructure activities
- Public facilities activities

## **20.3 Monitoring Visit**

Prior to scheduling any monitoring visit, OLTR staff completes the Pre-Monitoring letter. This form identifies the areas to be monitored, any open findings or concerns, and any special conditions that have not been met. OLTR staff will notify the subrecipient by certified mail 30 days prior to onsite monitoring date. This letter is referred to as the "Coming to Town Letter" and includes the date of the monitoring visit and identifies the areas to be monitored.

For the first and all subsequent monitoring visits, the Program Administration Monitoring Checklist is used. An onsite entrance conference will be conducted at the beginning of the monitoring review. The entrance conference outlines the purpose of the monitoring visit and the files that will be reviewed.

Once the review is completed, OLTR staff will conduct an exit conference to discuss the preliminary results of the monitoring review. Any findings, concerns, or other issues relative to compliance with federal code, state law, administrative rule, program requirements, or subrecipient terms and conditions will be discussed at the exit conference. The discussion may include anticipated requirements for corrective action. It is recommended that the chief elected official be present for this conference.

Each monitoring visit will be different because different activities will be reviewed. OLTR staff will use standard HUD forms for the monitoring visits, and these forms may be referenced in the "Coming to Town Letter." Other forms may also be developed by OLTR but will be made available to the subrecipient and will

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include only those items required by statute, regulation, rule, or contract.

Upon returning to the office, a checklist will be completed during the monitoring visit and OLTR staff will prepare the monitoring report, in a letter format, summarizing items reviewed during the monitoring visit; identifying any findings, areas of concern, or other deficiencies; and including recommended corrective actions. A *finding* is a violation of a statutory, regulatory or program requirement for which corrective actions are required. A concern is an issue that, if not addressed and corrected, may later result in a finding and may require a corrective action.

Monitoring reports are to be prepared and mailed to the subrecipient within 90 days following the monitoring visit. If any additional information is needed from the subrecipient to complete the monitoring report, a request for that information must be made within 2 weeks after returning from the monitoring visit. Requests for additional information must be documented in the grant file. Appropriate documentation includes copies of emails, telephone logs, memoranda, letters, or other similar documentation. If a response is required, the subrecipient has 45 days to respond to a monitoring report. After receiving a response to the monitoring report, a letter to the subrecipient regarding the adequacy of its response will be prepared and mailed within 45 days of receipt of the response. Requests for funds will be withheld if the subrecipient does not respond to findings or concerns within the 45-day period.

All findings from monitoring visits must be cleared prior to program or project closeout. If more than 45 days is needed to process the subrecipient's response, documentation must be included in the grant file providing a reason for the delay in responding.

If a finding remains uncorrected, one or more remedies will be imposed. The choice of remedies will be governed by the type and seriousness of the deficiency. Possible remedies include the following:

- Seek changes in personnel duties and responsibilities
- Suspension of grant payments
- Reduction of grant amount
- Termination of grant
- Reimbursement to the state for disallowed costs
- Legal action pursued by the state

### ***20.3.1 Recommended Subrecipient Monitoring Methodology***

Monitoring priority and frequency should be based on the results of a Risk Assessment. (See the Risk Assessment section for more information.) The monitoring plan should include onsite monitoring and site visits. A representative sample of the subrecipient's grant files should be reviewed to draw valid conclusions about performance and capacity.

The following procedures are implemented to ensure OLTR's monitoring reports are prepared and mailed within 90 days after returning from a monitoring visit.

1. Monitoring reports are to be prepared within 90 days following the monitoring visit. If any additional information is needed from the subrecipient to complete the monitoring report, a request for that information is to be made within 2 weeks after returning from the monitoring visit. Requests for additional information must be documented in the grant file. Appropriate documentation includes copies of emails, telephone logs, memorandums, letters, or other similar documentation.
  - a. Documentation must also be included in the grant file to explain why a monitoring report could not be completed and mailed within the 60-day time period. For example, if there are delays in receiving additional information from the subrecipient, the grant file must include copies of emails, telephone logs, memorandums, letters, or other similar documentation regarding follow-up requests or reminders for the needed information.

2. After receiving a response to the monitoring report from the subrecipient, a letter to the subrecipient regarding the adequacy of its response will be prepared and mailed within 45 days of receipt of the response. If more than 45 days is needed to process the subrecipient's response, documentation must be included in the grant file providing a reason for the delay in responding.

### ***20.3.2 Technical Assistance***

When deficiencies are identified as a result of the monitoring, technical assistance may be required to assist in resolution of the deficiency. The objective of technical assistance is to aid the subrecipient in its day-to-day compliance with HUD and state regulations and program requirements as it administers its programs. The nature and extent of technical assistance should be determined at the discretion of the monitor. Some examples of technical assistance include verbal or written advice, formal training, and documentation and guidance.

### ***20.3.3 Follow-Up***

In the event that deficiencies are identified during the monitoring review, follow-up actions should be scheduled to address the progress of the proposed resolution. Timing and frequency of follow-up communication and activities should be determined at the discretion of the monitor and should be based on the severity of the deficiency.

If previous deficiencies remain unresolved or uncorrected, these issues will also require follow-up activity. All follow-up actions should be documented and communicated. Target dates should be assigned for resolution of deficiencies.

## 21.0 Closeout

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Subrecipients are responsible for timely submission of closeout documents. A subrecipient agreement cannot be closed out until all activities associated with the project have been completed and the National Objective has been met. For example, a project that provides funds for a new sewage collection and treatment system cannot be closed out until the households are connected to the system and the system is fully functional.

OLTR staff coordinate with the subrecipient to ensure appropriate closeout documents are submitted. There are two stages in the closeout process: *Administrative Closeout* and *Final Closeout*. Administrative closeout means that the subrecipient has received notice from CDBG-DR staff that all applicable administrative actions and all required work in the subrecipient agreement have been completed, with the exception of the submission and approval of the final audit required under 2 CFR Part 200. Final closeout means that the subrecipient has received notice from CDBG-DR staff that the final audit has been submitted and that there are no outstanding audit issues to resolve or an attestation statement has been submitted that a 2 CFR Part 200 audit is not required.

To complete necessary closeout documents, subrecipients and their subcontractors must closeout any subcontracts or subrecipient agreements associated with the funded activities and settle any outstanding financial claims. Subcontractor(s) should be advised to prepare claims or invoices and submit them to the subrecipient within 30 days of the completion of the project to ensure payment requests are made before the closeout process begins.

The subrecipient's Administrative Closeout package must be submitted within 45 days after termination date of the subrecipient agreement or as soon as the project is completed. The closeout package includes data regarding accomplishments and beneficiaries served and documents how federal and local resources were expended in accordance with the current approved budget. The closeout package must be signed by the subrecipient's chief elected official or by the individual with a designation of signature authority signed by the chief elected official.

After the subrecipient is final closed, the subrecipient must keep all records related to the grant award for a minimum of 6 years after final closeout has been approved or from the end of any audit or legal proceedings involving the subrecipient award.

### 21.1 Closeout Process

The subrecipient must submit a subrecipient agreement closeout report and documentation to the OLTR within 45 days of the termination of the contract or within 45 days of the completion of all activities.

Upon completion of activities contained in the subrecipient agreement, including any amendments, the subrecipient shall submit to OLTR a closeout report and documentation (closeout package) that includes the following:

- Final statement of costs and copies of the final construction invoices;
- Certification that all construction has been completed, inspected, and approved by all parties prior to the subrecipient end date and submission of the administrative closeout;
- Photographs of project activities, maps, documentation of fair-housing activities, documentation of resolution of citizen complaints, and any outstanding monitoring issues;
- Certification that all costs have been paid, including those reflected on the closeout report;
- Documentation of expenditure of any leverage;



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- A report of final beneficiary data and final accomplishments;
- A list of the homes receiving direct benefit; and,
- Certification that each housing unit assisted was within the local government's jurisdiction for housing rehabilitation.

In addition:

- All funds drawn from the subrecipient award and not expended must be returned to OLTR prior to submission of the closeout report.
- The closeout report must contain original signatures.
- If a subrecipient fails to meet contractual requirements, on time, OLTR shall require them to financially (not administratively) close out a subrecipient to meet federal requirements for the timely distribution of funds set by HUD.
- If an audit report is past due, the subrecipient cannot be administratively closed until the past due audit is received. If an audit report is owed but not past due, the administrative closeout can proceed. Final closeout will not occur until all required audits are received.

Upon receipt of a closeout, the staff will complete an examination of closeout documents:

- Audit findings
  - There can be no open audit findings.
- CDBG funds on hand
  - Funds cannot exceed \$5,000 and must be properly reflected in the closeout documents.
- Monitoring
  - There can be no open findings.
- Program income (if funds were returned)
  - Unless otherwise authorized, all program income must be returned to the DEO OLTR.
- Proper disposition acquired property
- Meeting all special requirements (i.e., map and certification statement)
- Final engineering certification
  - Certification is required for all public infrastructure activities paid for with CDBG funds. The Certification of Completion must be executed by a licensed professional engineer and must state that the activity meets design specifications as may have been modified by change orders.

OLTR will respond to a closeout request by notifying the subrecipient by mail and identifying any issues that must be resolved before the OLTR will mail Notice of Outstanding Closeout Issues letter identifying these issues and the actions needed to resolve them.

Upon receipt and acceptance of the subrecipient's final audit required under 2 CFR Part 200, for a subrecipient that has already been administratively closed, OLTR will send the subrecipient a Notice of Final Closeout letter. All audits must conform to the provisions of 2 CFR Part 200 and the subrecipient requirements to be accepted by OLTR. If there are any audit findings related to the CDBG subrecipient, these findings must be resolved before the subrecipient can be final closed.

## **21.2 Procedure: Final Closeout**

An important part of the final closeout procedure is reviewing the subrecipient's audit. The subrecipient is responsible for mailing the audit to OLTR. Once the audit is received, OLTR and DEO staff will review the audit

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for findings and concerns related to the CDBG program. If there are none, final grant closeout will proceed.

If unresolved findings and concerns are noted in the audit review, OLTR will contact the subrecipient and coordinate the resolution of the findings and concerns. Only after all findings and concerns are resolved may the final closeout be processed.

## **21.3 Grant Closeout**

After all the activities are completed and all subrecipient agreements are final closed, OLTR can close out the grant with HUD. The Grant Accounting Office completes and signs Standard Form 424 (Federal Financial Report) and completes HUD Form 40153 (State CDBG Closeout Checklist). The DEO Executive Director or authorized designee signs Form 40153. These forms and all attachments are mailed to:

Director, Community Planning and Development Division, 4HD

Charles Bennett Federal Building

U.S. Department of Housing and Urban Development

400 West Bay Street, Suite 1015

Jacksonville, FL 32202

or as specified by HUD.

## Appendix A: Acronyms

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AGI	Adjusted Gross Income
CDBG	Community Development Block Grant
CDBG -DR	Community Development Block Grant - Disaster Recovery
CENST	Categorically Excluded Not Subject to § 58.5
CEST	Categorically Excluded Subject to § 58.5
CFR	Code of Federal Regulations
CWHSSA	Contract Work Hours and Safety Standards Act
DBA	Davis-Bacon Act
DEO	Department of Economic Opportunity (Florida)
DR	Disaster Recovery
EA	Environmental Assessment
EIS	Environmental Impact Statement
ERR	Environmental Review Record
FEMA	Federal Emergency Management Agency
FONSI	Finding of No Significant Impact
HUD	U.S. Department of Housing and Urban Development
LMI	Low- to Moderate-Income
NEPA	National Environmental Policy Act of 1969
NFIP	National Flood Insurance Program
NOI	Notice of Intent
OLTR	Office of Long-Term Resiliency
RROF	Request for Release of Funds
SAM	System for Award Management
SBA	Small Business Administration
SERA	Subrecipient Enterprise Resource Application
SHPO	State Historic Preservation Office
UGLG	Unit of General Local Government
URA	Uniform Relocation Assistance

## Appendix B: Definitions

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**Acquisition:** This term refers to the acquiring of real property, in whole or in part, by the recipient or other public or private nonprofit entity through purchase, long-term lease, donation or otherwise for any public purpose, subject to the limitation of 24 CFR 570.207. Real property includes air rights, water rights, rights-of-way, easements and other interests therein. (24CFR 570.201)

**Activity, Project or Program:** These terms refer to a housing, infrastructure, economic development, or planning endeavor undertaken by the subrecipient.

**Appraisal:** An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

**Bid:** A bid is an offer by a company, firm, or individual to provide goods or services submitted in response to solicitation for those goods or services.

**Change order:** This term refers to work that is added or deleted from the original contract activities to be performed and changes the original contract amount and/or the completion due date. The change order must be approved by the Department of Economic Opportunity (DEO) Office of Long-Term Resiliency (OLTR), homeowner, subrecipient, contractor, subcontractor, and project architect and/or engineer, as appropriate, prior to being implemented.

**Concern:** A concern is an issue identified in DEO's monitoring report sent to the subrecipient that, if not addressed or corrected, may result in a finding in a future monitoring report.

**Contractor:** This term refers to an entity competitively selected to provide clearly specified goods or services meeting the procurement requirements at 24 CFR 85.36, 2 CFR 200, Section 287.055, Florida Statutes, and Rule 73-23.0051(3), Florida Administrative Code. In accordance with 24 CFR 85.36(c), such procurement actions must be conducted in a manner that provides for free and open competition.

**Corrective Action:** This term refers to required steps to be taken to resolve findings and/or concerns identified in the DEO Disaster Recovery Unit's monitoring report sent to a subrecipient.

**Cost Reimbursement:** This term refers to payment made to the subrecipient after a request for funds has been submitted and approved by the State of Florida. In Community Development Block Grant (CDBG) Disaster Recovery (DR) agreements with subrecipients, subrecipients initially pay invoices for work completed under a CDBG-DR sub-agreement. The subrecipient is reimbursed for the payment made for work performed.

**Deficiency:** This term refers to an inadequacy based on a federal or state statutory, regulatory, or program requirement.

**Direct Cost:** This term refers to any project cost or project delivery cost that is identified specifically with completing an activity or product such as materials and labor. Costs identified specifically with a contract are direct costs of that contract. Administrative expenses are not generally considered direct costs.

**Disaster Recovery Grant Reporting System:** This is the U.S. Department of Housing and Urban Development's (HUD) web-based reporting and grants-management system.

**Environmental Review Record:** This term refers to environmental file and documents associated with activities to be undertaken with CDBG-DR funds.

**Federal Register:** This is the official journal of the federal government of the United States that contains government agency rules, proposed rules, and public notices issued by federal administrative agencies.

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**Finding(s):** This term refers to a specific issue of noncompliance with federal or state regulatory requirements, including CDBG-DR subgrant agreement provisions, that is identified in a monitoring report produced by DEO sent to the subrecipient.

**Grantee:** As used in this manual, this term refers to the State of Florida DEO Disaster Recovery Unit as recipient of CDBG-DR funds from HUD.

**Indirect Cost:** This term refers to any cost not directly identified with a cost objective, such as a specific project, facility, or function. Indirect costs include administration, personnel, and security costs.

**Low- to Moderate-Income (LMI) Household:** This term refers to a household whose annual income does not exceed 80 percent of the median income for the area as most recently determined by HUD.

**Low- to Moderate-Income Resident, Person, or Individual:** These terms refer to a person whose annual income does not exceed 80 percent of the median income for the area as most recently determined by HUD.

**Offer:** An offer is a response to a solicitation that, if accepted, would bind the offer. Responses to an Invitation to Bid are offers that are called "bids" or "sealed bids."

**Program Income:** This term refers to gross income received by the subrecipient directly generated from the use of CDBG-DR funds (revenue that is received by a state, unit of general local government, or subrecipient as defined at 24 CFR 570.500).

**Project Cost:** This term refers to total CDBG-DR funds, local and other matching funds, and total business investment in the project.

**Project Delivery Cost:** This term refers to costs used specifically to meet requirements to complete a particular project, especially as it applies to meeting CDBG-DR requirements.

**Project, Program, or Activity:** These terms refer to housing, infrastructure, economic development, or planning endeavor undertaken by the subrecipient using CDBG funds.

**Real Property:** This term refers to land, including all the natural resources and permanent buildings on it. Real property includes air rights, water rights, rights-of-way, easements, and other interests therein (24CFR 570.201).

**Release of Funds:** This term refers to HUD's or DEO's granting approval to use CDBG funding. This approval or authority to use grant funds is executed through HUD form 7015.16. The authority to use CDBG funds usually occurs after the project environmental review is completed and approved by DEO.

**Request for Funds:** This term refers to a subrecipient's request for funds from DEO.

**Request for Proposals (RFPs):** This term refers to a solicitation, often made through a bidding process, by an agency to communicate an entity's requirements for goods or services to prospective contractors.

**Request for Qualifications (RFQs):** This term refers to a bidding solicitation where an entity asks vendors to provide a cost quote to provide goods or services. RFQs are often used to procure the services of an engineering or architectural firm.

**Request for Release of Funds:** This term refers to a subrecipient's request for a release of funds. This request is executed through HUD Form 7015.15.

**Sealed Bid:** This is a method of contracting that employs competitive bids, public opening of bids, and awarding the bid.

**Section 3:** This term refers to Section 3 of the Housing and Community Development Act of 1968, as amended, and the implementing regulation, 24 CFR Part 135, relating to employment and other economic opportunities for low- and very-low-income persons.

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**Section 3 Business or Business Concern:** This term, as related to Section 3 of the HUD Act of 1968, as amended, refers to a business that is 51 percent or more owned by Section 3 residents or whose permanent, full-time employees includes 30 percent of such residents as employees.

**Section 3 Resident:** This term refers to a public housing resident, tribal housing resident, or an individual residing in a metropolitan area or a non-metropolitan county who meets the definition of a low-income or very-low-income person.

**Service Area:** This term refers to the total geographic area to be directly or indirectly served by a subgrant project that addresses the Low- and Moderate-Income National Objective, where at least 51 percent of the residents are low- and moderate-income persons. A service area must include all and only those beneficiaries who are reasonably served or would be reasonably served by the activity.

**Solicitation:** This term refers to any request to submit offers or quotations to the local government. Solicitations under sealed bid procedures are called "invitations for bids." Solicitations under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

**Subcontract:** This term refers to any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or another subcontract. It includes purchase orders and changes and modifications to purchase orders.

**Subcontractor:** This term refers to any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

**Subrecipient:** This term refers to a recipient, usually a local government, that is provided CDBG-DR funds from DEO to carry out agreed-upon eligible activities documented in a Subrecipient Agreement.

**Subrecipient Agreement:** This term refers to an agreement between DEO and a subrecipient to undertake activities the subrecipient will undertake using CDBG-DR funds.

**Subrecipient Enterprise Resource Application (SERA):** This is DEO's web-based reporting and grants management system.

**Very Low-Income (VU) Household/Family:** This term refers to a household whose annual income does not exceed 30 percent of the median income for the area as most recently determined by HUD.

**Very Low-Income (VU) Person or Individual:** This term refers to a person whose annual income does not exceed 30 percent of the median income for the area as most recently determined by HUD.

**Waiver:** This term refers to a revision to standard CDBG-DR regulations, requirements, and activities granted by HUD.