Policies & Procedures Manual

Subrecipient Grant Management Guide
2019 CDBG-DR

Oklahoma Department of Commerce
Effective Date: May 23, 2023

OKLAHOMA Commerce

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ODOC Internal Policies

CDBG Disaster Recovery Funds

After Congress appropriates funding to the CDBG DR program, HUD formally announces the CDBG DR awards via press release and notices published in the Federal Register. These notices describe the rules that govern the specific CDBG DR appropriation. The notices modify the HCD Act to reflect any requirements of the statute appropriating the CDBG DR funds and any statutory and regulatory waivers and alternative requirements granted by HUD. CDBG DR grants are subject to Title I of the HCD Act, (42U.S.C. § 5301 et seq.) which governs all CDBG programs. Grantees are also subject to the CDBG regulations at 24 CFR Part 570, unless modified by waivers and alternative requirements included in the applicable Federal Register Notice. CDBG DR grantees must also comply with the applicable requirements of 2 CFR Part 200, which provides the Federal government's guidance on administrative requirements, cost principles, and audit requirements. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) ("Stafford Act") provides the framework for Federal disaster assistance and sets forth the process by which the President declares a major disaster. Although the Stafford Act is largely devoted to programs administered by FEMA, certain sections apply more generally to all disaster assistance. CDBG DR grantees must adhere to section 312 of the Stafford Act, which prohibits duplication of benefits (addressed in detail later in this Guide). CDBG DR funds are further regulated by Federal Register Notices allocating funds and any subsequent Notice providing additional waivers and alternative requirements such as:

Public Law 116-20 (2019 Disasters)

Federal Register Notice / Vol. 85, No. 17 / Monday, January 27, 2020

Federal Register Notice / Vol. 83, No. 157 / Tuesday, August 14, 2018

Federal Register Notice / Vol. 83, No. 28 / Friday, February 9, 2018

Title I of the HCD Act and the CDBG regulations at 24 CFR Part 570, unless modified by waivers and alternative requirements included in the applicable Federal Register Notice;

2 CFR Part 200, which provides the Federal government's guidance on administrative requirements, cost principles, and audit requirements;

Section 312 of the Stafford Act.

National Objectives

The use of the "benefit to low and moderate income-persons" CDBG National Objective is considered a funding PRIORITY under the State's CDBG Program and is treated as such under the State's CDBG DR Program. All project proposals submitted for funding through the State's CDBG DR Program must prioritize the achievement of the low and moderate-income National Objective as delineated in 24 CFR §570.483 (Criteria for National Objectives).

To qualify for CDBG DR funding, activities must meet one of three national objectives set forth in section 104(b)(3) of the HCD Act:

Benefit low-and-moderate-income persons, or

Aid in the prevention or elimination of slums or blight, or

Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs (Urgent Need). A condition will generally be considered to be of recent origin if it became critical within 24 months.

Under applicable regulations or waivers and alternative requirements, general planning and program administrative costs are presumed to meet a national objective. As per 2 CFR §200.88, Simplified Acquisition Threshold, CDBG DR funds expended by local government grantees for planning activities listed at 570.205 and program administrative costs described at 570.206 are considered to address the national objectives. Typically, HUD grants a waiver and alternative requirement to state CDBG DR grantees to expand eligible planning activities to include those at 24 CFR 570.205, including non- project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. By waiver and alternative requirement, HUD typically gives states the same flexibility that 24 CFR 570.208(d)(4) gives local governments to presume that general planning activities and program administrative costs meet national objectives.

Recordkeeping Requirements

The State shall comply with § 200.334 Retention Requirements for Records. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report. 24 CFR 570.490 also requires records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant. Therefore, the State will retain all necessary documents as required by 2 CFR § 200.334 and 24 CFR 570.490 for 3 years after the closeout of the grant.

CDBG DR Documentation, Reporting, and Website Updates

As required by HUD and outlined in the Federal Register notice 83 FR 5860, ODOC/CD Programs Planner will enter its Action Plan activities for Disaster Recovery, including performance measures, into HUD's DRGR system. Each activity must meet the applicable environmental requirements prior to the use of funds. Throughout the CDBG DR program lifecycle, ODOC/CD Programs Planner will continuously enter updated performance-based information to meet both current and future reporting requirements. The dedicated webpage will remain separate of other webpages and programs.

A quarterly performance report will be submitted to HUD no later than 30 days following the end of each quarter after grant award and continuing until all funds have been expended and all expenditures have been reported. Each quarterly report will include information about the uses of funds during the applicable quarter including (but not limited to) the project name, activity, location, and national objective; funds budgeted obligated, drawn down and expended; the funding source and total amount of any non-CDBG Disaster Recovery funds to be expended on each activity; beginning and completion dates of activities; achieved performance outcomes; and the race and ethnic status of persons assisted under direct-benefit activities. Quarterly reports to HUD will be submitted by the Programs Planner and Programs Representative using the DRGR system. ODOC/CD's Marketing Manager will post the submitted report to its official website within three (3) business days of HUD's approval in the DRGR system. This report will also contain a HUD Contractor Reporting Template, containing a listing and detailed information for all the contracts executed and reported during the quarter and will be listed/updated on the ODOC website on a quarterly basis.

In accordance with CDBG DR requirements, ODOC/CD has developed and will maintain a comprehensive website regarding all disaster recovery activities assisted with these funds. The dedicated disaster recovery web page will inform the public and any other interested parties on how the ODOC/CD is managing the CDBG DR funds. ODOC/CD will post all Action Plans and amendments on the ODOC/CD's dedicated CDBG DR website at (https://www.okcommerce.gov/reporting-compliance/cdbg-disaster-recovery- 2019/).

The website will include:

- The current approved CDBG DR Action Plan
- All Action Plan amendments
- The Current approved DRGR Action Plan
- DR Program Information and Descriptions of Activities
- CDBG DR Policy & Procedure Manual/Subrecipient Grant Management Guide
- Citizen participation requirements, comments, and related postings
- Procurement policies and procedures
- Description of current procurement for goods and services procured by the grantee
- A copy of contracts, as defined in 2 CFR 200.22, ODOC has procured directly
- A summary of all procured contracts, including those procured by ODOC, subrecipients, or recipients (e.g., a summary list of procurements, the phase of the procurement, requirements for proposals, and any liquidation of damages associated with a contractor's failure or inability to implement the contract, etc.) *ODOC will submit monthly updated summaries to the website.
- Copy of each HUD-approved Quarterly Performance Report (QPR) submitted through HUD's Disaster Recovery Grant Reporting (DRGR) System

- HUD's Contract Reporting Template (ODOC will attach an updated version with each new QPR submission to DRGR and a quarterly update to the website)
- Internal Audit reports (these may contain any cases of fraud, waste, or abuse)
- Ancillary program information as required or deemed necessary to account for the use of funds.

The website gives citizens an opportunity to read the plan and to submit comments. This website is featured prominently on, and is easily navigable from, ODOC/CD's homepage contact and comment section. Paper copies of the CDBG DR Action Plan Amendment will be available upon request to the Programs Planner.

ODOC/CD's Marketing Manager (and other Marketing staff at the manager's discretion) will manage the website as well as all other forms of media in order to maintain public transparency. The website will be updated monthly as required with the last current date of the update noted on the document. All required updates to ODOC/CD's dedicated CDBG DR Program website will be completed within three (3) business days. ODOC/CD's Programs Planner and Programs Representative will send update/change requests to ODOC/CD the Marketing Manager. All physical website updates/changes will be accomplished by ODOC/CD Marketing Manager or other Marketing staff, if necessary.

ODOC/CD will offer closed captioning for meetings, access to free online screen readers and information in an accessible PDF, Microsoft Word, Excel, or PowerPoint format. Screen readers are software programs that allow blind or visually impaired users to read the text that is displayed on the computer screen with a speech synthesizer or braille display. A screen reader is the interface between the computer's operating system, its applications, and the user. Additionally, ODOC/CD can provide for a professional service to translate graphs and charts so that the visually impaired have adequate access to written elements of the CDBG-DR program. All these types of assistance are available upon request. ODOC/CD will translate CDBG-DR Action Plan, Citizen Participation Plan, and press releases into Spanish.

The State values the public's opinion by accepting citizen and other interested parties' comments throughout development and implementation of its CDBG Disaster Recovery program. Every effort will be made to reach minorities, non-English speaking residents, as well as persons with disabilities. For all meetings, to facilitate comments, questions, and other information; a Spanish-speaking translator and/or Hearing Impaired Sign Language interpreter is made available upon request. Program information posted to the website will be accessible and available in accessible formats, including those readable by screen readers. ODOC/CD works to publish all public documentation in formats supportive of screen reader technology. ODOC/CD will make information available in alternate formats as needed and upon request to ensure effective communication to persons with disabilities and language related impairments.

Citizen Participation

The State has an adopted Citizen Participation Plan as required by HUD in its Five-Year Consolidated Plan/Annual Action Plan. The plan(s) provide citizens with information on how they can participate in HUD's formula funded CDBG program as well as the HOME, ESG, and HOPWA Programs. Upon notification that the State would receive a CDBG DR grant allocation, the State has adopted this Citizen Participation Plan and modified it for this CDBG DR Action Plan in accordance with the guidance set forth in the Federal Register Notice(s).

INDIVIDUALS WITH DISABILITIES OR LANGUAGE IMPAIRMENTS

The State values the public's opinion by accepting citizen and other interested parties' comments throughout development and implementation of its CDBG Disaster Recovery program. Every effort will be made to reach minorities, non-English speaking residents, as well as persons with disabilities. For all meetings, to facilitate comments, questions, and other information; a Spanish-speaking translator and/or Hearing Impaired Sign Language interpreter is made available upon request. Program information posted to the website will be accessible and available in accessible formats, including those readable by screen readers. ODOC/CD works to publish all public documentation in formats supportive of screen reader technology. ODOC/CD will make information available in alternate formats as needed and upon request to ensure effective communication to persons with disabilities and language related impairments.

The State welcomes public comments and encourages citizens to submit written comments. All postal delivered written comments are submitted to:

Oklahoma Department of Commerce

Attn: Marshall Vogts, Director, Community Development

900 N. Stiles Ave.

Oklahoma City, OK 73104-3234 Or

marshall.vogts@okcommerce.gov

Requests for this Plan or related documents in alternate formats consistent with the provisions of federal requirements related to limited English proficiency may be directed to ODOC/CD using the following methods:

CITIZEN PARTICIPATION OUTREACH

A Draft CDBG DR Action Plan was published regarding the $36,353,000 allocation – (Federal Register Notice Vol. 85, No. 17, January 27, 2020) and made available for public comment on the ODOC/CD CDBG DR website (https://www.okcommerce.gov/reporting-compliance/cdbg-disaster-recovery-2019/). A formal public hearing will be held to discuss the proposed CDBG DR Action Plan on July 23, 2020. By regulation, a minimum of thirty (30) days is required to allow for public review of the proposed Action Plan.

Notification will be posted on State's CDBG Disaster Recovery webpage located on ODOC/CD's dedicated CDBG DR Website. A meeting notification and program narrative was also posted on the ODOC/CD website's EVENTS webpage as well. The Public Hearing was also listed in the ODOC/CD New Pioneer Newsletter.

Under the State's Citizen Participation Plan, each comment will be considered and personally addressed and attached in the Appendix of the CDBG Disaster Recovery Action Plan. A chronology of outreach events will also be provided.

CITIZEN COMPLAINT PROCEDURES

The State will accept written citizen complaints from citizens related to the disaster recovery programs, Action Plans, Substantial Amendments, or quarterly performance reports. Written complaints should be submitted via email marshall.vogts@okcommerce.gov or be mailed to:

Oklahoma Department of Commerce

Attn: Marshall Vogts, Director, Community Development

900 N. Stiles Ave.

Oklahoma City, OK 73104-3234

The State will make every effort to provide a timely written response to every citizen compliant within fifteen working days of the receipt of the complaint, where practical.

The State encourages all Fair Housing / Equal Opportunity complaints be filed as applicable with the Metropolitan Fair Housing Council of Oklahoma, Inc. for Fair Housing Administration. All citizen complaints relative to Fair Housing / Equal Opportunity violations involving discrimination will be forwarded to the following address for disposition:

Metropolitan Fair Housing Council of Oklahoma, Inc.

1500 Northeast 4th Street, Suite 204,

Oklahoma City, OK 73117

Additionally, the State encourages all Fair Housing / Equal Opportunity complaints be filed as applicable with the State Human Rights Commission now operating under the State Office of the Attorney General.

Oklahoma Office of the Attorney General

313 NE 21st Street,

Oklahoma City, OK 73105

Substantial Amendments to the Action Plan

A Substantial Amendment to the Action Plan shall be defined as:

1. A change in program benefit or eligibility criteria;

2. The addition or deletion of an activity; or
3. The allocation or reallocation of more than $3.6 million between activities.

Only those amendments that meet the definition of a Substantial Amendment are subject to the public notification and public comment procedures. A public notice will be placed online along with the published CDBG DR Action Plan amendment on the ODOC/CD CDBG Disaster Recovery webpage (https://www.okcommerce.gov/reporting-compliance/cdbg-disaster-recovery-2019/) and public comments will be accepted when assistance programs are further defined (i.e. change in program benefit or eligibility criteria) or when funding allocations are further refined by type of activity and location, if applicable. Per the Federal Register Notice guidelines, all amendments (Non-Substantial and Substantial) to the Action Plan will be posted online at the ODOC/CD CDBG Disaster Recovery webpage. Additionally, the CDBG Disaster Recovery Action Plan will be revised to reflect the amendments (Non-Substantial and Substantial) to the Action Plan. As with the amendments, the CDBG Disaster Recovery Action Plan is posted online at the ODOC/CD CDBG Disaster Recovery webpage. Hard copies will also be made available upon request. Citizens, units of local government, and community partners will be provided notice and the opportunity to comment on proposed Substantial Amendments to the Action Plan. No less than thirty (30) days will be provided for review and comment on the Substantial Amendment. Comments will be accepted electronically or in writing and will be posted online at the ODOC/CD CDBG Disaster Recovery webpage. A summary of all comments received and responses will be included in the Substantial Amendment that is submitted to HUD for approval. Each amendment submitted to HUD for approval will be numbered sequentially and is meant to supersede the earlier amendments in the published Action Plan.

Non-Substantial Amendments to the Action Plan

Non-Substantial Amendments to the Action Plan are defined as minor, one that does not materially change the activities or eligible beneficiaries. This provision should not be construed as allowing the general administrative budget to exceed the allowable limit. Additionally, a Substantial Amendment is not required in the case where the State is simply requesting additional funding from HUD. HUD must be notified in advance of a Non-Substantial Amendment becoming effective. Non-Substantial Amendments are NOT subject to the public notification and public comment procedures such as a thirty (30) day review and comment period. Per the Federal Register Notice guidelines, all amendments (Non-Substantial and Substantial) to the Action Plan will be posted online at the ODOC/CD CDBG Disaster Recovery webpage;

(https://www.okcommerce.gov/reporting-compliance/cdbg-disaster-recovery-2019/)

Additionally, the CDBG Disaster Recovery Action Plan will be revised to reflect the amendments (Non-Substantial and Substantial) to the Action Plan. As with the amendments, the CDBG Disaster Recovery Action Plan is posted online at the ODOC/CD CDBG Disaster Recovery webpage. Hard copies will also be made available upon request. Each amendment submitted to HUD for approval will be

numbered sequentially and is meant to supersede the earlier amendments in the published Action Plan.

Internal Audit

INTERNAL AUDIT POLICY

The Oklahoma Department of Commerce, Community Development Division, operates the CDBG Disaster Recovery Program. As a requirement of the CDBG Disaster Recovery Program, an Internal Audit function is in place to provide programmatic and financial oversight of Grantee activities for program compliance as well as implementing procedures to detect fraud, waste and abuse. The Internal Audit function is independent of the Community Development Division and reports directly to the Oklahoma Department of Commerce Executive Director.

ODOC's CDBG Disaster Recovery Program has had an internal audit function for only a few years and has established a baseline understanding of the risks, opportunities, and unique challenges posed by the nature of the program, the division, and the environment in which it operates. The fundamental purpose, nature, and scope of internal auditing is to be an independent, objective assurance and consulting activity designed to add value and improve CDBG DR program's operations and to serve as a trusted advisor to management.

The program will continue the efforts of reviewing a sufficient cross-section of Disaster Recovery operations while addressing certain significant risks. In evaluating risk, the following factors are considered:

a. Prior audit/monitoring findings from HUD and/or others

b. Inherent riskiness of a subject matter

c. Subrecipient Risk

d. Recent major changes in operations, personnel, or operating results e. Input from senior management

f. Observations made in preliminary internal audits to date

g. General issues involved in Oklahoma State agency fiscal operations

h. Input & direction from the Oklahoma Department of Commerce Executive Director

Additional audits may be added based on emerging issues such as fraud tips. The Oklahoma Department of Commerce Executive Director, Secretary of Commerce and Workforce, and Division Director may also request audits of areas that they have concerns about. In the event that significant changes to this plan are necessary, the Internal Auditor will obtain the approval of the Oklahoma Department of Commerce Executive Director for the revised plan. Internal Audit's progress relative to this plan will be reported to the Oklahoma Department of Commerce Executive Director on a continuing basis until program end.

Internal Audit utilizes risk-based programmatic auditing of the activities conducted by the program division. An emphasis will be on reviewing the program division's responses to all HUD monitoring and management reviews, ensuring all responses have been implemented. Additional auditing shall be conducted as necessary as

there are several program requirements identified as potential program risk including duplication of benefits, program income, sub recipient monitoring, fraud reporting etc.

POLICY SCOPE

This policy is applicable to all ongoing activities as detailed in the CDBG-DR Action Plan(s) and includes the activities of the program division and the CDBG DR contractors, where pertinent.

STANDARD OPERATING PROCEDURES FOR THIS POLICY

A. Evaluate the current Oklahoma Department of Commerce (ODOC/CD) procedures and significant control points for effectiveness, adequacy, and efficiency of operations for the CDBG DR processes utilized by ODOC/CD.
B. Review of the ODOC/CD CDBG DR policies and procedures, financial internal controls to identify the key risks.
C. Review the ODOC/CD responses to the HUD monitoring reports received to ensure that all agreed upon actions have been implemented.
D. On an as needed basis, other audits or reviews will be completed using an approved audit program. The results will be reported through a formal report along with any findings.
E. The State of Oklahoma's HUD-approved Action Plan(s) is the predominant source document for the Manual, Policies, and SOPs, which are written with the intent to add clarity where needed and stipulate the processes necessary to successfully implement the Action Plan. Concurrent reference to the Action Plan, Manual, Policies and SOPs should provide the contextual understanding necessary to accurately interpret and apply the information contained in these documents.
F. The audit plans will be flexible enough to respond to emerging risks and organizational changes. The audit plans will be periodically visited throughout the year.
G. Reports, findings and comments will be thoroughly discussed with management to be sure of their understanding and a written draft of such will be provided to management to review and to encourage corrective action comments. Sufficient time will be given for management to respond, however, the reports must be issued timely to be effective.

INTERNAL AUDITOR ROLE

The role of the Internal Auditor for the CDBG Disaster Recovery Program will be to conduct internal monitoring/audits of the Community Development Division within the Oklahoma Department of Commerce. The Community Development Division administers the Community Development Block Grant Disaster Recovery (CDBG DR) programs and activities as required by HUD guidelines. The scope of responsibility of the Internal Auditor encompasses all funds allocated by Community Development Block Grant Disaster Recovery (CDBG DR) funds awarded under the Public Law per declared disaster appropriations and evaluate compliance related to the actions of personnel, contractors, vendors, grantees, and sub-grantees while in pursuit of the objectives of the Disaster Recovery Program.

Specifically, the internal auditor provides services in the following manner:

Both programmatic and financial oversight of Grantee activities. Specifically, perform procedures necessary to determine the Program's compliance with applicable requirements and perform tests as considered necessary in the circumstances.

Procedures would include detecting fraud, waste and abuse as follows:

- Discussing with Programs Personnel to identify opportunities and risks for fraud, waste and abuse.
- Inquiring of Program personnel their knowledge of any fraud, waste and abuse.
- Following up by changing further inquiry, scope and test work as necessary.

Specifically, the firm provides services in the following manner:

- The firm will apply auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States.
- Evaluate compliance related to the actions of personnel, contractors, vendors, grantees, and sub-grantees with regard to policies, procedures, and applicable laws, regulations, and governance standards of the Program.
- Monitoring will be conducted on a quarterly basis and reports will be rendered quarterly unless conditions require a more frequent reporting.

In addition, the Internal Auditor will be responsible for the detection and prevention of fraud, waste, and abuse in division and contractor administered programs as well as the coordination of investigations of alleged fraud with division, state and federal law enforcement agencies. This responsibility includes informing the Office of Inspector General for the U. S. Department of Housing and Urban Development if necessary.

The Internal Auditor generally adheres to Generally Accepted Government Auditing Standards (GAGAS). The Internal Auditor may conduct a Peer Review of this position. Such reviews are done after audit reports are issued and normally are done every 3-5 years.

The Internal Auditor will evaluate the current Oklahoma Department of Commerce (ODOC/CD) procedures and significant control points for effectiveness, adequacy and efficiency of operations for the CDBG DR processes utilized by ODOC/CD. Included in this evaluation will be a review of ODOC/CD CDBG DR policies and procedures, financial internal controls, and identification of any key risks. The Internal Auditor will also review the ODOC/CD responses to the HUD monitoring reports received to ensure that all agreed upon actions are implemented.

The Internal Auditor designs audit programs and conducts audits to determine if CDBG DR funds are being spent within the confines and parameters of the Disaster Recovery Program's Policies and Procedures and all relevant HUD guidelines.

The Internal Auditor audits, monitors, and issues reports and findings with the focused goal to detect and prevent waste, fraud and abuse in all facets of the CDBG Disaster Recovery Program, to include administrative, financial and operational capacities, as well as insuring that the funds are spent in compliance with appropriate HUD and applicable guidelines.

The Internal Auditor investigates any reports of waste, fraud or abuse and follows them to their ultimate resolution, informing integral personnel as warranted. The Internal Auditor ensures that these cases will be posted publicly (e.g., Disaster Recovery website).

HUD OIG HOTLINE NUMBER

As per 83 FR 5844, instances of any fraud, waste, or abuse is to be reported via the HUD OIG Hotline:

1-800-347-3735

Toll-Free and Toll Access Number for Federal Relay:

(800) 877-8339

TTY/ASCII (American Standard Code for Information Interchange) – Allows TTY Users to type their conversation.

The Hotline is the primary means to submit allegations of fraud, waste, abuse, mismanagement or Whistleblower related matters within the U.S. Department of Housing and Urban Development (HUD) and HUD Funded programs to the Office of Inspector General (OIG).

The Internal Auditor will acquire overall knowledge of the Program's processes, policies, risks and controls in order to provide independent assurance that the Program is in compliance in all relevant areas, to include administrative, financial and operational functional areas.

The Internal Auditor shall report significant findings and issue periodic (quarterly) audit reports to the Oklahoma Department of Commerce Executive Director. These reports will be posted to the Disaster Recovery website on a quarterly basis. The Internal Auditor shall remain independent of all external influence throughout his or her tenure with the Oklahoma Department of Commerce.

MONITORING OF ODOC CONTRACTORS

Substantial and meaningful involvement of the project lead of the Department is critical to the success of any contractor engagement. The CDBG-DR Programs Planner and Programs Representative will have an active participation in both the planning and execution of a monitoring contractor if one is used. In summary:

- The contractor, if procured, will not make any management decisions, perform any management functions, or assume any management responsibilities.

- Deliverables provided to ODOC/CD by the contractor may be disclosed by the Department to the Department only for their informational purposes and solely in their capacity as Leadership of the Department.
- Deliverables provided to the Department hereunder by the contractor may be disclosed by the Department to the Department's independent accountants to the extent required solely in connection with their audit of the Department's financial statements.
- The contractor will retain copies of the deliverables and any information evidencing the contractor's performance of the Services hereunder and any Department confidential information contained in such retained materials shall remain subject to our confidentiality obligations set forth in the General Business Terms.

During the term of this engagement, ODOC/CD may request that the contractor perform additional services that are not encompassed in the contractor letter. The contractor may perform such additional services upon receipt of a separate signed engagement letter with terms and conditions that are acceptable to the contractor and the Department.

ODOC/CD shall cooperate with the contractor in the performance of the services, including providing the contractor with reasonable facilities and timely access to data, information, and personnel. ODOC/CD shall be solely responsible for, among other things (a) the performance of its personnel and agents; (b) making all management decisions, performing all management functions, and assuming all management responsibilities; (c) designating a competent management member to oversee the Services (presently the Program's Planner,); (d) evaluating the adequacy and results of the services; (e) accepting responsibility for the results of the services; and (f) establishing and maintaining internal controls, including monitoring ongoing activities. The consultant shall be entitled to rely on all decisions and approvals of ODOC/CD.

The contractor will be responsible for onsite monitoring if they are used. The contractor will be required to adhere to all guidelines on onsite monitoring for which ODOC/CD has already laid out in this section. Contractors will be required to 1) Contact subrecipients to schedule an onsite monitoring visit, 2) Travel to subrecipient location, 3) Fill out monitoring checklists that are provided by ODOC and note whether subrecipients are or are not compliant with the Federal and State regulations outlined in the checklist, 4) Include a separate document with explanations and reasoning for each regulation and why they have or have not met such requirement, and 5) Deliver filled out checklists and explanations to ODOC/CD within five (5) business of days of completing the checklist. In the even that the contractor must gather additional documents from the subrecipient in order to justify that said subrecipients have met Federal and State guidelines, such documentation must also be submitted to ODOC/CD within five (5) days of completing the monitoring checklist. These tasks will be outlined in the contractor's contract between them and ODOC/CD, if a contractor for monitoring is procured.

The Programs Planner and the Programs Representative will assume oversight of the monitoring process for the CDBG-DR grant utilizing the contractor.

Duplication of Benefits

HUD has instituted specific reporting, written procedures, monitoring, and internal audit requirements for each grantee to ensure compliance with program rules for CDBG disaster recovery awards, including rules related to prevention of fraud, abuse, and duplication of benefits. Several authorities form the foundation of duplication of benefit inquiries—the Stafford Act and applicable "necessary and reasonable cost principles" in in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in subpart E of 2 CFR part 200. Supplemental appropriations statutes often reinforce and supplement these authorities.

The Stafford Act directs administrators of Federal assistance to ensure that no "person, business concern or other entity" will receive duplicative assistance and impose liability "to the extent such assistance duplicates the benefits available to the person for the same purpose from another source." 42 U.S.C. 5155(a). Specifically, section 312 of the Stafford Act prohibits any person, business concern, or other entity from receiving "any part of such loss as to which he has received financial assistance under any other program or from insurance or any other source." 42 U.S.C. 5155(a). Duplication occurs when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need. The Stafford Act requires a fact specific inquiry into assistance received by each person, household, or entity. A grantee may not make a blanket determination that a duplication of benefits does not exist for all beneficiaries or recipients under a disaster recovery program. As a result, all disaster recovery funds must be governed by policies and procedures to prevent duplication of benefits.

The Federal Register Notice entitled "Updates to Duplication of Benefits Requirements under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees," published 6/20/2019, (84 FR 28836 and 28848) outlines requirements for disasters declared between 2015 and 2021.

DOB NOTICE FOR 2019

The Federal Register Notice entitled "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" on 6/20/19, (84 FR 28836 and 28848) supersedes the July 2013 declined loans memorandum: instead, "Grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115-123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice."

The 2019 DOB notice covers the time period addressed by the Disaster Recovery Reform Act (DRRA) (which sunsets on October 5, 2023) and the declined loan provision in PL 115-123. The notice provides clarification to duplication of benefits for disasters declared between January 1, 2015 –December 31, 2021.

The notice does not allow for a "blanket determination" in duplication of benefits, but the grantee must conduct an individualized review of each of the subrecipients' applicants to determine that the amount of assistance will not be a duplication of benefits by exceeding the unmet needs of an applicant. A review specific to each applicant is necessary because assistance available to each applicant varies depending on individual insurance coverage, eligibility for various sources of assistance, and other factors. Based on this notice, ODOC/CD will utilize a DOB consultant to ensure that every applicant and their available assistance is analyzed.

The following framework for DOB analysis was laid out in the 2019 DOB Notice (84 FR 28836). The State's DOB consultant will perform all duties as they relate to DOB and the 2019 DOB notice. The following outlines the DOB analysis framework that the DOB consultant will follow:

Assess Applicant Need – The total need of an applicant is calculated based on need estimates at a set point in time. Thus, total need is most often the current need. Rehabilitation, reconstruction, and new construction are easy to assess through cost estimates. For recovery programs of the grantee that do not entail physical rebuilding, such as special economic development activities to provide an affected business with working capital, the total need will be determined by the requirements or parameters of the program or activity. In-kind donations will also need to be considered when calculating total need. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. While in-kind donations are not "financial assistance," they reduce the amount of CDBG-DR unmet need because they reduce the reduce activity costs. Yet, reimbursement programs allow for past costs to be a part of the total need if they meet all the requirements for a reimbursement. Total need is initially calculated without regard to the program-specific caps on the amount of assistance.

Identify Total Assistance – Total assistance includes all reasonably identifiable financial assistance available to an applicant.

Types of Resources Included in Total Assistance – The total assistance for an applicant includes funding in the form of cash awards, funds gained from insurance, grants, and loans received by or available to each CDBG–DR applicant, including awards from local, State or Federal programs, and from private or nonprofit charity organizations, but will not include personal assets such as money in a checking/savings account (excluding insurance funds or disaster assistance deposited into the applicant's account); retirement accounts; credit cards or lines of credit; in-kind donations; and private loans. A private loan is considered a loan that is not offered by a governmental entity. Yet, subsidized loans for the same purpose are to be included in the DOB calculation unless an exception applies.

Availability of Resources Included in Total Assistance – Total assistance includes funds that are available for assistance, which includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. Funds are considered assistance to be available if it is awarded to the applicant but is administered by another party instead of being directly deposited with the applicant. Assistance is considered available if an applicant:

Would have received it by acting in a reasonable manner or by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but are not eligible to receive CDBG–DR assistance; or

Has received the assistance and has legal authority over it.

Note that applicants for CDBG–DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts, and to behave reasonably when negotiating payments to which they may be entitled.

Further, funds that are not available to an applicant must be excluded from the final CDBG–DR award calculation. Funds are not available to an applicant if the applicant does not have legal control of the funds when they are received.

Exclude Non-Duplicative Amounts – Once the total need and the total assistance have been determined, the sources should be excluded as non-duplicative for the DOB calculation should be identified. Those include funds for a different purpose or funds for the same purpose, but a different, allowable use:

Funds for a Different Purpose – Any assistance provided for a different purpose than the CDBG–DR eligible activity, or a general, nonspecific purpose (e.g., ‘‘disaster relief/ recovery’’) and not used for the same purpose must be excluded from total assistance when calculating the DOB amount. For example, insurance proceeds that go towards the rehabilitation or reconstruction of a building for the same purpose as CDBG-DR funds would be considered a DOB. Yet, grantees may exclude, as non-duplicative, insurance proceeds for loss of contents or personal property, or loss of buildings, such as a detached garage, that will not be awarded assistance with CDBG-DR funds. All insurance funds may be considered a duplication of benefits if it is impractical or not feasible to identify the portion of insurance proceeds that are considered non-duplicative. Similarly, CDBG–DR assistance paid to a homeowner as a housing incentive for the purpose of inducing the homeowner to sell the home to the grantee, usually in conjunction with a buyout, are for a different purpose than funds provided for temporary housing assistance for rental housing during a time when a household is unable to reside in its home. In this case, temporary housing assistance may be excluded from the final DOB calculation as non-duplicative of funds paid for the housing incentive.

Funds for Same Purpose, Different Allowable Use – Assistance provided for the same purpose as the CDBG–DR eligible activity must be excluded when calculating the DOB if the applicant can document that the specific use of the assistance was an allowable use and different than the use of the CDBG–DR assistance. As an example, the purpose of the CDBG-DR program is housing rehabilitation. Another organization provided assistance in the form of a roof replacement and the use of the CDBG–DR rehabilitation assistance is for the interior of the house. This would not be considered a duplication of benefits. There should be adequate documentation of type of assistance received to ensure that CDBG-DR funds are not duplicating other forms of assistance. Further, whether the use of the non-CDBG–DR assistance is an allowable use depends on the rules imposed by the source that provided the assistance. As an example, if an applicant received interim housing assistance

through FEMA and was permitted to use such funds for a general housing need, these FEMA funds can be excluded as non-duplicative assistance for a CDBG-DR housing rehabilitation program. Otherwise, if an applicant received funds for housing rehabilitation through FEMA and chose to use such funds for interim housing, this would be considered duplicative assistance for a CDBG-DR housing rehabilitation program. Lastly, if other assistance is used for minor or temporary rehabilitation that enables the applicant family to live in their home instead of moving to temporary housing until rehabilitation can be completed, ODOC subrecipient programs can undertake remaining work necessary to complete rehabilitation. The assessment of total need at the time of application may include the costs of replacing temporary materials with permanent construction and of completing mold remediation by removing drywall installed with other assistance. These types of costs to modify partially completed rehabilitation that the grantee determines are necessary to comply with the requirements of CDBG–DR assistance do not duplicate other assistance used for the partial rehabilitation.

Identify the DOB Amount and Calculate the Total CDBG–DR Award – The total DOB is calculated by subtracting all non-duplicative amounts from the total assistance.

To calculate the maximum possible amount of CDBG–DR funding assistance an applicant could receive, the grantee must:

1. Identify total need;
2. Identify total assistance;
3. Subtract non-duplicative amounts from total assistance to determine the amount of the DOB; and
4. Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG–DR award.

MAXIMUM AWARD PROGRAM AMOUNTS

There are three considerations that can change the maximum award amount. ODOC/CD has imposed a program cap that limits the amount of assistance an applicant is eligible to receive, which may reduce the potential CDBG–DR assistance available to the applicant **(Note that ODOC will not fund any rehabilitation or reconstruction programs within the 100-year floodplain).**

The program caps (there will be no program cap exceptions) for eligible housing activities are as follows:

Activity	Description	Amount
Elevation	As part of the rehabilitation/reconstruction program only. Elevation is not eligible in the 100-year floodplain.	$40,000.00
Rehabilitation	For the Rehabilitation/Reconstruction Program.	$70,000.00

Voluntary Buyout from the 100-year floodplain or the Disaster Risk Reduction Area (DRRA)	Housing Incentive	$5,000.00
Voluntary Buyout from the 100-year floodplain or the Disaster Risk Reduction Area (DRRA)	Pre-flood Fair Market Value (based on official appraisal for properties valued over $10,000	Pre-flood FMV
Voluntary Buyout from the 100-year floodplain or the Disaster Risk Reduction Area (DRRA)	Homeownership Incentive	Up to the median sale price of homes in the county
Voluntary Buyout from the 100-year floodplain or the Disaster Risk Reduction Area (DRRA)	Rental Assistance	For a maximum of 12 months for an affordable rental unit outside of the floodplain

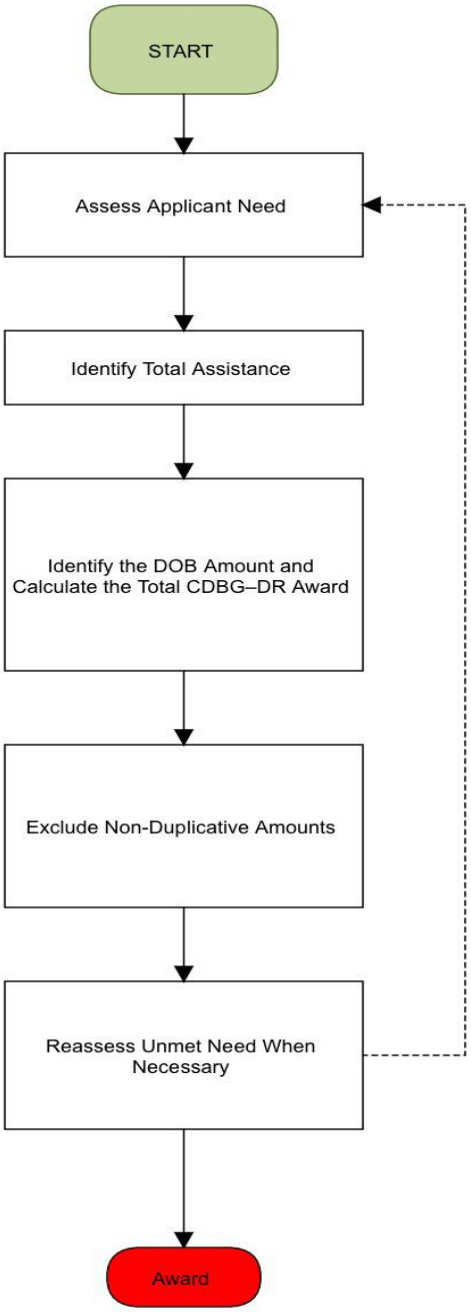
ODOC/CD may increase the amount of an award if greater unmet need is identified and documented and if the applicant agrees to repay duplicative assistance it receives in the future (as stated as such in the subrogation and assignment agreement that all subrecipients are required to sign) (unless prohibited by a statutory order of assistance, as discussed in section V.C.). Section 312(b) of the Stafford Act permits a grantee (ODOC/CD) to provide CDBG–DR assistance to a subrecipient who is or may be entitled to receive assistance that would be duplicative if:

- The subrecipient has not received the other assistance at the time ODOC/CD makes its award; and
- The subrecipient agrees to repay ODOC/CD for any duplicative assistance once it is received.
- The subrecipient's CDBG–DR award may increase if a reassessment shows that the subrecipient has additional unmet need

Reassess Unmet Need When Necessary – A change in an applicant's circumstances may affect the applicant's remaining unmet need, meaning the need that was not met by CDBG–DR and other sources of assistance. Unmet need can become apparent after CDBG–DR assistance has been provided such as: A subsequent disaster that causes further damage to a partially rehabilitated home or business; a recent increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other resources become available to pay for costs of the activity (such as FEMA or US Army Corps of Engineers), reducing the need for CDBG-DR assistance. Any additional unmet need must be identified and documented, as well as any reduction in unmet need.

Overall, the framework for calculating DOB based on the 2019 Notice clarifies the types of resources included in the total assistance, as well as the availability. Likewise, non-duplicative funds can be excluded if they are altogether for a different purpose or if they are for the same purpose, but for a different, allowable use. The 2019 DOB Notice expands on the simple DOB framework outlined in earlier notices and provides further clarity to the duplication analysis.

The DOB process in this section is described graphically below:



Secondly, the 2019 DOB Notice outlines special considerations for duplication of benefits:

PROGRAMMATIC CONSIDERATIONS

A. In the case of an economic revitalization programs that provide working capital assistance to businesses, working capital assistance is calculated after assessing a business's ability to use its current assets to pay its current liabilities. The DOB analysis must consider total assistance, which includes all sources of financial assistance available to the applicant to pay a portion of liabilities that will become due.
    a. For example, a downtown business alliance might award business recovery grants from its funds to cover some of the same liabilities. Even if the downtown business alliance does not call its assistance ''working capital'' assistance, the amount the business received from the downtown business alliance to pay the same costs as the CDBG–DR funds is a DOB. Therefore, the basis for calculating CDBG–DR economic development assistance and the purposes for which the assistance is used should be clearly identified so that DOB can be prevented. Assets such as cash and cash equivalents (excluding deposits of insurance proceeds or other disaster assistance), inventories, short-term investments and securities, accounts receivable, and other assets of the business are not financial assistance, although those assets may be relevant to underwriting.
B. CDBG-DR fuds can also be used to restore infrastructure (public facilities and improvements) after a disaster but are still subject to the DOB requirements outlined in the Stafford Act. If a city needed to rehabilitate their wastewater treatment plant, not only would Federal assistance be included as a DOB, but local assistance available for this activity as well. If local funds were previously reserved for this project but are no longer available, this needs to be documented that the city does not have any reserved funds set aside in any capital improvement plan.
C. ODOC may provide a displaced person with rental assistance payments (defined under 24 CFR 570.606) made under the Uniform Relocation Assistance and Real Property Acquisition Act (URA). Before an issuance of rental assistance payments required by the URA, the DOB consultant must complete a DOB analysis to ensure that entities such as FEMA did not provide rental assistance payments during the same time period. The URA also prohibits payments for the same ''purpose and effect'' as another payment to a displaced person (49 CFR 24.3).

SUBSIDIZED LOANS

A. The 2019 notice clarifies the treatment of subsidized loans. First, private loans are not ''assistance'' and therefore are not a duplication of benefits. The full amount of a subsidized loan available to the applicant for the same purpose as CDBG–DR assistance is assistance that must be included in the DOB calculation unless one of the exceptions applies. A subsidized loan is available

when it is accepted, meaning that the borrower has signed a note or other loan document that allows the lender to advance loan proceeds. Note that CDBG-DR funds may not be used for activities reimbursable by, or for which funds are made available by, the Federal Emergency Management Agency or the Army Corps of Engineers. This prohibition (or similar prohibitions) in CDBG–DR appropriations acts applies to loans even if the loans would not be treated as a DOB under the following exceptions:

a. According to the 2019 DOB Notice, subsidized loans (including forgivable loans) are loans other than private loans. Both SBA and FEMA provide subsidized loans, as well as many other sources. Subsidized loans are assistance that must be included in the DOB analysis.
    i. Subsidized loans are not considered a DOB when they are short-term loans that can be reimbursable with CDBG-DR funds. If the activities paid for by such a loan, such as a low-interest loan from a local tax increment financing fund, and the activities they pay for are CDBG-DR eligible activities, then the reimbursement of the costs paid by the loan does not create a duplication.
    ii. Declined or cancelled subsidized loans (as long as there is documentation of the loan being declined or cancelled) are not considered a DOB. To exclude declined or cancelled loan amounts from the DOB calculation, the grantee must document that all or a portion of the subsidized loan is cancelled or declined.
        1. Declined loans are loans offered to an applicant, but the applicant never signed the loan documents to receive the loan proceeds. Declined SBA loans can also be excluded and not considered a DOB. Documentation of declined loans are only required if information available (e.g., the data the received from FEMA, SBA, or other sources) indicates that the applicant received an offer for subsidized loan assistance, and ODOC/CD, the subrecipient, or the DOB consultant is unable to determine from that available information that the applicant declined the loan. If ODOC or its subrecipient is aware that the applicant received an offer of loan assistance and cannot ascertain from available data that the applicant declined the loan, ODOC's subrecipient must obtain a written certification from the applicant that the applicant did not accept the subsidized loan by signing loan documents and did not receive the loan.
        2. Cancelled loans are loans that were initially accepted, but for various reasons all or portions of the loan was not disbursed and is no longer available to the applicant. The cancelled loan amount is the amount that is no longer available. The cancellation of the loan may be due to the default of the borrower, an agreement by both parties to cancel the undisbursed amount of the loan, or an

expiration on the term for when the loan was available for disbursement. For cancelled SBA loans, ODOC must notify the SBA that the applicant has agreed to not take any actions to reinstate the cancelled loan or draw any additional undisbursed loan amounts. Documentation must be maintained to show if all or portion of a loan was cancelled. Without this documentation, any approved but undisbursed portion of a subsidized loan must be included in the grantee's calculation of the total assistance amount unless another exception applies. Adequate documentation includes either:

   a. A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
   b. A legally binding agreement between the subrecipient and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

3. Subsidized loans are not considered a DOB when they meet the requirements for a statutory exception under the DRRA's amendments to the Stafford Act. These exceptions only apply to major disasters or emergencies declared between January 1, 2016 and December 31, 2021. However, this amendment sunsets and these exceptions no longer apply after October 5, 2023. For DRRA Qualifying Disasters, FEMA has advised that a loan is not a prohibited duplication of benefits under section 312(b)(4)(C) of the Stafford Act, as amended by section 1210 of the DRRA, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.
   a. Treatment of Disbursed Loans That Meet the Statutory Exception Under the DRRA Amendments – FEMA advises the following statement regarding the repayment of existing loan amounts: "Whether particular federal grant funds are available for the purpose of paying down a loan provided for disaster losses is a determination reserved for the grant awarding agency, pursuant to its statutory program authorities and appropriations." This is further defined in Subsection 4– Use of CDBG–DR for Reimbursement of Costs Paid by Subsidized Loans Following DRRA Qualifying Disasters.
   b. Treatment of Undisbursed Loans That Meet the Statutory Exception Under the DRRA Amendments - Accepted but undisbursed loan amounts,

including SBA loans, are not considered a DOB. ODOC's subrecipients may revise awards to applicants with undisbursed subsidized loan assistance from SBA or other sources to provide additional CDBG–DR assistance. The amount of additional CDBG–DR assistance must be based on a revised DOB analysis that excludes accepted but undisbursed loan amounts from total assistance when calculating the maximum CDBG–DR award. If ODOC's subrecipient provides additional CDBG–DR assistance, they must notify ODOC/CD and must obtain a written agreement from the applicant that the applicant will not make additional draws from the subsidized loan without the ODOC/CD's approval. ODOC/CD must review and approve any subsequent draws to determine whether all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency, as required by the DRRA.

i. Note that accepted but undisbursed loan amounts are not a DOB. Therefore, ODOC/CD will exclude such assistance when calculating the maximum award amount for a subrecipient, as long as the subrecipient has a written agreement that the loan holder will not make any additional draws on the loan.

CDBG–DR appropriations acts also includes a statutory order of assistance for Federal agencies. CDBG-DR funds may not be used for activities that are reimbursable by or completely funded through FEMA or the US Army Corp of Engineers (USACE). Thus, the Programs Planner will verify whether FEMA or USACE funds are either 1) available for an activity or 2) the activity can be reimbursable by FEMA or USACE. If the application window for FEMA or USACE funds are open, applicants should first apply for those funds before receiving CDBG-DR funds. Programs Planner and Programs Representative will be responsible for the recapture process if assistance is duplicated.

FEMA regulations at 44 CFR 206.191 have set forth a delivery sequence that defines which source of assistance is duplicative for certain programs. CDBG-DR funds are not listed in FEMA's sequence, but CDBG-DR funds would be likely considered a duplication of benefits of FEMA funds. Therefore, if CDBG-DR funds are received after FEMA funds have been awarded, it is the requirement of the grantee (the State) to recapture funds. If the duplicative assistance is received after CDBG–DR, the State must collect the DOB or contact HUD for clarification on whether another Federal agency is responsible for collecting such funds.

Finally, per the 2019 DOB Notice, HUD has adopted a policy that applies when two disasters occur in the same area, and the applicant has not recovered from the first disaster when the second disaster occurs: Applicants are not required to maintain

documentation related to the use of public disaster assistance (Federal, State, and local) beyond the period required by the agency that provided the assistance for the initial disaster if a second disaster affects such recordkeeping. When documentation cannot be provided, the grantee may accept a self-certification regarding how the applicant used local, State, and Federal assistance, as long as the applicant understands the criminal and civil penalties that apply in cases of false claims and fraud, and the State can determine that the applicant's total need is consistent with the data the State and its subrecipients have on the damage caused by the disasters.

NOTE: Applicants must continue to follow all requirements to obtain and maintain flood insurance as a condition of receiving Federal flood disaster assistance. No Federal disaster relief assistance made available in a flood disaster area may be used to make a payment to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property. See 42 U.S.C. 5154a.

In summary, this notice affects the grantee and subrecipients in the following conditions:

i. Funds used for a different purpose other than the activity requested to be paid for by CDBG-DR funds are not considered a duplication of benefits.
ii. Funds for the same purpose or activity, but a different allowable use as CDBG-DR funds are not considered a duplication of benefits.
iii. Subsidized loans, whether declined or cancelled, or a portion is declined or cancelled, are not a duplication of benefits if the applicant meets all other requirements of the CDBG-DR program.
iv. Short-term subsidized loans can be later reimbursed with CDBG-DR, as long as the activities paid for are CDBG-DR eligible activities and the loans were taken out prior to the availability of CDBG-DR funds;
v. Sets a sequence of delivery that defines which Federal funding types would be considered duplicative. CDBG-DR funds would be considered the duplicative funding source of any FEMA or USACE funds that have been or will be paid for an activity.
vi. Applicants that suffer from multiple disasters in the same area may accept a self-certification identifying funds they received for the first disaster in order to receive funds for the second disaster. The applicant must be advised of the criminal and civil penalties that apply in cases of false claims and fraud and the grantee must determine that the applicant's total need is consistent with data the grantee has about the nature of damage caused by the disasters.

ODOC RECORDKEEPING REQUIREMENTS

The State shall comply with § 200.334 Retention Requirements for Records. Financial records, supporting documents, statistical records, and all other non-Federal entity

records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report. 24 CFR 570.490 also requires records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant. Therefore, the State will retain all necessary documents as required by 2 CFR § 200.334 and 24 CFR 570.490 for 3 years after the closeout of the grant.

PROCEDURES FOR DUPLICATION OF BENEFITS

In order to prevent DOB, the State will procure a DOB consultant to implement CDBG-DR DOB procedures. The DOB consultant will perform the initial DOB analysis on the subrecipients, perform a DOB analysis on each individual homeowner once the subrecipients' applicants are determined, establish a database for the collection of data on each resident/client receiving any portion of the Funding with quarterly updates to any changes in funding sources, and ensure compliance for all Duplication of Benefits information for the entirety of the CDBG-DR grant lifespan of six (6) years with ODOC/CD oversight.

The awarded DOB consultant will perform a calculation based upon the 2019 DOB Notice framework for DOB analysis. This will be completed by: (1) Identifying total need; (2) identifying total assistance; (3) subtracting non-duplicative amounts from total assistance to determine the amount of the DOB; and (4) subtracting the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG–DR award. This activity will be monitored for accuracy and completeness by ODOC/CD. The DOB consultant will implement the following framework for its initial determination and prevention, as well as its quarterly updates to ODOC/CD, of Duplication of Benefits for the CDBG-DR Program:

A. **Identify Total Need**. The DOB consultant will first determine the applicant's total post disaster need in the absence of any duplicative benefits or program caps using the framework provided in the 2019 DOB Notice. This will be determined through an Information Sharing Access Agreement (ISAA) with the DOB consultant and FEMA. The DOB consultant will use this data gathered to identify total need for an applicant post disaster. (For housing and infrastructure programs, the State will require an applicant to obtain professional construction cost estimates on all projects seeking assistance)
    a. ODOC/CD has an informal agreement with the Oklahoma Housing Finance Agency (OHFA) to review construction costs, ensuring costs are reasonable and consistent with market costs at the time and place of construction. The DOB consultant will send Programs Planner all cost estimates for CDBG-DR activities and the Programs Planner will review the submissions. The Programs Planner will work with an OHFA representative to ensure that all cost estimates during the DOB analysis are reasonable.
    b. ODOC/CD has already entered into a FEMA State Agreement (FSA) for all data as it pertains to DR-4438. ODOC/CD has partnered with the Oklahoma Department of Emergency Management in obtaining this FSA. ODOC/CD's DOB consultant will also receive data from FEMA

through their own Information Sharing Access Agreement (ISAA) once they have met the necessary requirements to obtain such data per FEMA standards.

c. ODOC/CD has already entered into an ISAA agreement with FEMA for their set of PII data in relation to policyholder and repetitive loss data through NFIP and will require their DOB consultant to also enter into their own ISAA agreement with FEMA for NFIP data as it relates to DR-4438. NFIP data will identify who holds a policy for flood insurance through NFIP and their number of claims prior to the DR-4438 disaster, as well as any claims they made for the DR-4438 disaster and any funds they received or are in the process of receiving.
    i. While ODOC/CD recognizes the need to continually check for updated insurance claims through the NFIP program to ensure there is no duplication of benefits, it is important to note that the open period to make claims for the DR-4438 disaster has passed. Residents of affected areas are no longer able to submit claims for NFIP or FEMA Individual Assistance. Thus, ODOC/CD will utilize its data sharing agreement with FEMA NFIP data by checking for applications that have already been received, but funds have yet to be disbursed.
d. ODOC/CD will enter into a data sharing agreement with SBA as well to ensure there is not a duplication of benefits with CDBG-DR funds. ODOC/CD will contact the SBA office of disaster assistance and request data on all claims filed for the DR-4438 disaster in the 27 eligible counties in Oklahoma. ODOC/CD will follow SBA's rules and guidance as to what steps they must take to receive this data. Once ODOC/CD receives this data it can be analyzed to ensure there is no duplication of benefits per the 2019 DOB Federal Register Notice. ODOC/CD's DOB consultant will be required to enter into their own individual agreement with SBA to ensure there is no duplication of benefits for the remainder of the grant lifespan.

B. **Identify total assistance available to the person or entity**.
    a. The DOB consultant will then identify the total assistance received and available. Assistance includes all benefits available to a funding recipient; including cash and other resources such as insurance proceeds, grants, and SBA loans (private loans not guaranteed by SBA are exceptions and will not be included in accordance with guidance from HUD). The DOB consultant will identify all assistance received by each person, business concern, or other entity, via insurance, FEMA, SBA, other local, state, or federal programs, and private or nonprofit charity organizations. The homeowner, business and/or Unit of General Local Government (UGLG) will be required to sign a "Consent and Release Form". This form will allow ODOC/CD to share all of the owner information and all owner non-public personal information with agencies and companies, such as Federal government entities and the State's DOB consultant, in order to process the application of CDBG-DR funds. Each "Consent and Release Form" will be used for the legal sharing of information required for completing the duplication of

benefits check. In addition, each applicant for CDBG-DR funds will be required to complete an "Insurance and Other Fund Sources Affidavit". This form will be used to collect information on assistance received by the homeowner and/or entity for the same purpose. All collected information will be used by the DOB consultant to identify total assistance available.

b. Identify reasonably anticipated assistance, such as future insurance claims, approved SBA loan proceeds, or pending funding awards through other entities. This assistance will be provided through the data sharing agreement with FEMA and the DOB consultant. Reasonably anticipated funds include assistance that has been awarded but has not yet been received. This information will be entered in the database for calculation of the CDBG-DR unmet need. This assistance will be subtracted from the total post disaster need for an applicant, as they are considered duplicative. To address any potential duplication, beneficiaries and other recipients will be required to sign a "Subrogation and Assignment Agreement" to repay any assistance later received for the same purpose as the CDBG-DR funds. The signing of this document ensures that if the applicant receives additional funds, the applicant pays ODOC/CD back enough to prevent any duplication of benefit. This also ensures that CDBG-DR funds are not being used to cover losses already covered by "any other source". (Ref. Sec. 312. Duplication of Benefits (42 U.S.C. 5155) Ensuring compliance of all DOB data and analysis will be carried out by the DOB consultant for the six (6) year grant agreement with ODOC/CD oversight.
    i. ODOC/CD currently has FEMA verified data on assistance received to disaster survivors. ODOC/CD has contacted NFIP and SBA to ensure that future claims can no longer be made for the DR-4438 disaster. With the Consent and Release Form, the DOB consultant will continue to check for DOB with all sources the subrecipients and beneficiaries have made claims with, as well as check for any new claims made if the window for submitting claims for any entity is still available. The DOB consultant will also be required to check and update a database detailing any future disaster assistance that may be available for the DR-4438 disaster over the grant lifespan to ensure that there is no duplicative assistance throughout the grant lifespan.

C. **Subtract non-duplicative amounts from total assistance to determine the amount of the DOB**. Once the potential award is determined and the total assistance received, or to be received, the following assistance will be excluded for duplication of benefit purposes: (1) assistance provided for a different purpose; (2) used for the same purpose, but a different, eligible use; (3) not available to the applicant; (4) private loan not guaranteed by SBA; or (5) any other asset or line of credit available to the applicant. However, the State will take into consideration that funding for the repair, replacement, rehabilitation, or new construction of public facilities or improvements could potentially involve a duplication of benefits. The owner of these facilities must

be able to address whether other sources of funds are available for that same purpose and for that specific project because funds used directly by State and other government entities for public facilities or other purposes are also subject to the duplication of benefits prohibitions under the Stafford Act. Subtracting the total amount of funds that would be considered duplicative from the total need gives the current unmet need for subrecipients.

D. **Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG–DR award**. The DOB consultant can then subtract the total DOB calculated from the total need to determine the unmet need at a certain point in time. Based on the program cap amount, ODOC/CD can then determine how much assistance an applicant is eligible for based upon the current unmet need identified by the DOB consultant and the program assistance cap set by ODOC/CD.

Example: Basic DOB Framework Calculation

Basic Framework for Calculating CDBG DR Duplication of Benefits	
1. Identify Applicant's Total Need Prior to Any Assistance	$100,000
2. Identify All Potentially Duplicative Assistance	$35,000
3. Deduct Assistance Determined to be Duplicative	$35,000
4. Maximum Eligible Award (Item 1 less Item 3)	$65,000
5. Program Cap (if applicable)	$50,000
Final Award (lesser of Items 4 and 5)	$50,000

The DOB consultant will then be required to submit the above DOB analysis for each CDBG-DR subrecipient onto the OKGrants system for both ODOC/CD and its subrecipients to keep records of such files. The DOB consultant will be required to maintain a database of subrecipient records that detail their assistance from other sources, subrogation agreements, written letters of agreement such as the Consent and Release Form, and any other subrecipient documents used to verify unmet need and total assistance received. The DOB consultant will also be required to submit quarterly updates to ODOC/CD, verifying when a DOB has occurred. ODOC/CD will maintain oversight of the DOB consultant throughout the grant process and assume responsibility of the recapture process, should a DOB occur.

The Oklahoma Department of Commerce (ODOC/CD) working through the Oklahoma Office of Management & Enterprise Services (OMES) will invite the submission of a Statement of Qualifications to provide Duplication of Benefits analysis and verification and ensuring compliance services including the execution of Subrogation Agreements for the Community Development Block Grant Disaster Recovery program (CDBG-DR). Duplication of Benefit requirements are prescribed

by Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C 5155). A copy of the Amendment of Solicitation will be placed on ODOC/CD's Disaster Recovery website found at (https://www.okcommerce.gov/reporting- compliance/cdbg-disaster-recovery-2019/).

Duplication of Benefits – ODOC/CD Oversight and Consultant Responsibility

Substantial and meaningful involvement of the project leads of the Department is critical to the success of this engagement. The Programs Planner and Programs Representative will have an active participation in both the planning and execution of the DOB engagement. In summary:

- The DOB consultant will not make any management decisions, perform any management functions, or assume any management responsibilities.
- Deliverables provided to ODOC/CD by the DOB consultant may be disclosed by the Department to the Department only for their informational purposes and solely in their capacity as Leadership of the Department.
- Deliverables provided to the Department hereunder by the DOB consultant may be disclosed by the Department to the Department's independent accountants to the extent required solely in connection with their audit of the Department's financial statements.
- The DOB consultant will retain copies of the deliverables and any information evidencing the DOB consultant's performance of the Services hereunder and any Department confidential information contained in such retained materials shall remain subject to our confidentiality obligations set forth in the General Business Terms.

During the term of this engagement, ODOC/CD may request that the DOB consultant perform additional services that are not encompassed by the DOB engagement letter. The DOB consultant may perform such additional services upon receipt of a separate signed engagement letter with terms and conditions that are acceptable to the DOB consultant and the Department.

ODOC/CD shall cooperate with the DOB consultant in the performance of the services, including providing the DOB consultant with reasonable facilities and timely access to data, information, and personnel. ODOC/CD shall be solely responsible for, among other things (a) the performance of its personnel and agents; (b) making all management decisions, performing all management functions, and assuming all management responsibilities; (c) designating a competent management member to oversee the Services; (d) evaluating the adequacy and results of the services; (e) accepting responsibility for the results of the services; and (f) establishing and maintaining internal controls, including ensuring compliance for ongoing activities. The DOB consultant shall be entitled to rely on all decisions and approvals of ODOC/CD.

The DR Programs Planner and Programs Representative will assume oversight of the DOB process for the CDBG-DR grant utilizing the DOB consultant. The Programs Planner and Programs Representative will thoroughly check all initial DOB analyses performed by the DOB consultant. The Programs Planner and Programs

Representative will also take monitoring samples of the DOB analyses twice per year to ensure that the DOB consultant is adhering to all contractual obligations, as well as following Federal and State guidelines to ensure the State's CDBG-DR programs are in compliance. The Programs Planner will communicate via phone and email within one (1) business day if the DOB consultant has done any DOB analyses incorrectly and will require the consultant, per contract obligations, to perform a new DOB analysis on any applicants whose analyses was initially done incorrectly. The DR Programs Planner will check any analyses that had to be redone to ensure compliance. All DOB analyses for each applicant will have the time and date documented when the analysis was done and will be retained in the applicants' files and uploaded to OKGrants. Any subsequent DOB analyses done by the DOB consultant over the six (6) year lifespan of the grant will be checked for completeness and accuracy by the Programs Planner. Any updates to a DOB analysis will be uploaded to the OKGrants system as well and will need the time and date of when the new analysis was done.

Both the subrecipient and its CDBG-DR applicants will be required to sign a subrogation and assignment agreement requiring any duplicative assistance to be repaid to the lender. For applicants, they will be required by the following agreement to repay funds to their lender, ODOC's subrecipients. For the subrecipients, they will be required by this agreement to repay funds to their lender, ODOC. The below is a sample of the subrogation and assignment agreement that all subrecipients and applicants must sign, upload to OKGrants, and retain on file:

SUBRECIPIENT PROCEDURES FOR DUPLICATION OF BENEFITS

Subrecipients will be required to submit the following documentation at the time of application to the OKGrants System:

- Duplication of Benefits (DOB) Chart identifying all funds from other sources received for the DR 4438 disaster (attached to this manual)
- A signed Subrogation Agreement between ODOC and the subrecipient (attached to this manual and written above)
- DOB Policies and Procedures detailing how the subrecipient will check and avoid duplication of benefits. These policies and procedures need to reflect the DOB analysis required by the 2019 DOB Notice

If subrecipients have individual beneficiaries, they will be required to submit the following documentation to the OKGrants System for each individual beneficiary receiving benefits from a CDBG-DR funded program such as a buyout, reconstruction, rehabilitation, or reimbursement of funds with CDBG-DR funds:

- A signed Subrogation Agreement between the subrecipient and the individual (one per household) beneficiary (attached to this manual)
- A signed Consent and Release Form for each individual (one per household) consenting to a release of records and information to check for DOB (attached to this manual)
- A signed Insurance and Other Fund Sources Affidavit for each individual (one per household) beneficiary (attached to this manual)

Subrecipients will be required to submit the above attachments and supporting documentation required by the DOB consultant and ODOC through the OKGrants System. Subrecipients will be required to submit additional documentation to OKGrants if it is requested by the DOB consultant or the DR Programs Planner to perform an accurate DOB analysis. Subrecipients will be required to have clear labels on all subrecipient information so that the consultant, ODOC, and HUD can easily retrieve and analyze files uploaded. Subrecipients will be required recapture funds used in any activity shown to be duplicative and return those funds to the Oklahoma Department of Commerce. ODOC/CD still maintains all responsibility of the DOB process and the responsibility to request funds are returned in the case that a DOB is found.

Duplication of Benefit Check

In accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. §§ 5121 - 5207), applicants must disclose all financial assistance awarded and/or received in response to their storm-related damage, including the following sources:

- Federal Emergency Management Agency (FEMA)
- National Flood Insurance Program (NFIP) and Increased Cost of Compliance (ICC)
- Small Business Administration (SBA)
- Private insurance
- Private or nonprofit organizations or donations
- Disaster Recovery Act (DRA) funding
- Other state, local, or federal programs

Prior to the award of assistance, the DOB consultant will use the best, most recent available data from FEMA, the Small Business Administration (SBA), insurers, and any other sources of funding to prevent the duplication of benefits (For example, the use of data feeds from FEMA and SBA). ODOC/CD's DOB consultant will engage in a sharing agreement with FEMA, SBA and, as applicable, with other Federal agencies to ensure the best available data.

More specifically, the following are sources of funding assistance provided for structural damage and loss that are considered a duplication of benefits and, under federal law, must be deducted from any grant assistance amount.

FEMA Individual Assistance (IA)

FEMA Individual Assistance (IA) will be determined and verified through the FEMA NEMIS database. If the FEMA IA amount cannot be verified through the FEMA NEMIS database, the payment amount disclosed by the applicant at the time of application will be used. If an applicant can provide documentation demonstrating that the FEMA IA amount provided by the FEMA NEMIS database includes amounts not paid to cover structural loss, the documentation provided by the applicant to adjust the FEMA IA payout amount will be used. The documentation provided by the applicant must come from FEMA.

FEMA National Flood Insurance Program (NFIP) and Increased Cost of Compliance (ICC)

NFIP flood insurance and Increased Cost of Compliance (ICC) payment information from the applicant through the application process will be collected. ODOC/CD and the DOB consultant will work directly with NFIP to verify the information provided by the applicant.

Exception: Insurance proceeds taken by a mortgage company as a forced mortgage payoff will not be counted as a duplication of benefits, as long as documentation from the mortgage company shows that the payoff was involuntary. The applicant will need to provide supporting documentation demonstrating that the mortgage payment was involuntary, and the DOB consultant will attempt to verify this information with the applicant's mortgage company. Voluntary mortgage payoff using insurance proceeds is a duplication of benefits that will be counted against an applicant's award.

Small Business Administration (SBA) Loans

Federal regulations deem SBA loans for repair to be a duplication of benefit for federally funded repair programs unless a waiver request is approved in accordance with the provisions of the Disaster Recovery Reform Act (H.R. 302 signed into law in October 2018) or an exception in the 2019 DOB Notice applies. ODOC/CD will obtain a data feed provided by SBA to verify all approved amounts for SBA loans and check for any outstanding loans that may still be processing. The Program will collect specific information from SBA that breaks out the approved SBA loan amounts into the different categories of assistance (e.g., real property, personal property, vehicles, etc.).

Duplication of benefit analysis for SBA loans shall follow the Federal Register Notice entitled "Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees" published on 6/20/2019, (84 FR 28836) on guidance for exceptions when subsidized loans are not a duplication:

- Short-term subsidized loans for costs later reimbursed with CDBG–DR will not be considered a DOB if the applicant obtained a subsidized short-term loan to pay for eligible costs before CDBG-DR funds were available.
- Cancelled loans or portions of cancelled SBA loans are not considered DOB if:
- A written communication from the lender confirming that the loan has been cancelled and undisbursed amounts are no longer available to the applicant; or
- A legally binding agreement between the CDBG–DR grantee (or local government or subrecipient administering the CDBG–DR assistance) and the applicant that indicates that the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts.

The State will not treat declined SBA loans as a DOB (but can consider declined subsidized loans for other reasons, such as underwriting) if all requirements are met per 84 FR 28836.

Private Insurance

All property or casualty insurance, including flood and settlement amounts for loss to dwellings, are deducted from the applicant's funding assistance award. Private insurance payments for contents or other expenses are not deducted from the applicant's award. Insurance proceeds are initially determined through applicant-provided information. Applicants must also authorize the DOB consultant to contact third-party private insurance providers to verify information provided by the applicants. Third-party re-verification will only occur if the applicant self-certifies that a claim has been filed and the applicant is unable to provide a claim summary.

Exception: Insurance proceeds taken by a mortgage company as a forced mortgage payoff will not be counted as a duplication of benefits, as long as the applicant provides adequate documentation. The applicant will need to provide supporting documentation demonstrating that the mortgage payment was involuntary, and the DOB consultant will attempt to verify this information with the applicant's mortgage company. Voluntary mortgage payoff using insurance proceeds is a duplication of benefits that will be counted against an applicant's award.

Other Assistance

Assistance received for the same purpose of a housing recovery grant, such as funding provided by a non-profit entity to assist applicants with rebuilding their home, must be reported by applicants through the application process and must be accounted for and verified by the DOB consultant. In addition, support documentation related to other duplicative funding sources must be provided by the applicant and verified and applied as a duplication of benefits by the DOB consultant.

Loan Definitions

Private Loans

A loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG–DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms, e.g., the loan is not forgivable.

Subsidized Loans

Subsidized loans (including forgivable loans) are loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery.

Declined Loans

Declined loan amounts are loan amounts that were approved or offered by a lender in response to a loan application, but were turned down by the applicant, meaning the applicant never signed loan documents to receive the loan proceeds.

Canceled Loans

The borrower has entered a loan agreement, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant. Documentation is required. The loan cancellation may be due to default of

the borrower, agreement by both parties to cancel the undisbursed portion of the loan, or expiration of the term for which the loan was available for disbursement.

METHODS FOR VERIFYING DUPLICATION OF BENEFITS

In order to accurately document the amount of other assistance provided to the applicant, ODOC/CD's DOB consultant will enter into a data sharing agreement with FEMA to obtain all data pertaining to federal and private donation dollars received per client for the DR-4438 presidentially declared disaster. This data will be used to identify funds provided for applicants post disaster and identify if any of those funds would be considered duplicative. ODOC/CD's requirements for the DOB consultant will include but will not be limited to a database listing all damages, unmet needs, and assistance received per client, a detailed method of analysis on DOB and future sources of assistance that reflects all requirements outlined in the applicable Federal Register Notices, and updates on DOB analysis and/or overall progress at agreed upon intervals.

The following Individual Assistance data points, as suggested by HUD, were requested by ODOC/CD through their FSA agreement with FEMA. ODOC/CD is requiring their DOB consultant to request these same data points through their own ISAA agreement with FEMA in order to analyze DOB:

- Applicant Name
- FEMA ID
- Damaged Street Address
- Damaged City
- Damaged State
- Damaged ZIP (ZIP 5)
- Damaged Latitude (if available)
- Damaged Longitude (if available)
- Household Composition
- Income
- Special Needs (YIN)
- Own/Rent
- Insurance
- Insurance Company
- Insurance Settlement
- Flood Insurance
- Inspection (YIN)
- Residence Type
- Real Property FEMA Verified Loss (RP FVL)
- Destroyed (YIN)
- Water Level
- Flooded (YIN)
- Foundation Damage (YIN)
- Foundation Damage Amount
- Roof Damage (YIN)
- Roof Damage Amount
- TSA Eligible (YIN)

- TSA Received (YIN)
- Rental Assistance Received (YIN)
- Rental Assistance Amount
- Rental Assistance Ineligible Reason
- Repair Received (YIN)
- Repair Amount
- Repair Ineligible Reason
- Replacement Received (YIN)
- Replacement Amount
- Replacement Ineligible Reason
- SBA Eligible (YIN)
- SBA Received Amount
- Renter Damage
- Habitability Repairs Required (YIN)
- Rental Assistance End Date
- Rental Resource Street
- Rental Resource City
- Rental Resource State
- Rental Resource ZIP (ZIP 5)

ENSURING COMPLIANCE WITH DUPLICATION OF BENEFITS

Ensuring compliance with Duplication of Benefits over the entirety of the grant lifespan will be done by ODOC/CD's DOB consultant with ODOC oversight. Ensuring compliance will begin on the date of the signed contract agreement. An agreement of ensuring Duplication of Benefits for six (6) years will be made between the DOB consultant and ODOC/CD. This period of six (6) years was agreed upon because of the length of the grant agreement with ODOC/CD and HUD, therefore requiring an agreement of at least the same length with ODOC/CD and the DOB consultant. A time period of greater than six (6) years was not appropriate based on funding availability.

The initial DOB analysis will be conducted by the DOB consultant on each subrecipient and their activities before ODOC/CD provides a "Release of Funds" to the subrecipients' activities. The DOB consultant will also perform a DOB analysis on each applicant per subrecipient, maintaining a detailed database of applicant funding information, and will continue to ensure compliance and provide updates to ODOC/CD on a quarterly basis. The schedule for these updates will be every 10th of the months of January, April, July and October for the contracted years. A final DOB analysis will be performed by the DOB consultant before the closeout of the CDBG-DR grant.

Once a DOB contract is executed, ODOC will adhere to the following procedures in order to successfully fund the DOB consultant:

- Approval for all expenses for State and Federal funds is required by Community Development Team Leaders, Budget Officer and the Director. Expenses and amounts over $5,000 will require either Executive Director or Secretary of Commerce approval.

- Once approved, an Acquisition Request is created by the division assistant/financial liaison for a Purchase Order (PO). Acquisition requests include all information such as amount, time frame (one-time payment or contract), all vendor information and the funding source. Also included is the necessary paperwork that is required by OMES. Examples: Sole Source, Sole Source Terms, Federal Procurement Justifications, Non-collusion Affidavit.
- The purchase order is created by ODOC's Procurement Office and the PO information is sent to the consultant.
- Invoices should be submitted to Accounts_Payable@okcommerce.gov referencing the PO number on the invoice.
- Procurement office processes invoice includes set key for funding and routes to division for approval.
- The Team Leaders, Budget Officer and the Director of Community Development will verify funding source, amount, time frame for services and will approve or deny the invoice for payment.
- Once approved the invoice is returned to Procurement Office for payment.

Disaster Recovery Reform Act of 2018 (PL 115-254, Division D) ("DRRA")

Section 1210 of the DRRA amended the DOB provision in the Stafford Act to add a new subsection 312(b)(4)(42 U.S.C. 5155(b)(4))

"(4) WAIVER OF GENERAL PROHIBITION. —

(C) PROHIBITION ON DETERMINATION THAT A LOAN IS A DUPLICATION. Notwithstanding subsection (c), in carrying out subparagraph (A), the President may not determine that a loan is a duplication of assistance, provided that all Federal assistance is used toward a loss suffered as a result of the major disaster or emergency."

Based on the "Prohibition on determination that a loan is a duplication" subsection (C), the following is confirmed:

- Grantees shall not treat declined loans (including SBA loans) as a DOB or consider declined loans in the DOB analysis, but may consider declined loans for other reasons, such as underwriting.
- Documentation (applicant certification) for declined loans is required if the grantee has information/data showing that the applicant was offered subsidized loan assistance, but that information does not indicate that the applicant declined the loan.
- They can exclude cancelled amounts in the DOB analysis if the grantee has (a) a written communication from the lender that undisbursed amounts are not available; or (b) a legally binding agreement with the applicant that loan is no longer available for disbursement and the applicant agrees not to reinstate the loan or accept more disbursements.
- DRRA amendments apply so that a subsidized loan is not a prohibited DOB, provided that all Federal assistance is used toward a loss suffered as a result of a major disaster or emergency.
    - Accepted but undisbursed loan amounts are not considered a DOB.

    - Treatment of undisbursed loan amounts is similar to cancelled loans: Assistance for the same purpose as the undisbursed loan requires that the grantee notify the lender, obtain applicant's agreement not to draw loan funds without approval, and determine that all Federal assistance is used toward a loss resulting from a major disaster or emergency.
    - Updates to the action plan are required if assistance is inconsistent with grantee's plan.
- Subject to conditions in the 2019 DOB Notice, grantees may grant CDBG–DR funds to reimburse individuals and businesses (other than the grantee or subrecipients) for some costs of CDBG–DR eligible activities that were paid with subsidized loans.
- The waiver excludes FEMA PA (Sec. 406) and IA (Sec. 408)
- No automatic requirement for the use of federal grant funds to repay loans. This will depend on the specific grant program requirements.

Certain rules apply if grantees wish to reimburse CDBG–DR eligible activities that were paid with subsidized loans. This affects grantees in the following conditions:

1. Document that all federal assistance is used toward a loss suffered as a result of the major disaster or emergency;
2. Meet all grant requirements for reimbursement of costs in Federal Register notices (see CPD Notice 2015-17), including that the cost is not reimbursable by FEMA or Army Corps.
3. Complete a revised DOB analysis; reimburse before October 5, 2023 when the DRRA sunsets;
4. Document that cost was for an activity that was eligible on the date of the 2019 DOB Notice.
5. If the payment is due to SBA, notify the SBA of the reimbursement and issue a joint payment to the SBA and the applicant. For all loans, require the applicant to comply with loan requirements related to reimbursement of costs.
6. Advise applicants that submitting an application for CDBG–DR reimbursement assistance does not relieve the applicant of a duty to make payments on a subsidized loan; and
7. Document compliance with environmental requirements at 24 CFR part 58.

ODOC Program Administration & Implementation

ODOC STAFFING PLAN

The ODOC/CD Community Development Services Division manages the CDBG-DR program. ODOC/CD Staff positions and responsibilities to the program are as follows:

Programs Manager

The current Senior CDBG Program Manager has more than a decade of experience in CDBG and was centrally involved in administration of the first iteration of Oklahoma's CDBG-DR program. They act as a liaison to HUD staff and assists Program Planner and other staff in preparation of state plan documents. They will

provide support to the Programs Planner and Programs Representative, as necessary. They will also review all Environmental Reviews for projects and determine if they meet Federal regulations.

Programs Planner (CDBG- Disaster Recovery)

This position takes the lead role in all aspects of the CDBG-DR program, and allows for other staff to take a supporting role in CDBG-DR. This position will be the lead point of contact for CDBG-DR program planning, implementation, monitoring (directly, or indirectly by overseeing contractors or other staff), reporting, DRGR management, and closeout. They will manage all communication and partnership with subrecipients, funding sources, and state agencies.

Programs Representative (CDBG-DR/CARES)

This position supports the CDBG-DR Programs Planner in all aspects of the CDBG-DR program., including planning, implementation, monitoring, reporting in DRGR, and closeout.

Program Representative (CDBG/CDBGDR)

This individual has several years of CDBG monitoring experience and will dedicate time, as needed, specifically to CDBG-DR oversight, sub recipient management, contract implementation and reporting.

Director of Programs (Monitoring)

This individual supervises all monitoring activity, including CDBG-DR. In that capacity, she reviews, approves and signs all sub recipient monitoring reports and ultimately ensures contracts are properly implemented and overseen.

Director of Programs (Planning)

This individual supervises all program planning activity, including CDBG-DR. In that capacity, she reviews and approves all state plans and program designs, and ultimately ensures the program is appropriately drafted.

OKLAHOMA WATER RESOURCES BOARD (OWRB)

The OWRB plays an ongoing role in Oklahoma's overall flood plain planning and hazard mitigation strategy. The Oklahoma Department of Commerce has engaged with OWRB and explored possible use of CDBG-DR funds for planning, and various strategic activities related to flood recovery and resilience. OWRB offers their expertise and experience that helps fill knowledge gaps in ODOC's staff.

OKLAHOMA OFFICE OF EMERGENCY MANAGEMENT (OEM)

The OEM administers FEMA funding and coordinates most aspects of Oklahoma's general response to any disaster. They facilitate regular meetings of all parties who administer any aspect of disaster recovery, of which CDBG-DR is a part. They are a valuable partner and provide FEMA related data to ODOC to help design the CDBG-DR method of distribution.

OKLAHOMA HOUSING FINANCE AGENCY (OHFA)

The OHFA administers HUD HOME funding and Housing Trust Fund. They are a close partner to ODOC in our yearly Consolidated Plan. They have agreed to provide staff time and expertise to review all housing related aspects of the CDBG-DR program. They are aware of the needs in the most disaster impacted areas of the state, and they are aware of the housing priority of the CDBG-DR program. They have already provided insight that has proven valuable to the tentative draft design of the CDBG-DR program and will continue to do so.

Building the Administrative Record

A. The Administrative Record will include all documents considered, either directly or indirectly, by ODOC DR staff in reaching a final decision on an issue. Documents can include contracts, forms, agreements, internal memoranda and notes, correspondence, email, electronic submissions, and any other document considered by the decision-maker and/or staff in reaching the decision. It can be used by ODOC DR staff to take enforcement actions (e.g., to reduce or terminate a participant's grant) or to defend ODOC's decision if sued. Once the final decision is made, the Administrative Record cannot be supplemented with subsequent documents.

B. ODOC DR staff will ensure that it has a sufficient administrative record that supports its decisions so that ODOC can defend itself against appeals of the decision. In HUD-CPD and Disaster Recovery programs, that provide the participant an opportunity for a hearing before an administrative law judge before ODOC can reduce or terminate the grant, ODOC must have the evidence to support the determination that the sub recipient failed to substantially comply with the program requirement. The administrative record provides the primary evidence.

C. All basic documents will be readily available. ODOC DR staff will write correspondence with the realization that it can be used effectively either for or against ODOC in litigation. Therefore, any written correspondence "stands on its own," whether you initiate it or are replying to a submission from the participant (or outside of the ODOC). It should be understandable to a third party reading it for the first time months or years later.

Correspondence containing administrative decisions requires special attention. When ODOC DR staff makes a finding, a request for corrective action is being conveyed, or ODOC is saying "no" to a request, the letter conveying the decision or action needs will show an understanding of the nature of the issue and explain our reasons.

Adverse actions must cite the authority, e.g., the applicable regulation, OMB Circular, or statutory provision. ODOC will avoid characterizations or personal opinions in written correspondence, whether letters, emails, or internal memorandums. ODOC DR staff will answer all correspondence within a reasonable amount of time after received. Demands or requests that we make of our subrecipients must be reasonable and it must be possible to complete required actions within the time allotted. All attachments will be retained to incoming or outgoing correspondence.

All dates, signatures, and concurrences will be clearly legible. These actions will help protect ODOC against allegations of arbitrary and capricious conduct.

D. Telephone calls will be returned promptly. Notes will be taken of such calls, including the date of the call, the names of the people who participated in the call, and the substance of the conversations. For non-documentary materials, such as pictures, videotapes, recordings of interviews, etc., identify each item as to date, place, and names or narrators (if applicable). Errors to Avoid: To the extent that compliance issues arise with a sub recipient that results in litigation, indefensible or incomplete administrative records can hurt ODOC's ability to prove our case. Some of these problems are fixable; some are not. However, any problems either have to be corrected before ODOC can go to court or a judgment made by the Local HUD Office that a problem is fatal to any enforcement effort. ODOC will be cognizant of the problems that are difficult to fix such as:

- Letters from ODOC DR staff that deny a request but do not explain the basis for the denial or cite the wrong authority;
- Letters from ODOC DR staff containing unreasonable requests, either in time or action;
- Unfulfilled promises by ODOC DR staff;
- Letters that demonstrate lack of understanding of what a participant was asking for or proposing;
- Actions taken by ODOC DR staff that do not follow our own procedures including inconsistencies in making findings;
- Letters that do not stand on their own (i.e., are not understandable to a third party reading them for the first time months or years later);
- Missing or illegible documents; and/or
- Letters that clear findings without stipulations or verification of compliance.

E. Potential Consequences. All ODOC files will be disclosed in litigation if the subrecipient requests it. Therefore, ODOC will provide any kind of document, particularly internal memos, to avoid conclusions, predictions, or inferences to keep the Department from harm in litigation. Note that email messages are retained in back-up systems for up to three years after you delete them and, in most cases, must be disclosed in litigation. Voice mail messages are generally retained for up to three calendar days. All monitoring conclusions must be supported.

Program Training & Compliance Monitoring

As part of the State's ongoing responsibilities for the administration of U.S. Department of Housing and Urban Development (HUD) federally funded programs, the Oklahoma Department of Commerce (ODOC) will conduct comprehensive monitoring reviews for all programs and activities governed by Public Law 116-20 (2019 Disasters) and Federal Register Notices, Vol. 85, No. 17, Monday, January 27, 2020; Vol. 83, No. 157, Tuesday, August 14, 2018; Vol. 83, No. 28, Friday February 9, 2018, Title I of the HCD Act and the CDBG regulations at 24 CFR Part 570, unless modified by Waivers and alternative requirements included in the applicable Federal Register Notices; 2 CFR Part 200, which provides the Federal Government's guidance on

administrative requirement, cost principals, and audit requirements; and Section 312 of the Stafford Act.

The Federal Register Notices provide the regulatory framework established by HUD and the State of Oklahoma's Disaster Recovery Programs. The State of Oklahoma and its subrecipients that receive CDBG-DR funds are required to comply with all HUD's rules and regulations concerning program performance and any rules and regulations unique to the Disaster Recovery legislation.

Oklahoma's Department of Commerce (ODOC) CDBG-DR compliance monitoring handbook and monitoring tool provides a guide for areas of programmatic review and responsibilities relating to compliance which will enable the DR funding subrecipients and the public to understand the program, its objectives, and methods to ensure success of the program. ODOC understands the importance and need for a compliance program that safeguards all participants in the CDBG-DR program and adequately and responsibly carry out the various ethical, legal, and fiduciary responsibilities in the administration of its programs and activities.

The State of Oklahoma as recipient of CDBG-DR funds is responsible for safeguarding that the funds are used in accordance with all applicable program requirements. ODOC understands that the use of subrecipients does not relieve the State of compliance responsibilities. The policies and procedures are consistent with those used by HUD to monitor state-administered and entitlement programs and are modified as appropriate to monitor specifics of the Disaster Recovery program. Reimbursement of expenditures will be disallowed if local governments cannot properly document the use of funds that do not address disaster-related needs or are clearly not for the greatest need. In such case, the local government receiving the funding would be required to refund the amount of such disallowance.

APPLICABILITY

ODOC implements an annual CDBG Certified Administrator program to assist subrecipients, UGLG's, in the implementation and administration of a CDBG contract. Subrecipients have the option to utilize a certified administrator or can administer the contract themselves by sending staff to the certification training, or by attending a technical assistance training with ODOC staff. The CDBG technical assistance trainings provided are normally based on Risk Assessments performed by CDBG staff for contracts awarded under each CDBG set-aside and then schedules mandatory trainings to those subrecipients who, by their scores, are required to participate such as the Authorized Officials, Financial Officers, and Managers. The training is conducted either in person or via online webinar and covers all regulatory actions and policy guidance to a regular CDBG program.

It is intended that the CDBG Certified Administrator program, CDBG training and guidance, be used as a prerequisite in administering a contract under the CDBG Disaster Recovery program. The subrecipient's staff, pertinent partners, and certified administrators will attend a mandatory CDBG-DR training specific to the policies and procedures related to the program. CDBG-DR staff will also conduct a Risk Assessment for all subrecipients.

As per 83 FR 5856, The State shall attend and require subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG–DR grant funds. Additional information about this training will be posted on the HUD website.

ODOC staff will monitor all CDBG-DR sub recipient contracts by performing daily desk monitoring through the State's web based OK Grants Management System. ODOC/CD DR Staff will review all submittals that is required for each subrecipient milestone such as procurement procedures of engineering and other services, environmental review forms, purchase orders, invoices, fair housing forms, financials, equal opportunity forms, payrolls, and Davis Bacon requirements. These daily reviews of submittals will ensure that subrecipients are meeting all milestones and making timely expenditure deadlines.

On-site monitoring review visits will utilize a monitoring tool outlining federal and state requirements based off of the HUD monitoring checklist. ODOC may, at times, utilize contractors to assist staff in performing such reviews as outlined in this guide as well as in ODOC's CDBG-DR Subrecipient Management Guide and updates and revisions thereto.

ODOC will require on-site monitoring when subrecipients have expended 50% of funds and again at 85% expended funds. ODOC/CD will ensure that subrecipients are on track to achieve milestones set for them and are adhering to all Federal guidelines. ODOC Programs Planner and Programs Representative will fill out a monitoring checklist to check that subrecipients are following all Federal Guidelines for CDBG-DR funds. This checklist is based on the HUD monitoring checklists provided to all grantees in Chapter 6 of the CPD Monitoring Handbook, Disaster Recovery- Community Development Block Grant:

https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2/

OBJECTIVES

HUD describes monitoring as an integral management control technique and a Government Accounting Office ("GAO") standard. It is an on-going process that assesses the quality of a program over a period of time. Accordingly, the monitoring process shall provide ODOC information about subrecipients that will be critical for making informed judgments about CDBG-DR program effectiveness and management efficiency. Monitoring is helpful in identifying occurrences of fraud, waste, and abuse. ODOC will use monitoring to accomplish the following objectives:

- Ensure that all CDBG-DR projects/activities are carried out efficiently, effectively, and in compliance with all applicable laws and regulations.
- Assist subrecipients to improve their performance, develop or increase capacity, and augment management and technical skills.
- Ensure that all subrecipients will be monitored through regular desk and on-site reviews and to recommend the appropriate program compliance & management steps to reduce fraud, waste and abuse, as well as provide for timely expenditures.

- Ensure compliance roles and responsibilities are clearly established within ODOC's staff and subrecipient' staff and that care is given in delegating authority to the sub recipient.
- Ensure that subrecipients have written policies and procedures and internal control systems capable of ensuring compliance.
- Ensure that individuals responsible for CDBG-DR compliance and ethics have adequate resource authority and competencies to carry out such responsibilities.
- Ensure that subrecipients maintain an effective mechanism to report any wrong- doing, including mechanisms to allow for anonymous reporting, and protect against retaliation.
- Ensure that sub recipient reporting requirements are submitted accordingly to enable the State to submit compliance reports in a timely manner to appropriate agencies, as well as reporting accomplishments in the HUD Disaster Recovery Grant Reporting (DRGR) System.

MANAGING THE MONITORING PROCESS

ODOC DR staff will perform a final on-site monitoring review visit and will issue a final report for each subrecipient contract under the Supplemental Disaster Program. The ODOC DR Programs Planner performs reviews on a regular/daily basis of all submittals within the OKGrants system for all subrecipients, this shall include items such as

- the review of Release of Funds and Environmental Review for each activity,
- procurement of services policies and contracts,
- financial reviews such as checking supporting documents for pay advances,
- budgets & obligation revisions,
- timely expenditures,
- program income reporting,
- Labor Standards to include Contract Awards, contractor weekly progress payments and payroll reports, and contractor section 3 reports,
- Fair Housing Activities,
- Quarterly Reporting,
- HUD's Contractor Reporting Template, and more.

"On-site monitoring" is a structured review conducted by the ODOC Project Planner at locations where project activities are being carried out and where the subrecipient must maintain project records. Two on-site monitoring visits will be conducted with each sub recipient during a project.

If there are emergency circumstances that do not allow an in-person visit, desk monitoring can occur. Desk monitoring requires alternate methods such as document sharing until a complete review of the program can be completed. A monitoring tool/checklist template is utilized to ensure that all requirements are addressed.

The ODOC DR Programs Planner will be thoroughly familiar with the Disaster Program requirements and knowledgeable of sub recipient activities for monitoring purposes. Preparation for monitoring is critical and includes:

1. Understanding governing statutes, regulations and official guidance; and

2. Reviewing and analyzing prior financial audits and previous monitoring reports and any findings.

This preparatory work may result in revisions to the individual monitoring strategy, either with respect to areas to be covered, estimated time-frames, and or staff resources needed/participant staff to be consulted. ODOC will be in constant communication with subrecipients by providing the monitoring tool/checklist and guidance regarding technical areas that will be carefully reviewed as outlined and provided in the CDBG-DR Sub Recipient Grant Management Guide.

CONDUCTING THE MONITORING

All monitoring by ODOC DR Staff will consist of the following elements:

Notification to the Subrecipient

After the monitoring strategy has been developed, communication with the sub recipient to establish a date (whether on-site or remote) is the next step. Once a date has been set, formal notification is provided to the sub recipient. Unless there are extenuating circumstances, the notification will be sent at least two weeks prior to the monitoring. The notice will discuss the monitoring schedule identify the areas to be reviewed, and the names and titles of the ODOC DR staff conducting the monitoring. It will also request that the necessary staff be available to participate in the monitoring entrance meeting. For on-site monitoring, the notice will confirm the need for any required services (e.g., conference rooms, telephones, and computers). For remote monitoring, the review notice will identify specific information and instructions to document the review and a timeframe for submission.

Entrance Conference

The purpose of the entrance conference is to:

1. Explain how the monitoring will be conducted;
2. Identify and confirm key subrecipient staff that will assist during the monitoring;
3. Set-up or confirm meeting or interview times (including any clients who may be interviewed) and, if applicable, schedule physical inspections;
4. Verify the programs/activities to be reviewed and, if on-site, how access to files and work areas will be granted (some programs files can be sensitive; some work areas can be hazardous).

Assessment Process

Monitoring entails interviews and file reviews to verify and document compliance and performance (and can include physical inspections if monitoring is conducted on-site). ODOC will require on-site monitoring when subrecipients have expended 50% of funds and again at 85% expended funds. ODOC/CD will ensure that

subrecipients are on track to achieve milestones set for them and are adhering to all Federal guidelines. ODOC DR Staff will perform all onsite monitoring. ODOC Staff will fill out a monitoring checklist to check that subrecipients are following all Federal Guidelines for CDBG-DR funds. This checklist is based on the HUD monitoring checklists provided to all grantees in Chapter 6 of the CPD Monitoring Handbook, Disaster Recovery- Community Development Block Grant: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2/

Within twenty-one (21) days of the monitoring visit, the State's Subrecipient will receive a formal monitoring result(s) letter through OKGrants. This letter will summarize the area(s) reviewed, performance expectations, an analysis of what was discovered on-site, a conclusion or finding and, if necessary, required State's Subrecipient responses or actions.

Evaluate

The monitoring tool/checklist is designed to assess and document compliance with program requirements based upon:

a. File reviews to determine the accuracy of the information, using both automated and manual data and reports submitted to ODOC DR Programs Planner by the sub recipient; and

b. Interviews with sub recipient staff, contractors, and clients to clarify and determine the accuracy of the information, assess level of satisfaction with the provision of services or the "end products," and document performance. Specific responses to the Monitoring tool/checklist questions are required. Although this approach can take more time up-front, it yields higher quality reviews that provide a better picture of the sub recipient grant program for supervisory staff, HUDs Local Office, and others who have a need to review performance. The responses to each question provide important documentation for ODOC's administrative record.

ODOC DR staff will use a commonsense approach and engage in a thorough evaluation of data and other information to draw defensible and supportable conclusions. ODOC DR staff understand that the main objective of monitoring is to assist subrecipients in carrying out their program responsibilities. "Is the program purpose being accomplished? Are the program beneficiaries being served as intended?" Are program requirements being met?

Communicate

Throughout the monitoring, ODOC DR staff will maintain an on-going dialogue with the sub recipient. This communication will keep the sub recipient informed as to how the monitoring is progressing, enables discussions of any problem areas encountered, and provides the participant an opportunity to make "on-the-spot" adjustments or corrections or present additional information to help the ODOC DR Staff. It also minimizes the potential for surprises to the participant when the exit conference is held as well as when the monitoring results are formally communicated in writing.

Document

The responses to the questions in the Monitoring tool/checklist form the basis for monitoring conclusions and are supplemented by sub recipient records copied or reviewed during the monitoring. All checklist questions will be clearly answered (both the "Yes/No/N/A" box and the "Findings/Comments" text box). For example, an N/A response could indicate either that the question did not apply, or the reviewer was unable to answer it (due to time constraints, unexpected problems in other areas, etc.). The "Finding/Comments" section needs to succinctly but explicitly explain this.

Exit Conference

At the end of the monitoring review, ODOC DR staff will conduct an exit conference with the appropriate participant officials or staff to discuss preliminary conclusions. In part, this serves to confirm the accuracy and completeness of the information used to form the basis for the monitoring conclusions. It may also highlight areas of disagreement between ODOC and the participant. The ODOC DR Staff is responsible for using the checklist not only to prepare for the exit conference by clearly and concisely summarizing the conclusions, but also to document the issues discussed at the exit conference, the date and time of the meeting, and the names and titles of the attendees. To the extent that a sub recipient signifies disagreement, the basis for any objections should be noted. These summarizations are used to develop the monitoring letter.

MONITORING CONCLUSIONS

Decision Categories: As a result of monitoring, ODOC DR Staff will reach one or more conclusions that:

1. Performance was adequate or exemplary;
2. There were significant achievements;
3. There were concerns that need to be brought to the attention of the sub recipient;
4. Technical assistance was provided or is needed; and/or
5. There were findings that require corrective actions.

All conclusions – positive or negative - must be supportable, defensible, and adequately documented.

Findings and Concerns: Where deficiencies are identified, the following procedures apply:

1. Findings. Where an identified deficiency results in a finding, the finding must include the condition, criteria, cause, effect, and required corrective action.
    a. The condition describes what was wrong or what the problem was.
    b. The criteria cite the regulatory or statutory requirements that were not met.
    c. The cause explains why the condition occurred.
    d. The effect describes what happened because of the condition.
    e. The corrective action identifies the action(s) needed to resolve the problem and, unless inapplicable or there are extenuating

circumstances, should include the time frame by which the participant is to respond to the finding.

2. Concerns. Monitoring concerns brought to the subrecipient's attention should include the condition, cause, and effect. The ODOC DR staff will suggest or recommend actions that the sub recipient can take to address a concern, based on sound management principles or other guidelines. However, corrective actions are not required for concerns.

SANCTIONS

The Process

Identify monitoring deficiencies that rise to the level of a "finding" require corrective action. Responsibility rests both with the ODOC DR Staff and the entity being monitored. The ODOC DR Staff must validate that there is sufficient documented information and/or evidence to support a finding of noncompliance. The entity being monitored has a responsibility to determine or assist the ODOC DR Staff in determining the reason why a requirement was violated or provide evidence of compliance.

A key ingredient of effective monitoring is the ability to identify the root cause(s) of any identified deficiencies, whether the problem is an isolated occurrence or systemic. Such knowledge leads to the development of optimal corrective actions. Keep in mind that there may be any number of acceptable solutions to resolve a deficiency. Ideally, the sub recipient should agree with ODOC DR Staff's assessment of the cause and offer a workable solution. In some cases, the ODOC DR Staff may need to determine appropriate action if compliance is not possible, i.e., do we want money recovered, a grant reduced, limited or terminated? Contemplation of those or other serious corrective actions triggers the need for ODOC DR staff to contact the HUD DR Representative. Additionally, suspected instances of fraud or misconduct should be referred to the HUD Office of the Inspector General for further investigation as appropriate.

Monitoring Tool/Checklist Template

The questions contained within the checklist provide a standardized format structure of the financial and programmatic monitoring compliance areas. The checklist is used to identify financial and programmatic compliance and identify any "finding" that could require corrective action. The checklist allows for fair and consistent monitoring procedures and its use will assure completeness and thoroughness of the monitoring and provides the ODOC DR staff the information needed to prepare the monitoring letter. ODOC DR staff will complete the monitoring checklist during all on-site monitoring visits. The checklist also provides the documentation and information necessary to justify corrective action and further monitoring as necessary. Any findings or problems noted during monitoring will be first noted on the checklist either next to the questions or noted on the notes page at the back of the checklist. These problems or findings will be discussed with appropriate grantee personnel during the Exit Conference.

Understanding the cause serves to outline the action or actions needed to resolve the violation(s). To assist the ODOC DR Staff in developing corrective actions for

findings of noncompliance. An important and fundamental principle of the monitoring process is that ODOC DR staff is required to make findings when there is evidence that a statute, regulation or requirement has been violated but it retains discretion in identifying appropriate corrective action(s) to resolve deficiencies. An equally fundamental principle is that subrecipients have due process rights to contest findings.

ODOC will require on-site monitoring when subrecipients have expended 50% of funds and again at 85% expended funds. ODOC/CD will ensure that subrecipients are on track to achieve milestones set for them and are adhering to all Federal guidelines. ODOC DR Staff will perform all onsite monitoring. ODOC Staff will fill out a monitoring checklist to check that subrecipients are following all Federal Guidelines for CDBG-DR funds.

Monitoring Findings Issuance Letter

Within 21 days after completion of monitoring performed, On-site or Desk, ODOC DR staff will send written correspondence to the sub recipient describing the results – in sufficient detail to clearly describe the areas that were covered and the basis for the conclusions. Each monitoring letter is to include:

1. The program, project or entity monitored;
2. The dates of the monitoring;
3. The name(s) and title(s) of the ODOC DR staff who performed the monitoring review.
4. A listing of the program/project/activity areas reviewed (which, in most cases, will repeat the areas outlined in the 1st notification to the sub recipient);
5. If applicable, a brief explanation of the reasons why an area specified in the notification letter was not monitored (e.g., time constraints, unanticipated problems arising in another area);
6. monitoring conclusions;
7. if applicable clearly labeled findings and concerns;
8. if there are findings, an opportunity for the sub recipient to demonstrate, within a time prescribed by ODOC DR Staff, that the participant has, in fact, complied with the requirements;

This timeframe will be determined by ODOC DR Staff and will depend on the finding and the timeframe needed to respond adequately. ODOC DR Staff will give no less than 30 days to respond to any findings to ensure there is no unnecessary burden on the subrecipient and that the subrecipient has an adequate amount of time to respond.

An offer of technical assistance, if needed or a description of technical assistance, will be provided during the monitoring.

Because ODOC DR Staff works in partnership with the entities it funds, generally, the tone of the monitoring letter will be positive, in recognition of our common goal to responsibly and effectively implement Oklahoma Disaster program. ODOC's monitoring letter will not include general statements that the sub recipient "complied with all applicable rules and regulations." Such broad general statements

can negate ODOC's ability to apply sanctions, if deemed necessary at a later date. Monitoring conclusions, therefore, should be qualified, i.e., "based upon the materials reviewed and the staff interviews, the activity/area was found to be in compliance with (specify requirements)."

CLOSING FINDINGS

Follow-up by ODOC DR Staff serves two purposes:

1. It provides an opportunity to evaluate the effectiveness of monitoring efforts in maintaining or improving participant performance; and
2. It enables to determine that required corrective actions are implemented. The General Accounting Office (GAO) considers the monitoring process to be completed only after an identified deficiency has been corrected, the corrective action produces improvements, and it is determined that management action is not needed (see GAO/AIMD-00-21.3.1, Standards for Internal Control in the Federal Government, "Monitoring").

All follow-up actions will be documented and communicated to subrecipients. Target dates are assigned when corrective actions are required and relayed to the participant in the monitoring letter.

1. In the event that a sub recipient fails to meet a target date - and
1. has not alerted the ODOC DR staff as to the reason for not meeting the date (and, if appropriate and agreed-upon, established a new date) - the ODOC DR Programs Planner will follow-up either by telephone or email, with a reminder. Either form of contact will be documented.
2. If the sub recipient has not responded within 30 days after the date of the ODOC DR staff's reminder, a letter will be sent to the sub recipient requesting the status of the corrective action(s) and warning the participant of the possible consequences (under the applicable program requirements) of a failure to comply. Where the sub recipient is unresponsive or uncooperative, ODOC DR staff will contact the appropriate HUD Program Representative for guidance on carrying out progressive sanctions.
3. When the sub recipient notifies ODOC DR staff that the corrective actions have been implemented, the appropriate ODOC DR Staff will review the submitted information within 30 working days. Regardless of whether the response is acceptable (and/or sufficient to close a monitoring finding) or inadequate, a letter will be sent to the sub recipient within 45 calendar days of receipt of its submission. The correspondence will either inform the participant that a finding has been closed; acknowledge any interim actions that have been taken and reaffirm an existing date; or state that additional information/action is needed and establish a new target date to resolve the deficiency. When determining whether it is reasonable or appropriate to establish new target dates, ODOC DR staff will consider the sub recipient's good faith efforts as well as any extenuating circumstances beyond the participant's control that impact timely and effective resolution.

Attachments

001	Organizational Chart
002	Financial Services Policies and Procedures Manual Updated
003	Audit Procedures
004	2019 ODOC Audit Report
005	2019 ODOC Audit Management Letter
006	OK State Statutes - State Finance Act
007	OST Admin Rules - Security for Public Deposits
008	OK Dept. of Libraries General Records Disposition
009	Federal Purchase Justification Form
010	ODOC-OMES Account Code Cross-walk
011	OMES Policy for CAFR-Clearinghouse
012	OHFA Support Letter
013	Letter from Internal Auditor

Subgrantee Application Guidance

The purpose of this State of Oklahoma Community Development Block Grant Disaster Recovery (CDBG DR) Program Policies and Procedures Manual is to provide a basic reference source for the operation of the Program. This manual contains the basic program policies, rules, and procedures, but does not and is not intended to contain every detail of policy, rules, or regulations. Rather, it is intended to serve as an easily understood guide for the administration of the State of Oklahoma's CDBG DR Program. All CDBG DR policies and procedures conform to federal and state regulations governing the CDBG DR activities. Whenever there are conflicts between local, state, and federal requirements, the restrictive of the three regulations always take precedence.

This manual complements Public Law 116-20 and Federal Register Notice Vol., 85, No. 17 / Monday, January 27, 2020 page 4681 which sets regulatory foundation for the State's $36,353,000 CDBG DR allocation. This manual describes the structure and process for administration of the State of Oklahoma's CDBG DR Program. It also identifies needs within the state; objectives to address those needs; and the basis for allocating funds between CDBG DR program activities developed to meet those objectives.

Low- and Moderate-Income (LMI) Overall Benefit Requirements

As identified in Federal Register Notice / Vol. 85, No. 17 / Monday, January 27, 2020, at least 70 percent of the State's HUD allocated CDBG DR funds must benefit low and moderate-income persons. The primary National Objective of the Community

Development Block Grant Disaster Recovery (CDBG DR) Program is the "development of viable urban communities by providing decent housing and a suitable living environment, particularly for persons of low and moderate incomes."

Eligible Geographic Areas

When funds are allocated directly to States, the CDBG DR appropriation typically mandates that all funds must be spent to meet recovery needs in areas declared a major disaster area pursuant to the Stafford Act. Typically, appropriations further limit use of funds to the "most impacted and distressed" areas resulting from a major disaster. HUD uses damage estimates and other data from FEMA and SBA to determine the eligible grantees, geographical areas to be served or prioritized and allocation amounts. Based on this data, the Department may attach additional restrictions, e.g., units of general local government (UGLG) in receipt of a direct award may only spend funds within that local government's jurisdiction (not within the county at large). Eligible disasters and any geographic restrictions are identified in the Federal Register Notice that governs the use of funds.

Federal Register Notice / Vol. 85, No. 17 /January 27, 2020

This Register Notice stipulates that a minimum of $29,082,000 (80%) of the total $36,353,000 State of Oklahoma CDBG DR allocation be expended on eligible CDBG DR projects within Muskogee, Tulsa, and Sequoyah (Area Code: 74946) Counties. The remaining 24 counties and the entirety of Sequoyah county will be considered the State's MIDS. Therefore, the remaining $7,270,600 (20%) of funds will be delegated to such counties. Additionally, this Notice identifies the specific disasters occurring under FEMA Disaster Number 4438 as the qualifying factor for the use of these funds. A listing of the federal Disaster Declarations and eligible counties accounted for under the eligible declarations can be seen below.

FEMA DR-4438

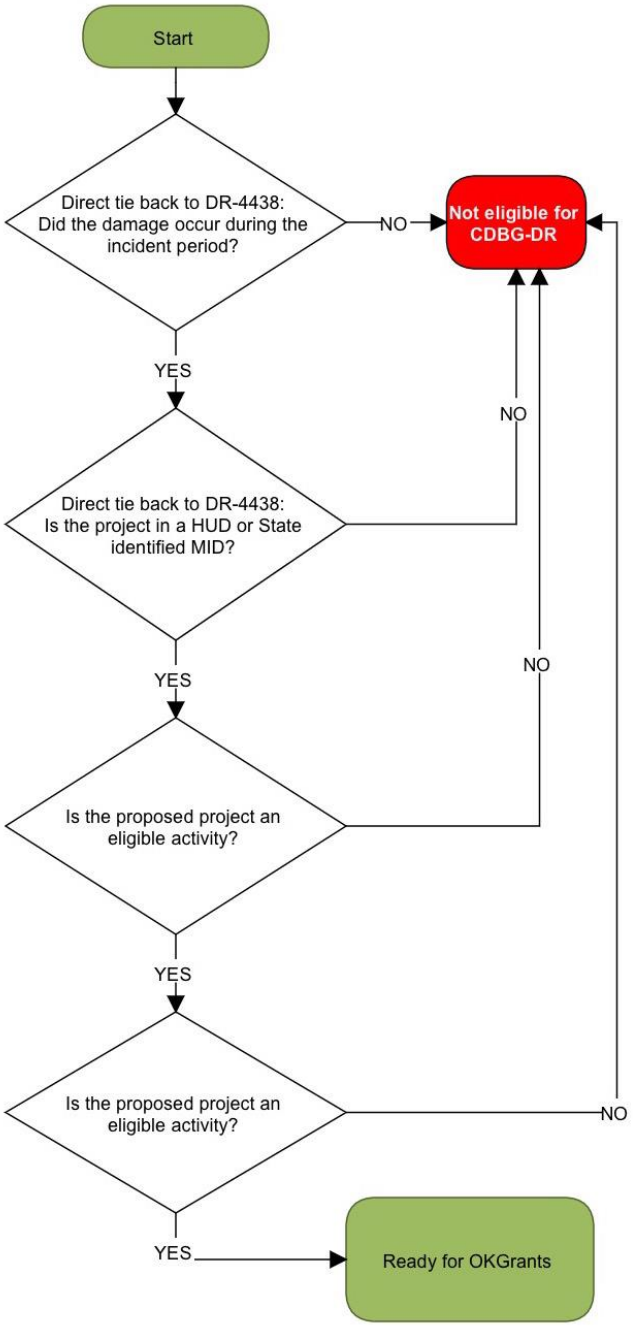
Oklahoma Severe Storms, Tornadoes, Straight-line Winds, and Flooding (DR-4438)

Incident period: May 7, 2019 to June 9, 2019

Designated Counties: Alfalfa, Canadian, Cherokee, Craig, Creek, Delaware, Garfield, Kay, Kingfisher, Le Flore, Logan, Mayes, Muskogee, Noble, Nowata, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pottawatomie, Rogers, Sequoyah, Tulsa, Wagoner, Washington, Woods

Proposal Eligibility

The above sections are described graphically below:



Eligible Applicants

Eligible applicants for CDBG DR Funding are General Units of Local Government (UGLG) (incorporated towns, cities, counties, tribal nations, and), eligible housing non-profits, and state agencies. Per the Federal Register Notice, the only areas in which the funding can be expended lie in Presidentially Declared Disaster areas of the state tied to FEMA DR 4438.

Proper Sponsors

The process of determining which unit of government (a town, city, county, eligible housing non-profit) should submit or sponsor an application for CDBG DR assistance must include an examination of the relationship between the location of proposed improvements in the service delivery area, and the proposed beneficiaries. The unit of government with direct jurisdiction over the majority (50%) of the proposed beneficiaries must be the sponsor or applicant for CDBG DR funds. However, in the event that no unit of local government has 50% of the proposed beneficiaries, then the unit of local government with the majority of proposed beneficiaries must sponsor the application for grant assistance. Also, in some instances a county may submit an application on behalf of a town or city that cannot meet the financial requirements identified in the application threshold requirements in this guide.

CDBG Disaster Recovery Projects – Use of Funds

Under this broad category, an Applicant may submit a project proposal for any eligible activity listed in Section 105(a) of the Federal Housing and Community Development Act of 1974, as amended. Such projects could include but are not limited to the following:

Housing - Rehabilitation, Buyouts

Public Infrastructure – Streets, Water, Sewer, Storm Water Drainage Improvements

Planning

CDBG DR Program Inquiries

Technical assistance regarding eligible projects, project concepts, the application guidelines, and other information pertaining to the CDBG DR Program is available upon request. Applicants are encouraged to contact the ODOC/CD DR staff anytime they are uncertain with regard to Program requirements, project conceptualization, or any portion of the application process and/or guidelines. After a contract is executed, Technical Assistance (TA) is available to all subrecipients and consultants. Program s from ODOC/CD will contact each subrecipient upon awarding contracts to determine if technical assistance is appropriate. Subrecipients and consultants that are new to the process will automatically receive technical assistance. Technical assistance will be made to subrecipient staff as requested or determined that it would best suit the subrecipient and the State's investment of grant dollars. Technical assistance visits are to assist the subrecipient toward achieving successful project completion. The experience of the staff toward problem resolution and recommending alternative solutions is a source and a benefit that all subrecipients who need assistance should utilize. New administrators/staff are required to participate in TA meetings.

Subrogation and Assignment Agreement

All respective CDBG DR awardees will be required to enter into a "Subrogation and Assignment Agreement" with the Oklahoma Department of Commerce. Please see the Attachments for this form.

OKGrants

OKGrants is a grant management software system used to electronically capture all grant information from application to closeout. OKGrants launched in 2012 for the ODOC/CD , followed by many other agencies. Any county, community or organization applying for a grant through the Oklahoma Department of Commerce must do so through OKGrants. OKGrants offers a variety of benefits to include,

reduction in application processing time, ability for grantees to monitor the status of their grants, centralized record keeping, and a reduction in paper usage.

The first step for new grant administrators is to contact the grantee's "Agency Administrator". The AA is the Grantee's designated person assigned to manage associated accounts. If you do not have an account, the AA will create one for you. If you already have an account, notify the AA so that it can be associated. New and returning users can access the web based OKGrants system at the following web address. https://grants.ok.gov/Login2.aspx?APPTHEME=OKOSF

The OKGrants system governs the level of access by the user's assigned role. The common roles used by grantees in the OKGrants system are:

- Agency Administrator (AA) – handles user accounts only
- Viewer – Cannot edit or save. Used for auditors.
- Writer – Can edit and save. Cannot submit.
- Financial Officer (FO) – Can edit, save and submit.
- Authorized Official (AO) – Full permissions. Senior Elected Official. Submits Applications.

The application Writer or AO will have a link on their Home Page called "Available Opportunities" This link will provide information on all open grant opportunities, official guidelines on the program, and links to generate applications for these grants. The Writer, AO or FO will have ability to edit and save the application's various documents. Once the application is complete, the AO must submit the document to ODOC/CD through the OKGrants system.

Additional information regarding the OKGrants system can be found on the Oklahoma Department of Commerce website. http://okcommerce.gov/community/okgrants/ The website contains an array of OKGrants resourceful documentation such as module walk-throughs, FAQ's, troubleshooting guides, status glossary, and important contact information.

OKGRANTS LOGON & PASSWORD ASSISTANCE

For questions regarding login and password issue, users may contact Cody Butler at (405) 815-5305 or cody.butler@commerce.ok.gov.

OKGRANTS TECHNICAL & TRAINING ASSISTANCE

For questions regarding technical or training issues with the OKGrants Grant Management System contact Cody Butler at (405) 815-5305 or cody.butler@commerce.ok.gov.

Required Application Documentation

Applicants to the 2019 CDBG-DR program are encouraged to read the 2019 CDBG-DR Application Handbook for the required documentation for submittal.

OKGRANTS SYSTEM SUPPORT

The following ODOC/CD Management Personnel provide the Community Development Division with oversight and assistance relating to the OKGrants System.

System Administrator – Entity Registration Point of Contact

1. Provides support for questions regarding CDBG DR related login and password issues

System Administrator – Technical and Training Assistance

2. Provides support for questions regarding CDBG DR related technical or training issues with OKGrants Grant Management System

Application Process

APPLICATION SUBMISSION

All funding opportunities require applicants to complete and submit their respective application and applicable attachments online using the OKGrants Grant Management System. No paper applications will be accepted.

OKGRANTS

OKGrants is a grant management software system used to electronically capture all grant information from application to closeout. OKGrants launched in 2012 for the ODOC/CD , followed by many other agencies. Any county, community or organization applying for a grant through the Oklahoma Department of Commerce must do so through OKGrants. OKGrants offers a variety of benefits to include, reduction in application processing time, ability for grantees to monitor the status of their grants, centralized record keeping, and a reduction in paper usage.

The first step for new grant administrators is to contact the grantee's "Agency Administrator". The AA is the Grantee's designated person assigned to manage associated accounts. If you do not have an account, the AA will create one for you. If you already have an account, notify the AA so that it can be associated. New and returning users can access the web based OKGrants system at the following web address. https://grants.ok.gov/Login2.aspx?APPTHEME=OKOSF

The OKGrants system governs the level of access by the user's assigned role. The common roles used by grantees in the OKGrants system are:

- Agency Administrator (AA) – handles user accounts only
- Viewer – Cannot edit or save. Used for auditors.
- Writer – Can edit and save. Cannot submit.
- Financial Officer (FO) – Can edit, save and submit.
- Authorized Official (AO) – Full permissions. Senior Elected Official. Submits Applications.

The application Writer or AO will have a link on their Home Page called "Available Opportunities" This link will provide information on all open grant opportunities,

official guidelines on the program, and links to generate applications for these grants. The Writer, AO or FO will have ability to edit and save the application's various documents. Once the application is complete, the AO must submit the document to ODOC/CD through the OKGrants system.

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OKGRANTS TECHNICAL & TRAINING ASSISTANCE

For questions regarding technical or training issues with the OKGrants Grant Management System contact Cody Butler at (405) 815-5305 or cody.butler@commerce.ok.gov.

REQUIRED APPLICATION DOCUMENTATION

The following narration provides detailed guidance regarding the documents needed to submit a complete CDBG DR application. Please note that the documentation in items One (1) through Four (4) can only be completed online at the OKGrants' website. Items Five (5) through Nineteen (19) are attachments that are required to be completed and then electronically uploaded via the internet to the OKGrants' website.

Item 1: Application Summary and Certification

The summary requests general information about the applicant. The certification attests to the accuracy and completeness of the application.

Item 2: Detailed Line Item Budget

The proposed activities should be as specific as possible as they will provide the basis of your contract and project budget should you receive funding. As referenced in (24 CFR 570.201-204) and (CPD Notice 13-07), costs incurred by the subrecipient as a direct result of implementing and executing eligible CDBG-DR activities are known as "Activity Delivery Costs" within OKGrants. These costs are directly attributable to an eligible CDBG-DR project activity. An applicant would likely consider these "Activity Delivery Costs" as their administrative costs.

Item 3: Consultant Form

The contracted CDBG Administrator fills out this form if the applicant chooses to use one.

Item 4: Audit

Towns, cities, non-profits, and tribal nations (counties and state agencies are exempt) must submit a copy of their latest audit by the application deadline. All applicants that have a June 30, fiscal year end date are required to submit a copy of their FY2021 audit and applicants that have a December 31, fiscal year end date are required, as a minimum, to submit a copy of their FY2020 audit. No application will be considered for review or funding that does not meet the requirements stated above.

An audit is required to be uploaded as part of the application process. However, the audit may also be submitted via postal mail to:

Oklahoma Department of Commerce

Administrative Services

Attn: Sharmin Rahman

900 N. Stiles Ave.

Oklahoma City, OK 73104

General audit inquiries and questions regarding audit submissions should be directed to Sharmin Rahman at the Oklahoma Department of Commerce:

Sharmin Rahman

800-879-6552, ext. 5312 or

405-815-5312 (sharmin.rahman@okcommerce.gov)

Item 5: Applicant Resolution SAMPLE (Attachment A)

This form must be completed and submitted to OKGrants. Applications must include a resolution passed by the current governing body requesting that assistance. The Resolution is required to be uploaded as part of the application process. A sample resolution is provided in Attachment “A” of the application.

Item 6: Citizen Participation Plan SAMPLE (Attachment B)

This form must be completed and submitted to OKGrants. All applicants, in order to apply for CDBG-DR assistance, must complete and document the following requirements: (1) create and adopt a Written Citizen Participation Plan and (2) hold an application phase public hearing regarding the CDBG-DR program.

Citizen Participation Plans must be officially adopted and followed by all applicants and submitted as Attachment “B” in the application. Re-stating the Citizen Participation Plan outline requirements does not constitute a valid plan. Applicants

must clearly state the actions they will undertake to meet the requirements of Written Citizen Participation Plans. (Sample Citizen Participation Plan can be found in the Attachment “B” of the application.) Applicants are eligible to readopt Citizen Participation Plans that have been completed previously, provided that the previous plan has been reviewed and updated as needed to adequately support the proposed project.

Documentation of the “application phase” Public Hearing is also an application requirement. Acceptable documentation consists only of the Affidavit of Publication. ODOC/CD requires that no less than seven (7) working days be given as advance notice of the application phase Public Hearing or any subsequent public meetings held for the purpose of discussing project activities as they relate to the CDBG-DR grant funds. All written Citizen Participation Plans must explain how an applicant unit of local government will:

1) Provide for and encourage citizen participation, particularly by low and moderate-income persons who reside in areas where CDBG-DR funds are proposed to be used.
2) Ensure citizens will be given reasonable and timely access to local meetings, information and records relating to the applicant’s proposed and actual use of the CDBG-DR funds; including, but not limited to, the following:
    a. The amount of CDBG-DR funds expected to be made available for the current fiscal year if the project is approved;
    b. The range of activities that may be undertaken with CDBG-DR funds;
    c. The estimated amount of CDBG-DR funds proposed to be used for activities that will meet the National Objective of benefit to low and moderate-income persons;
    d. The proposed CDBG-DR activities likely to result in displacement and the sponsoring unit of local government's anti-displacement and relocation plans developed in accordance with Section 104(d)(1) and (2) of the Act.
    e. The basis on which the sponsoring applicant may provide technical assistance to groups representative of persons of low and moderate income that may request assistance in developing proposals. The level and type of assistance to be provided is at the discretion of the applicant and does not necessarily include providing funding to such groups.
    f. Provide for a minimum of two (2) public hearings; one prior to submission of the application for funding of the project that favors the purpose of obtaining citizens' views and formulating or responding to proposals and questions; the other at the end of the grant period, if the applicant receives funding, that discusses Grantee performance. There must be reasonable notice of the public hearings (ODOC/CD requires seven (7) working days, and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped.
    g. Meet the needs of non-English speaking residents in the case of public hearings where a significant number of non-English speaking residents can reasonably be expected to participate.

h. Provide citizens with reasonable advance notice (ODOC/CD requires seven (7) working days, and the opportunity to comment on proposed activities not previously described in a applicant's funding request and activities which are proposed to be deleted or substantially changed in terms of purpose, scope, location or beneficiaries. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries.
i. Provide the place, phone numbers, links (if online), and times where and when citizens are able to communicate when submitting written complaints and grievances; the process the unit of local government will use to provide for a timely written answer to written complaints and grievances, within fifteen (15) working days where practicable.

The application phase public hearing must, at a minimum, address the following topics:

a. Community development and housing needs;
b. CDBG-DR Program purpose, i.e. National Objective being met; and
c. The development of proposed activities.

The Citizen Participation Plan is required to be signed and dated by the chief elected official. The Citizen Participation Plan also requires a Town/City/County/Tribal seal, or it must be notarized in lieu of the seal.

Item 7: Certified Engineering Report and Professional Cost Estimates (Attachment C)

This form must be completed and submitted to OKGrants (Alternative Word/Excel or PDF documents may be submitted in lieu of Attachment C. Projects must have certified cost estimates from either professional architects, engineers, vendors, construction companies, or appropriate personnel to make such estimates.

The following can be used as a guide for the preparation of a Professional Engineering Report:

1. General

A. Preliminary Engineering Report (PER) or Cost Estimate should briefly but clearly describe the following:

- The present situation
- An analysis of alternatives
- The proposed course of action

2. Project Planning Area

- Furnish a map that shows the existing building plat, service area or municipal boundaries, if applicable
- When applicable, show a map of new service areas or annexed areas that are to be served by the project.

3. Existing Structure or Facility

- Evaluate the condition and suitability for continued use. For example, you may want to discuss cost of rehabilitation versus replacement or cost of Operation & Maintenance.

4. Proposed Structure or Facility

- Provide brief but clear descriptions of proposed structure or facility

5. Cost Estimate

- Construction
- Land Cost
- Engineering Cost
- Inspection Cost
- Legal Fees

Preliminary Engineering and Architectural expenses are an eligible cost to the CDBG-DR contract if budgeted for in the application and approved for funding. These preliminary costs may be up to 2% percent of the total proposed CDBG-DR activity dollars. Engineering and architectural services paid for with CDBG-DR funds must be procured in accordance with ODOC/CD procurement standards. The maximum amount of CDBG-DR funds that may be used for final engineering and architectural is based on the total proposed CDBG-DR activity dollars using the following Rural Economic and Community Development engineering fee table:

USDA – RURAL DEVELOPMENT ENGINEERING FEE TABLE:

Proposed CDBG-DR Construction Amount	Percentage Limit
$60,000.00	13.2
$70,000.00	12.6
$80,000.00	12.3
$90,000.00	12.0
$100,000.00	11.9
$200,000.00	10.5
$300,000.00	9.7
$400,000.00	8.9
$500,000.00	8.5
$600,000.00	8.2
$700,000.00	8.0
$800,000.00	7.8
$900,000.00	7.7
$1,000,000.00	7.5
$2,000,000.00	6.7
$3,000,000.00	6.4

$4,000,000.00	6.3

The maximum amount of CDBG-DR funds that may be used for resident inspection is based on the total proposed CDBG-DR activity dollar costs using the USDA-Rural Development resident inspection fee table below:

USDA – RURAL DEVELOPMENT RESIDENT INSPECTION FEE TABLE:

Proposed CDBG Construction Amount	Percentage Limit
100,000 or less	5.0 (or negotiated lump sum)
$200,000.00	4.2
$300,000.00	3.8
$400,000.00	3.5
$500,000.00	3.2
$600,000.00	3.0
$700,000.00	2.8
$800,000.00	2.65
$900,000.00	2.5
$1,000,000.00	2.4
$2,000,000.00	2.3
$3,000,000.00	2.2
$4,000,000.00	2.1
$5,000,000.00	2.0

The aforementioned limitations are to be used by applicants as guides for CDBG-DR project proposal budgeting only. ODOC/CD does not mean to imply that percentage of professional and construction engineering fee contracts are acceptable. In the event a grant is awarded, and CDBG-DR funds are used to pay for professional and construction engineering services, only lump sum or fixed price contracts for those services will be acceptable when procured in accordance with the ODOC's Procurement Policies and Procedures. ODOC/CD reserves the right to review, question, realign and/or negotiate any part of an applicant's proposed project costs including, but not limited to, engineering and/or resident inspection fees, administrative costs, leverage, all elements of construction costs, etc. Applicants should be prepared to justify the costs associated with their entire project. Any proposed costs that cannot be fully justified and/or documented shall be subject to change by ODOC/CD.

Item 8: Applicant/Recipient Disclosure/Update Report – HUD Form 2880 (Attachment D)

This form must be completed and submitted to OKGrants. This form must be completed if the minimum requirements of the disclosure are met and certified by the interested parties as set forth in the disclosure. The Applicant/Recipient Disclosure/Update Report is required to be uploaded as part of the application process.

Item 9: LMI Documentation (Attachment E)

This form must be completed and submitted to OKGrants. The following are mandatory uploads for those applicants conducting Random Sample Income Surveys:

1. LMI Beneficiary Summary Form – (Blank Copy Attachment F) NOTE: The LMI Beneficiary Summary Form summarizes the uploaded Field Survey Sheets on one form and is required to be completely filled out to include: Town/City/Target Area, County and Survey Date.
2. Random Number Table
3. Survey Map
4. Copy of the Original LMI Field Survey Sheets

CDBG-DR applicants must qualify their project activities under the low- and moderate-income National Objective.

(a) Qualifying under the National Objective of Benefit to Low- and Moderate-Income

To qualify for CDBG-DR funding under the National Objective of benefit to low- and moderate-income persons, the proposed project activities must show a positive or general improvement of living condition in a definable geographic target area where at least 51% of the occupied households/homes are of low- and moderate-income families. Low- and moderate-income families have an income equal to or less than the current Section 8 low income limits established by the United States Department of Housing and Urban Development (HUD), (Appendix E of this guidance document).

Each activity proposed for funding with CDBG-DR dollars claiming the National Objective of benefit to low- and moderate-income persons, must provide data indicating the percentage of low- and moderate-income beneficiaries. Various questions must be answered before determining whether or not an activity proposed for CDBG-DR funding provides benefit to principally low- and moderate-income families. Questions to be answered include: (1) How does the proposed activity serve the residents of the geographic target area in which it is taking place? (2) Which occupied households/homes within the geographic target area are directly affected or impacted by the proposed activity? (3) Is there a larger set of households/homes that will be served by the proposed activity?

Once the beneficiaries for each activity proposed for funding with CDBG-DR dollars have been identified, the next step is to document the percentage of low- and

moderate-income households/homes that will benefit from each of those activities. This is best accomplished by performing an income survey in order to determine family incomes.

However, in some very limited cases, Census data may be used to document the percentage of low and moderate-income families receiving benefit. However, the use of any Census data to document the percentage of low and moderate-income beneficiaries for any CDBG-DR funded activity requires prior ODOC/CD review and approval. Any applicant intending to use Census data to document the project's percentage of low and moderate-income beneficiaries must contact the ODOC/CD CDBG Planner via email thirty (30) days PRIOR to the application's submission deadline. The use of Census data has several HUD mandated procedural requirements and is subject to various use related restrictions. These requirements and restrictions are best directly discussed with the ODOC/CD CDBG Program Planner in order to receive the proper guidance on meeting HUD Census based compliance requirements. An applicant's failure to obtain prior ODOC/CD review and approval of the use of Census data in order to qualify the proposed CDBG project may result in rejection of data's conclusions.

Please note that if the available Census data geographies do not reasonably correspond to the service area, it will not be appropriate to use Census data to qualify a low and moderate- income activity. Applicants will then be required to conduct a targeted local income survey in order to determine low and moderate-income compliance for the specific service area.

Applicants may not prorate the Census data when a given service area includes a portion of a geography from published datasets. The low and moderate-income determination shall be made based on the entirety of the data of the census geography which the service area both completely encloses and significantly overlaps.

Income survey techniques consist of door-to-door surveys, telephone surveys, mail surveys, or any combination of the three. Regardless of the technique used, an applicant must be able to link each income response to a specific family within a specific household/home. Blind survey techniques that cannot match households/homes and their respective family incomes will not be accepted, as they do not allow for verification should it become necessary.

For all FY 2020 income surveys, only the Random Sample Survey methodology will be accepted by ODOC/CD. ODOC/CD will accept income surveys that have been conducted within the previous five (5) program years (FY 2015, 2016, 2017, 2018, or 2019). However, to be eligible for previous program years' surveys, the applicant will be responsible for providing copies of the original Field Survey Summary Sheet, Survey Field Sheets, Random # Table, and Survey Map.

(b) Conducting an Income Survey

For those applicants conducting Random Sample Income Surveys, a sample Field Survey Form can be found in Appendix "A" of this guidance document. All applicants

are required to complete the Direct Project Beneficiary Income Survey Summary located in the online application at OKGrants. Additionally, the following LMI documentation is required to be uploaded the Application "UPLOADS" section of OKGrants:

1. Upload a copy of the Random Number Table that was generated by ODOC/CD to perform the survey.
2. Upload a color-coded map that identifies each surveyed home's income status (above or below low and moderate-income status); the location of all proposed CDBG and leverage activities, and the central business district.
3. Upload all scanned copies of the original Direct Beneficiary Income Field Survey sheets.
4. Upload a copy of the LMI Field Survey Summary sheet. (A blank copy of this form is located in Attachment F) NOTE: The LMI Field Survey Summary Sheet summarizes the uploaded Field Survey Sheets on one form and is required to be completely filled out to include: Town/City/Target Area, County, and Survey Date.

An overview of the Random Sample Survey procedures is provided below:

Step 1. List by name and address, the number of households within the geographic area to be covered by the project (for example, the following listings may be used to identify the number of households within your universe: water billing, wastewater billing, solid waste billing, 911 emergency service databases, or in the case of a county, the voting rolls).

Step 2. Alphabetize your universe by last name (all households); or list in ascending or descending order by account numbers. This establishes a random distribution for your universe.

Step 3. Number all households comprising your universe.

Step 4. Based on the number of households provided, a random survey sample will be generated by ODOC/CD and provided to the applicant along with the required response rate that must be achieved.

Step 5. Match the random sampling numbers to your numbered household universe and survey those locations. For example, if the random sample provided by ODOC/CD is "#47", match that number 47, to the 47th entry on your numbered universe and survey that location. Continue to survey until you have achieved the required response rate. Do not over survey.

Step 6. Survey using the "Direct Project Beneficiary Income Survey Field Worksheet" provided in the appendix to this application packet (these working papers are to be retained with the permanent records of the unit of local government) and the low-income figures for your county (provided in Appendix A).

Step 7. Complete and upload Attachment LMI Beneficiary Income Summary Form in your OKGrants application Upload Section.

The table below provides the sample size of households that must be surveyed compared to the number of households identified in the target area. For example: If you had 230 occupied households in the target area you would need to survey 150 occupied households.

Required Sample Sizes for Universes of Various Sizes:

Number of Occupied Households	Number of
1 - 55	50 or all if less than 50 households
56 - 63	55
64 - 70	60
71 - 77	65
78 - 87	70
88 - 99	80
100 - 115	90
116 - 138	100
139 - 153	110
154 - 180	125
181 - 238	150
239 - 308	175
309 - 398	200
399 - 650	250
651 - 1,200	300
1,201 - 2,700	350
2,701 or more	400

The results of the Random Survey must be clearly shown on a map that identifies each surveyed home with the low and moderate-income homes designated with a distinct color. Applicants performing income surveys are cautioned that incorrectly administered surveys or their resulting data regarding low and moderate-income percentage claims will be rejected. Failure to include a properly marked map with the application will result in rejection and return of the application.

Determining the beneficiaries and performing a survey for any activity under any project category is critical. ODOC/CD guidance regarding beneficiaries and surveys is well advised. Therefore, all applicants should take the time to discuss their project activities and surveys with ODOC staff before performing their survey(s).

Item 10: W-9 Form & Instructions (Attachment F)

This form must be completed and submitted to OKGrants. The W-9 form (Taxpayer Identification Number & Certification) is required to be filled out in full and uploaded as part of the application process.

Item 11: SAM.gov Exclusion / Debarment Verification (Attachment G)

Follow the instructions on this attachment to upload the correct information ensuring that the applicant is not debarred.

Item 12: Subrogation Agreement (Attachment H)

A signed subrogation agreement is required for any grantee or subrecipient in the instance of a duplication of benefits. A signed agreement ensures that any duplicative funds will be paid back.

Item 13: Duplication of Benefits Chart (Attachment I)

A Duplication of Benefits chart is a requirement for CDBG-DR applicants. Applicants should fill out all known sources of funding to the best of their ability and include any documentation proving the amounts of funds received from sources such as Insurance, FEMA, SBA, etc.

Item 14: Project/Activity Narrative (Attachment J)

Applications must not only sufficiently demonstrate an applicant's need for the requested CDBG-DR activity, but it must also fully detail what the requested activity is, what the activity will accomplish, and how the activity directly relates to the disaster. It is the responsibility of the applicant to communicate to ODOC/CD how the CDBG-DR activity is being requested in the application. Failure to adequately define the requested CDBG-DR activity will result in a FAILED threshold application rating.

A. Identify exactly what the activity is. Descriptive detail is important.
B. Define the estimated completion timeframe.
C. Define how the requested project will benefit the disaster recovery effort once completed.
D. As applicable, identify the green building standards that will be incorporated into the requested activity.
E. As applicable, identify resilience strategies that will be incorporated into the requested activity.
F. Housing Activities Only: Identify the housing application process to include staffing used to implement the program, client intake, the target area, target group, and estimated number of applicants.

Attachment(s) may be in a Word document or in PDF and labeled ATTACHMENT J – Projective Narrative.

Item 15: Unmet Need Documentation Verification (Attachment K)

Applicants must document their total unmet need as it relates to their respective CDBG-DR funding request. The applicant must substantiate the amount of CDBG-DR funding being requested.

A. Identify the total unmet need in terms of projects/activities as a result of the disaster.
B. Identify the total unmet need in terms of overall dollar amounts as a result of the disaster.
C. Identify source and upload the documentation used for determining unmet need.

Attachment(s) may be in a Word/Excel document or in PDF and labeled ATTACHMENT K – Unmet Need Documentation.

Item 16: Project Disaster Related Damage Verification (Attachment L)

Applicants must provide damage related photos as they relate to their respective CDBG-DR funding request. While there is no defined number of photo related documentation required, the applicant must substantiate overall damage commensurate with the CDBG-DR activity being undertaken. A description must accompany each picture explaining exactly what is being illustrated in the photo. Ideally, "before" and "after" damage related photos are recommended to the fullest extent possible. Photos may be uploaded individually but ideally should be in a format which contains the same number or numbers as its required description. Photo quality must be adequate in order to allow the reviewer to match the narrative with the depicted damage in the photo. Applicants may use photos, newspaper clips, or other sources to show damages. In the event that the applicant prefers to provide videos or other types of documentation not supported by the OKGrants platform, please reach out to the ODOC CDBG DR team. Attachment(s) may be in JPG, PNG, or PDF and labeled ATTACHMENT L1 (DESCRIPTION), L2 (DESCRIPTION), etc.

Item 17: Capacity Assessment Verification (Attachment M)

Applicants must verify their capacity to maintain adequate staffing to meet all grant requirements. Applicants must submit a staff organization chart and descriptions of all staff responsibilities as they pertain to the CDBG-DR grant. Grantees should also include if their staff has successfully managed federal grants before (in the staff responsibilities section). If the grantee does not currently have the capacity to

manage the CDBG-DR grant, the grantee must include future improvements to capacity in their staff organization to meet the minimum requirements such as:

• Hiring additional, experienced staff

• Partnering with other organizations

• Contracting for expert services

• Training existing staff

Attachment(s) may be in a Word/Excel document or in PDF and labeled ATTACHMNET M.

Item 18: Procurement Policies & Procedures Verification (Attachment N)

Applicants must describe the policies and procedures to be set in place that address procurement of services or goods, subject to the federal guidelines outlined within ODOC's Procurement Policies and Procedures. Applicants are to follow their own procurement policies and procedures, as well as 2 CFR 200.318-327. In the event that such policies conflict, the applicant will follow whichever policy is more restrictive. Cite local guidelines and/or documents/handbooks/manuals when referring to current policies and procedures.

Attachment(s) may be in a Word document or in PDF and labeled ATTACHMENT N.

Item 19: Duplication of Benefits Policies & Procedures Verification (Attachment O)

Applicants must describe the policies and procedures to be set in place that address duplication of benefits. These policies should follow the guidance found in the 2019 DOB Notice: 84 FR 28836.

Attachment(s) may be in a Word document or in PDF and labeled ATTACHMENT O.

APPLICATION THRESHOLD CRITERIA

Applications received under the CDBG DR Program will be scored competitively against one another regardless of project type.

The maximum amount of CDBG DR funds that may be used for Activity Delivery Cost is six percent (6%) of the total CDBG DR funds awarded for the total construction and professional/non-construction funds provided, unless the subrecipient includes a justification for additional ADC.

Threshold Criteria for CDBG DR Program

1. CDBG DR funding requests should meet the principle CDBG DR National Objective of providing a direct benefit to persons of low and moderate-income.
2. CDBG DR funding requests must sufficiently identify and address an unmet need.

3. CDBG DR funding requests must identify an eligible CDBG DR activity.
4. CDBG DR applicants must sufficiently address staff capacity as it relates to undertaking the requested CDBG DR funded activity.
5. A proper sponsor for CDBG DR projects is defined as a unit of local government with direct jurisdiction over the majority (50%) of the proposed project beneficiaries.
6. Cities and Town applicants with populations less than 15,000 may not apply for more than one (1) CDBG DR project activity under this CDBG DR Program. As noted above, no more than four (4) eligible CDBG DR Activity funding request is allowed per CDBG DR application.
7. Cities and Town applicants with populations less than 15,000 may not apply for CDBG DR funding if they currently have an open CDBG contract with ODOC/CD. Cities and Towns with previous CDBG funding must have had ALL close-out documents submitted to ODOC/CD by October 31, 2021.
8. Proof that citizen participation requirements have been met, as evidenced by an application phase public hearing and written Citizen Participation Plan.
9. All cost estimates shall be obtained from professional sources and submitted with the application. These estimates must be certified and from professional engineers, architects, construction companies, vendors, or appropriate personnel with experience to make such estimates.
10. Towns, Cities, and Counties must submit a copy of their audit or agreed upon procedures by the application deadline. ALL TOWNS, CITIES, AND COUNTIES THAT HAVE A JUNE 30 FISCAL YEAR END DATE ARE REQUIRED TO SUBMIT A COPY OF THEIR FY 2021 AUDIT AND ENITITIES THAT HAVE A DECEMEBR 31 FISCAL YEAR END DATE ARE REQUIRED, AS A MINIMUM, TO SUBMIT A COPY OF THEIR FY 2020 AUDIT. No application will be considered for review or funding that does not meet the requirements stated above. If a city or town receives less than $25,000 in annual revenues from its normal business and does not have an audit or agreed upon procedures, the city or town cannot apply directly to ODOC/CD. The city or town can apply only by having the local County apply on their behalf, if the County chooses to do so. Nothing contained herein mandates a County to act as an accommodating party.
11. Applicants must certify that if the proposed project is funded by CDBG DR it will be properly insured for the life of the asset (as applicable). Proper insurance for buildings include property and liability insurance coverage. When the project includes vehicles, proper insurance will include liability, comprehensive and collision coverage.
12. Applicants are responsible for accomplishing online application corrections/revisions along with any applicable application upload corrections/revisions as directed by ODOC/CD staff within the pre- determined deadline. In fairness to other applicants and in order to maintain HUD required CDBG funding expenditure rates; ODOC/CD can NOT indefinitely hold applications until the respective application corrections/revisions are accomplished. Applications will be considered INCOMPLETE if the prescribed corrections/revisions are not made to the application within the pre-determined deadline established by ODOC/CD. This will result in a FAILED threshold application rating.

13. The Application Guidelines associated with the CDBG DR Program contains an APPLICATION FORMS CHECKLIST outlining all application related documentation required to be uploaded into the online OKGrants application. It is the Applicant's responsibility to follow this checklist and seek additional guidance from ODOC/CD staff as required. Applicants will be responsible for following and providing each item listed on the checklist. Failure to provide any of the required application documentation listed on the checklist will result in a FAILED application rating. Additionally, Applicants must provide a response to all application questions and satisfy all documentation requirements delineated in the CDBG DR Application Guidelines and online OKGrants Application System including, but not limited to: Resolution, income survey results, resolution requesting assistance, survey maps, certifications, HUD Form 2880 Applicant Recipient Disclosure Update Report, project budget, etc.
14. The application must sufficiently demonstrate an applicant's need for the requested CDBG DR activity. For any requested CDBG DR project, there is an underlying "need" for such a project. It is the responsibility of the applicant to communicate to ODOC/CD why the particular CDBG DR activity is being requested in the application. Failure to adequately demonstrate a project need will result in a FAILED threshold application rating. The project need is communicated in the "Project Description" section of the "CDBG DR Application Summary" page of the online OKGrants application. Additional narratives and supporting documentation can be uploaded in the "Uploads" page of the OKGrants application if required.

ODOC/CD APPLICATION REVIEW & APPROVAL WORKFLOW

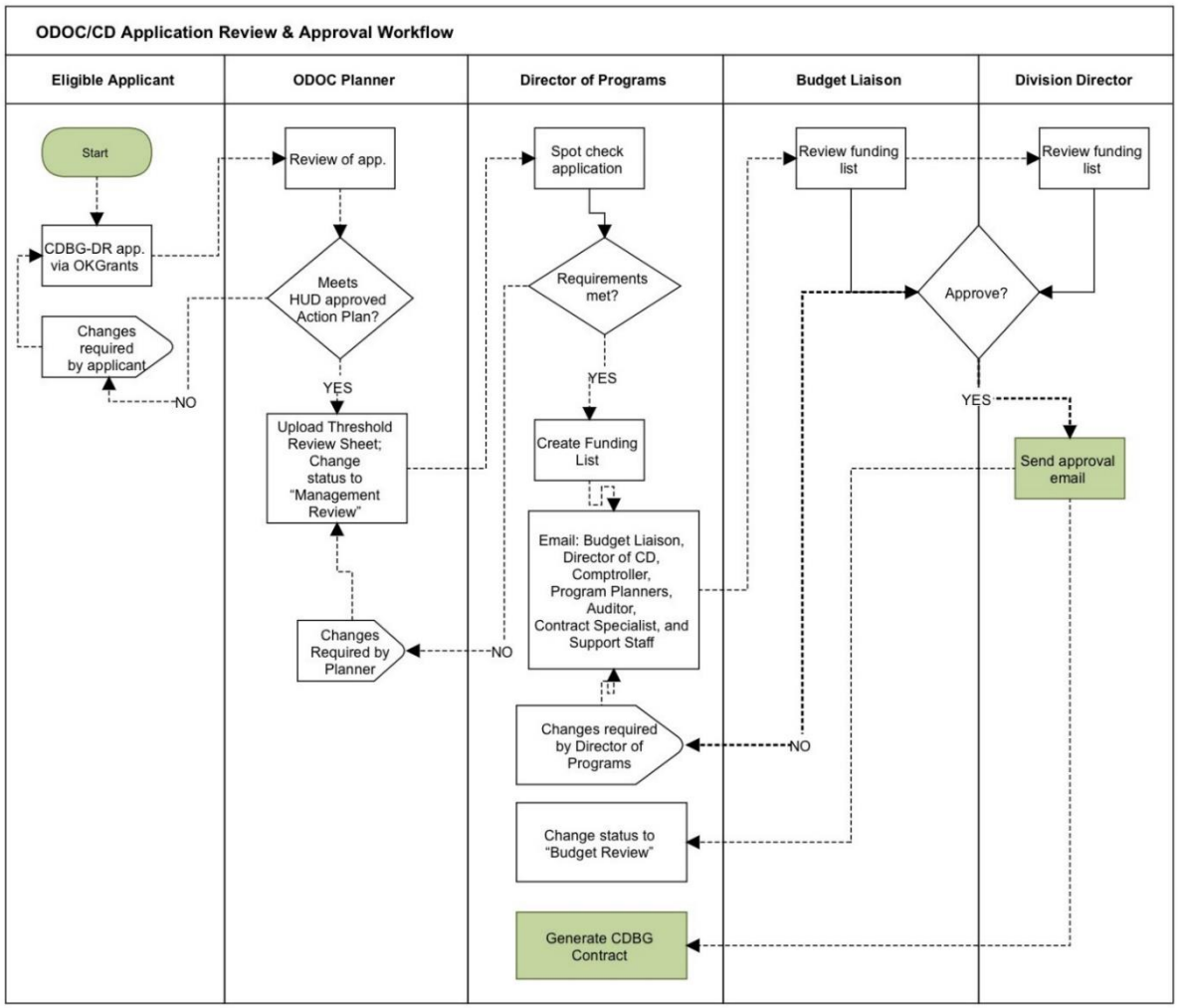
1. Official CDBG DR Applications are initiated and submitted by units of general local government through the OKGrants system. When the application is being worked, the status in OKGrants will indicate "Application in Process". Once the application is completed the Chief Elected Official changes the Status in OKGrants to "Application Submitted". Planner reviews the application to ensure it meets all threshold requirements per the HUD approved CDBG DR Action Plan. Based on this review the Planner may send the application back to the unit of local government as "changes required" if additional information or clarification is needed. Most importantly, all CDBG DR applications must be an eligible activity, and meet a National Objective. It's important that the Planner clearly document the application review by filling out, signing and dating a Threshold Review sheet. This "officially" documents the application is reviewed by ODOC/CD staff. The Threshold Review Sheet is uploaded by the Planner in the Review Section of OKGrants. The review mirrors the approved CDBG State plan and other relevant CDBG DR requirements.

2. Once the Planner is confident that the CDBG DR application(s) should be recommended for funding the Planner then changes the status to "Management Review." The Director of Programs will spot check the application to ensure all threshold criteria is met and uploaded into the OKGrants System. If not, the Director of Programs will return to the Planner for additional information/clarification "Planner Review". If threshold criteria are met then the Director of Programs will

create an Official Funding List and email the Budget Liaison, Director of Community Development, Comptroller, Program Planners, Auditor, Contract Specialist and Support Staff. This notifies all applicable staff that official funding is being recommended.

3. The Budget Liaison will review the funding list and ensure funding is available, as well as the Division Director. Once the funding list is approved by email the Director of Programs changes the status to “Budget Review”. The Budget Liaison then changes the status to “Division Director Review”. Once reviewed by the Division Director the status is changed to “Generate a CDBG Contract.” Also, the standard award letter is developed by Support Staff.

The process described above (steps 1-3) Is shown graphically below:



Requirement No. 401 – Program Management

(Applies to all activities performed by the Subrecipient, as eligible or required)

Contractual Requirements

Community Development Block Grant (CDBG) State's Subrecipient shall not obligate or expend funds for any activity including matching/leveraged funds specifically conditioned in the contract until such condition is removed by the Oklahoma Department of Commerce, Community Development (ODOC/CD).

The announcement and subsequent award of CDBG-DR contract does not authorize the State's Subrecipient to incur costs or obligate the expenditure of funds whether paid with grant or leverage/matching funds.

Obligating or expending funds for a conditioned activity that has not yet been cleared by ODOC is an ineligible use of contract funds and the CDBG contract will be de-obligated.

Sec. 312 of the Stafford Act (42 U.S.C. 5155) requires all Stafford Act funded programs to ensure that entities in receipt of federal disaster recovery dollars are not compensated for the same damages through multiple sources. HUD provided specific guidance for CDBG-DR funding through "Clarification of Duplication of Benefits Requirements under the Stafford Act for CDBG- DR Grantees," 76 Federal Register 221 (16 November 2011), pp. 71060-71066. This policy and procedure document reinforces those requirements and establishes applicability and responsibility in the implementation of Oklahoma's CDBG-DR Contract.

Removing Contract Conditions and Release of Funds

Every contract has two basic sets of conditions, i.e., standard and special. Some standard conditions and at times special conditions must be satisfied or cleared before the project funds can be requested. The State's Subrecipient is required to take the actions necessary to satisfy these conditions and, after the actions are completed, submit the Request for Authority to Use Grant Funds/Release of Funds (ROF) using OKGrants. The grant contract provides for 120 days to complete and submit for the removal of these conditions.

Some standard conditions and at times special conditions must be satisfied or cleared before the project funds can be requested. The State's Subrecipient is required to take the actions necessary to satisfy these conditions and, after the actions are completed, submit the Request for Authority to Use Grant Funds using OKGrants. Special conditions are identified in **Part II of the contract** between ODOC and the State's Sub-recipient.

RELEASE OF FUNDS (ROF)

The Release of Funds includes completing the environmental review. Every activity will be defined under one of the following **five levels** of review:

- Exempt
- Categorically Excluded Not Subject To 58.5
- Categorically Excluded Subject To 58.5
- Environmental Assessment
- Environmental Impact Statement

The Request for Release of Funds (Environmental Review) and Removal of Contract Conditions Checklist must be uploaded with all required documentation. This checklist form is very helpful in making sure correct documentation is submitted.

Each activity must be cleared separately, using specific procedures and forms designed for that purpose. The State's Sub-recipient may draw down funds to carry out various project activities after appropriate reviews have been conducted and cleared and a Notice of Removal of Contract Conditions and Authority to Use Grant Funds is received from ODOC. [See Requirement 403 Environmental Review for further detailed guidance.]

INSURANCE AND BONDING

The State's Sub-recipient shall submit evidence of:

- The grantee's current policy showing general liability insurance covering the funded activities; and
- Bonding of all officials who are responsible for financial transactions relating to this contract.

ANTI-DISPLACEMENT PLAN

All State's Sub-recipients must have a current anti-displacement plan adopted by council resolution on State's Sub-recipient's letterhead. [See 402 Property Acquisition & 404 Civil Rights, E.O., & Fair Housing.]

Updated Disclosure Report

Prior to signing the contract agreement, the subrecipient should submit a completed initial Disclosure Report. Submit a partial or full report, depending on several factors. You are required to submit an updated report if:

- Omissions were made in the initial Disclosure Report;
- Additional persons can be identified as interested parties who were not identified in the initial Disclosure Report;
- There is an increase in the amount of pecuniary interest of a person or entity identified in the last report, if the total interest is more than $50,000 or 10% of the contract amount, whichever is lower;
- There is a change in the other governmental assistance previously reported by more than $250,000 or 10%, whichever is lower; or There is a change in the sources or uses of funds since the last report that exceeds the amount of all

previously disclosed sources and uses of funds by more than $250,000 or 10%, whichever is lower; or
- Updates must be submitted to ODOC within thirty (30) days of the occurrence of any of these circumstances and as frequently as they occur throughout the life of the contract.

Project/Budget Modifications

NOTE: Project and budget modifications will be performed in OKGrants. Please contact your ODOC DR Programs Planner/Programs Representative or review the My Training Materials tab in OKGrants for instructions. The information described below will be necessary for any contract changes. Changes to the scope, budget or completion date of the project are accomplished by a modification.

A modification is a change from the original project description as a result of:

- New or additional activities; and/or
- Changes in the proposed scope of services or beneficiaries; and/or
- Changes in the project location or target area; and/or
- Extensions of the contract ending date; and/or
- Changes in the amount of any budget line item (or total budget).

When revision of a budget line item is necessary, the State's Subrecipient must Contact the ODOC DR Programs Planner/Programs Representative for instructions or review the My Training Materials tab in OKGrants for instructions. All modifications must be submitted on OKGrants.

Project expansion: During the course of implementation of the grant project, there are occasions when project costs are less than anticipated. During these occasions, the State's Subrecipients may be able to undertake additional work that is the same scope of the original project. The State's Subrecipient is required to consult with an ODOC Programs Planner/Programs Representative for approval. Examples are listed below:

Example #1: A State's Subrecipient has a grant for street resurfacing. At the completion of the project the overall cost of the project was less than projected. The State's Subrecipient has available funds to do additional street resurfacing. This is not considered a change of scope. The State's Subrecipient may use remaining funds to resurface additional streets as long the individuals benefiting from the street resurfacing meet the requirement of being at least 51% low to moderate income. Example #2: A State's Subrecipient has a grant for installation of sewer lines. Upon completion of the project as described in the application the State's Subrecipient has funds remaining. The State's Subrecipient desires to utilize the remaining funds to install a new lift station. This would be an example of a change of scope. Regardless of whether the project is simply a project expansion or Change of Scope, the additional work must have achieved Environmental Review and approval.

Documentation Required: Requests for a program modification (Change of Scope) must provide the following documentation:

- Narrative explanation of reasons, including:

    - A detailed description of the new or significantly altered activities, existing activities being altered or eliminated (if any) and why these changes are being proposed. Submit a revised Project Description, along with a technical/engineering justification, professional cost estimates, maps; and
    - A detailed description of any changes in the number, percentages or scope of services that are to be provided to low and moderate income persons and/or other project beneficiaries. This may require revisions to existing or new beneficiary documentation (income surveys, census data, etc., as appropriate).
- If the proposed modification involves reduced and/or substantially altered activities from the original contract:
    - Documentation confirming the public notice and conduct of a public hearing or posting consistent with the State's Subrecipient's Citizen Participation Plan is required;
    - The State's Subrecipient's legislative body must adopt a resolution supporting the modifications and submit;
    - Either a Certification of Continued Environmental Compliance or, if appropriate, documentation of a different level of environmental review; [See Requirement 403]
    - Documentation of permits or regulatory approvals from appropriate agencies such as DEQ, if applicable;
    - Determination of whether an Updated Disclosure Report must be submitted. If the modification causes any changes from the Initial Disclosure Report, the Updated Report must be submitted with the modification request.

ODOC will evaluate the proposed modification against the following criteria:

- Eligibility: Will the proposed changes still be eligible for CDBG funding?
- Ratability: Would the proposed changes have caused a lower scoring on the original application? Would this lower score have meant that the application would not have been competitive and, subsequently, not have been authorized to enter into a contract agreement? If the answer to this question is "yes", the modification will not be approved.

Note: No increases above the maximum established by ODOC in either the administrative or engineering line items will be approved.

The project modification may trigger the need for a budget modification. If the existing budget is in need of a modification, the subrecipient must Request for Budget Modification with a detailed letter of justification and CDBG Certification of Leverage form. The form and letter are required even if the revised budget is not a result of any project modification.

Any modification will be completed on OKGrants. Contact your Programs Planner/Programs Representative for specifics on how to enter the information or review the My Training Materials tab in OKGrants for instructions.

Administering the Program – Subrecipient

The Chief Elected Official is ultimately responsible for contract performance. The State's Subrecipients have three options in managing the daily activities of a CDBG DR-funded project:

- Assign the responsibility to someone on the Subrecipient's staff; or
- Utilize the services of a certified CDBG Administrator (whether for-profit or non-profit). [See Requirement 405 for procurement procedures.] The Certified Grants Administrators list can be found on the OkCommerce.gov website; or
- Seek permission from ODOC to procure a consulting firm who has not obtained ODOC's certification for grant administration.

Consultants assisting the State's Subrecipient must be/become familiar with CDBG Disaster Recovery requirements even if already certified by ODOC as a Certified CDBG Administrator. Beyond this minimum expectation and given the complexities of most projects, utilization of an experienced, certified CDBG administrator to assist with some or all of your project activities is preferred.

The decision to employ a Certified CDBG Administrator is influenced by the following factors:

- The size of the municipality and, more importantly, the number of municipal employees who can devote some significant time to routine contract administrative requirements; and
- ODOC will not recommend any individual or firm for providing these services. ODOC will, however, provide the following:
- A list of all firms or individuals currently certified to administer CDBG grants;
- A referral to other similar communities with similar projects.
- If the services of an administrator are retained, the subrecipient's staff must understand to the best of their ability, the CDBG and CDBG DR program processes and the requirements well enough to evaluate your administrator's work and progress. Even if a grant administrator has been certified, it is necessary for you to make sure your grant administrator stays on track with the project to avoid delays and possible de-obligation of the contract. Remember, the Chief Elected Official is ultimately responsible for contract performance.

Requirements for the CDBG Certification Program, disciplinary action, complaint process, penalties and the process to impose penalties as set forth in Title 150 of the Oklahoma Administrative Code, Chapter 15, Subchapter 9, can be located at: http://www.oar.state.ok.us.

Mentorship: In the event an individual wishes to act as an administrator, and the individual has not previously been tested and failed, and individual can act as an interim CDBG administrator upon the completion of the following:

- The individual must provide written notice to the Oklahoma Department of Commerce of the interim CDBG administrator's name, address, telephone number; and the name of the certified CDBG administrator that has agreed to be the mentor and supervise the interim CDBG administrator.

- A statement that the interim CDBG administrator understands that he/she is subject to all of the same rules and standards as if they were a certified CDBG administrator and is also subject to discipline.
- Interim certification is effective only until the next certification class and examination.
- The mentor must be a certified CDBG administrator in good standing and will cosign all forms, applications, and other documents with the interim CDBG administrator. In the event that a grievance or request for investigation is filed against the interim CDBG administrator, an automatic investigation will be instituted against the mentor to determine if the mentor properly supervised the interim CDBG administrator. The mentor may be subject to discipline for failure to properly supervise an interim CDBG administrator.

Any person or entity adversely affected by an act or decision by Oklahoma Department of Commerce is entitled to an individual hearing and shall file a Petition for Hearing before the Oklahoma Department of Commerce, 900 North Stiles Avenue, Oklahoma City, Oklahoma, 73104 Attention: General Counsel. This petition must be filed on the appropriate form as detailed in the Administrative Rules and must be received by the Department within thirty days of the adverse action. The rules governing this process and all related filings can be found at Okla. Admin. Code §150:1 et. seq. These rules can also be located at the website for the Office of Administrative Rules as well as the Oklahoma Department of Commerce. Failure to follow these rules and to timely file the Petition for Hearing may cause your petition to be dismissed by the Department.

Records Maintenance

Documentation is the most important aspect of federal grant administration. The reason for this is:

1. These are public funds, and they demand a high level of accountability.
2. The only way to confirm what you have done is to have it in writing.

It is the responsibility of the State's Subrecipient to maintain all official grant related records and documents at the County/City/Town offices. Grant records and documents should be kept in a metal filing cabinet. The State's Subrecipients should take reasonable caution to protect the records and documents from destruction such as flood or fire damage. ALL official documents must be maintained by the State's Subrecipient. ODOC does require certain documentation be submitted in the OKGrants system as the program progresses, however as lessons learned, both the State and sub recipient benefit by documenting the OKGrants during all aspects in the requirements of this guide.

The subrecipient or its grant administrator will have access to perform the required tasks outlined in the contract and in this guide by uploading the required supporting documentation in OKGrants for review and oversight by the State.

ORGANIZATION AND CONTENT

State's Subrecipients are required to maintain records sufficient to document compliance with all CDBG program requirements. Administrators may only retain copies of files.

While ODOC does not specifically mandate the exact structure of a State's Subrecipient's filing system, State's Subrecipients are encouraged to utilize the instructions provided.

RECORD RETENTION

Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three (3) years from closeout of the State's Grant to HUD, or the period required by other applicable laws and regulations as described in §570.487 and §570.488 or in the federal register pertaining to the disaster. The three-year rule may be extended under extenuating circumstances.

Any litigation, claim or audit is started before the expiration of the three-year period. In this instance, the records will be retained until all actions involving the records have been resolved; or the records pertain to non-expendable property acquired with CDBG funds. Such records must be retained for five years after the final disposition of such property; or

ODOC transfers records to its custody or to HUD's when ODOC determines that the records possess long-term retention value.

ACCESS TO RECORDS

Except for confidential records, all documents required to be maintained by, or reasonably considered as pertinent to, the contract agreement must be available for viewing and/or examination by:

- Any citizen, pursuant to the requirements of State law and local ordinance; and
- Representatives of ODOC, HUD, the Office of the Inspector General, the Attorney General, the General Accounting Office, the Comptroller General of the United States or the State Auditor's office.

CONFIDENTIAL RECORDS

State's Subrecipients may receive confidential information. In some cases, an individual's right to privacy protection will necessitate that confidential records be maintained. In other circumstances, the individual's job security and safety require that information be kept confidential. The latter is particularly true where worker provided information results in a finding that labor standards are being violated. Confidential records include but are not limited to, Staff personnel files, labor and civil rights complaints and the incomes of project beneficiaries. Access to confidential records is strictly limited. They are to be kept in a locked file cabinet separate from other records accessible only to the CDBG Administrator. If a State's Subrecipient delegates the responsibility to an administrator or subrecipients for

tasks, which may yield confidential records, very specific controls must be established in the contract to assure that the State's Subrecipient understands the responsibility for maintaining confidential records. The State's Subrecipient is responsible for protecting these records. Any violations of confidentiality requirements, including a determination by State monitors that proper records management procedures are not being employed, could result in a serious finding of deficiency and adversely affect the State's Subrecipient's right to apply for funds.

Citizen Participation

The State's Subrecipient is required to conduct a public hearing during the application phase of the project as well as at the end of the project. The purpose of these public hearings is to advise citizens of the proposed project and actual accomplishments.

The requirements for all other public hearings are essentially the same as for the hearing conducted prior to the original submission of an application for funding. The subrecipient certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements for this grant). These requirements include:

- Advance notice of seven (7) business days prior to conducting the meeting, not including the date of notice or posting of the day of the hearing;
- Publication of a notice specifying the purpose, date, time and location of the hearing in a newspaper of general circulation in the municipality or posting of a legal notice in at least three public places within the municipality;
- Holding the hearing at a location that is convenient to the low- and moderate-income persons who are affected by the project;
- Conducting the meeting in a manner that accommodates the disabled and meets the needs of non-English speaking residents who might be expected to participate. The subrecipient certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 or 91.105 (except as provided for in notices providing waivers and alternative requirements for this grant).
- Providing citizens with the address, phone number and times for submitting complaints and grievances; and
- Providing written answers to written complaints and grievances within 15 working days, where applicable.
- The State's Subrecipient must take thorough minutes of the hearing. The project files must contain:
    - Signed minutes of the hearing;
    - An attendance roster; (sign-in sheet)
    - Written complaints, if any;
    - Responses to those complaints;
    - A copy of the legal notice with a notation of where and when the three notices were posted (three different addresses); and
    - Proof of publication from the newspapers or website postings.

Section 3 Reporting

Section 3, which provides that, to the greatest extent feasible, training and employment opportunities shall be made available to lower-income residents of the unit of local government or metropolitan area (or non-metropolitan county) in which the project is located and that contracts be awarded to small businesses located within or owned in substantial part by residents of the same metropolitan area (or non-metropolitan county) as the project. For compliance with HUD regulations, ODOC will require the State's Subrecipient to submit Section 3 Reports for any contracts over $100,000 upon completion of activities.

Section 3 Reports can be submitted by utilizing the fillable form found in the forms section of the CDBG-DR Subrecipient Grant Management Guide. Please see Requirement Number 404 for more information, policies, and forms related to Section 3.

Required Submissions for Subgrantees

Beneficiary Tracker: The Subgrantee is required to submit the Beneficiary Tracker, found in the attachment section of the Policies and Procedures Manual, when submitting Advance Requests.

Optional Participant Survey: The Subgrantee is required to submit the Optional Participant Survey, found in the attachment section of the Policies and Procedures Manual, when submitting Advance Requests.

Monthly Expenditure Report: The subgrantee is required to submit a monthly expenditure report on the fourth of every month in OKGrants. This fulfills the monthly check in requirement of the Timely Expenditure Plan.

Quarterly Progress Report: The subgrantee is required to submit a Quarterly Progress Report by the fourth of each January, April, July, October, and December. Attachment (QPR) # must be included in the uploads section of the QPR in OKGrants.

Attachments

101	Subrecipient Contract Template Part I & II
102	Section 3 Fillable Form
103	Applicant Disclosure Update Report
104	Sample Program Files Checklist
105	Request to Mentor
106	DR Beneficiary Tracker
107	(ENG) Optional Participant Survey
108	(ES) Optional Participant Survey

Requirement No. 402 – Property Acquisition and Relocation

Real Property

This approach to the ownership, use, management, and disposition of property is complicated by two facts. First, the rules about property management and disposition differ slightly depending on whether a grantee is a public-sector subrecipient (the rules are generally more explicit for governmental grantees) or a private-sector subrecipient. Second, real property (e.g., land, buildings) is treated differently than personal property, as required in 2 CFR 200.

The federal requirements relating to real property are organized according to title (ownership), use, and disposition. In general, the property management system must provide for accurate records, the performance of regular inventories, adequate maintenance and control and proper sales procedures. Subrecipients must follow sales procedures that provide for competition, to the extent practicable, and that result in the highest possible return. For the sale of property owned by local governments, competitive disposal procedures are required to be followed according to local, state, and federal requirements, and generally include public notice of the intended sale, price competition, contract award to the highest responsive, responsible bidder, and governing board approval of the conveyance.

Acquisition of Real Property

Upon notification of permission from ODOC, the subrecipient may proceed with efforts to acquire any real property, including easements and rights-of-way, required for the project. CDBG-DR federal funds, administered by ODOC and disbursed to subrecipients and/or direct contractors and/or beneficiaries, are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) and/or Section 104(d) of the Housing and Community Development Act of 1974 as waived by 81 FR 83254) and (82 FR 5591). The applicable federal regulations are located at 49 CFR Part 24 (URA), and in the Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378). For purposes of the 2019 CDBG-DR Voluntary Buyout Program, the State is not using its power of eminent domain to acquire real property.

A purchase option agreement on a proposed site or property is allowed if certain actions have been taken ahead of time: 1) the option agreement must be subject to a determination by the subrecipient on the desirability of the property for the project; 2) an environmental review must have been completed; and, 3) the cost of the option must be a nominal portion of the purchase price. Prior to advertising for bids, the subrecipient must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. More detailed information regarding real property acquisition follows below.

For the purposes of this manual, “property to be acquired” refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements,

long-term leases, and rights-of-way. Temporary easements are also subject to all the same rules as other forms of acquisition unless the temporary easement exclusively benefits the property owner. Subrecipients should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

Acquisition rules must be followed whenever:

- The subrecipient undertakes the purchase of property directly;
- The subrecipient hires an agent, private developer, etc. to act on their behalf;
- The subrecipient provides a nonprofit, or for-profit entity organization with funds to purchase; or
- The Subrecipient provides federal assistance to individuals who are acquiring their own home (i.e. homebuyer assistance program).

NOTE: Subrecipients must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts.

Voluntary Versus Involuntary Real Property Acquisition

Property acquisition procedures fall into two distinct areas: Voluntary and non-voluntary. To determine which procedures must be followed, the State's Subrecipient must answer the following questions:

- Does the entity carrying out project activities and, which will be acquiring the property, have the power of eminent domain?
- If the entity has the power of eminent domain, will it use this power, if necessary, to secure the property needed to carry out the project?

Answering "yes" to both these questions requires the State's Subrecipient to follow the nonvoluntary procedures.

Subrecipients must understand the critical difference between voluntary and involuntary acquisition of real property to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary acquisitions. The key difference between the two types of acquisition is that when a voluntary sale occurs, there can be no threat of eminent domain. **Regardless of the form of acquisition used, it is strongly recommended that the Subrecipient maintain a log of contacts with the owner in the acquisition file.**

Voluntary Real Property Acquisition

Note: The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, Subrecipients should proceed with caution if federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a federal or federally assisted project at any point during a project.

The URA recognizes three general types of purchases as potentially voluntary. Generally, they are:

- Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the Subrecipient or community states in writing that it will not use this power. Example: The Subrecipient has identified parcel (s) for a project but will not use its powers to obtain the property through condemnation. In this case, the Subrecipient and/or buyer must inform the seller of this fact in writing and, if the offer is not accepted, be prepared to look for another property as the condemnation process will not be used to acquire the identified parcel.
- Purchases where a Subrecipient, agency, or person does not have the power of eminent domain. Example: A nonprofit organization without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.
- Purchases of property from government agencies (federal, state, or local) where the Subrecipient does not have the power of eminent domain over the other entity. Example: A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase the property if the Corps is not agreeable to their offer.

Sometimes there is confusion about what is actually considered "voluntary." A common misconception is that "willing seller", or "amicable agreement" means a transaction is "voluntary." This is not true under URA. The applicable requirement of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary.

Each type of voluntary acquisition, and the URA requirements pertaining to each, is described as follows:

- The public notice, advertisements and literature should include a description of what the subrecipients intends to purchase, its reasons, and any conditions of which a seller should be aware.
- The voluntary acquisition policy must a state that if a mutually satisfactory agreement cannot be reached, the subrecipient will not buy or condemn the property for the same purpose.
- The subrecipient should indicate that owner-occupants are not eligible for relocation benefits in the public notice and the acknowledgement form should be attached to the purchase offer.
- While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, all tenants in legal occupancy (including non-residential occupants are protected by the URA and are eligible for relocation benefits under the URA.

VOLUNTARY ACQUISITION BY A SUBRECIPIENT OR PERSONS ACTION ON BEHALF OF A SUBRECIPIENT WITH THE POWER OF EMINENT DOMAIN

- To be considered a voluntary acquisition by a Subrecipient with the power of eminent domain, the property may not be part of a planned or designated

project area where substantially all the property in the area will be purchased within a specified time frame.
- The search for alternative sites for the project or activity may be limited to one geographic area, but if none of the owners are willing to sell voluntarily, the Subrecipient must be prepared to look in another area for a suitable site. Where a Subrecipient wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated in an equivalent or like manner.

If a Subrecipient determines that a specific site is necessary for a program or activity it is planning to undertake, then the sale cannot be considered voluntary. It is assumed that, if negotiations fail, the Subrecipient could ultimately acquire the property through condemnation. Thus, the acquisition is not considered voluntary. Note: Temporary or permanent easements are only very rarely not part of a planned project; therefore, easements are discussed at the beginning of this Section and under Involuntary Acquisitions at the end of this Section.

If someone else, such as a private developer or realtor, is authorized to act on the Subrecipient's behalf in negotiating the purchase, and the Subrecipient is prepared to intervene and use condemnation if the negotiations are unsuccessful, the acquisition is not considered voluntary.

To be voluntary, the Subrecipient must meet all the requirements listed below and inform the property owner in writing that:

- Federal funds are involved in the transaction; however, the Subrecipient will not use its power of eminent domain if negotiations fail to result in an amicable agreement; and
- The Subrecipient estimate of the market value for the property to be acquired as outlined below. To estimate market value in a voluntary acquisition, Subrecipients must follow specific procedures:
- A formal appraisal is not required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal.
- While an appraisal for voluntary transactions is not required, Subrecipients may still decide that an appraisal is necessary to support their determination of market value, Subrecipients must have some reasonable basis for their determination of market value.
- If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file.

After a Subrecipient has established a market value for the property and has notified the owner of this amount in writing, a Subrecipient may negotiate freely with the owner to reach an agreement. Since these transactions are voluntary, negotiations may result in an agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount.

Although not required by the regulations, it could be appropriate for Subrecipients to apply the URA administrative settlement concept and procedures in the URA regulations to negotiate amounts that exceed the original estimate of market value

(if they can demonstrate that the offer was reasonable and necessary to accomplish the project).

If Subrecipients anticipate they will offer an amount greater than market value, they must submit a request in writing and provide supporting documentation to ODOC for a basis to pay an amount that is more than market value. ODOC must provide approval prior to payment.

Note: Subrecipients cannot take any coercive action to reach an agreement on the price to be paid for the property.

VOLUNTARY ACQUISITION BY ORGANIZATIONS WITHOUT THE POWER OF EMINENT DOMAIN (INCLUDING NONPROFITS AND INDIVIDUALS)

Nonprofit organizations and individual buyers generally do not have the power of eminent domain. Under such circumstances, the requirements for URA are limited. In these types of purchases, the buyer, who could be a private citizen, a developer, or an organization, must inform the seller of three things in writing:

- The buyer does not have the power of eminent domain;
- Federal funds are involved in the acquisition of their real estate; and
- The owner will not be eligible for relocation benefits, and an estimate of the fair market value of the property.

After the buyer/Subrecipient has determined the property's market value and has notified the owner of this amount in writing, the buyer/Subrecipient may negotiate freely with the owner to establish the purchase price. If the seller refuses to accept the offer, the buyer/Subrecipient must look for another property to purchase.

In voluntary transactions, the seller must be notified of the preceding information using Exhibit TBD "Disclosures to Seller with Voluntary Arm's Length Purchase Offer". If, for any reasons, the seller is not informed of these facts prior to the closing, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty.

VOLUNTARY ACQUISITION OF GOVERNMENT PROPERTY

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the power of eminent domain. Subrecipients and individual buyers do not possess the legal authority to condemn government-owned property.

PROPERTY DONATIONS

Voluntary acquisition included donations of real property; however, the owner must be fully informed of his or her rights under the URA, including the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the Subrecipient, in writing, from its obligation to appraise the property. The Subrecipient must retain this acknowledgement in the project file. Exhibit TBD should be used as a template for the Subrecipients as the "Seller Acknowledgement of Acquisition and Relocation Rights and Benefits under the Uniform Relocation Act".

Involuntary Acquisitions

No CDBG-DR funds may be used to support Subrecipient for projects that seek to use the power of eminent domain unless eminent domain is employed for a public use. Any Subrecipient considering the involuntary acquisition of property must notify ODOC during the application process and/or prior to contacting property owners for review and approval. ODOC provides recipients with templates for: Involuntary Preliminary Acquisition Notice, Invitation to Accompany an Appraiser, Written Offer to Purchase, Statement of Basis of Just Compensation, and Notice of Intent Not to Acquire, Donation and Appraisal Waiver, and Administrative Settlement.

PROCEDURES FOR INVOLUNTARY ACQUISITION

Whenever the State's Subrecipient undertaking the CDBG-DR- funded project has the power of eminent domain and will use it, if necessary, to acquire specific parcels of property to carry out project activities, it must follow the non-voluntary procedures of acquisition. [Refer to HUD Handbook 1378, Chapter 5, for detailed guidance. State's Subrecipients are strongly encouraged to contact ODOC for technical assistance as soon as the contract is executed.] This procedure is very similar to the voluntary procedure. [Attachment 9]

Since going through this process assumes the individual parcels needed to undertake the project are or will be known, the first step is to identify each parcel and confirm the ownership of that parcel. A file should be set up for each parcel. [Enclose the publication "When a Public Agency Acquires Your Property".]

The next step is to determine if an appraisal is required.

After the specific parcel(s) and ownership have been confirmed and the need for an appraisal tentatively confirmed, the property owner is to be notified in writing of the State's Subrecipient's intent to acquire the property. This notification specifically advises the property owner of his/her rights and gives him/her the option of waiving his/her right to fair compensation (donation) and/or his/her right to have an appraisal conducted, whether they are donating or not. [Attachment 9]

If the property owner requests an appraisal, the State's Subrecipient must conduct it, even if the estimated FMV is less than $10,000. If the appraisal is neither required nor requested, skip to step 5.

If the property owner waives his/her right to an appraisal, a release to this effect must be executed.

If an appraisal is required or requested, the next step is to conduct the appraisal. The appraiser must advise the property owner of the date the appraisal will be conducted and invite the property owner to accompany the appraiser. The same steps are followed for the conduct of a second, or review, appraisal. [Attachment 5]

When the appraisal and review appraisal have been finished [Review appraisals are required in all non-voluntary acquisitions. See 49 CFR 24.104.]:

If the property owner had previously indicated a willingness to donate the property but requested an appraisal prior to doing so, a copy of the appraisal report must be provided to the owner. At this time, the waiver of rights release must be executed, if not done previously.

If the property owner had not indicated a willingness to donate the property, the State's Subrecipient prepares a written statement basis for just compensation. The dollar value of this statement may not be less than the FMV established by the appraisal/ review appraisal.

Note: Donation of property most commonly occurs when the State's Subrecipient is asking for easement rights. The property owner will usually be receiving a new or improved service (water, sewer, etc.) in exchange for donating a partial use of his/her property to locate the service. The property owner may waive his/her right to an appraisal if they believe that the FMV is apt to be zero, i.e., the loss in value due to damage or partial interest is offset by the value of the improvements.

The State's Subrecipient must submit an offer of just compensation with attached statement of basis. [Attachment 6 (insert Option B)]

If the property owner accepts the offer of just compensation, either immediately or after a period of successful negotiation, the State's Subrecipient must prepare and submit a statement of settlement costs. [Attachment 13] This statement reflects the price agreed upon plus incidental costs associated with transfer of title, e.g., recording fees, transfer taxes, etc. If the State's Subrecipient pays more than the FMV, this is called an administrative settlement and the file must contain a written justification of the excess costs. Unjustified payments more than the FMV may be disallowed at ODOC's discretion.

Submit a copy of the appraisal, review appraisal, basis of cost, offer of just compensation and summary of settlement costs to ODOC for review and approval. This must be done prior to or along with the acquisition cost request for payment if CDBG-DR funds are to be used to cover these costs.

If the State's Subrecipient and property owner are unable to negotiate a settlement, the State's Subrecipient must decide which of two options to pursue:

1. A decision not to acquire the property. If this decision is made, the State's Subrecipient must notify the property owner of this decision in writing [Attachment 7]; or a decision to initiate condemnation proceedings.
2. Complete the acquisition by preparing and executing the appropriate legal documentation (contract for sale, deeds, etc.). If applicable, the property owner and/or tenant are provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.

Note on Condemnations:

- Exercising the power of eminent domain by condemning private property for a public purpose is absolutely the final step in the acquisition process. It is a step which should be taken only after all other alternatives have been exhausted

and the State's Subrecipient determines that the property in question is so crucial to an important public purpose that no other alternative is possible.
- While ODOC recognizes that this action is sometimes inevitable, it is not bound by either the delays that might occur or the compensation the court determines. The State's Sub-recipients should be mindful when proceeding with a condemnation that a prolonged legal fight may jeopardize the ability of the State's Subrecipient to implement the project within the contract time period. Further, ODOC will not increase the grant award if the court decision exceeds the amount budgeted in the grant for acquisition and no other savings can be realized in other grant line items.

Points to Keep in Mind:

- If the acquisition of only a portion of a property would leave the owner with a remnant that was not economically viable (not large enough for any reasonable use), the State's Subrecipient must offer to purchase this remnant along with the portion needed for the project.
- If the owner, in response to the offer, provides additional information that indicates the need for a new appraisal or if there has been a significant delay since the appraisal was conducted, an updated or new appraisal must be conducted, and the acquiring State's Subrecipient must re-establish its offer.
- The State's Subrecipient (whichever is acquiring the property) must guard against both the existence and appearance of a conflict of interest in using CDBG-DR funds to acquire property. Special measures must be taken if an officer or employee of the acquiring State's Subrecipient sells property to the State's Subrecipient.

Qualifications of Appraisers and Review Appraisers:

- The State's Subrecipient shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualification should be consistent with the scope of work for the assignment. The State's Subrecipient shall review the experience, education, training, certification/licensing, designation(s), and other qualifications of appraisers and use only those determined to be qualified. If contracting with an appraiser for a fee, such appraiser shall be State licensed or certified in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12.U.S.C. 3331 et seq).
- The review appraiser is responsible for examining the analysis and presentation of data, assuring that all appraisal requirements are met, and that the appraisal meets the requirements as listed in 49 CFR 24.103(a). The review appraiser can accept the appraisal as recommended and that complies with all requirements. During the review, the review appraiser shall consult with the appraiser(s) to clarify report conclusions. If the review appraiser prepares an independent valuation, it must meet 49 CFR 24.103 appraisal requirements. The review appraiser must prepare a written report on the results of the review, and if appraisal is not accepted, such person must include the reason for not accepting.

- In accordance with 49 CFR 24.102(n), appraisers, review appraisers, and waiver valuation preparers shall not have any interest in the property, shall not be subject to influence or coercion regarding the valuation, and may be authorized to act as negotiator where valuation role is for acquisition less than $10,000.

The Purchase Price (Fair-Market Value) - A certified appraisal must be conducted for determining the fair-market value (FMV) of a property. The appraisal requirement may be waived in instances where the anticipated value is less than $10,000. For properties where the anticipated value is between $10,000 and $25,000, the appraisal requirement may also be waived provided the property owner is offered the option of having the Agency appraise the property. When an appraisal is determined to be unnecessary, the Agency shall prepare a waiver valuation. The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation. Additional information on determining the FMV of a property, including criteria for appraisals, can be found at 49 CFR Part 24 Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally- Assisted Programs.

Buyout or Acquisition of Commercial Properties - Per 24 CFR 570.483(b)(4), if a business can document that it is retaining or creating 51 percent low- and moderate-income jobs (LMJ) as a result of the buyout, the LMJ national objective will be met. The actual clearance of the property may address an urgent need or blighted condition. As with residential properties, an area benefit may be provided if the end use of the land will be available to an entire residential community (such as park or green space) and at least 51 percent of the households are LMI. The end use must be CDBG- DR eligible and meet a National Objective.

NOTICES OF FUNDING AVAILABILITY (NOFAS), APPLICANT CERTIFICATIONS AND/OR WRITTEN AGREEMENTS FOR FUNDS SUBJECT TO THE UNIFORM ACT SHALL REFER TO FEDERAL AND STATE RULES, AS APPROPRIATE

Recipients with eminent domain authority may only utilize this authority to acquire property using ODOC funding after discussion with and approval from ODOC. Many projects funded by CDBG-DR involve some form of property acquisition. The acquisition may be temporary, such as a construction easement, or it may be permanent. Permanent property acquisition may range from "partial", such as securing an easement, to outright purchase and transfer of ownership. Whichever the case, there are very specific procedural requirements imposed on State's Subrecipients when they must acquire private property in order to carry out their community development programs. The guiding principle in these procedures is the fundamental rights of property owners to receive "just compensation" when their property is needed or desired to achieve public purposes. [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601, et seq.) 49 CFR 24, Subpart B] The Final Rule of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and updated Booklets that provide guidance on acquisition and relocation procedures are located at the end of this requirement.

These procedures may apply even if the property was acquired prior to submission of the grant application and even if CDBG-DR funds are not involved in the actual acquisition costs. If the property was or is acquired with the express intent of using it for the activities for which CDBG- DR funds are requested, that acquisition must have been and/or be conducted in conformance with the requirements spelled out in this Requirement. [HUD Handbook 1378]
https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

Property acquisition procedures fall into two distinct areas: Voluntary and non-voluntary. In order to determine which procedures must be followed, the State's Subrecipient must answer the following questions: Does the entity which is carrying out project activities and which will be acquiring the property have the power of eminent domain? If the entity has the power of eminent domain, will it use this power, if necessary, to secure the property needed to carry out the project?

Answering "yes" to both these questions requires the State's Subrecipient to follow the non- voluntary procedures.

The rest of this Requirement provides specific guidance for meeting the procedural requirements of these two methods of property acquisition.

In a voluntary acquisition, the State's Subrecipient notifies the property owner of an interest in acquiring the property, with a clear statement that it cannot or will not condemn the property to obtain it for the project. [Attachment 1] The purpose of notification is to determine if the property owner is interested in negotiating the sale of the property. If the owner is not interested, the State's Subrecipient must determine if the project can proceed at any alternative location. If it cannot, the project may not proceed further and the grant will be de-obligated.

If the State's Subrecipient opts to go the voluntary route in a site-specific project and fails to find a willing seller, it may not start over with the non-voluntary approach. This would amount to after-the-fact coercion against a property owner. If the property is crucial to the project, the State's Subrecipient should think long and hard about the method used to acquire it.

If the project does not require a very specific parcel, i.e., it can be undertaken on any site within a given geographic area, the State's Subrecipient sends a notice to a limited number of property owners in the area. The purpose of this notice is to determine if there are any owners who are actively interested in selling their property. If the State's Subrecipient receives an expression of willingness from one or more owners, it should develop a priority list of such properties based on the characteristics (location, likely cost, etc.) which are most advantageous to it. [Attachment 2]

All notices must be personally served to owners and occupants or sent by registered first- class mail, return receipt requested.

Assuming there is at least one willing owner or that the site-specific property owner is willing to consider a voluntary transaction, the next step is to determine if there are any tenants involved, excluding the owner. If there are, the State's Subrecipient

must notify each tenant and advise him/her that it is considering acquiring the property on which they reside for the purposes of carrying out a project. The notice must also alert all tenants that they will not be eligible for any relocation assistance if they move out at this time. [Attachment 3 or 4]

Following tenant notification, the State's Subrecipient must make a preliminary estimate of property value and use. The purpose of this estimate is to determine if a formal appraisal will be necessary. An appraisal is not required if:

- The owner is donating the property and releases the State's Subrecipient from its obligation to appraise the property; or
- The State's Subrecipient determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at $10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the State's Subrecipient shall prepare a waiver valuation. A waiver valuation is the valuation process used and the product produced when the State's Subrecipient determines that an appraisal is not required, pursuant to appraisal wavier provisions in 24 CFR 24.102(2). The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation. [When hiring an appraiser, refer to HUD Handbook 1378, Appendix 20: Agreement for Appraisal Services.]

If an appraisal is required, the appraiser must notify the property owner of the date the appraisal is going to be conducted and invite the owner to accompany the appraiser [Attachment 5]. The State's Subrecipient is responsible to ensure that the appraisals meet appraisal requirements as listed in 49 CFR 24.103(a).

When the appraisal and review appraisal, if applicable, have been conducted and fair market value established. [Review appraisals are required in all non-voluntary acquisitions. See 49 CFR 24.104.]

The State's Subrecipient must submit a written offer to purchase the property. [Attachment 6 (Insert Option A) the Fair Market Value (FMV) established by the State's Subrecipient must be based on the appraised value. Other considerations may include the timing of the sale and length of time the property is off the market.]

The offer may not be more than the appraised FMV; however, the sale price may be less than the appraised value.

At this point, negotiation begins. The owner has the option of accepting the offer, making a counteroffer, or rejecting the offer outright. If, at any point in this process, the State's Subrecipient decides it does not wish to acquire the property, regardless of the reason, it must notify the property owner of this fact.

The State's Subrecipient must submit a copy of the appraisal, review appraisal (if appropriate) and any other documentation for the established FMV to ODOC for review and approval, regardless of whether CDBG-DR funds will be used to pay for the acquisition. If CDBG- DR funds are to be used, this documentation must be submitted with the request for payment. Unjustified payments more than the appraised value may be disallowed at ODOC's discretion.

Complete the acquisition by preparing and executing the appropriate legal documentation (contract for sale, deeds, etc.). If applicable, the property owner and/or tenant is provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.

Note: State's Subrecipients are strongly encouraged not to execute any binding documents for purchase of property prior to ODOC approval. If ODOC determines that the process fails to comply with any requirements, the State's Subrecipient will not be allowed to use any CDBG-DR funds for acquisition, leaving the State's Subrecipient financially liable. If some form of offer and acceptance is crucial prior to ODOC approval, it should be contingent upon formal ODOC approval.

Relocation

If the property owner or tenant is forced to move, either temporarily or permanently, because of CDBG-DR-funded activities, that person or household is involuntarily displaced. A displaced person is entitled to certain services, including counseling, payments for relocation and, in certain circumstances, assistance in obtaining replacement housing.

The State's Subrecipient must determine who might be affected if displaced, provide the required assistance under the Uniform Relocation Act, and document that the process has been followed. This is an involved and detailed process. For that reason, it will not be repeated in this Manual. A separate Handbook is available to State's Subrecipients The HUD Handbook 1378 Tenant Assistance and Real Property Acquisition can be accessed at: https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

While the specific procedural and record-keeping requirements are detailed, the basic outline of the process is as follows:

- Determine which persons or households may have to be displaced and whether the displacement is permanent or temporary;
- Make certain that affected persons or households receive notice not to relocate (move) before they are eligible to receive assistance and that they understand their rights for assistance; and
- Provide the assistance to which displaced persons or households are entitled, not more or less.

REQUIREMENTS UNDER 49 CFR 24 (URA) AND 24 CFR 570.104

Keep outstanding, detailed records on every aspect of the process. **These requirements apply only to a non-voluntary property acquisition.**

Note: The single most common mistake made by State's Subrecipients in the acquisition or relocation process is failure to provide required notices in a timely fashion, especially to tenants. Provide proper notices at the right times. Failure to do so exposes the State's Subrecipient to legal challenges and additional expenses.

Tenant Displacement and Relocation

Any buyout or acquisition program should be prepared to address displaced tenant needs following the guidance in their FR Notice and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and other HUD requirements such as Section 104(d) of the Housing and Community Development Act. Even if the buyout program does not intend to make eligible the purchase of tenant-occupied properties, a URA Notice of Intent and General Information Notice should still be provided as required when implementing a buyout or acquisition program.

URA - Map 21 Revision to 49 CFR part 24

Revisions to Residential Relocation & Non-Residential Relocation housing payments have been revised and should be followed and considered when budgeting for this activity.

Relocation Tenant Waivers & Alternative Requirements

HUD CPD Notice 08-02 (Flexibility upon Request for certain circumstances) Waivers may be granted by the State when failure to suspend certain provisions would impede disaster recovery. Subrecipients/Agencies should consider the waivers to the URA 49 CFR Part 24 and Section 104(d), and Section 414 of the Stafford Act provisions and may request these waivers as applicable and justifiable for reasonable costs for the locality.

30% of Income

Financial assistance should be sufficient to reduce the displaced person's post-displacement rent/utility cost to 30% of household income. (If tenants have been paying rents more than 30% of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30% would not be required). The subrecipient must establish a uniform definition of "demonstrable hardship" in their program per their locality. Appropriate Documentation would be required of the program participant for review before this requirement could be waived such as:

- Comparable Replacement Dwelling
- Fixed payments for Moving Expenses
- Optional Policy

Replacement of Low- to Moderate-Income Housing Units

Section 104(d) of the Housing and Community Development Act (the "Barney Frank Amendment") imposes specific obligations on State's Subrecipients with respect to the replacement of low- and moderate-income housing units and for the provision of relocation assistance to displaced low- and moderate-income families or persons. [See 24 CFR 570.4488(c) and HUD Handbook 1378, Chapter 7.]

In brief, these special provisions are triggered when any CDBG-DR-funded activity causes the conversion of low- to moderate-income housing (including vacant occupiable units) into [24 CFR 570.488(c)];

- Non-housing, e.g., demolition of housing units to make room available for some other purpose such as a shopping center or community center; or
- A smaller number of units, i.e., conversion of a multi-family unit to fewer units and/or to fewer net bedrooms; or
- Non-low- to moderate-income housing, i.e., upgrading a low-rent apartment building into an upscale condominium.

Any CDBG-DR-funded activity, which causes a reduction in the number of residential units/bedrooms available to and occupied by low- and moderate-income persons in the State's Subrecipient's jurisdiction must be offset by an equal replacement of the lost units. In addition, displaced low- and moderate-income families are eligible to receive either the normal URA relocation assistance or, potentially, more generous benefits available under HUD regulation. The choice of benefits is the displaced persons.

Replacement housing must meet the following criteria [Some exemptions from these criteria are possible]:

- It must be located within the State's Subrecipient's jurisdiction and, preferably, within the same neighborhood as the units replaced;
- The number of replacement bedrooms must at least equal the number removed [Because the obligations under this provision of the law can be extremely technical, the State's Subrecipient should contact ODOC for detailed guidance];
- The replacement units must be in standard condition;
- Replacement units must be made available for occupancy within an approximate four- year time period; and
- Replacement units must remain affordable for 10 years from date of initial occupancy.

ODOC is adopting the waiver provided through Section IV.F.1 of the Consolidated Notice, Section 104(d) One-for-One Replacement of Lower Income Dwelling Units. To comply with this alternative requirement, ODOC is defining a property as "not suitable for rehabilitation" if any of these conditions apply:

1. The property is declared a total loss.
2. Repairs would exceed 50% of the cost of reconstruction.
3. The home is in the 100-year floodplain or is part of the Disaster Risk Reduction Area as defined in the State's 2019 CDBG-DR Action Plan and Voluntary Buyout Program Guidelines.

Residential Anti-Displacement and Relocation Assistance Plan

The State's Subrecipient must prepare and adopt a Residential Anti-Displacement and Relocation Assistance Plan, regardless of whether displacement or relocation is or is not anticipated. The Subgrantee may also choose to adopt ODOC's Anti-Displacement and Relocation Plan. Submission of the Plan is one of the contract conditions that must be cleared prior to release of funds by ODOC. The State's

Subrecipient will recall that it certified it would take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non- profit organizations and farms) as a result of activities assisted with CDBG-DR funds.

The Anti-Displacement and Relocation Plan must provide certain relocation assistance to any low- or moderate-income person displaced as a direct result of demolition or conversion to other use as a result of the CDBG-DR-funded activity. The nature and extent of a given Plan are dependent on whether the State's Subrecipient anticipates any kind of displacement. If the nature of the project is such that no demolition or conversion is expected, the Plan is essentially a certification that required procedures for replacement and relocation assistance will be followed in the unlikely event that demolition or conversion occurs.

If the State's Subrecipient knows from the beginning that displacement will occur as a result of project activities, the Plan must be very specific in terms of:

- The nature of project activities (a description of the project);
- The location of units to be displaced (by size and number);
- The location of comparable replacement units (by size and number);
- The source(s) of funding and time schedule for providing the replacement units;
- The basis for concluding that replacement units qualify, and other requirements of the regulations. If developments during project implementation cause unforeseen displacement, the Plan must be amended.

Summary

As mentioned at the outset of this Requirement, few issues have more legal or emotional impact than the rights of property owners and tenants. It is crucial that these rights be scrupulously protected and observed when undertaking any public project. The State's Subrecipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation. The State's Subrecipients are also strongly encouraged to read the more detailed guidance referenced in this Requirement if they are undertaking any property acquisition or will displace any persons or households. Finally, the State's Subrecipient must take great care to avoid the existence or appearance of coercion.

Attachments

201	Sample Voluntary Notice to Specific Owners
202	Sample Voluntary Notice to Several Owners
203	Sample Notice to Tenants Not Displaced
204	Sample Notice to Tenants Who May Be Displaced
205	7 Sample Letter Notification of Date of Appraisal/Invitation to Accompany
206	Sample Notification of Fair Market Value
207	Sample of Notice of Decision Not to Acquire Property
208	Property Acquisition, Individual Parcel File Requirements
209	Sample Notice of Interest in Acquiring Property, Non-Voluntary Acquisition

210	Sample Waiver of Required Appraisal
211	Sample Agreement to Waive Rights to Full Compensation
212	Sample Statement of the Basis for Determining Just Compensation
213	Sample Statement of Settlement Costs
214	Relocation, Individual Household File Requirements
215	Sample Residential Anti-Displacement and Relocation Assistance Plan
216	Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones/Accident Potential Zones
217	Property Acquisition Process – Voluntary Transaction Flow Chart
218	Property Acquisition Process – Non Voluntary Transaction Flow Chart

For more detailed information, please see HUD.gov - Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)

https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780

Requirement No. 403 – Environmental Review

Overview of the Process

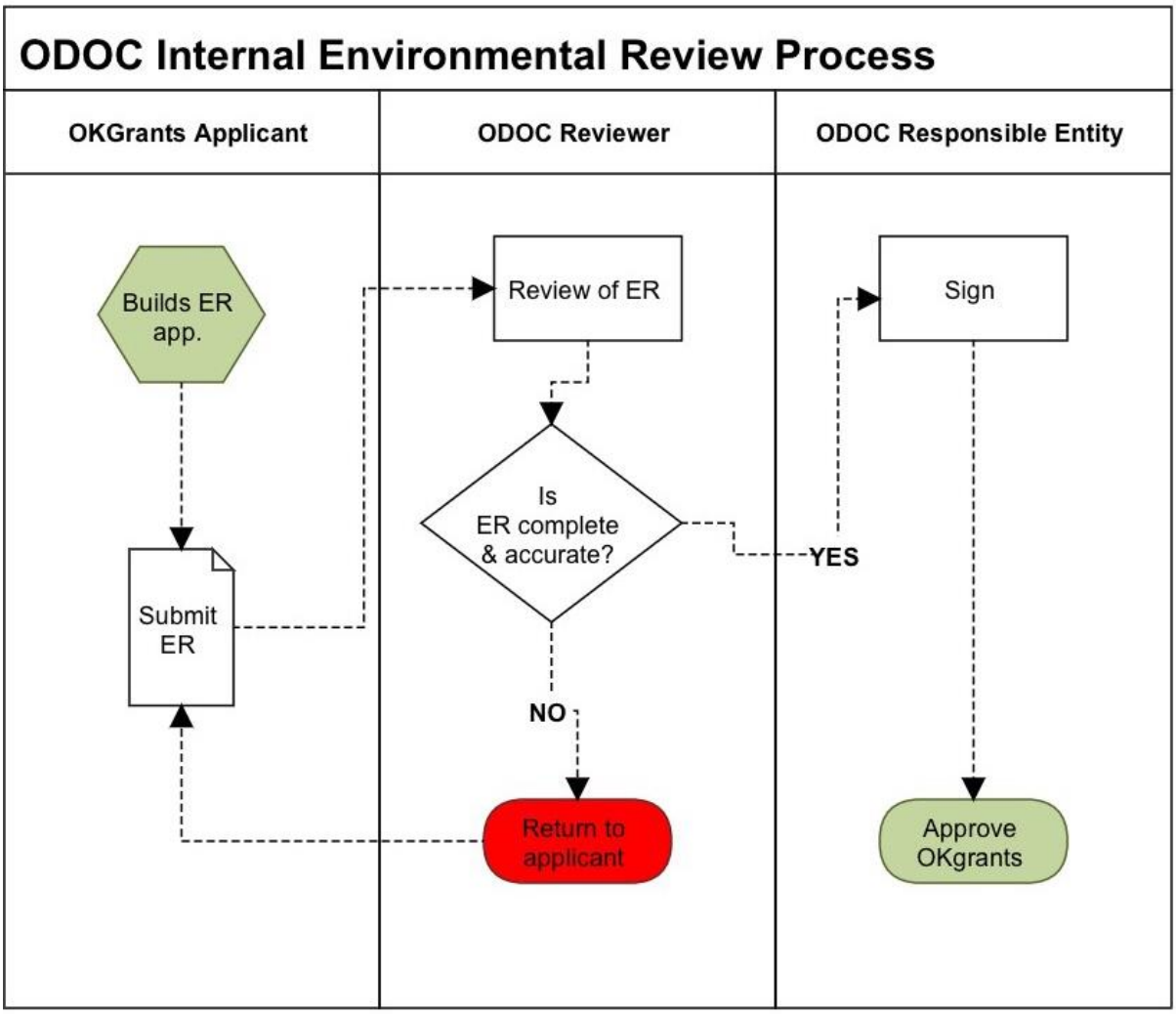
State's Subrecipients shall comply with the National Environmental Policy Act of 1969 (NEPA) and the Environmental Review Procedures for the Community Development Block Grant, per 24 CFR 58.5, covering the following areas: a) Historic Properties, b) Floodplain Management and Wetlands Protection, c) Coastal Zone Management, d) Sole Source Aquifers, e) Endangered Species, f) Wild and Scenic Rivers, g) Air Quality, h) Farmlands Protection, i) HUD Environmental Standards, and j) Environmental Justice.

Please Review the 2016 CDBG-DR Environmental Review Webinar: https://www.hudexchange.info/trainings/courses/2016-cdbg-dr-environmental-review- webinar/

Environmental responsibilities have both legal and financial ramifications. A State's Subrecipient assumes the role of Federal official under the provisions of NEPA and 24 CFR 58 and 24 CFR 50. Please refer to the "OEE Handbook for HUD Environmental Compliance (2015)", located at https://www.okcommerce.gov/wp-content/uploads/OEE-Handbook-for-HUD-Environmental-Compliance-2015.pdf

The State's Subrecipient's Chief Executive Official will assume overall responsibility for the environmental review process, including making determinations and signing required certifications. This environmental duty may not be delegated, although certified CDBG-DR administrators, staff and/or State resources may provide technical assistance to support local efforts.

When the ODOC Programs Planner initially begins the Environmental Review submitted by the State's subrecipients, only the ODOC Programs Representative has the authority to signoff as the Responsible Entity. Similarly, when the ODOC Programs Representative initially begins the Environmental Review submitted by the State's subrecipients, only the ODOC Programs Planner has the authority to signoff as the Responsible Entity. The purpose behind this is to ensure appropriate oversight over the Environmental Review. In the event where either the Programs Planner or the Programs Representative is out on extended leave, the Senior Program Monitor (CDBG) can either review or sign as the Responsible Entity for one of those staff members. ODOC will continue to maintain oversight to ensure compliance with all Federal environmental requirements. This process is shown below:



Local officials should review the liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. If a suit is filed against a program in Federal court on findings/environmental grounds, the chief executive official will be named the respondent.

In administering the program, the State of Oklahoma accepts no responsibilities or liabilities for the quality or accuracy of the local environmental review process. ODOC's responsibility is to ensure that the State's Subrecipient has complied with the procedural requirements of various environmental statutes, regulations and executive orders. There will be a separation between ODOC staff in who reviews and signs the Environmental Review.

Contract responsibilities require a complete environmental review of all project activities related geographically or functionally even if some activities are funded by other sources or provided by any type of volunteer or in-kind resources (24 CFR 58.32).

Environmental Review - Policies and Procedures

For policy guidance with completing the environmental review and document compliance with 24 CFR Part 58 and Part 50, please refer to the HUD Exchange website:

https://www.hudexchange.info/programs/environmental-review/

To assist with these reviews at the local level, a "Regulatory Agency" letter format requesting concurrence with the "Finding" found in the Form Section of this Guide.

The following "Levels of Environmental Review" may pertain to the project activities listed in the approved CDBG-DR Application Contract Budget located in the OKGrants system. Each project activity requires submittal of a Certification Form as it pertains to levels of environmental review.

Please refer to the Release of Funds Checklist Form for submittals in the OKGrants system.

1. Exempt Activities - 24 CFR Part 58 (58.34, subject to CFR 58.6): Certain activities are exempt from the environmental review requirements of NEPA and the environmental requirements of other applicable Federal laws and requirements under 24 CFR 58.6. (Examples include grant administrative costs, advertisements, engineering, architecture, testing, and planning).

2. Categorically Excluded Activities - 24 CFR Part 58 (58.35b, not Subject to 24 CFR 58.5, subject to CFR 58.6): Purchase of Equipment (Fire Trucks). The State's Subrecipient is still required to address the requirements under 24 CFR 58.6.

The activities above may submit for release of funds upon execution of contract with ODOC before procurement of professional services or equipment. Please complete and submit the RROF checklist and HUD Exempt/CENST forms:

https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or- censt-format/

3. Categorically Excluded Activities - 24 CFR Part 58 (58.35a (1-6), Subject To 24 CFR 58.5): Certain activities are "excluded" from NEPA requirements; however, other Federal laws and authorities listed in 24 CFR 58.5 are applicable. These Categorically Excluded Activities can be found in 24 CFR 58.35a (1-6).

4. Environmental Assessment (EA) - 24 CFR Part 58 and Part 50 (58.36) - Activities which are neither Exempt nor Categorically Excluded will require an EA to document not only compliance with the other Federal laws and authorities, but the requirements of NEPA 24 CFR 58.5 and 58.6.

5. Environmental Impact Statement (EIS) – 24 CFR Part 58 and Part 50 (58.37) An EIS is required when the project is determined to have a potentially significant impact of the human environment.

Related Laws and Authorities for Environmental Review

Please refer to the following pages on HUD Exchange website:
https://www.hudexchange.info/programs/environmental-review/
https://www.hudexchange.info/resource/4707/environmental-review-record-related-federal- laws-and-authorities-worksheets/

Environmental Worksheets

Environmental Worksheets are provided for use in completing an environmental review on a project's compliance with Federal environmental laws and authorities. These worksheets, along with all supporting documentation, are required as part of the Request of Release of Funds checklist and submittal in OKGrants.

Air Quality

Determine if the project conforms to the latest approved State Implementation Plan (SIP) regarding air quality, EPA.gov, Region 6:

https://www.hudexchange.info/programs/environmental-review/air-quality/

Airport Hazards and Runway Clear Zones

Use the worksheet to document compliance for a proposed activity:

https://www.hudexchange.info/programs/environmental-review/airport-hazards/

Coastal Barrier Resources/Coastal Zone Management

Not applicable to Oklahoma.
https://www.hudexchange.info/programs/environmental-review/coastal-barrier-resources/

https://www.hudexchange.info/programs/environmental-review/coastal-zone-management/

Endangered Species

Determine if project activity will endanger species of wildlife or impact habitat areas. Project Reviews in Oklahoma are made through the IPaC Module on the Fish and Wildlife Service (FWS) Website:

https://www.hudexchange.info/programs/environmental-review/endangered-species/

https://ecos.fws.gov/ipac/

Environmental Justice

Determine if the proposed activity impacts area of minority and/or low-income. Refer to the following website:

https://www.hudexchange.info/programs/environmental-review/environmental-justice/

https://ejscreen.epa.gov/mapper/

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation

and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies. The goal of this "fair treatment" is not to shift risks among populations, but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.

Executive Order 12898 was passed to ensure that each Federal agency makes achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. For NEPA compliance, implement the following steps:

- Analyze environmental effects, including human health, economic, and social effects of federal actions, including the effects on minority communities; and
- Address significant and adverse environmental effects of proposed federal actions on minority communities and low- income communities with mitigation measures outlined or analyzed in the environmental assessment or in the environmental impact statement; and
- Provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of public meetings, official documents, and notices to affected communities. You should request concurrence from the Environmental Protection Agency (EPA), if a significant impact is anticipated.

Explosive and Flammable Facilities

Determine if the properties being proposed for use are free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that could affect the health and safety of the occupants. The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must evaluate previous uses of the site or other evidence of contamination. This evaluation must include any proposed site in or near areas such as dumps, landfills, industrial sites, or other locations that have, or may have, contained hazardous waste. Obtain the services of qualified professionals who use current techniques to undertake the investigations that are considered necessary. An Environmental Phase I Site Assessment or equivalent analysis as appropriate may comply with this part. https://www.hudexchange.info/programs/environmental-review/explosive-and- flammable-facilities/

Farmlands Protection

Determine if a proposed activity converts farmland to non- agricultural uses;

https://www.hudexchange.info/programs/environmental-review/farmlands-protection/

Natural Resources Conservation Service (request concurrence)
https://www.nrcs.usda.gov/wps/portal/nrcs/site/national/home/

NRCS Web Soil Survey Instructions:
https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm

Flood Insurance

When property in a Special Flood Hazard Area (SFHA), (A Special Flood Hazard Area is a high-risk area defined as any land that would be inundated by a flood having a one percent chance of occurring in any given year also referred to as the base flood, or the 100-year floodplain), benefits from assistance funded by CDBG-DR there is a federal statutory requirement to maintain flood insurance on the property in perpetuity. Compliance with this requirement must be monitored by the subrecipient per the requirements listed at 24 CFR 58.6. Flood insurance is provided through the National Flood Insurance Program (NFIP).For CDBG-DR properties located outside the SFHA, HUD cannot mandate that flood insurance be purchased and maintained, but a subrecipient could if they elected to be stricter than the Federal requirements. If a person receives Federal disaster assistance conditioned on obtaining and maintaining flood insurance and fails to do so, the National Flood Insurance Reform Act of 1994 prohibits that property from receiving further Federal disaster assistance.

https://www.hudexchange.info/programs/environmental-review/flood-insurance/

Floodplain Management

Document compliance with 24 CFR Part 55 by determining whether or not a project activity is affected by or may modify the base 100-year flood hazard area.

https://www.hudexchange.info/programs/environmental-review/floodplain-management/

Floodplain maps may be obtained at: https://msc.fema.gov/portal/home

A Digital Flood Insurance Rate Map (DFIRM) is used to determine whether flood insurance is required for a structure. If the structure is in an SFHA on a DFIRM, flood insurance is required for any acquisition, rehabilitation, construction, or contents financed by HUD. While the content of a DFIRM may vary based on the data available and/or developed for a particular flood study/mapping project, every DFIRM will contain certain standard features:

- A base map;
- The features shown on a printed Flood Insurance Rate Map; (e.g., floodplain boundaries, Base Flood Elevations, regulatory floodways, etc.);
- Electronic Flood Insurance Study (FIS) report text, tables, and Flood Profiles; and
- Federal Geographic Data Committee-compliant metadata.
- Flood insurance maps are usually on file in a community's town hall or county building, usually in the planning and zoning, or engineering offices. From time to time, FEMA updates flood maps. The adopted maps in place at the time of application processing should be used to determine if a property is located in an SFHA.

If the project activity(s) are located in a floodplain, the Executive Order 11988, Eight-Step Decision-Making Process must be followed.

This process includes the publication of two public notices at least 16 days apart: an Early Public Notice identifying the activity and soliciting comments, and a Notice of Explanation, including a judgment whether the benefits of the activity outweigh the environmental considerations and a determination that there are no practical alternatives to the activity site. These notices become part of the State's Subrecipient's Environmental Review Record (ERR) and shall be submitted as well as the floodplain map number, panel number and date recorded on the Partner Worksheet. NOTE: The Corps of Engineers may charge a fee to review floodplain compliance requests. If the applicable Flood Hazard Boundary Map or Flood Insurance Rating Map shows that the project activity is not located within the 100-year flood hazard area, the Corps of Engineers need not be contacted.

Historic Preservation

Document Historic Properties or Archeological concerns of the proposed activity. As noted for compliance and documentation on the Partner Worksheet, a concurrence letter from the State Historic Preservation Office (SHPO), and if applicable, the Tribal Historic Preservation Office (THPO) for "no historic properties affected", "no adverse effect" or "adverse effect". A concurrence letter from the State Archaeological Survey is also required.

https://www.hudexchange.info/programs/environmental-review/historic-preservation/

Noise Abatement and Control

Noise analysis is recommended for noise sensitive projects such as for housing, libraries, etc.

https://www.hudexchange.info/programs/environmental-review/noise-abatement-and- control/

Site Contamination (Housing Activities)

Determine if a project activity is near a hazard operation handling petroleum products or chemicals of an explosive or flammable nature or within an aircraft clear zone. Request concurrence from the Environmental Protection Agency (EPA) EPA Region 6; and the Department of Environmental Quality (DEQ); DEQ Oklahoma; along with site evaluation. Project cannot increase density or subject citizens or buildings to above ground storage tanks greater than 100 gallons. Acceptable Separation Distance (ASD) must be determined.
https://www.hudexchange.info/programs/environmental-review/site-contamination/

Sole Source Aquifer

Determine if the project activity will affect a recharge area which is a primary source of local drinking water or involving dredging, filling or disposal of dredged materials upon water bodies. There is one aquifer located in Oklahoma, the Arbuckle/Simpson Aquifer; Source EPA.gov, Region 6.
https://www.hudexchange.info/programs/environmental-review/sole-source-aquifers/

Wetlands Protection

Determine, by site visit if necessary if wetlands are affected by a project activity. Executive Orders 11990 and 11988 are effective the same as above for Floodplain. May

request concurrence from U.S. Fish and Wildlife, the Conservation Commission, NRCS, and the U.S. Corps of Engineers.
https://www.hudexchange.info/programs/environmental-review/wetlands-protection/

Wild and Scenic Rivers

Determine if a project activity impacts a designated wild and scenic river in Oklahoma. Please refer to the "Scenic Rivers Act" at Title 82 O.S. 1452-1471. The following counties in Oklahoma are designated scenic river areas: Adair, Cherokee, Delaware, Sequoyah, Leflore and McCurtain. Any construction or modification projects outside these counties are exempt from review by the Oklahoma Scenic Rivers Commission.

https://www.hudexchange.info/programs/environmental-review/wild-and-scenic-rivers/

FINDING OF CATEGORICAL EXCLUSION/EXEMPT FROM RELEASE OF FUNDS PUBLICATION

Pursuant to 58.34(a); when it is determined, after completing all of the Partner Worksheets, that the other Federal laws and authorities in CFR 58.5 and 58.6 are not applicable to a categorically excluded activity, the activity will convert to exempt from public notification and the determination should be marked on the form as such.

The State's Subrecipient may submit for release of funds. Please complete CEST form and the RROF checklist.

https://www.hudexchange.info/resources/documents/Part-58-CEST-Format.docx

FINDING OF CATEGORICAL EXCLUDED (SUBJECT TO SECTION 58.5)

Pursuant to 24 CFR 58.35(a); When it is determined, after completing all of the Partner Worksheets, that the other Federal laws and authorities in CFR 58.5 and 58.6 are applicable to a categorically excluded activity, a "Finding of Categorical Exclusion Subject To" must be made (the activity cannot convert to exempt from public notification). The Finding identifies the activity and states the statutory authority for the exclusion.

A Notification to the Public may either be published or posted as a Notice of Intent to Request Release of Funds. The Notice should be mailed or emailed that same day to individuals and groups known to be interested in the activities and to the appropriate tribal, local, State and Federal agencies (see Distribution List at end of this requirement).

When Publishing: The Notice must be published in a newspaper of general circulation, which informs interested parties of the State's Subrecipient's intent to request a Release of Funds from ODOC. The publication must allow seven (7) calendar days for public comments to the State's Subrecipient. Please furnish an affidavit from the newspaper for submission with RROF.

When Posting: The Notice may be posted in lieu of publication. It must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for ten (10) calendar days for public comments to the State's Subrecipient.

When the comment period has elapsed and all public comments have been addressed, the State's Subrecipient will submit the Request for Release of Funds (RROF) in the OKGrants System. Comments received and responded to as a result of the Public Notice should be uploaded with the RROF as well as a notarized Posting listing the dates posted and where posted as it relates to Public Notice requirements as stated in the Citizen Participation Plan.

Upon receipt in the OKGrants System, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for Public Comment.

ACTIVITIES REQUIRING AN ENVIRONMENTAL ASSESSMENT (EA)

Activities which are neither Exempt nor Categorically Excluded (i.e., new construction) will require an EA to document not only compliance with the other Federal laws and authorities, but the requirements of NEPA 24 CFR 58.5 and 58.6.

The assessment will determine if an activity will significantly affect the quality of the human environment. A Finding of No Significant Impact must be signed by the Certifying Officer and made a part of the ERR. A copy of the finding must be submitted to ODOC by use of the OKGrants system.

After completion of the review and after the Finding has been made, the State's Subrecipient's chief elected official will sign the completed Environmental Certification and publish or post a Combined Notice of FONSI and Intent to Request Release of Funds.

Notification to the Public may either be published or posted as:

Combined Notice - Notice of Intent to Request Release of Funds and Finding of No Significant Impact. The Notice should be mailed or emailed that same day to individuals and groups known to be interested in the activities and to the appropriate tribal, local, State and Federal agencies (see Sample Distribution List Attachment 20).

When Publishing: The Notice must be published in a newspaper of general circulation, which informs interested parties of the State's Subrecipient's intent to request a Release of Funds from ODOC. The publication must allow fifteen (15) calendar days for public comments to the State's Subrecipient. Please furnish an affidavit from the newspaper for submission with RROF.

When Posting: The Notice may be posted in lieu of publication. It must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for eighteen (18) calendar days for public comments to the State's Subrecipient.

When the comment period has elapsed and all public comments have been addressed, the State's Subrecipient will submit the Request for Release of Funds

(RROF) in the OKGrants System. Comments received and responded to as a result of the Public Notice should be uploaded with the RROF as well as a notarized Posting listing the dates posted and where posted as it relates to Public Notice requirements as stated in the Citizen Participation Plan.

Upon receipt, ODOC must hold the Environmental Review for an additional fifteen (15) calendar days for public comment. If an activity is one that will significantly affect the quality of the human environment, contact ODOC before preparing an Environmental Impact Statement (EIS).

Re-evaluation of the Environmental Review Process

The State's Subrecipient must re-evaluate the results of its original review process if it:

- Makes substantial changes in the nature, magnitude or extent of the project, including adding new activities; or
- Discovers new circumstances and environmental conditions that may affect the project or the environment.
- Has been over twelve (12) months since any action has been taken.

The purpose of a re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. If the original finding is still valid, the State's Subrecipient needs only to provide appropriate documentation to the ERR file.

However, if the re-evaluation is the result of a change in the scope of work requiring an amendment to the contract, the State's Subrecipient must submit a Certification of Continued Environmental Compliance with its request to ODOC for amendment approval.

If the State's Subrecipient determines that the original finding is no longer valid, it must re- initiate the appropriate review process following the procedures outlined above.

Attachments

301	Release of Funds Checklist.pdf
302	Certificate of Exempt-CENST
303	Certification of CEST (subject to 58.5)
304	Environmental Assessment Checklist
305	Sample-Notice of Intent-RROF
306	Sample-Combined Notice-FONSI-RROF
307	Sample Flood Notices for publication
308	Env. Review-Finding of No Significant Impact
309	7015.15 Subrecipient Request for RROF
310	OK Tribal List
311	Distribution List for Environmental Notices
312	Cert. of Continued Environmental Compliance

313	CDBG Engineers Acknowledgement
314	Certification of Leverage
315	Sample Letter Request for Agency Comments

Requirement No. 404 – Civil Rights, Equal Opportunity, and Fair Housing

Information pertaining to civil rights, equal opportunity, and fair housing may be uploaded into OKGrants in the RROF Section. Original documentation must be kept in the Subrecipient's location file.

Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964 - https://www.justice.gov/crt/file/885401/download

Contractual Requirements

Federal civil rights laws, whether they address hiring, housing, contracting or access, were enacted to ensure that no group or individual would be subject to any kind of discrimination, particularly when spending taxpayers' money, e.g., CDBG-DR grants. Specific laws, the persons those laws cover, and the types of discrimination prohibited are outlined at the end of this Requirement. [Attachment 22].

Generally, these laws prohibit discrimination based on race, color, national origin, religion, age, sex, disability, familial status or sexual orientation. Identified groups included under these categories are:

Minorities, i.e., Blacks, African Americans, American Indians, Alaskan Natives, Asians, Native Hawaiians, Pacific Islanders, Hispanics and Latinos; Women; Age groups (specifically those over 40); and Handicapped persons (mental and/or physical). Sexual Orientation for Housing Projects.

CDBG-DR State's Subrecipients and their subrecipients must comply with these laws, demonstrate efforts made to comply and document those efforts in various aspects of project activities.

Employment Practices:

The State's Subrecipient's employment policies should be examined (or re-examined) in light of the Civil Rights and non-discrimination statutes. Providing equal opportunity in the hiring process and in the evaluation of current employees is paramount. State's Subrecipients are also required to make affirmative action (redress for past discrimination) a part of local policies.

Evidence of efforts to provide equal opportunity and take affirmative action steps in the recruitment, selection and compensation of employees must be documented. Other actions that can demonstrate non-discriminatory practices of the State's Subrecipient as an employer include but are not limited to the following: Upgrading, demotions or transfers; Recruitment and advertisements for employees; Layoffs or terminations; Changes in rates of pay or other forms of compensation; Selection for training, including apprenticeships; and Participation in recreational and educational activities.

Employment notices must be posted in conspicuous places available to both employees and applicants and must contain the following provisions of this discrimination clause:

“All qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, national origin, familial status, disability, or sexual orientation."

It is important to remember that another part of the Civil Rights laws prohibits sex discrimination in the payment of wages to women and men performing equal work in the same establishment [The Equal Pay Act of 1963].

One law prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans [Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974].

Special outreach should be made to notify minority or disadvantaged groups of employment opportunities. The State’s Subrecipient should have written employment and personnel policies and practices available for review by ODOC representatives. A Self-Evaluation Plan for Handicapped Accessibility, displaying the local government’s current staffing arrangements, would supplement the written policies. A sample of a Transition Plan demonstrates format and how various programs might be addressed.

EXECUTIVE ORDER 11246: EQUAL EMPLOYMENT OPPORTUNITY - CONTRACTS AND SUBCONTRACTS

State’s Subrecipients are required to include equal opportunity provisions and certifications in all contracts.

Contracting is another part of the program, which must be non-discriminatory. Efforts to ensure non- discrimination in the soliciting and awarding of contracts generated through CDBG-DR funding is required. Advertisement and distribution of solicitation must not discriminate. Maintain records of all contacts with minority- or women-owned firms. Bid specifications and/or evaluation criteria used to review bids must not be discriminatory.

§200.321 - CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

Federal Executive Order 12432 guidelines require selected federal agencies to promote and increase the utilization of Minority-Owned Business Enterprises (MBEs). 2 CFR 200.321 requires the Non-Federal entity to take all necessary steps to ensure that all recipients, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance ensure that contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms when possible.

The non-Federal entity must take all necessary affirmative steps to assure that minority business, women’s business enterprises, and labor surplus area firms are used when possible.

Affirmative steps must include:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited as they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps.

Section 3 of the Housing and Urban Development Act of 1968

Section 3 of the Housing and Urban Development Act of 1968 requires that grantees, sub grantees, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBGDR funding, to the greatest extent feasible, extend hiring opportunities and contracts to Section 3 eligible residents and businesses. Section 3 eligible residents are low- and very low- income persons, particularly those who live or reside in public, or government assisted housing.

For those entities that receive more than $200,000 in HUD CDBG-DR assistance, and contractors that are awarded covered contracts that exceed $100,000, ODOC requires that an approved Section 3 plan be in place before the project is awarded and approved. On a quarterly basis, ODOC staff reviews and tracks quarterly reports.

State's Subrecipients must make a special effort to provide training and employment opportunities to lower-income residents and contract opportunities to businesses in the project area. [Section 3 of the Housing and Urban Development Act of 1992] This requirement applies to the following:

- A local government (State's Subrecipient), including private entities receiving CDBG-DR funds, if it receives CDBG-DR funds for housing rehabilitation and/or public construction and the CDBG-DR assistance exceeds $200,000 for any one activity; and
- Construction contractors and subcontractors when the activity has been determined to be covered by Section 3 for the construction con-tractor and the construction contract or sub-contract exceeds $100,000. [See Requirement 407]

At a minimum, Contractors must include Specific Section 3 language in all solicitations (RFPs and bid documents.) [Housing and Community Development Act

of 1992, as Amended; Title VIII of the Civil Rights Act of 1968, as Amended; 42 U.S.C 3601, et seq., also known as the Fair Housing Act of 1988]

Affirmatively Furthering Fair Housing

Fair housing is generally defined as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, sex, religion, national origin, marital status, familial status, age, mental or physical disability, or sexual orientation. Local governments, because of their influence and power, are in the most effective position to promote fair housing.

The State's Subrecipients must provide documentation of steps taken to affirmatively further fair housing, regardless of the type of CDBG-DR activity funded by ODOC, for each fiscal year the State's Subrecipient has received a CDBG-DR contract.

While the State's Subrecipient has already certified that it practices fair housing, it must demonstrate that it is affirmatively furthering fair housing on a continual basis, not merely as a requirement of spending CDBG-DR dollars. Efforts must be made to identify discriminatory housing patterns and alleviate them by working with developers, property owners, realtors, residents and government agencies.

Both State and Federal laws must be cited in all applicable contracts dealing with housing. Efforts must be made and documented to end discriminatory housing policies and to provide information to the public regarding fair housing matters. When rehabilitating investor owned property, you should advise the owner of the requirements for fair housing/equal employment opportunity clauses in advertising for vacant units. In addition, when rehabilitating all housing units, making those units accessible to the disabled should be taken into consideration where applicable. [Executive Order 11063: Equal Opportunity in Housing]

ODOC requires all CDBG-DR State's Subrecipients to adopt a Fair Housing Ordinance or pass a Fair Housing Resolution as the first step in affirmatively furthering fair housing.

In addition, ODOC requires the State's Subrecipient to undertake at least one (1) new activity per year in an effort to further fair housing. The State's Subrecipient is not required to undertake multiple fair housing activities if it has multiple CDBG-DR contracts open in any one year.

COMPLAINTS

Since the State's Subrecipient may receive complaints related to the various aspects of civil rights, equal opportunity and fair housing, a file to document such complaints must be established. [It is advised to appoint an individual who would be responsible for handling any complaints, doing necessary follow- up and maintaining documentation on complaints received and their resolutions.] This file should contain any relevant paperwork as well as follow-up efforts within 15 working days and eventual resolution.

Complaints may not refer to a violation of a particular civil rights law or laws. A complaint will be viewed as a civil rights complaint when the complainant:

- Indicates the belief that he/she has been denied benefits or opportunities, has been treated differently, etc.; and
- Alleges his or her race, ethnicity, and gender, status as a disabled person or age was the basis for his/her belief of discrimination.

Any person or specific class of persons who believes that he/she/they have been subject to any discrimination prohibited by the laws referenced in this Requirement may file a complaint. Advice your ODOC representative if you receive a civil rights complaint, as it will be referred to HUD's regional office, which deals directly with such complaints. For additional guidance, refer to HUD's web site:

https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint

Since this Requirement only summarizes applicable laws and gives general guidance to aid in compliance with those laws, a State's Subrecipient and its legal counsel may want to refer to the actual statute if questions about a specific regulation arise.

Evaluating Municipal Accessibility (Section 504)

Section 504 of the Rehabilitation Act of 1973, as amended, establishes policies, goals and procedures for assuring that no otherwise qualified individual with disabilities is, solely on the basis of the disability, denied benefits, subjected to discrimination or excluded from participation in any program or activity receiving Federal assistance. HUD has issued regulations to establish the manner in which recipients of CDBG-DR funds are required to comply with the provisions of Section 504. [24 CFR 8]

CDBG-DR State's Subrecipients must conform to HUD's procedural requirements as a condition of receiving these Federal funds. There are ways the community may need to modify its customary way of doing business to ensure that all local services, not only grant-related activities, are accessible to your disabled citizens and that local programs discriminate against them. [See Architectural Barriers Act of 1968, as amended; the Americans with Disabilities Act; and the Fair Housing Amendments Act of 1988]

Additional Actions:

All CDBG-DR State's Subrecipients must take the following actions regarding disabled persons, regardless of the number of persons employed by the State's Subrecipient:

- Establish effective communication methods, e.g., auxiliary aids, information regarding accessible services, activities and facilities;
- Demonstrate non-discriminatory employment practices;
- Conduct a self-evaluation of policies, practices and programs; and Develop a Transition Plan for compliance
- State's Subrecipients employing fifteen or more individuals must also:

- Designate a "504 contact person" and publish a Notice of Non-Discrimination; and
- Develop grievance procedures.

Though not required by either state or regulation, ODOC encourages all State's Subrecipients to take these additional actions.

Summary of Requirements:

Effective Communication For Persons with Hearing Impairments Qualified sign language interpreters

- Note takers
- Telecommunication devices for deaf persons (TDDs) Telephone handset amplifiers
- Assertive listening devices (devices that increase the sound in large group settings) Flashing lights (where aural communication is used, such as warning bells) Transcription services
- Closed and open captioning For Persons with Vision Impairments
- Qualified readers
- Written materials translated into alternative formats, e.g., Braille, audio, large print, etc. Aural communication (bells or other sounds used where visual cues are necessary).

The State's Subrecipient must pay attention to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purpose of Section 504 compliance, the target population includes: The hearing impaired, visually impaired, mobility impaired, develop-mentally disabled and those persons requiring in-home care or institutional care.

State's Subrecipients are not required to provide individually prescribed devices such as glasses, hearing aids, readers for personal use or study or any other device of a personal nature.

When a State's Subrecipient communicates by phone a TDD or other equally effective communication system must be used. Further, the State's Subrecipient must communicate in such a manner that disabled persons may obtain the information they need regarding the State's Subrecipient's programs. All public hearings must be held in locations accessible to the disabled. It is acceptable to require that persons with disabilities provide adequate advance notice that they may need a particular auxiliary aid or service. All communications must clearly outline the specific procedures, which must be followed if an individual with disabilities intends to request an auxiliary aid or service.

If the requested aid or service cannot be provided as requested by the disabled individual, the State's Subrecipient must advise the individual immediately of the specific reasons why the request cannot be granted and the reasons why the decision was made.

The State's Subrecipient is not required to undertake any action which would, if taken, result in a fundamental alteration of the program or which would result in an undue financial and/or administrative burden. If it is determined this would be the case, you should contact ODOC for further advice.

Non-Discriminatory Employment Practices

The State's Subrecipient must take the following actions or make the following assurances:

- It will provide an assurance that no qualified individuals will, solely because of disability, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance;
- It will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunity or status because of a disability.
- The State's Subrecipient must assure that this prohibition against discrimination applies to the following activities: Recruitment, layoff, advertising, termination, employment application processing, right of return from layoff, hiring, upgrading, job assignments, promotion, job classifications, award of tenure, organizational structures, transfer, injury or compensation, position descriptions, lines of progression, seniority lists, leave, sick leave of absence, fringe benefits, selection and financial support for training, selection for leaves of action for training, employer-sponsored activities (re-creational or social), other terms, conditions or privileges of employment.
- It will not participate in a contractual or other relationship that has the effect of subjecting qualified applicants or employees with disabilities to discrimination;
- It will provide reasonable accommodations for the known physical or mental limitations of an otherwise qualified applicant with disability. Reasonable accommodations may include accessible facilities, job structuring, job relocation, part-time or modified work schedules, acquisition or modification of equipment or devices, provision of readers or interpreters.
- It will make a determination of whether an individual with disability is qualified for the position at the time of the employment action. This involves two steps:
    - Determine if the individual satisfies the pre-requisites for the position in terms of appropriate education, skills, licenses, etc.
    - Determine whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. Essential functions are ones the individual who holds the position must be able to perform unaided or with the assistance of reasonable accommodation;

REASONABLE ACCOMMODATION

State's Subrecipients make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant for employment or employee

with a disability, unless the State's Subrecipient can demonstrate the accommodation would impose an undue burden on its operations. There are three categories of reasonable accommodation:

- Accommodations required ensuring equal opportunity in the application process
- Accommodations enabling the State's Subrecipient's employees with disabilities to perform the essential functions of the position held or desired; or
- Accommodations enabling the State's Subrecipient's employees with disabilities to enjoy equal benefits and privileges of employment as enjoyed by employees without disabilities.

A reasonable accommodation in employment may include, but is not limited to, one or more of the following actions:

- Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
- Restructuring, including part-time or modified work schedules or reassignment to a vacant position; Acquisition or modifications of devices or equipment;
- Appropriate adjustment or modifications of examinations, training materials or policies; or the provision of qualified readers or interpreters.

SELF-EVALUATION OF POLICIES, PRACTICES & PROGRAMS

Each State's Subrecipient must, after consulting with interested persons (including individuals with disabilities or organizations representing such individuals) evaluate its current policies and practices to determine whether they constitute barriers to participation by the disabled. The self-evaluation process should be viewed as the starting point toward achieving compliance with Section 504 requirements. The self-evaluation process is a comprehensive review of all current policies and practices to determine whether there are barriers to participation by the disabled in programs or services.

The self-evaluation includes communication and employment, as well as the policies and practices for all services, programs and activities. Information to be included in the plan includes:

- A list of persons consulted about the self-evaluation
- A description of the areas examined, and any problems identified; and
- A description of any modifications made to the policies, procedures, services and programs. Areas evaluated include but are not limited to:
    - Buildings and/or facilities for physical accessibility; All programs, activities and services
    - All outreach and communications;
    - Eligibility and admission criteria and practices;
    - Employment practices and guidelines;
    - Complaint processing procedures.

The self-evaluation must include all aspects of the State's Subrecipient's organization and not just those portions that pertain or relate to the CDBG-DR-funded program and its administration.

The self-evaluation may determine that some non-structural modifications may be necessary, along with staff training on how to make reasonable modifications to achieve program accessibility. The self- evaluation may also determine that some structural modifications may be necessary. These should be identified early in the process so modifications can be budgeted for and completed on a timely basis.

The regulations also require the State's Subrecipient to consult with persons with disabilities and/or representative organizations throughout the self-evaluation process. The regulations do not stipulate how many people to consult, how to select the members, whether there should be a group or individual consultation or how long the consultation process should take. ODOC recommends that no less than four and no more than seven individuals should comprise a citizen's advisory committee. It is recommended that the committee consist of a wide variety of members.

Following are some suggestions for soliciting persons to compose the self-evaluation committee:

Solicit one or two local officials: Draw upon local agencies or chapters of disability advocate organizations: Check with local veterans' groups: Publicize widely in appropriate media accessible to persons with disabilities: Ask for the help of the local school system: Include persons within the community known to have disabilities: Check with the nearest vocational rehabilitation service; Advertise on local radio and/or television: Advertise in local and regional newspapers: Contact appropriate State agencies, boards and commissions.

By establishing a citizens' advisory committee made up of the above types of individuals, the State's Subrecipient will be able to:

- Ensure the most complete evaluation of programs and policies and uncover any impediments or barriers to participation by persons with disabilities;
- Receive information from persons or experts from organizations representing disabled individuals who are in an excellent position to recommend the least costly, most innovative solutions to accessibility problems;
- Demonstrate a commitment to the goals of Section 504 and ADA and help to foster support from all citizens for the handling of this compliance issue.

Records must be kept for three years following final closeout of the State's contract with HUD.

TRANSITION PLAN FOR COMPLIANCE

If your programs and activities cannot be made accessible by making administrative changes, structural changes will be necessary. Develop a Transition Plan for any structural changes. Interested citizens, especially disabled citizens, should be

recruited to help develop the Plan. A copy of the Plan must be available for public inspection. The Plan should:

- Identify the physical obstacles that limit the program's accessibility to disabled persons. The State's Subrecipient should consider utilizing the Uniform Federal Accessibility Standards (UFAS) Checklist;
- Describe in detail the method used in making the facilities in question accessible;
- Set forth the schedule of tasks, identifying actions taken within the first year, if the total project will exceed one year;
- Identify the official responsible for implementing the Plan; and
- Identify those who assisted the State's Subrecipient in preparing the Transition Plan.

The State's Subrecipient must make reasonable accommodations to the known physical or mental impairments of an otherwise qualified participant or employee with disabilities, unless the State's Subrecipient can demonstrate that such accommodations would impose undue financial and/or administrative burdens. Accommodations could include but are not limited to the following:

- Conducting home visits;
- Assigning aides to assist beneficiaries;
- Locating programs or services in accessible facilities;
- Adding or redesigning equipment or furnishings;
- Selectively altering existing facilities or acquiring or building new facilities;
- Changing management policies or procedures;
- Job restructuring;
- Modifying work schedules;
- Providing readers or interpreters.

If reasonable accommodation, as requested by an individual with disabilities, cannot be provided, the following steps should be taken:

- Notify the individual immediately with the specific reasons why the request cannot be granted and the reasons why the decision was made;
- When claiming fundamental alteration or undue burden, document the basis for the decision in a written statement and demonstrate that all resources available for the funding and operation of the service, activity or program were taken into consideration;
- Obtain the written concurrence of both the chief elected official and the chief executive officer.

CONTACT PERSONS AND NOTICE OF NON-DISCRIMINATION

At least one individual should be designated as the Section 504 Coordinator and should be the single point of contact for all Section 504 activities. [Americans with Disabilities Act of 1990, 42 USC 12131 as amended by the ADA Amendment Act of 2008 P.L. 110-325] This individual should be a permanent, full- time employee of the State's Subrecipient. Responsibilities of the Section 504 Coordinator include:

- Overseeing formation of the citizen's advisory committee;

- Receiving and investigating grievances;
- Organizing training activities;
- Ensuring the recommendations identified in the self-evaluation and Transition Plan is implemented;
- Serving as the single point of contact for individuals who are disabled; and Keeping abreast of changes in laws and regulations.

The State's Subrecipient must assure that appropriate initial and continuing steps are taken to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing and unions with professional agreements with the State's Subrecipient that it does not discriminate based on disability.

The State's Subrecipient must conspicuously post or publish in a newspaper of general circulation the notice "Policy of Non-Discrimination on the Basis of Disability Status". The Section 504 Compliance file should contain the printer's affidavit for the Notice and other evidence of compliance with the notification policy.

Attachments

401	Compendium of Federal Civil Rights Laws
402	Section 3 Guidance & Forms
403	Business Registry- Get Connected Poster
404	Business and Employment Notice Sample
405	Section 3 Clause
406	Section 3 Contractor Business Self Certification
407	Section 3 Monthly Utilization Report
408	Section 3 Worker Status Certification
409	Section 3 Grantee Checklist
410	Section 3 Grantee Sample Plan
411	Section 3 Grantee Sample Resolution
412	Section-3 Contractor-Estimated-Workforce-Breakdown-Form 2021
413	Section-3 Contractor-Sample Plan
414	Section 3 HUD Complaint Form
415	Minority and Women Owned Business
416	Fair Housing Resolution
417	504 Staff Composition Form
418	504 Accessibility Self-Evaluation

Requirement No. 405 - Procurement

State of Oklahoma Policies, Requirements, and Procedures

ODOC is required to comply with state code regarding procurement. In the following section the 2 CFR 200.318-326 standard will be referenced along with the applicable state code as well as ODOC's internal policy to implement the requirement.

The state follows the Oklahoma Central Purchasing Act located in title 74 for state agency implementation and the competitive bidding act of 1974 title 61 and Office of Management and Enterprise Services Title 260: chapter 115 procurement

§200.318 General Procurement Standards: procurement procedures, oversight of contractors, procedures to prevent conflict of interest and a code of conduct, avoid acquisition of unnecessary or duplicative items, state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services, encouraged to use value engineering clauses in contracts, surplus property, award contracts only to responsible contractors possessing, Maintenance of records, for the settlement of all contractual and administrative issues arising out of procurements.

74 O.S. § 85.39. Agency Internal Purchasing Procedures

Each state agency shall develop internal purchasing procedures for acquisitions by the state agency. Procedures shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations. Following development, the state agency shall submit the procedures to the State Purchasing Director. The State Purchasing Director shall review the procedures submitted pursuant to paragraph 1 of this subsection to determine compliance with the Oklahoma Central Purchasing Act, rules promulgated pursuant thereto, Sections 3001 through 3010 of this title, and provisions of paragraph 1 of this subsection. The State Purchasing Director shall provide written findings, including details of noncompliance, if any, to the Director of the Office of Management and Enterprise Services.

The Director of the Office of Management and Enterprise Services shall, within fifteen (15) days after the procedures are submitted, notify the state agency that the procedures are in compliance or indicate revisions necessary to bring the procedures into compliance.

ODOC Internal Policy

ODOC's internal purchasing procedures have been approved by the Office of Management and Enterprise Services. The State purchasing director confirmed that they were in compliance with the Oklahoma Central purchasing Act in March of 2018. The department responsible for implementing the purchasing procedures is the Financial Services Division. The Chief Financial Officer established the purchasing procedures that were submitted to the State Purchasing Director and

then any findings were sent to the Director of the Office of Management and Enterprise Services. Any findings were addressed and revised by March of 2018.

74 O.S. § 85.6. Grade and Quality of Merchandise Delivered

State agencies shall have the right to question the grade and quality of any merchandise delivered to the agency. The Central Purchasing Division must determine, through post award contract administration procedures, whether the supplies and services meet the grade and quality specified in the contract and take remedial action with the appropriate supplier if the supply or service does not.

OAC 260:115-9-1 - Supplier contract performance

Delivery. A supplier shall deliver acquisitions to a state agency within time periods the contract specifies.

Inspection. Unless otherwise provided in the contract documents, the state agency shall inspect acquisitions from the supplier within a reasonable time after supplier delivery.

Rejection. The state agency shall reject acquisitions from the supplier that do not meet specifications or other terms and conditions of the contract. The supplier shall pay costs to retrieve and replace acquisitions that do not meet specifications with a conforming item or service.

Acquisition title. Title to acquisitions shall not pass from the supplier to the state agency until the state agency receives, inspects and accepts the items. The state agency shall document, at a minimum, the date of delivery, the name and address of the supplier, a description of the goods received, and the signature of the receiving agency employee.

Subcontractor performance. A supplier shall be responsible for the performance of subcontractors. The supplier shall provide a single point of contact for the state agency when the supplier uses subcontractors. The supplier shall notify the state agency and the Central Purchasing Division if the supplier uses a subcontractor the supplier did not disclose in the supplier's bid.

Contract changes. If a supplier determines a requested change to the contract or performance exceeds the original scope of the solicitation, the supplier shall notify the State Purchasing Director or the state agency. No changes shall be made prior to the approval of a change order in accordance with Section 260:115-9-3.

Contract assignment. A supplier shall not assign or subcontract a contract to another supplier, individual, business entity or organization unless otherwise specified in the solicitation.

Performance evaluation. State agencies shall develop a process to consistently assess and document the quality of products and/or services acquired from a supplier. State agencies shall retain written documentation of evaluation of the performance of services provided pursuant to a professional services contract with the acquisition file. If the evaluation indicates deficiencies with the supplier's work, the state agency shall submit a Professional Service Evaluation to the State Purchasing Director. [Reference 74 O.S. §85.41]

ODOC Internal Policy

ODOC DR Staff, Programs Planner and Programs Representative will:

- Identify need
- Define specific requirements
- Define price parameters
- Identify potential sources
- Complete Purchase Requisition with detailed information and include all required forms
- Obtain appropriate division and agency approval
- Submit the purchase requisition to Financial Services Contracting Officer
- If purchase is over $5,000, request will be submitted to the ODOC Certified Purchasing Officer for processing.

Procurement Contracting Officer will:

- Review the purchase requisition for necessary and required approval
- Determine purchasing methodology
- Perform necessary purchasing functions:
- Solicitation refer to ODOC Certified Purchasing Office
- Statewide contract release
- Open Market release
- OMES Central Purchasing Requisition or change order
- Any other approved purchasing method required
- Obtain required documentation from all sources with the help of the end user the DR Programs Planner and Programs Representative
- Verify funding sources
- Complete the purchase order or forward to OMES Central Purchasing for completion
- Send a copy to the end user Programs Planner and Programs Representative and supplier
- Maintain purchase order file

The end user, currently Programs Planner and Programs Representative will:

- Coordinate delivery of services or product with supplier
- Ensure supplier compliance with requirements through consistent method of monitoring during the acquisition process
- End users should involve the ODOC certified Purchasing Officer to help with resolving any supplier issues
- Review and approve an accurate and proper invoice upon completion
- Submit invoice to accounts payable for payment
- Submit any required documentation to Procurement Director as necessitated by the purchase.
- An example would be the Supplier Performance Evaluation form after the completion of the services.

State Conflict & Code of Conduct

74 O.S. § 85.3. Purchasing Division - Director - Employees - Encouragement of Certain Purchases - Conflict of Interest

All activities of any state agency, department, or institution relating to purchasing shall be under the direction of the Purchasing Division unless otherwise provided by the Oklahoma Central Purchasing Act.

The Purchasing Division shall provide qualified personnel to assist the purchasing activities of state agencies, departments, and institutions.

Each state agency, department, and institution shall designate personnel to coordinate its purchasing functions with the Purchasing Division.

The Purchasing Division may, if the needs of a state agency, department, or institution are such as to so require, employ, and establish a buyer within a state agency, department, or institution.

No state agency, department, or institution subject to the Oklahoma Central Purchasing Act shall have or maintain a purchasing section without the prior approval in writing of the Purchasing Division unless otherwise provided in the Oklahoma Central Purchasing Act.

The Purchasing Division shall make acquisitions from industries operated by the Department of Corrections pursuant to the provisions of Section 549.1 of Title 57 of the Oklahoma Statutes.

None of the personnel authorized by this section shall:

- *Sell to or otherwise provide acquisitions to any state agency subject to the Oklahoma Central Purchasing Act;*
- *Be employees, partners, associates, officers, or stockholders in or with any business entity that sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act;*
- *Be employed in any of the positions authorized by this section if a spouse or child owns any stock in any business entity which sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act; or*
- *Be employed in any of the positions authorized by this section if a relative within the third degree of consanguinity or affinity sells to or otherwise provides acquisitions to any agency subject to the Oklahoma Central Purchasing Act or is interested in any business entity which does so, except that such relative, excluding a spouse or child, may own Five Thousand Dollars ($5,000.00) worth or less, or one percent (1%) or less, whichever amount is the lesser amount, of the stock of a corporation or any business entity which sells to or otherwise provides acquisitions to any state agency subject to the Oklahoma Central Purchasing Act.*

ODOC Internal Policy

ODOC has identified Department of Programs Operational Logistics to work with the Purchasing Division within the Office of Management and Business Services (OMES) on procurement. The purchasing division main role in conflict of interest is to ensure that all goods and services are procured fairly and within Federal and State requirements. In order to ensure there is no conflict of interest, CDBG-DR staff, currently the DR Programs Planner and Programs Representative, will work with the

Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. These details are then sent to the Certified Purchasing Officer at OMES to create the solicitation and send the solicitation to all recipients on the vendor list. OMES handles the scheduling of interviews, creating the guidelines and questionnaires for vendors and decides the processes ODOC will take to procure such goods or services. This allows a separation of duties when ODOC is procuring goods and services.

State procedure to avoid acquisition of unnecessary or duplicative items

74 O.S. § 85.4. Requisitions - Determination of Quantitative Needs by Agencies - Forms - Information Required - Lease-Purchase Agreements - Change Order or Addendum - Lease of Products - Purchases from Federal Government

Subject to the provisions of this section, every state agency shall determine its own quantitative needs for acquisitions and the general class or nature of the acquisitions.

The Director of the Office of Management and Enterprise Services shall prescribe standardized contract forms and all other forms requisite or deemed necessary by the Director of the Office of Management and Enterprise Services to effectuate the provisions of this section and the Oklahoma Central Purchasing Act.

A contract that results from a requisition required by this section for nonprofessional services or professional services whether or not such services are exempt from the competitive bidding requirements of this section or pursuant to Section 85.7 of this title shall be signed by the chief administrative officer of the state agency or the chief administrative officer of the requisitioning unit of the state agency certifying that:

- *No employee of the state agency is able and available to perform the services to be provided pursuant to the contract;*
- *The state agency shall receive, review and accept a detailed work plan from the supplier for performance pursuant to the contract if requested by the State Purchasing Director;*
- *The state agency has developed, and fully intends to implement, a written plan providing for the assignment of specific state agency personnel to:*
- *Monitoring and auditing supplier performance,*
- *The periodic review of interim reports, or other indications of performance, and*
- *If requested by the State Purchasing Director, the ultimate utilization of the final product of the nonprofessional or professional services,*
- *The work to be performed under the contract is necessary to the state agency's responsibilities, and there is statutory authority to enter into the contract,*
- *The contract will not establish an employment relationship between the state or the state agency and any persons performing under the contract,*
- *No current state employee will engage in the performance of the contract, unless specifically approved by the State Purchasing Director,*

- *The purchase of the nonprofessional or professional services is justified, and*
- *The contract contains provisions that are required by Section 85.41 of this title.*

74 O.S. § 85.41. Professional Services Contracts

If the final product of the professional services contract is a written proposal, report, or study, the professional services contract shall require the supplier to certify that the supplier has not previously provided the state agency or another state agency with a final product that is a substantial duplication of the final product of the proposed contract.

ODOC Internal Policy

CDBG-DR Staff Programs Planner and Programs Representative will contact the Contracting Officer to request a solicitation of services that is beyond the scope of ODOC/CD staff. DR Staff and the contracting officer will work to write requirements for a solicitation. The Certified Purchasing Officer will ensure that all requirements are applicable to the program and check with other solicitations to inquire about duplicative services or items or unnecessary goods or services that are being requested. If the CPO finds that the solicitation is not duplicative, they will send the requirements to OMES Purchasing Division to advertise the solicitation. The CPO at OMES will also check that other solicitations for goods and services have or have not been procured to check for duplicative or unnecessary items. If the CPO finds that the solicitation is duplicative, they will contact the CDBG-DR staff to inform them of the duplicative item or services and suggest another process. If there is any exemptions to the previously stated rules the Chief Administrative Officer must sign off on such an exemption.

Professional Services

- Requirement: As previously referenced in this manual, professional services are not exempt from competitive bid, with the exception of professional services defined in Title 18 O.S. § 803. If the result of the professional service is a written plan, study or proposal, then a Supplier Contract Certification must be completed by the supplier. Pursuant to§ 85.41.C. if the work product of the contract is a report, the state agency shall file the report with the State Librarian and Archivist. For all professional services, regardless of the results, a supplier performance evaluation must be completed by the end user upon completion of the service.
- Process Placement: The Supplier Contract Certification must be signed prior to issuance of a purchase order. The Supplier Performance Evaluation should be completed prior to payment of the last invoice.
- Required Forms OMES Central Purchasing form CP-021 Supplier Contract Certification and OMES Central Purchasing form CP-016 Supplier Performance Evaluation.

Additionally, regarding Professional Services, ODOC has procedures on how these services are evaluated.

Professional Service Evaluations

State statutes require a state agency evaluate the performance of the professional services upon completion of the services – the DR Programs Planner will do this using the OMES Supplier Performance Evaluation.

1. The performance evaluation shall indicate the quality or work product of the professional service provider.
2. The agency may use the OMES Central Purchasing Supplier Performance Evaluation form for documenting the quality of work of the professional service provider. The evaluation documentation shall be maintained in the agency procurement file.
3. Evaluations indicating unsatisfactory service must be sent to OMES Central Purchasing.

ODOC Internal Policy

ODOC/CD DR Staff Programs Planner and Programs Representative will be in charge of filling out the OMES Central Purchasing Supplier Performance Evaluation form for documenting the quality of work of the professional service provider. DR Staff will turn the form in to OMES Central Purchasing.

State use of co-operative agreement to share common goods

OAC 260:115-7-3 - Methods state agencies use to make acquisitions. State agencies shall make acquisitions using a method of acquisition in this section.

State Use Committee. State agencies shall make acquisitions from suppliers on the State Use Committee procurement schedule at the fair market price if the supplier's delivery date meets state agency requirements. State Use Committee contracts are mandatory contracts to the extent a fair market value has been established. State agencies shall utilize the State Use Committee procurement schedule to ensure all acquisitions are made pursuant to 74 O.S. §§ 3001 et seq. If an acquisition is available from both the State Use Committee procurement schedule and the Oklahoma Correctional Industries, the state agency shall make the acquisition from the State Use Committee procurement schedule.

Oklahoma Correctional Industries. If an acquisition is not available from the State Use Committee within the time period required by the purchasing state agency or if it does not have an established fair market value, state agencies shall make acquisitions from the Oklahoma Correctional Industries pursuant to 57 O.S. §549.1 or statewide contracts as follows:

If a state agency determines in the acquisition of a product or service within the agency's acquisition authority, the product or service is available from OCI and is the lowest and best offer, the agency may place a direct order with OCI without competitive bidding. If an acquisition is competitively bid, the award shall be made to OCI upon determination that OCI is lowest and best.

For an acquisition exceeding an agency's procurement authority, the agency may place a direct order with OCI or submit a requisition to OMES for issuance of a solicitation to include OCI as a supplier. The award shall be made to OCI if such product or service is the lowest and best bid.

If Oklahoma Correctional Industries is unable to meet state agency requirements for an acquisition, Oklahoma Correctional Industries shall certify to the State Purchasing Director that it is not able to provide products.

If the State Purchasing Director determines that a product or service the Oklahoma Correctional Industries produces does not meet the reasonable state agency requirements, the State Purchasing Director shall notify Oklahoma Correctional Industries.

If Oklahoma Correctional Industries disagrees with the State Purchasing Director, the OMES Director shall resolve the issue.

Statewide Contracts. The State Purchasing Director shall designate statewide contracts as mandatory or non-mandatory.

Mandatory statewide contract. The State Purchasing Director may designate a statewide contract for mandatory use. State agencies shall make acquisitions from mandatory statewide contracts regardless of the acquisition purchase price. A state agency may submit a written request to the State Purchasing Director to waive requirements for a state agency's use of a mandatory statewide contract for acquisitions. The State Purchasing Director shall grant exceptions prior to a state agency making the acquisition from another supplier.

Non-mandatory statewide contracts. State agencies are encouraged to use non-mandatory statewide contracts. Whenever a state agency acquires a product or service from an alternate source, the acquisition shall be made in accordance with the Central Purchasing Act, the rules of this chapter and any other laws and rules applicable to the acquisition.

ODOC Internal Policy

If ODOC/CD DR Staff Programs Planner and Programs Representative gives solicitation requirements to the Central Purchasing Division of OMES and there is an opportunity for a co-operative agreement to share common goods with other state agencies, OMES Central Purchasing will receive such inquiries from other agencies and arrange the agreement between agencies if such agencies agree.

Intergovernmental or Interagency Purchases

Definition: By Title 74 O.S.§ 581 or74 O.S. §§ 1001 through 1008, agencies may contract with any political division or subdivision of the State, any political subdivision of another state, or any agency of the United States or the State. Acquisitions shall not be made for the purpose of evading competitive bidding requirements, provisions of the Oklahoma Central Purchasing Act, rules of the Purchasing Division, or the provisions related to the State Use Committee.

Process:

- The end user DR Programs Planner and Programs Representative identifies the need or program that requires interaction with the governmental unit.
- The end user defines the requirements within the acquisition.
- Bilaterally approved documentation is created to support the acquisition (Done by end users, but ensures documentation is correct). i.e. quote, scope of work, contract, etc.
- A completed requisition is attached to the documentation, approved and sent to ODOC Procurement (Certified Purchasing Officer) for processing.

State to use surplus property

74 O.S. § 85.5. Powers and Duties of State Purchasing Director

J. 6. Development of electronic means of making state agencies aware of office furniture, equipment, machinery, tools, and hardware available for purchase from the surplus property programs.

ODOC Internal Policy

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for the use of surplus property. These details are then sent to the Certified Purchasing Officer at OMES if purchase is over $50,000.

Intergovernmental or Interagency Purchases Definition: By Title 74 O.S.§ 581 or74 O.S. §§

- ODOC Purchasing Authority and hierarchy
- The State Purchasing Director, under the supervision of the Director of the Office of Enterprise and Management Services, shall have sole and exclusive authority and responsibility for all acquisitions used or consumed by state agencies. (Title 74 § Section 85.5.(A)
- State agencies shall make acquisitions in accordance with state statutes as outlined in Title 74 O.S. §85.1 et seq. and administrative rules as outlined by Administrative Rules Oklahoma Administrative Code (OAC) 260:115.
- The ODOC Certified Purchasing Officer is the delegated purchasing authority and primary CPO for ODOC.
- The ODOC Certified Purchasing Officer reports to the Deputy Director/Legal Counsel.
- The Deputy Director/Legal Counsel reports to Secretary of Commerce.

ODOC Internal Policy

CDBG-DR staff Programs Representative and Programs Planner will work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. For purchases over $50,000, these details are then sent to the Certified Purchasing Officer at OMES to create the solicitation and send the solicitation to all recipients on the vendor list. OMES handles the scheduling of interviews, creating the guidelines and questionnaires for vendors and decides the processes ODOC will take to procure such goods or services.

State award contracts only to responsible contractors

74 O.S. § 85.5. Powers and Duties of State Purchasing Director

I. The State Purchasing Director shall endeavor to satisfy state agencies in terms of cost, quality, and timeliness of the delivery of acquisitions by using bidders who have a record of successful past performance, promoting competition, minimizing administrative operating costs, and conducting business with integrity, fairness, and openness.

J. The State Purchasing Director shall undertake the following:

1. The use of electronic commerce pursuant to the Oklahoma Online Bidding Act for solicitation, notification, and other purchasing processes;

2. Monitoring rules promulgated pursuant to the Oklahoma Central Purchasing Act to ensure that the rules, satisfy the interests of the state, are clear and succinct, and encourage efficiency in purchasing processes;

3. A program to identify suppliers with poor delivery and performance records;

4. Development of criteria for the use of sealed bid contracting procedures, negotiated contracting procedures, selection of types of contracts, post award administration of purchase orders and contracts, contract modifications, termination of contracts, and contract pricing;

5. Continual improvement in the quality of the performance of the Purchasing Division through training programs, management seminars, development of benchmarks and key management indicators, and development of standard provisions, clauses and forms;

ODOC Internal Policy

The State Purchasing Director created the criteria used for sealed bid contracting procedures. This criterion is then used by the Certified Purchasing Officer and the Contracting Officer to create a solicitation of goods or services. OMES CPO will check to ensure that such criteria is legitimate and accurate for such solicitation. If this type of procurement is needed as part of the CDBG-DR grant, Programs Planner and Programs Representative will work with OMES CPO.

Best Value Criteria: bid or proposal evaluation criteria which include, but are not limited to, the following: (Title 74 §Section 85.2.a-j.)

a. The acquisition's operational cost a state agency would incur
b. The quality of the acquisition, or its technical competency,
c. The reliability of the bidder's delivery and implementation schedules,
d. The acquisition's facilitation of data transfer and systems integration,
e. The acquisition's warranties and guarantees and the bidder's return policy,
f. The bidder's financial stability,
g. The acquisition’s adherence to the state agency's planning documents and announced strategic program direction,

h. The bidder's industry and program experience and record of successful past performance with acquisitions of similar scope and complexity,
i. The anticipated acceptance by user groups and
j. The acquisition's use of proven development methodology and innovative use of current technologies that lead to quality results.

State maintains records sufficient to detail the history of procurement

OAC 260:115-5-9 - Retention of state agency acquisition records

Retention time period. A state agency shall retain all records relative to acquisitions and contracts as follows:

Acquisitions independently processed by agency. Retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later; and,

Acquisition documents submitted to Central Purchasing Division for processing. Retain documents until one (1) year after all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies and provided no legal actions are pending, then destroy. If legal action is pending destroy two (2) years after exhaustion of all legal remedies.

Acquisition documents processed by Central Purchasing Division. The Central Purchasing Division shall retain documents for the duration of the contract term and for a period of seven (7) years following completion and/or termination of the acquisition, provided all audits have been completed, all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If an audit, litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two (2) years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later.

Records retention location. A state agency shall retain procurement records and documents in a reasonably accessible location unless a written waiver is provided by the State Purchasing Director.

Records availability. A state agency shall make acquisition records available to the State Purchasing Director for review and the OMES Audit staff for audit purposes.

Records to be retained. A state agency shall retain acquisition records to include but not limited to justification for the acquisition, supporting documents, related information, acquisition contract, evaluations, other evidence of contractor performance and written reports.

ODOC Internal Policy

CDBG-DR Staff Programs Planner and Programs Representative will retain all procurement documents electronically in ODOC drives. ODOC's CPO will also keep electronic records in ODOC's drive. The OMES CPO will retain all procurement documents in a separate electronic file within OMES drives.

Record Retention

ODOC Procurement will maintain records for all purchase orders and their associated documentation. This does not include invoices or payment claims.

a. Records must be maintained for seven (7) years following completion or termination of the acquisition.
b. If an audit litigation, or other action involving such records is started before the end of the seven (7) year period, the records shall be maintained for two years from the date all issues arising from the action are resolved or until the end of the seven (7) year retention period, whichever is later.
c. ODOC Procurement will maintain P-card records for seven (7) fiscal years. If audit, litigation or other action is started before the end of the seven year period, the records are required to be retained for two years from the date all issues arising out of the action are resolved or until the end of the seven year retention period, whichever is longer.

State responsible for the settlement of all contractual and administrative issues arising out of procurements

OAC 260:115-9-7 - State agency and supplier disputes

Quality assurance inspections by state agencies. A state agency must establish quality assurance procedures that ensure timely and thorough inspection of acquisitions delivered to the agency. It is critical that problems with delivery or the quality of the acquisition delivered be promptly communicated to the agency's primary procurement official and the State Purchasing Director.

Resolution of dispute between a state agency and supplier. Whenever a supplier provides a state agency with defective products or fails to perform in accordance with contract requirements, a state agency shall notify the supplier in writing of the deficiency and include information necessary for the supplier to resolve the problem. If the state agency and supplier are unable to resolve the dispute, the state agency shall submit a written request for dispute resolution to the State Purchasing Director.

State agency submission of supplier performance evaluation form. A state agency shall request the State Purchasing Director seek dispute resolution by submitting a Supplier Performance Quality Report, whenever a supplier:

1. Fails to timely retrieve and replace an acquisition that does not meet or exceed contract specifications;

2. Does not refund payment for an acquisition that does not meet or exceed contract specifications; or

3. Fails to resolve any other problem that conflicts with the contract specifications in a timely manner.

ODOC Internal Policy

ODOC/CD DR Staff Programs Planner and Programs Representative will be in charge of submitting any issues with the supplier to the supplier directly in writing. If the issue cannot be initially resolved, DR Staff will contact ODOC Chief of Staff and Legal Counsel and the Procurement Director. If it is still not resolved, the discrepancy will be referred to OMES Central Purchasing. If any discrepancy cannot be resolved still, DR Staff will contact the State Purchasing Director and submit a request for dispute resolution. DR staff will request the Purchasing Director submit a Supplier Performance Quality Report.

Contract Administration

a. Supplier Conflict Resolution:

1. All communications with suppliers should be in writing, but this is not always feasible, and misunderstandings do occur.
2. The end user must make an attempt to cure or correct their problem and give the same opportunity to the supplier. If a problem occurs, all communications between parties must be in writing to prevent further misunderstandings and to document the file.
3. If a mutually satisfactory solution cannot be obtained between the two parties, contact the Procurement Director or ODOC Chief of Staff and Legal Counsel for assistance. If either the Procurement Director or ODOC Legal Counsel cannot resolve the issue, the matter will be referred to OMES Central Purchasing.
4. Regardless of how the issue is resolved, the OMES Central Purchasing Supplier Performance Evaluation form must be completed for documentation.

§200.319 Competition Summary: full and open competition, procurements conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences, written procedures for procurement transactions, all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and provide good competition.

State procedures on full and open competition

74 O.S. § 85.7. Competitive Bid or Proposal Procedures

Except as otherwise provided by the Oklahoma Central Purchasing Act, no state agency shall make an acquisition for an amount exceeding Fifty Thousand Dollars ($50,000.00) or the limit determined by the State Purchasing Director pursuant to rules authorized by Section 85.5 of this title, not to exceed One Hundred Thousand Dollars ($100,000.00), without submission of a requisition to the State Purchasing

Director and submission of suppliers' competitive bids or proposals to the State Purchasing Director.

Any acquisition a state agency makes shall be made pursuant to the Oklahoma Central Purchasing Act and rules promulgated pursuant thereto. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony.

Split Purchasing occurs when an end user or division splits the total acquisition of a known quantity acquisition into two or more acquisitions to evade the competitive requirements. This includes multi-year agreement totals, total project costs, total one time purchases, and aggregate same commodity purchases for a fiscal year. Split purchasing for the purpose of evading the requirement of competitive bidding shall be a felony pursuant to title 74. O.S. § 85.7(A)(2)(a).

The State Purchasing Director may waive or increase the limit authorized for a state agency acquisition by not more than ten percent (10%) to perfect an otherwise valid acquisition inadvertently exceeding the limit due to administrative error by the state agency or unforeseeable circumstances. The state agency shall request a waiver upon the discovery of the error or circumstance to the State Purchasing Director on a form the Director requires.

The State Purchasing Director shall report all requests for waivers or increases, stating the amount and whether the request was granted or denied, monthly to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives.

Requisitions pursuant to this section shall not be required prior to emergency acquisitions by a state agency not exceeding One Hundred Thousand Dollars ($100,000.00). The state agency shall submit a requisition to the State Purchasing Director within five (5) days following the acquisition together with a statement of the emergency. The State Purchasing Director shall send the requisition and a written analysis to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives specifying the facts and circumstances giving rise to the emergency requisition.

Requisitions pursuant to this section for acquisitions to alleviate a serious environmental emergency shall not be required if, upon receiving a request from the Chair of the Corporation Commission and after having examined the facts and circumstances of the case, the Governor certifies in writing the existence of a serious environmental emergency. For the purposes of this section, "serious environmental emergency" means a situation within the jurisdiction of the Commission:

In which serious damage to the environment will quickly occur if immediate action is not taken and the damage will be so significant that the urgent need for action outweighs the need for competitive bids, or

A situation in which human life or safety is in imminent danger or significant property interests are threatened with imminent destruction.

Acquisitions for repairs of equipment in emergencies, of livestock through a market agency, dealer, commission house, or livestock auction market bonded or licensed

under federal or state law, the purchase or collection of semen or embryos, and the placement of embryos into recipient livestock shall not require requisitions pursuant to this section or any other provisions of the Oklahoma Central Purchasing Act.

Sole source or sole brand acquisitions by a state agency or the State Purchasing Director shall comply with Section 85.45j of this title.

Any acquisition of a service which the Office of Management and Enterprise Services has approved as qualifying for a fixed and uniform rate shall be made pursuant to provisions of this paragraph.

The Office of Management and Enterprise Services shall establish criteria and guidelines for those services which may qualify for a fixed and uniform rate.

ODOC Internal Policy

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. These details are then sent to the Certified Purchasing Officer at OMES to create the solicitation and send the solicitation to all recipients on the vendor list. Vendor lists are standard within OMES and created to ensure competitive procurement. All procurement lists used have the most up-to-date qualified vendors in the State. OMES handles the scheduling of interviews, creating the guidelines and questionnaires for vendors and decides the processes ODOC will take to procure such goods or services. This allows a separation of duties when ODOC is procuring goods and services.

State agency purchasing procedures

State procurement procedures are found at OAC 260: 115: OAC 260:115-5-7 - State agency purchasing procedures

Development. State agencies shall develop internal purchasing procedures for acquisitions by the state agency pursuant to 74 O.S. §85.39, ". . .which shall, at a minimum, include provisions for the state agency's needs assessment, funding, routing, review, audits, monitoring, and evaluations". A state agency must include the method whereby a supplier may protest a contract award by the agency pursuant to 260:115-3-19 in its internal purchasing procedures and include provisions for procurement policies under statutorily applicable emergency events. Internal purchasing procedures are not effective until approved in accordance with this section.

ODOC Internal Policy

OAC 260:115-3-19 Supplier Protest

Legal counsel will review and process any supplier protests, however the OMES Central Purchasing Administrative Rule OAC 260:115-3-19 Supplier Protest, will be followed.

State Use Product or Service:

A. Definition: Products/services are available from suppliers employing the severely handicapped pursuant to Title 74 O.S.§§ 3001-3010 State agencies shall make acquisitions from the suppliers approved on the State Use Procurement Schedule and by the State Use Committee which governs the products or services available. The Department of Commerce shall make maximum utilization of such products/services and no similar products or services shall be purchased by the agency from any other source.

B. The Process:

i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition

ii. End user identifies the requirements of the needs

1. Detailed specifications for products or,

2. required services.

iii. An internal ODOC requisition is prepared by the end user citing:

1. The specific need and the requirements

2. The funding source and availability

3. The projected budget

4. Applicable terms and conditions

iv. All documentation is attached to the requisition.

v. The requisition is routed through the appropriate division and agency approval levels.

vi. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.

vii. Submission to ODOC Procurement Certified Purchasing Officer where:

1. The requisition is reviewed for completeness and applicability

2. if it is a State use Product, the correct information is transferred to the requisition.

3. It is entered into the purchasing software system

4. It is signed by the ODOC Procurement Director

5. The purchase order is distributed to the supplier and the end user.

C. Required Forms:

i. Requisition

ii. Required contract specific documentation

iii. Documentation for special purchases as outlined in Appendix B

iv. Purchase order.

State use of pre-qualified lists are current and provide competition

OAC 260:115-3-3 - Supplier registration

Purpose. Unless otherwise specified, supplier registration pursuant to this section provides a supplier with automatic notification of bid opportunities but is not required for a supplier to respond to a solicitation. Automatic notification is dependent upon a supplier providing the Office of Management and Enterprise Services valid and up-to-date information. Supplier registration is required for any supplier selected for award or renewal of a contract pursuant to the Central Purchasing Act and these rules. For the purposes of this section, "State Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

Suppliers may be required to prequalify for the purpose of responding to online solicitations.

Suppliers shall prequalify in accordance with procedures established by the State Purchasing Director.

Registration. A supplier may apply for registration online as established by 74 O.S. 85.33, for each commodity class listed in the registration application, to be placed on the Supplier List for a one-year period. Registered suppliers are to be notified by the Central Purchasing Division or by non-exempt state agencies pursuant to applicable laws and rules, of solicitations for each commodity class for which a supplier registers. The State Purchasing Director shall not place a supplier on the Supplier List if the supplier provides incomplete registration information or if the State Purchasing Director, in his or her sole discretion, determines the supplier is not a responsible supplier.

Registration fee. A registered supplier may renew a registration prior to the expiration date of the supplier's current registration in order to remain on the Supplier List. The Office of Management and Enterprise Services shall not refund supplier registration fees.

Voluntary removal from Supplier List. A supplier may submit a written request to the Central Purchasing Division to request to be removed from the Supplier List for a commodity.

ODOC Internal Policy

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. Vendor lists are created through the online platform PeopleSoft. If a vendor wants to be included on a vendor list for certain commodities, they must register through PeopleSoft in order to be on vendor lists. All qualified vendors will be on the vendor lists that OMES uses for solicitation. The Certified Purchasing Officer at OMES chooses the commodities being requested, as well as several other closely related lists, to cast a wide net to all

potential vendors. Every new vendor that registers to the vendor list through PeopleSoft automatically updates the vendor list to have all eligible vendors listed for OMES. OMES can only choose from lists that meet the correct commodities but cannot delete vendors from a list. OMES does have the power to add additional vendors that request to be listed even if they are not on the PeopleSoft lists.

§200.320 Methods of procurement to be followed: Micro-purchase, small purchase, sealed bids, competitive and non-competitive bids.

State methods of procurement

OAC 260:115-7-11 - Acquisitions not exceeding $5,000.00: State agencies shall make open market acquisitions not exceeding $5,000.00 provided the acquisition process is fair and reasonable.

OAC 260:115-7-13 - Acquisitions over $5,000.00 and not exceeding $25,000.00

Basic Requirements. State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions over $5,000.00 and not exceeding $25,000.00 pursuant to this section.

Acquisition Preparation. The state agency shall prepare and document the state agency's specifications and all information required from the supplier for an acquisition. An agency shall choose an appropriate solicitation methodology, i.e., formal or informal competitive solicitation, based on the complexity of an acquisition.

Supplier selection. The state agency shall solicit from a minimum of three (3) registered suppliers (if available) for acquisitions over $5,000.00 and not exceeding $10,000.00 and ten (10) registered suppliers for acquisitions over $10,000.00 and not exceeding $25,000.00, from the Supplier List in the appropriate commodity classification. Selection of suppliers shall be rotated whenever more than ten (10) suppliers are registered.

State agencies shall solicit prices and delivery dates by mail, telephone, facsimile or by means of electronic commerce. The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition.

Documentation of prices, delivery dates and the evaluation shall be placed in the acquisition file. All awards shall be based on lowest and best or best value criteria.

Certifications, verifications and other required documents.

Non-collusion certification. Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

Sales Tax Permit Verification. Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the supplier's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

Certifications for services contracts. Additional documents required to be included in contracts for professional or nonprofessional services include:

If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

Bonds and sureties. The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

Form of bond. The bid bond, performance bond or other type of surety shall be subject to the approval of the State Purchasing Director. For bonds requiring a cash deposit, the amount specified by the State Purchasing Director shall be paid by certified check or cashier's check.

Irrevocable letter of credit. In lieu of bonds specified in this subsection, the State Purchasing Director may approve submission of an irrevocable letter of credit.

Bond or surety return. When the State Purchasing Director specifies a bid contain a bid bond, performance bond, or other type of surety, the State Purchasing Director shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

ODOC Internal Policy

CDBG-DR staff Programs Representative and Programs Planner work with the Contracting Officer and the Certified Purchasing Officer within ODOC to detail the necessary requirements for a procurement of goods and services. This allows a separation of duties when ODOC is procuring goods and services. Here is the detailed process:

1. Competitive bids or proposals between $5,000.01 and $10,000:

a. Definition: Based on the statutory Oklahoma Central Purchasing Act, all purchases over $5,000 that are not a purchasing methodology other than competitive bids listed in Procurement Procedures Section 6 must be competed based on defined rules listed in this section.

b. Process:

i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition

ii. End user identifies the requirements of the needs

1. Detailed specifications for products, or
2. Required services.

iii. End user identifies a minimum of three (3) potential suppliers.

There are several sources for identifying potential suppliers and they include but are not limited to:

a. Three (3) registered suppliers from OMES Central Purchasing list

b. Telephone Book

c. Internet

d. Industry specific resource guides

e. Previous ODOC work experience

f. word of mouth.

iv. An internal ODOC requisition is prepared by the end user citing:

1. The specific need and the requirements for the acquisition
2. The list of suggested suppliers
3. The funding source and availability
4. Applicable terms and conditions related to the acquisition.

v. An informal solicitation is performed by the end user or ODOC Procurement. Informal solicitation can be performed by phone, facsimile, email or mail with each potential supplier receiving requirements and same response instructions. A completed Non-collusion Certification is to be included and returned by the bidder pursuant to Title 74, O.S. Section 85.22.

vi. The end user reviews the responses to the solicitation for responsiveness to the solicitation.

vii. The end user evaluates the responses based on the requirements of the solicitation.

viii. The end user completes an award recommendation that includes an explanation of the solicitation process and evaluation.

ix. All documentation is attached to the requisition.

x. The requisition is routed through the appropriate division and agency approval levels. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.

xi. Submission to ODOC Procurement where:

1. Requisition and competition is reviewed for completeness, competitive fairness, and applicability by a CPO;

2. Agency requests verification of Workers' Compensation Insurance;

3.Entered into purchasing software system.

4. Signature of ODOC Procurement Director;

5. Disbursement of purchase order to supplier and end user.

c. Required Documentation:

i. Requisition for the acquisition

ii. Original documentation pertaining to competitive process.

iii. if the acquisition is a service, either a service acquisition term is located in the standard comments section in PeopleSoft or a Supplier Contract Certification is completed.

iv. Completed Non-collusion Certification pursuant to Title 74, O.S. Section 5.22.

v. Completed OMES Vendor/Payee Forms.

vi. Applicable documentation if it is a special classification as identified in Appendix B.

OAC 260:115-7-15 - Acquisitions over $25,000,00 and not exceeding $50,000.00

Basic requirements. State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7 shall make acquisitions exceeding $25,000.00 but not exceeding $50,000.00 in accordance with this section, by means of a formal method of competitive solicitation, i.e. sealed bid solicitations.

Acquisition preparation. The state agency shall prepare and document the state agency's specifications for an acquisition. The state agency shall provide the specifications, terms and conditions for the acquisition to each supplier selected for notification. Whenever the state agency issues a solicitation for acquisition by invitation to bid or RFP, the agency shall develop evaluation criteria for the acquisition prior to bid opening.

Supplier selection. The state agency shall solicit all registered suppliers in the appropriate commodity classification from the Supplier List along with any other

suppliers identified by the state agency. Suppliers that have been suspended or debarred by the State Purchasing Director or the Federal government shall not be awarded a contract.

State agencies shall solicit prices and delivery dates by means of sealed bid using mail or electronic commerce. The suppliers shall provide pricing and delivery dates in accordance with the requirements of the solicitation.

The state agency shall make a written evaluation of criteria considered in selection of the supplier for the acquisition. The written evaluation shall be placed in the acquisition file. When a selection has been made, the state agency shall notify the supplier of the award.

All awards shall be based on lowest and best or best value criteria. Certifications, verifications and other required documents.

Non-collusion certification. Pursuant to requirements in 74 O.S. §85.22, a non-collusion certification shall be included with any competitive bid and/or contract submitted to the State for goods or services. The certification shall have an authorized signature of the supplier certifying the non-collusion statement with full knowledge and acceptance of all its provisions.

Sales Tax Permit Verification. Prior to the award of a contract, the state agency must verify that the supplier has obtained a current sales tax permit in accordance with the laws of Oklahoma. Documentation of verification of a current sales tax permit, which must be a copy of the sales tax permit, the supplier's explanation of exemption, or confirmation of the permit's status obtained from the Oklahoma Tax Commission, must be filed in the acquisition file.

Certifications for services contracts. Additional documents required to be included in contracts for professional or nonprofessional services include:

If the final product of a professional services contract is a written proposal, report or study, the supplier shall include a statement certifying that the supplier has not previously provided a substantial duplication of the final product to the state agency or another state agency. [Reference 74 O.S. §85.41]

An acquisition for professional or nonprofessional services must include statutory language required by the Oklahoma Central Purchasing Act as a term of the requisition or contract and must be signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. §85.4]

Each contract for services shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract. [Reference 74 O.S. §85.42]

Bonds and sureties. The solicitation may require bidders to submit a bid bond, performance bond, or other type of approved surety with the bid.

Form of bond. The bid bond, performance bond or other type of surety shall be subject to the approval of the acquiring state agency. For bonds requiring a cash deposit, the amount specified by the acquiring state agency shall be paid by certified check or cashier's check.

Irrevocable letter of credit. In lieu of bonds specified in this subsection, the acquiring state agency may approve submission of an irrevocable letter of credit. (iii)Bond or surety return. When the acquiring state agency specifies a bid contain a bid bond, performance bond, or other type of surety, the state agency shall retain the bond or surety until the successful completion of the purpose for which the bond or surety was drawn.

Verification of registration and status with Secretary of State. Prior to the award of a contract, the acquiring state agency must verify, pursuant to applicable provisions of law, that the supplier is registered with the Secretary of State and franchise tax payment status pursuant to 68 O.S. §1203 and §1204. Documentation of verification of registration and status with the Secretary of State must include, at a minimum, a copy of the entity summary information from the Secretary of State's website or the supplier's statement providing specific details supporting the exemption claimed, must be filed in the acquisition file.

OAC 260:115-7-17 - Acquisitions over $50,000.00 and not exceeding $100,000.00

State agencies that have an internal CPO or a designated CPO through an interagency agreement and approved internal purchasing procedures pursuant to the requirements of 260:115-5-3 and 260:115-5-7, shall send a written request to the State Purchasing Director to request acquisition authority exceeding $50,000.00 but not exceeding $100,000.00. The State Purchasing Director shall consider the agency's internal purchasing procedures, procurement training and certifications of the agency's procurement staff, and any other information deemed necessary by the State Purchasing Director to make the determination to approve or disapprove the request. If approved, the agency shall:

- *Make all acquisitions within this acquisition authority pursuant to 74 O.S. §85.7, any other applicable state laws and rules, including Section 260:115-7-15;*
- *Award all contracts based on lowest and best or best value criteria; and,*
- *Solicit all suppliers in the appropriate commodity classification from the Supplier List along with any other suppliers identified by the state agency using solicitation forms prescribed by the OMES Director.*

ODOC Internal Policy

Competitive Bids or Proposals between $10,000.01 and $25,000:

a) a. Definition: Based on the statutory Oklahoma Central Purchasing Act, all purchases over $10,000 and less than $25,000, that are not a purchasing methodology other than Competitive Bid listed in Section 6, must be competed based on defined rules listed in this section.
b) Process:
    i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition

ii. End user identifies the requirements of the needs for the acquisition
    1. Detailed specifications for products,
    2. Or Required services.
iii. An internal ODOC requisition is prepared by the end user citing:
    1. The specific need and the requirements for the acquisition
    2. Ten (10) registered suppliers from OMES Central Purchasing list
    3. A list of other suggested suppliers if any
    4. The funding source and availability
    5. The projected budget
    6. Applicable terms and conditions
iv. All documentation is attached to the requisition.
v. The requisition is routed through the appropriate division and agency approval levels.
vi. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.
vii. Submission to the ODOC Certified Purchasing Officer where:
    1. Specifications related to the acquisition are reviewed for completeness. Certified Purchasing Officer will clarify any requirements or required terms with end user.
    2. All OMES Central Purchasing registered suppliers will be identified, and a compilation of the suggested suppliers and the identified OMES registered suppliers will establish a supplier list for the solicitation.
    3. A formal solicitation process will be used to notify the suppliers on the supplier list of the solicitation and the response due date and time. All communication between suppliers and the agency will be conducted through the ODOC Certified Purchasing Officer listed on the solicitation only.
    4. Upon receipt of solicitation responses at the appointed due date and time, the Certified Purchasing Officer will complete a response tabulation sheet, and review responses for solicitation of responsiveness. A completed Non-collusion Certification is to be included and returned by bidder pursuant to Title 74, O.S. Section 85.22.
    5. During the solicitation process, end users will be required to develop an evaluation matrix based on the requirements of the solicitation and develop a standardized reference questionnaire sheet for the solicitation.
viii. Once the tab sheet is complete, responsiveness determined, evaluation matrix, and reference questionnaire have been developed, the end user will receive copies of the responses to evaluate. During the evaluation process, an independent ODOC resource or ODOC Certified Purchasing Officer will verify references based on the reference questionnaire.
ix. Upon completion of the evaluation process, the end user will forward an award recommendation to ODOC Certified Purchasing Officer that includes all original evaluation documents.
x. The evaluation process and recommendation is reviewed for completeness, competitive fairness, and applicability by a CPO All CPO

questions and subsequent evaluation committee answers pertaining to the evaluation process will be documented.

xi. Once the evaluation process is validated, the Certified Purchasing Officer will review the supplier information for Secretary of State registration number, Oklahoma Sales Tax Permit, Workers' Compensation Insurance coverage, and Federal debarment status.

xii. The award is entered into the purchasing software system

xiii. Signature of ODOC Deputy Director/ Chief of Staff and Legal Counsel;

xiv. Disbursement of purchase order to supplier and end user.

c) Required Documentation:

i. Pre-solicitation requirements

1. Requisition
2. Solicitation requirements
3. Evaluation Matrix
4. Reference Questionnaire
5. Registered supplier List for category and other sources
6. If it is a service acquisition, a service acquisition statement is located in the PeopleSoft standard comments section
7. Applicable documentation if it is a special classification as identified in Appendix B.

ii. Award Document requirements

1. Completed Non-Collusion Certification pursuant to Title 74 O.S. Section 85.22
2. OMES Vendor/Payee Form
3. If it is a professional or non-professional service, a Supplier Contract Certification is completed
4. Any special certifications required by requirements of the solicitation.
5. Completed evaluation documentation
6. Completed reference questionnaires
7. Completed solicitation response tabulation sheet
8. Award recommendation.

Competitive Bids or Proposals over $25,000.01 and not exceeding $50,000:

a) Definition: Based on the statutory Oklahoma Central Purchasing Act, all purchases over $25,000 and not exceeding $50,000 that are not a purchasing methodology other than Competitive Bid listed in Section 6 must be completed based on defined rules listed in this section

b) Process

i. End user DR Programs Planner and Programs Representative identifies needs for the acquisition

ii. End user identifies the requirements of the needs for the acquisition

1. Detailed specifications for products, or
2. Required services.

iii. An internal ODOC requisition is prepared by the end user citing:

1. The specific need and the requirements for the acquisition
2. All registered suppliers for the category and other sources
3. The funding source and availability

4. The projected budget
5. Applicable terms and condition

iv. All documentation is attached to the requisition.
v. The requisition is routed through the appropriate division and agency approval levels. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.
vi. Submission to ODOC Procurement where:
    1. Specifications are reviewed for completeness. Certified Purchasing Officer will clarify any requirements or required terms with the end user.
    2. Specifications are then formatted in the standardized OMES Central Purchasing Solicitation format.
    3. Suggested evaluation matrix (if required) will be completed by ODOC Procurement and sent to the end user for review and modified if required.
    4. A PeopleSoft (EPRO) requisition will be completed in the required OMES format and attached to the specifications and completed evaluation matrix.
vii. ODOC Procurement will then process the solicitation internally.
viii. All communications concerning the solicitation will be routed through ODOC Procurement during the solicitation process.
ix. Once responses are received, copies will be sent to the end user for the evaluation process after completion and return to ODOC Procurement of the Conflict of Interest and non-disclosure Statement for Evaluation Team form. ODOC Procurement will coordinate the evaluation process ensuring that all required documentation is completed.
x. The award recommendation will be sent to ODOC Procurement for their review and approval.
xi. Upon final approval, a purchase order will be completed.

c) Required Documentation:
    i. Pre-solicitation requirements:
        1. Internal ODOC Requisition
        2. Solicitation requirements
        3. Evaluation Matrix.
        4. Reference Questionnaire
        5. All registered Suppliers for the category and other sources
        6. If a service acquisition, either a Supplier Contract Certification form is completed, or service acquisition statement is included within PeopleSoft
        7. Applicable documentation if a special classification as identified in Appendix
    ii. Evaluation Document requirements for solicitations:
        1. Completed evaluation matrix documentation
        2. Completed reference questionnaires.
        3. OMES Conflict of Interest and Nondisclosure Statement for Evaluation Team

74 O.S. § 85.45j. Sole Source or Sole Brand Acquisition

Pursuant to the provisions of this section, an acquisition may be exempt from competitive bidding procedures as a sole source or sole brand acquisition.

A court order requiring the purchase of specific products or services, but which does not specify a brand or supplier shall not substitute for the certification required by this subsection or otherwise invalidate the acquisition procedures required pursuant to The Oklahoma Central Purchasing Act.

Any chief administrative officer of a state agency affirming the certification required by this subsection who knows the information to be false shall be deemed guilty of perjury and upon conviction shall be punished by fine or by imprisonment or both fine and imprisonment pursuant to law. Upon conviction or upon entering a plea of nolo contendere pursuant to this paragraph, the chief administrative officer shall immediately forfeit his or her position and shall be ineligible for appointment to or employment in the state service for a period of five (5) years after entering a plea of nolo contendere or being convicted.

Upon a determination by the Director of the Office of Management and Enterprise Services that there are reasonable grounds to believe that a violation of this subsection has occurred, the Director shall send findings to the Attorney General that support the determination. The Attorney General shall review the findings and determine whether to investigate or prosecute the person.

If the acquisition's purchase price is such that the state agency is required to submit a requisition to the State Purchasing Director, the State Purchasing Director shall approve or deny the requisition for a sole source or sole brand acquisition. Prior to approving a requisition pursuant to this paragraph, the State Purchasing Director shall document reasons a sole source or sole brand purchase is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

For sole source or sole brand acquisitions exceeding Five Thousand Dollars ($5,000.00) and not requiring submission of a requisition to the State Purchasing Director, the state agency's certified procurement officer shall document reasons a sole source or sole brand acquisition is necessary and shall retain a written record for three (3) fiscal years following the end of the fiscal year during which the sole source or sole brand acquisition was made.

The chief administrative officer of each state agency shall submit to the State Purchasing Director a monthly listing of all sole source and sole brand acquisitions exceeding Five Thousand Dollars ($5,000.00) executed by the state agency in the preceding month. The report shall indicate whether requisitions for sole source and sole brand acquisitions were disapproved or modified by the State Purchasing Director and information the State Purchasing Director requires.

The State Purchasing Director shall electronically provide to the Office of Management and Enterprise Services the information received pursuant to paragraph 8 of this subsection in machine-readable format and in the form the Office of Management and Enterprise Services requires.

By the fifteenth day of each month, or the first working day thereafter, the Office of Management and Enterprise Services shall provide a report from the information received pursuant to this section to:

- *The Speaker of the House of Representatives and the President Pro Tempore of the Senate;*
- *The Majority and Minority Leaders of both the House of Representatives and the Senate;*
- *The Chair and Vice-chair of the Appropriations and Budget Committee of the House of Representatives and the Appropriations Committee of the Senate; and*
- *Any member of the Legislature requesting the report.*

The report shall detail all sole source and sole brand acquisitions by state agencies for the month prior to the month preceding the submission of the report. The report shall be titled "Monthly Sole Source and Sole Brand Contracting Report of Oklahoma State Agencies" and indicate the time period of the report. The report shall be provided in physical form unless the requesting person specifies the electronic version. The report shall be signed by the Director of the Office of Management and Enterprise Services or the Director's designee. The report shall be in columnar database format and shall include at least the following fields of information: state agency number; state agency name; date created by the Office of Management and Enterprise Services for the requisition; date of either approval or disapproval of the requisition; if disapproved, the reason why such contract was disapproved; estimated amount of the requisition; purchase order amount; purchase order number; actual business name of supplier; supplier federal employer identification number; contact person; and the commodity classification listing at the appropriate level to distinguish between similar acquisitions. Information required by this subsection shall be reported and maintained on each report through the next reporting period after an acquisition is made. The applicable data in the fields of information specified in this subsection shall be listed even if the state agency requisition is disapproved.

The Office of Management and Enterprise Services shall maintain electronic historic data, or any other data received pursuant to this section for at least two (2) years.

By August 15 of each year, from the data received pursuant to this section, the Office of Management and Enterprise Services shall complete and submit a report detailing the number of sole source or sole brand contracts issued by each state agency and a list of the business names of the suppliers who received sole source or sole brand awards during the previous fiscal year and if more than one such award, the number of awards so executed.

ODOC Internal Policy

Sole source acquisitions

a) Definition: An acquisition may be exempt from competitive bidding procedures as a sole source or sole brand acquisition. (Title 74 O.S. § 85.45j)
b) Process:

i. End user DR Programs Planner and Programs Representative identifies a need that is only available through a sole source or sole brand acquisition.

ii. An internal ODOC requisition is prepared by the end user citing:

1. The specific need and the requirements for the acquisition
2. The sole source supplier or possible suppliers if the acquisition is determined through research to be limited to a specific brand
3. The funding source and availability
4. The projected budget.
5. Applicable terms and conditions

iii. All documentation is attached to the requisition. Sole source terms are to be added. A Sole Source Certification ready for authorized signature and completion should be attached

iv. The requisition routed through the appropriate division and agency approval levels.

1. Must go through the Secretary of Commerce or their designee for the Sole Source Certification signature
2. The approval routing for each division is not defined in these purchasing procedures but is maintained in Financial Services.

v. Submission to ODOC Procurement where:

1. The requisition is reviewed for completeness and applicability
2. It is entered into purchasing software system
3. If the acquisition is under $50,000:
    a. Signature of the ODOC Procurement Director is required
    b. Disbursement of the purchase order to the supplier and end user.
4. If the acquisition is over $50,000:
    a. A PeopleSoft requisition is completed, and all documentation sent to OMES Central Purchasing for purchase order processing.
    b. Upon completion of the purchase order, OMES Central Purchasing will send a copy to ODOC Procurement and the supplier.
    c. ODOC Procurement will send a copy of the purchase order to the end user.

c) Required Forms:

i. Requisition for the acquisition.
ii. Sole Source Certification and Terms
iii. Required contract specific documentation
iv. Documentation for special purchases as outlined in Appendix B
v. Purchase order

§ 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

74 O.S. § 85.4a - Oklahoma Minority Business Enterprise Assistance Act

It is recognized by this state that the preservation and expansion of the American economic system of private enterprise is through free competition, but it is also recognized that the security and well-being brought about by such competition cannot be realized unless the actual and potential capacity of minority business enterprises is encouraged and developed. Therefore, it is the intent of the Legislature that the state ensure that minority business enterprises are not underrepresented in the area of procurement of state contracts for construction, services, equipment and goods. It is further the intent that this state provide for the aggressive solicitation of minority business enterprises, provide a feasibility study on a Small Business Surety Bond Guaranty Program, provide other programs targeted for assisting minority business enterprises in qualifying for state bids, and establish a percentage preference bid program for minority business enterprises who desire to participate in such program.

ODOC Internal Policy

ODOC DR Staff DR Programs Planner and Programs Representative will request that all solicitations for procurement of goods and services include all certified women-owned and minority businesses within the state of Oklahoma. DR Staff will request that OMES Central Purchasing include such lists from ODOC's own certified lists. If such lists cannot be obtained by OMES, DR Staff will contact ODOC's Business Department to obtain such lists and request OMES add them to the vendor lists. Information on ODOC's certification of women and minority owned businesses can be found here:

https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/

https://www.okcommerce.gov/wp-content/uploads/Minority-Business-Certification-Programs.pdf

§200.322 Domestic Preferences for Procurement

74 O.S. § 85.17A: Bidding Preferences

1. 1.State agencies shall not discriminate against bidders from states or nations outside Oklahoma, except as provided by this section. State agencies shall reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions for acquisitions pursuant to the Oklahoma Central Purchasing Act. The State Purchasing Director shall annually prepare and distribute to certified procurement officers a schedule providing which states give bidders in their states a preference and the extent of the preference. This schedule shall be used by state agencies in evaluating bids.
2. 2.For purposes of awarding contracts state agencies shall:
    1. Give preference to goods and services that have been manufactured or produced in this state if the price, fitness, availability and quality are otherwise equal;

2. Give preference to goods and services from another state over foreign goods or services if goods or services manufactured or produced in this state are not equal in price, fitness, availability, or quality; and
3. Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

ODOC Internal Policy

While the standard procedure for the State of Oklahoma is to preference in-state bidders and disabled veteran businesses, as well as reciprocate the bidding preference given by other states or nations to bidders domiciled in their jurisdictions and add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides, as cited in 74 O.S. § 85.17A and 74 OS § 85.44E, none of these rules shall be followed by the State when using CDBG-DR funds. While these rules are common for other projects and programs, they cannot be followed for CDBG-DR to ensure full and open competition. The CDBG-DR Staff DR Programs Planner and Programs Representative will follow the scoring matrix created by the OMES Central Purchasing Officer to adhere to all Federal guidelines and such matrices will exclude all such State regulations that do not allow for full and open competition. CPO's will create the scoring matrices in order to give adequate preference to goods or services produced within the United States but will not give preference to Oklahoma bidders, disabled veteran businesses, or reciprocate any bidding preference by another state for bidders domiciled in their jurisdictions, nor add a percent increase to any nonresident bidder. 74 O.S. § 85.14 allows for Federal rules and regulations to govern when federal funds are granted.

§200.323 Procurement of recovered materials.

OAC 260:85-1-4 - Recycled Products Procurement

Purchase of recycled products. Each state public entity shall procure products which are manufactured with recycled materials, and products which are recyclable and/or durable, to meet or exceed the legislative intent, requirements, and goals of the Act.

Reporting of purchases of recycled products. Each state public entity shall submit a report to the Director by December 31 of each year. This report shall describe the results of its procurement of recycled paper products and other products manufactured with recycled materials over the past fiscal year. The report shall be in a format determined by the Office.

Assistance in procurement objectives. The Office shall provide assistance to state public entities in the achievement of procurement objectives in their recycling programs.

Procurement specifications for recycled materials. Each state public entity shall use procurement specifications to require, to the greatest extent practicable, that a

product and its packaging or container contain recycled materials and that the product, and its packaging or container be recyclable.

Product and packaging specifications shall require the use of post-consumer materials to the greatest extent practicable without jeopardizing the intended end use of the product.

In writing specifications and selecting products for procurement, life cycle costs shall be part of the evaluation criteria when the costs of waste disposal or the durability and reusability of a product may be significant.

A state public entity may determine that, for technical reasons, and for a particular end use, a product containing recycled materials will not meet reasonable performance standards and may therefore declare the purchase of a product manufactured with recycled materials to be unpracticable. Such a determination shall be documented and based solely upon technical performance information related to a specific item, and not to a grade or type of product. This documentation may be requested for review by the Office.

Each state public entity shall reduce the generation of solid waste at its source, whenever practicable, by minimizing the purchase of single-use, disposable products and requiring the purchase of durable products which can be reused.

Each state public entity shall, whenever practicable, purchase only office paper, photocopier paper, printer paper, and printed paper products which are not coated with plastic, clay, or other material used to create a glossy finish.

Each state public entity shall take reasonable steps to minimize the procurement of colored paper products. If color is necessary for a particular use, full consideration shall be given to the use of white paper printed with colored, soy- based ink.

Declaration of vendors of percentage of recycled materials in products. State public entities shall require vendors to declare the minimum, if not exact, percentage of recycled materials content in the products offered, including both the post-consumer and total recycled materials content, regardless of whether the product meets the percentage of recycled materials specified for that product.

Certification by vendor of recycled content claim. The vendor of any product for which a recycled content claim is made must both possess and rely upon a reasonable basis for the claim and must be able, upon request by the Office, to certify and demonstrate this claim. Any fraud or deception in the representation of recycled materials content may result in cancellation of the contract and the removal or suspension of the vendor from the bidders list pursuant to OAC 260:115-3-21.

Preferences for recycled materials. If several products manufactured with recycled materials are being considered for purchase, and if all cost and quality considerations are comparable, preference shall be given to the product with the highest content of post- consumer material. If this measure fails to identify the more preferable product, the award shall go to the product with the highest content of total recycled materials.

Preferences by public entities. Each state public entity responsible for the maintenance of public lands in this state shall, to the greatest extent practicable and consistent with sound environmental practices, give preference to the use of compost materials in land maintenance activities which are to be paid for by public funds.

Price preference on bids. When accepting bids for purchases of supplies, equipment and materials, the Central Purchasing Division of the Office of Management and Enterprise Services and each state public entity shall extend price preferences to products manufactured with recycled materials whenever the Director determines that such products are unable to be price competitive with products of comparable grade and quality manufactured from virgin materials.

Those products manufactured with at least the minimum content level of recycled materials as established by the Federal Environmental Protection Agency (EPA) shall receive a price preference not to exceed a five percent differential.

A copy of the EPA specified content requirements and a list of products meeting the requirements will be maintained as a public record by the Office.

A product which contains recycled materials but falls short of the EPA minimum requirements may receive a price preference if no other product is bid or offered which meets the EPA requirements.

Price preferences allowed pursuant to this section shall not be combined with other price preferences or differentials. In response to product market conditions, the Director may temporarily increase, reduce, or eliminate any recycled product price preference.

Exemptions. No state public entity may be exempted from complying with the legislative intent, requirements, and goals of the Act; however, the Director may grant temporary exemptions from compliance with the rules in 260:85-1-4 due to lack of market availability or economic feasibility. All requests for exemption must be made in writing and must be accompanied by documentation supporting the need for such an exemption. Any exemption granted shall be in effect for no longer than one year.

ODOC Internal Policy

CDBG-DR Staff Programs Planner and Programs Representative will do its due diligence in procuring recycled materials. DR Staff will request that ODOC's CPO includes vendors that sell recycled materials on all vendor lists.

§200.324 Contract cost and price – performance of a cost or price analysis.

OAC 260:115-7-23 - State agency acquisitions processed by the Central Purchasing Division

A state agency submitting requisitions to the Central Purchasing Division pursuant to 260:115-5-11 shall comply with this section. For the purposes of this section, "State

Purchasing Director" does not include personnel of state agencies to whom the State Purchasing Director has delegated authority.

Forms. State agencies shall use forms for requisitions provided or approved by the State Purchasing Director. Services requisition requirements. If the state agency requisitions professional or nonprofessional services, the state

agency shall submit a requisition or contract, which includes applicable statutory language required by the Oklahoma Central Purchasing Act, signed by the chief administrative officer of the agency or the chief administrative officer of the requisitioning unit certifying compliance with the Act. [Reference 74 O.S. § 85.4]

Evaluation Criteria. An agency shall include written criteria necessary to evaluate a supplier's response to a solicitation such as technical scope, cost, experience, references etc.

Additional requisition information. The State Purchasing Director may require a state agency to submit additional information with a requisition.

Requisition acceptance or rejection. The State Purchasing Director shall accept or reject a state agency's requisition. The State Purchasing Director shall notify the state agency if the State Purchasing Director rejects a requisition.

Competitive bid evaluation. The State Purchasing Director shall evaluate bids and may request assistance of the state agency.

Competitive bid award. The State Purchasing Director shall award a contract, as the solicitation specifies, to the responsible bidder that provides the lowest and best, or best value bid.

State agency notification. The State Purchasing Director shall notify the state agency of the successful bidder by purchase order following the award of contract.

ODOC Internal Policy

ODOC DR Staff Programs Planner and Programs Representative have established a baseline for cost reasonableness. DR Staff will utilize the following criteria to determine whether a cost is reasonable:

Identifying Cost Reasonableness:

- Check the accuracy of the prices submitted;
- Evaluate the necessity of the proposed cost items;
- Evaluate the separate elements of cost;
- Review proposal for potential cost overruns, taking into consideration the vendor's
- past performance;
- Compare proposed prices to Subrecipient's independent cost estimate; and
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work

DR Staff will evaluate cost reasonableness and request such evaluation criteria is included in the bid evaluations.

§200.324 Contract cost and price – negotiation of profit and cost plus a percentage of cost must not be used.

OAC 260:115-7-34 - Contract negotiation

Negotiation. The State Purchasing Director may negotiate contracts by following the rules for negotiation in this section. Negotiations may be conducted with one or more suppliers. A state agency may conduct negotiations for acquisitions within the state agency's approved dollar threshold and shall follow the rules for negotiation in this section.

Negotiation team. A state agency may request assistance from the State Purchasing Director when conducting negotiations, which may include a request for the designation of a negotiator or negotiation team.

The State Purchasing Director or designee shall serve as the lead negotiator for a team when negotiations are being conducted for solicitations issued by Central Purchasing.

Negotiation process. The lead negotiator shall notify suppliers of the date and time for negotiations. The lead negotiator shall request the supplier provide a list of the individuals who will attend the negotiation and who have full authority to bind the supplier in the negotiation process. The lead negotiator shall determine the location and manner of negotiation.

The negotiation team shall develop an agenda with the lead negotiator and submit the agenda to all participants of the negotiation process. The agenda shall set forth the key areas in the solicitation, which require negotiation. The lead negotiator may require suppliers to submit a best and final offer.

The lead negotiator shall prepare a summary that shall document the following:

- *An overview setting forth the solicitation number,*
- *names and titles of participants,*
- *description of the solicitation,*
- *date and location of the negotiation, and purpose of the negotiation; and*
- *a summary of the results of the negotiation, specifically stating what is the basis of the final agreement.*

A summary created under these rules shall become a part of the contract file retained.

ODOC Internal Policy

In the even that a negotiation is necessary, DR Staff Programs Planner and Programs Representative will request their Community Development Division Director request a contract negotiation by the State Purchasing Director. The Purchasing Director will choose the individuals that will sit on the negotiation team with the Director as the negotiation lead. The lead negotiator will summarize the negotiation and all other necessary information after the completion of the

negotiation. The Certified Purchasing Officer will keep all negotiation files on ODOC's electronic drive.

§200.326 Bonding requirements.

61 O.S. § 1

A. Prior to an award of a contract exceeding Fifty Thousand Dollars ($50,000.00) for construction or repair of a public or private building, structure, or improvement on public real property, the person that receives the award shall:

1. Furnish a bond with good and sufficient sureties payable to the state in a sum not less than the total sum of the contract; or

2. Cause an irrevocable letter of credit, containing terms the Office of Management and Enterprise Services prescribes, to be issued for the benefit of the state by a financial institution insured by the Federal Deposit Insurance Corporation in a sum not less than the total sum of the contract.

B. The bond or irrevocable letter of credit shall ensure the proper and prompt completion of the work in accordance with the contract and shall ensure that the contractor shall pay all indebtedness the contractor incurs for the contractor's subcontractors and all suppliers of labor, material, rental of machinery or equipment, and repair of and parts for equipment the contract requires the contractor to furnish.

C. For a contract not exceeding Fifty Thousand Dollars ($50,000.00), in lieu of a bond or irrevocable letter of credit, the contractor shall submit an affidavit of the payment of all indebtedness incurred by the contractor, the contractor's subcontractors, and all suppliers of labor, material, rented machinery or equipment, and repair of and parts for equipment used or consumed in the performance of the contract. The execution of the affidavit with knowledge that any of the contents of the affidavit are false, upon conviction, shall constitute perjury, punishable as provided for by law.

ODOC Internal Policy

ODOC's Certified Purchasing Officer will ensure that all bonding requirements are met and all electronic files on such bonds are preserved.

§200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

OAC 260:115-9-9 - Contract termination

Reasons for contract termination. The State Purchasing Director may terminate a contract in its entirety or any portion thereof, between a supplier and a state agency if:

- A supplier fails to post, or allows to expire, a bid bond, performance bond, or other type of surety bond the solicitation specifies;
- A supplier fails to deliver an acquisition pursuant to the contract;
- A supplier fails timely to replace at the supplier's expense, acquisitions that fail to meet the requirements of the contract or have latent defects;
- A supplier misrepresents the supplier's ability to provide an acquisition;
- A supplier's financial or other condition, including but not limited to, bankruptcy or other evidence of insolvency which may affect the supplier's ability to perform;
- A supplier commits an unlawful act or an act that impairs the supplier's ability to perform;
- A supplier commits an act that could result in the supplier's suspension or debarment from the Supplier List;
- The State Purchasing Director determines that an administrative error occurred prior to contract performance; or
- If sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements.

Supplier responsible for damages. If the State Purchasing Director terminates a contract between a supplier and a state agency, the Attorney General of the State of Oklahoma, the State Purchasing Director, or the requisitioning agency, may seek damages from the supplier. Damages may include additional cost to obtain the acquisition from another supplier, the cost of re-bidding the acquisition and the cost of acquisition receipt delay.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. 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 officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.323 Procurement of recovered materials.

2 CFR 570.503:

ODOC is required to follow the below policies before disbursing funds to subrecipients. These requirements are further outlined in ODOC's CDBG-DR contracts with subrecipients Part I & II. All requirements that are not outlined in Parts I & II will be detailed in Contract Part III. This contract part details specific terms and requirements that are specific to the subrecipient such as their schedule for completing work:

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) Statement of work. The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) Records and reports. The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) Program income. The agreement shall include the program income requirements set forth in § 570.504(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(4) Uniform requirements. The agreement shall require the subrecipient to comply with applicable uniform requirements, as described in § 570.502.

(5) Other program requirements. The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart K of these regulations, except that:

i. The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and
ii. The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR part 52.

(6) Suspension and termination. The agreement shall set forth remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

(7) Reversion of assets. The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of $25,000 is either:

i. Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or
ii. Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

ODOC Internal Policy

ODOC DR Staff Programs Planner and Programs Representative will include all contract provisions in all contracts. DR Staff and the Community Development Director will assume oversight of all contracts to ensure they include such provisions.

Subrecipients

Subrecipients are State Agencies, Counties, Cities, eligible non-profit organizations, and Councils of Government (COG). Counties are required to follow the procedures as defined in O. S. 19, et.al. County purchasing practices in Oklahoma are regulated by Sections 1500 through 1505 in Title 19, Chapter 33, "County Purchasing Procedures" of the Oklahoma Statutes, commonly referred to as the County Purchasing Act. These practices are also regulated by the "Public Competitive Bidding Act" (PCBA) in Title 61, Sections 101 through 138 in the Oklahoma Statutes. Cities and Towns are required to adopt and follow their own procurement procedures as established by local ordinance for the purchase of all goods and services.

All subrecipients will be required to follow 2 CFR 200.318-326 in their procurement of goods and services with CDBG-DR funds. Subrecipients will also follow their own procurement policies and procedures and in the case of a conflict between the two policies, subrecipients will follow whichever is more restrictive. All subrecipients must submit a copy of their procurement of policies and procedures at the time of application. ODOC/CD staff will ensure that all policies and procedures adhere to 2 CFR 200.318-326. Procurement policies and procedures will be checked against an application checklist based on the Monitoring Checklist when subrecipients apply for CDBG-DR funds. CDBG-DR Staff Programs Planner and Programs Representative will assume all oversight of process. This checklist will include all procurement policies that the subrecipient is required to follow for 2 CFR 200.318-326 and State regulations, if applicable. Examples include vendor lists, small purchase quotes, types of contracts used, meeting minutes during bid openings, justification for the acceptance and denial of bids, minority and women owned business solicitations, and recycled material solicitations. If any policies do not meet State or Federal guidelines, subrecipients will be required to revise policies and procedures before receiving any CDBG-DR funds.

Subrecipients will also be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients to ensure that subrecipients adhere to 2 CFR Part 200 and their own policies throughout the contract period.

The following sections will outline the 2 CFR 200.318-326 requirements and how City, Counties, and tribal governments will meet the federal procurement standards as well as how ODOC will monitor compliance with the requirement. In Oklahoma, city and county governments must follow the Competitive Bidding Act of 1974. It is a

broad procurement guide that defines a public agency very broadly as "Public agency" means the State of Oklahoma, and any county, city, town, school district or other political subdivision of the state, any public trust, any public entity specifically created by the statutes of the State of Oklahoma or as a result of statutory authorization therefor, and any department, agency, board, bureau, commission, committee or authority of any of the foregoing public entities.

When procurement procedures are more lenient or are not regulated by state or local laws, the 2 CFR 200.318-326 requirements will be followed. State code allows for:

§ 136. Conflicts with Federal Rules and Regulations - Laws Governing In the event any provision of this act conflicts with or is inconsistent in any manner with the rules and regulations of any agency of the United States Government, which is providing all or any portion of the funds used to finance any public construction contract, the rules and regulations of said agency of the United States Government shall supersede and take precedence over such portion or portions of this act in conflict or inconsistent therewith, it being the intent of the Legislature to secure all of the benefits available to the people of the State of Oklahoma from federally assisted programs.

2 CFR §200.318-326

§200.318 GENERAL PROCUREMENT STANDARDS.

(a) The Non-Federal entity must use **its own documented procurement procedures** which reflect applicable State, local, and tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this part.

(b) Non-Federal entities **must maintain oversight** to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c) (1) The Non-Federal entity must maintain **written standards of conduct covering conflicts of interest** and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures **must avoid acquisition of unnecessary or duplicative items**. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost- effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or **use of common or shared goods and services.**

(f) The non-Federal entity is **encouraged to use Federal excess and surplus property** in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The Non-Federal entity is **encouraged to use value engineering clauses** in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity **must award contracts only to responsible contractors** possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also §200.213 Suspension and debarment.

(i) The non-Federal entity must **maintain records sufficient to detail the history of procurement**. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) (1) The Non-Federal entity **may use a time and materials type contract only after a determination that no other contract is suitable** and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of:

- (i) The actual cost of materials; and
- (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, **each contract must set a ceiling**

price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a **high degree of oversight** in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§200.319 COMPETITION.

a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
   1) Placing unreasonable requirements on firms in order for them to qualify to do business;
   2) Requiring unnecessary experience and excessive bonding;
   3) Noncompetitive pricing practices between firms or between affiliated companies;
   4) Noncompetitive contracts to consultants that are on retainer contracts;
   5) Organizational conflicts of interest;
   6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
   7) Any arbitrary action in the procurement process.

b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

c) The Non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
   1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a

statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

2) Identify all requirements which the offers' must fulfill and all other factors to be used in evaluating bids or proposals.

d) The Non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

State Requirements for Cities and counties:

The Competitive Bidding Act of 1974 and the County Purchasing Procedures do not have specific requirements for competition as defined in 2 CFR 200.319 except pre-qualification of bidders. Therefore, cities and counties will comply with 2 CFR 200.319.

§ 118. Prequalification of Bidders A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work pursuant to this section does not constitute a license. Except as provided in subsection B of this section, prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure.

ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Subrecipients will follow:

Subrecipients must have written procedures for procurement transactions that ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Identify all requirements which the offerors must fulfill;
    - If the subrecipient is a city, town or county, prequalification requirements must also be equally and uniformly known, if the subrecipient chooses to have prequalification for bidders.
- Identify all other factors to be used in evaluating bids or proposals; and
- Are conducted in a manner providing full and open competition;
    - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or request for proposals must be excluded from competing for such procurements
    - Some situations considered to be restrictive of competition include, but are not limited to, the following:
        - Placing unreasonable requirements on firms in order for them to qualify to do business;
        - Requiring unnecessary experience and excessive bonding;
        - Noncompetitive pricing practices between firms or between affiliated companies;
        - Noncompetitive contracts to consultants that are on retainer contracts;
        - Organizational conflicts of interest;
        - Specifying only ‘brand name’ products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; and
        - Any arbitrary action in the procurement process

When using prequalified lists, Subrecipients must ensure that all lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Subrecipients must not preclude potential bidders from qualifying during the solicitation period.

Cost and Price Analysis

For procurement actions in excess of the Federal Simplified Acquisition Threshold, Subrecipients must perform a cost or price analysis. This requirement also applies to

contract modifications and change orders. Note that Subrecipients must consider price reasonableness for micro-purchases as well as small purchases.

Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services and should be documented in the procurement file. In conducting a proper price analysis, Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, Subrecipients should review for significant discrepancies to determine if the goods or services are comparable.

Cost Analysis

Subrecipients will utilize this process to help determine if proposed costs are allowable, reasonable and allocable as described in 2 CFR 200.403-405. Prior to receiving bids or proposals, Subrecipients should establish an independent estimate for the goods or services to be procured. When conducting a cost analysis, Subrecipients must review and evaluate the separate elements of cost and negotiate profit in a received proposal.

1. A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

- The competitive proposal method is used;
- The sole source procurement method is used;
- Only one bid is received during a sealed bid procurement; and
- A contract modification is requested that changes the price or total estimated cost (either upwards or downwards)

2. Conducting a price and cost analysis:

- Check the accuracy of the prices submitted;
- Evaluate the necessity of the proposed cost items;
- Evaluate the separate elements of cost;
- Review proposal for potential cost overruns, taking into consideration the vendor's
    - past performance;
    - Compare proposed prices to Subrecipient's independent cost estimate; and
    - Compare proposed prices to previous cost estimates or actual costs incurred for similar work

3.Profit Negotiation

Subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed12. Per HUD's "Quick Guide To Cost And Price Analysis," all of the following criteria must be considered when negotiating profit:

- Complexity of the work to be performed;
- Amount of risk the contractor may be exposed to (performance and/or cost);

- Contractor’s investment and resources dedicated to performing the contract (labor,
- oversight, etc.);
- Use of subcontractors by the prime contractor and the nature of the work to be performed;
- Quality of the contractor’s past performance for similar work; and
- Industry profit rates in the surrounding area for similar work

Subrecipients are responsible for maintaining records and any documentation used to support the profit negotiation.

Note: Subrecipients must ensure that the contract does not constitute a prohibited cost-plus- a-percentage-of-cost or percentage-of-construction-cost contract.

Contracting with Historically Underutilized Businesses (HUB), Small and Minority Businesses, Women’s Business Enterprises, and Labor Surplus Firms

Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women’s business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible. Affirmative steps must include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above

Suspension and Debarment

Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

Subrecipients must ensure, prior to award, that all contractors receiving CDBG-DR funds have met all the eligibility requirements outlined in state and federal law. At a

minimum, the following steps must be taken to ensure contractor eligibility for all services procured.

- Contractors: All contractors, including professional consulting and engineering firms, must be cleared via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: https://sam.gov/SAM/
- Subcontractors: Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

It should be noted that if any of the above listed parties are deemed ineligible to receive CDBG-DR funds after award of contract, the contract will be immediately terminated. The matter must be reported to the ODOC Community Development staff for further action.

§200.320 METHODS OF PROCUREMENT

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases -

(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The

micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) Non-Federal entity increase to the micro-purchase threshold up to $50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

> (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
>
> (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
>
> (C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over $50,000. Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases -

(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

Formal procurement methods. When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for

procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The Non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

State Requirements for Counties and Cities:

The Competitive bidding act of 1974 is more restrictive when it comes to price thresholds for sealed bidding. Therefore, cities, towns, and counties will follow the thresholds defined in the Competitive Bidding Act and all other subrecipients will follow 2 CFR 200.320 unless they have more restrictive thresholds within their agencies.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure

that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Subrecipients Will Follow:

2 CFR 200.320 Thresholds and Definitions for Subrecipients (Note that thresholds are different for Cities, Towns, and Counties):

State Requirements for Cities and Counties

Competitive Bidding Act of 1974 section 114. Conflict of Interest The chief administrative officer and members of the governing body of the awarding public agency authorizing or awarding or supervising the execution of a public construction contract, and their relatives within the third degree of consanguinity or affinity, are forbidden to be interested directly or indirectly through stock ownership, partnership interest or otherwise in any Laws through 2011 Legislative Session Page 21 of 42 Title 61. Public Buildings and Public Works such contract. Contracts entered into in violation of this section shall be void. Persons willfully violating this section shall be guilty of a felony and shall be subject to removal from office.

§ 103.2. Political Subdivision May Appoint Purchasing Agent The governing body of any political subdivision of this state may duly appoint as its agent any individual or individual of a legal entity, with whom the political subdivision has duly entered Laws through 2011 Legislative Session Page 16 of 42 Title 61. Public Buildings and Public Works into a public contract pursuant to law, to make purchases necessary for carrying out the public contract.

§ 118. Prequalification of Bidders A. In order to determine the responsibility of bidders, the awarding public agency may require prospective bidders, general contractors, subcontractors and material suppliers to prequalify as responsible bidders prior to submitting bids on a public construction contract. Prequalification to bid or perform work pursuant to this section does not constitute a license. Except as provided in subsection B of this section, prequalification shall not serve as a substitute for a license otherwise required by law. Notice of any such prequalification requirement shall be made equally and uniformly known by the awarding public agency to all prospective bidders and the public in the same manner as proposals to award public construction contracts as set forth in Section 104 of this title. Financial information including, but not limited to, audited financial statements required by the awarding public agency as part of prequalification shall remain confidential. B. The Oklahoma Transportation Commission and the Oklahoma Transportation Authority may establish a system for prequalifying prospective bidders on construction and maintenance contracts to be awarded by the Commission or Authority. The Commission and the Authority shall be the sole judge of the

qualifications of prospective bidders and shall ascertain, to their Laws through 2011 Legislative Session Page 22 of 42 Title 61. Public Buildings and Public Works exclusive satisfaction, the qualifications of each prequalified bidder. Any contractor or subcontractor prequalified as of the effective date of this act performing signing, highway lighting, or traffic signal installation or maintenance for the Oklahoma Department of Transportation or the Oklahoma Transportation Authority shall be allowed to continue to bid and perform such work without obtaining any additional license from this state or any political subdivision of this state. However, no contractor or subcontractor may transfer, convey or assign this exemption to any other person or entity.

In addition, there are State Requirements for Counties:

O.S. § 19-1500 county purchasing agent A. The county clerk of each county or an employee of that office so designated by the county clerk shall be the county purchasing agent. Provided, in counties having a county budget board created pursuant to the County Budget Act, the board may, upon an affirmative vote of a majority of all the board members then in office, appoint a county purchasing agent. In the event the board does not appoint a county purchasing agent, the county clerk or an employee of that office so designated by the county clerk shall be the county purchasing agent. The county purchasing agent shall be under the general supervision and direction of the appointing authority.

B. All persons serving as county purchasing agents on July 1, 1989, shall attend training seminars sponsored by the Oklahoma Cooperative Extension Service prior to July 1, 1990. The training seminars will cover the terminology, concepts, customs and practices of the sellers of supplies, materials, equipment and information technology and telecommunications goods commonly purchased for the county. All county purchasing agents appointed after July 1, 1989, shall attend the training seminars within one (1) year of their appointment.

O.S. § 19-1500.1 Duties of a purchasing agent A. Except as otherwise provided by Section 1500 et seq. of this title, the county purchasing agent shall have the authority to develop, implement and promote policies and procedures that allow the procurement of materials and equipment through contracts that are flexible, value based and are in the best interests of the state and its political subdivisions.

O.S. § 19-1503 Receiving officers. Each county officer shall designate two (2) employees to act as receiving officers for their departments. A written designation of such employees shall be filed with the county clerk and shall be entered in the minutes of the board of county commissioners.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Other Subrecipients:

All other subrecipients will be required to adopt and follow 2 CFR 200.318-326 and their own procurement policies and procedures, whichever is more restrictive.

Subrecipients Step-by-Step Instructions (These should be detailed in Procurement Policies and Procedures:

1. Oversight. Subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
    - If a county subrecipient, must detail oversight of county purchasing agent and receiving officer.
2. Standards of Conduct. Every Subrecipient must maintain written procedures covering conflicts of interest and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-DR assistance, or the management of federally-assisted or purchased property. The Subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 (g)(h).
    - For the procurement of goods and services, no employee, officer, or agent of the Subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g), 2 CFR 200.318(c)(1));
    - The officers, employees, or agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts;

The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.

- If a county subrecipient, must show there is no COI with county purchasing agent, elected officials, other county employees, and receiving officers; or

- If a city or town subrecipient, must show there is no COI with elected officials, the appointed purchasing agent, and city employees.

3. Avoidance of Unnecessary or Duplicative Items. Subrecipients' procurement procedures must avoid the acquisition of unnecessary or duplicative items by giving consideration to consolidating or breaking out procurements to obtain a more economical purchase.
4. Value Engineering Clauses. Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. Awarding to Responsible Contractors. Subrecipients must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contactor integrity, compliance with public policy, record of past performance, and financial and technical resources.
6. Record Keeping. Subrecipients must maintain records sufficient to detail the history of procurement. These records shall include, but are not limited to, the following:
    - Rationale for the method of procurement;
    - Selection of contract type;
    - Contractor selection or rejection; and
    - The basis for the contract price
7. Time and Materials Contracts. Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contracts are the sum of:
    - The actual cost of materials; and
    - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit
8. Dispute Resolution. Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Subrecipients of any contractual responsibilities under its contracts.

The subrecipients will submit to the department:

All subrecipients will be required to submit their Procurement Policies and Procedures at the time of application for CDBG-DR funds. All policies and procedures must adhere to Federal and State guidelines outlined above.

MICRO-PURCHASES

The micro-purchase method is used for the acquisition of supplies or services which do not exceed the micro-purchase threshold and must be distributed equitable

among qualified suppliers. The micro-purchase threshold was increased from $3,500 to $10,000 on July 2, 2020 (85 FR 40064).

The micro-purchase threshold is $10,000, except for:

- Procurement of construction services subject to Davis Bacon requirements, the threshold is $2,000;
- Procurement of services subject to Service Contract Labor Standards, the threshold is $2,500.

Micro-purchases may be awarded without soliciting competitive quotations if the Subrecipient considers the price to be reasonable. However, documentation of the Subrecipient's determination of reasonableness must be maintained for record-keeping requirements.

Micro-Purchase Procedures

Prior to utilizing the Micro-Purchase method of procurement, Subrecipients should plan and document how many products or services will be required. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the micro- purchase threshold. For micro-purchases for construction services in excess of $2,000, Subrecipients must adhere to the Davis-Bacon and Related Acts.

To the extent practicable, Subrecipients must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Subrecipient considers the price to be reasonable by conducting a price analysis as outlined above. Prior to issuing a purchase order under this method, Subrecipients must verify that the vendor is not debarred under the System for Award Management.

- For Cities, Towns, and Counties, construction contracts for less than Five Thousand Dollars ($5,000.00) may be negotiated with a qualified contractor. Work may be commenced in accordance with the purchasing policies of the public agency (61 O.S. § 103)
- For other subrecipients, the threshold is the SAT: $10,000 (unless subrecipient policies are more restrictive).

SMALL PURCHASES

The small purchase method is used for the acquisition of supplies or services greater than the micro-purchase threshold and less than or equal to the simple acquisition threshold. Small purchase procedures are relatively simple and do not require a formal solicitation for securing services, supplies, or other property.

The federal simple acquisition threshold is $250,000 (increased from $150,000 on July 2, 2020 [85 FR 40064]).

If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Documentation of the rate quotations must be maintained for record-keeping requirements.

Small Purchase Procedures

Prior to utilizing the Small Purchase method of procurement, Subrecipients should consider the aggregate cost of the goods or services. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed:

- $50,000 for cities, towns, and counties; or
- The simplified acquisition threshold of $250,000 for all other subrecipients (unless subrecipient policies are more restrictive).

Subrecipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding the competitive bidding and competitive proposal requirements. This is both a Federal and State (61 O.S. § 131) Requirement. The State Penalty is as follows:

§ 131. Splitting of Contracts

No contract shall be split into partial contracts for the purpose of avoiding the requirements of this act. All such partial contracts shall be void. Any person who knowingly violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

When seeking quotes, Subrecipients must clearly explain to all vendors providing quotations that the information provided is being sought for informational purposes only and the request for quotation does not constitute a formal solicitation. Extra care must be given to avoid giving a vendor any competitive advantage in a future procurement initiative.

Step 1: Comply with Davis-Bacon Act requirements, if applicable

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction.

Step 2: Contact an adequate number of vendors (Neither State nor Federal Guidelines dictate the number of vendors)

Subrecipients must document quotes received (**This will be a required submission to ODOC** for every procurement of goods and services using the Small Purchase Procedures). Quotations may be requested via telephone, fax, email, mail, or any other reasonable method. Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business

enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

Step 3: Award the contract.

Subrecipients should conduct a price analysis and award to the lowest responsible bidder. If the Subrecipient does not award the contract to the lowest bidder, the reasoning must be documented and in compliance with federal, state, and local regulations (This will also be a **required submission to ODOC** for every procurement of goods or services). Subrecipients must verify that the vendor is not debarred under the System for Award Management.

Step 4: Execute the contract.

Subrecipients must submit the documentation of bid quotes received, reasoning for acceptance or denial of a bid, and vendor lists to Report to ODOC CDBG-DR Programs Planner/Programs Representative/staff within 30 days of executing a prime contract.

SEALED BIDS (FORMAL ADVERTISEMENT)

Sealed bids, bids that are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price. This is the preferred method for construction contracts.

Sealed Bid Procedures (Formal Advertisement)

Procurements for materials, equipment, and construction services with a total cost over the simple acquisition threshold must formally advertise for sealed bids. Procurement by sealed bids is the preferred method for procuring materials, equipment, and construction services if the following conditions apply:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible bidders are willing and able to compete effectively for the business; and
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

Step 1: Creation of Sealed Bid Packages

All subrecipients must create a bid package, usually written by an architect or engineer and based off of prepared plans or working drawings, that provides a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project. This package must:

- Be sealed by an architect or engineer registered in the State of Oklahoma and, if the project falls under the jurisdiction of another state agency, approval is required prior to construction;
- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility by the handicapped have been or will be satisfied must be executed and co-signed by a local jurisdictional official, filed in the contract documents file, and a copy must be sent to the State;
- Contain all properly obtained lands, rights-of-way, and easements necessary for carrying out the project;
- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project; and
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations

The base bid should include all components of the approved project and should not include any items which were not included in the approved applications or which have not received subsequent approval. ODOC CDBG-DR Programs Planner/Programs Representative/staff approval should be received prior to awarding a bid that includes items not listed in an approved line item budget.

Note: For fixed price contracts with unit cost pricing, the bid specifications should delineate some type of item, estimated quality, unit price, and total cost.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

For all Cities, Towns, and Counties, all bid notices shall set forth the following information:

1. The character of the proposed public construction contract **in sufficient details that all bidders shall know exactly what their obligation will be**, either in the bid notice itself or by reference to bidding documents on file in the main office of the awarding public agency; and

2**. The name of the officer, agent or employee of the awarding public agency and the office location and address of such person**, from whom a complete set of bidding documents regarding such proposed contract may be obtained, together with the amount of the cost deposit required therefor, if any; and

3. The date, time and place of opening of the sealed bids; and

4. The name and office location and address of the office of the awarding public agency to whom the sealed bids should be submitted; and

5. Any additional information regarding such proposed contract deemed by the awarding public agency to be of beneficial interest to prospective bidders or the public (61 O.S. § 105).

For all Cities, Towns and Counties, at least one complete set of bidding documents regarding a proposed public construction contract **shall be on file in the main office** of the awarding public agency at least twenty (20) days prior to the date set for opening bids. The officer, agent or **employee of the awarding public agency designated in the bid notice shall have a sufficient number of complete sets of said bidding documents and shall provide a complete set of same to any prospective bidder, upon request**; provided, however, that the awarding public agency may require a reasonable deposit for each such set; provided, that such deposit shall not exceed the actual cost of duplicating or printing. The public agency may retain all or part of said deposit if so stated in the notice for bids. (61 O.S. § 106).

Step 2: Comply with Davis-Bacon Act Requirements

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction.

Step 3: Advertise for Bids

The invitation for bids must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

A. A bidder on a public construction contract exceeding Fifty Thousand Dollars ($50,000.00) shall accompany the bid with:

1. A certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the awarding public agency as a guaranty; or

2. An irrevocable letter of credit containing terms the Construction and Properties Division of the Department of Central Services prescribes, issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in an amount equal to five percent (5%) of the bid. The awarding public agency shall deposit the irrevocable letter of credit with the Division.

B. The cost of republication of the notice to bidders, actual expenses incurred by reason of the bidder's default and the difference between the low bid of the defaulting bidder and the amount of the bid of the bidder to whom the contract is subsequently awarded, but not to exceed the amount of the certified check, cashier's check, bid bond or irrevocable letter of credit may, at the discretion of the awarding public agency, be forfeited to the awarding public agency in the event the apparently successful bidder fails to execute the contract or fails to provide the required bonds or irrevocable letters of credit and insurance to the awarding public agency.

C. The public agency shall, upon receipt of notice from the awarding public agency, return a certified or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution and delivery of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.

D. Nothing contained herein shall be construed so as to prevent the awarding public agency or the courts from exonerating the bidder and other parties to the bid security document from liability upon a timely showing that the bidder committed what the courts have determined under the common law to be an excusable bidding error and for that reason it would not be equitable to enforce the bid security (61 O.S. § 107).

For all Cities, Towns and Counties, each bidder shall accompany the bid with a written statement under oath disclosing the following information:

1. The nature of any partnership, joint venture or other business relationships then in effect or which existed within one (1) year prior to the date of such statement with the architect, engineer or other party to the project;

2. **Any such business relationship then in effect or which existed within one (1) year prior to the date of such statement** between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project; and

3. The names of all persons having any such business relationships and the positions they hold with their respective companies or firms. If none of the business

relationships hereinabove mentioned exist, then a statement to that effect (61 O.S. § 108).

Step 4: Public Opening of Sealed Bid Packages

All bids will be publicly opened at the time and place prescribed in the invitation for bids. All sealed bid packages must be opened in accordance with the following standards in addition to any requirements imposed by local, state, and federal law.

- All bids shall be opened and read aloud during the bid opening and the apparent low bidder should be determined during this time;
- Bids shall undergo a review for both technical and legal responsiveness;
- Bidders must be evaluated as having the capacity to furnish the products and/or services required; and
- Minutes of the bid opening along with a tabulation of bids shall be placed in the contract file (This will be a requirement to submit to ODOC)

Subrecipients should take action within 45 days of the bid opening (or 30 days for Cities, Towns, and Counties), or as otherwise specified in the bid documents, to either award a contract to the lowest responsible bidder or reject any and all bids for just cause. Any or all bids may be rejected if there is a sound documented reason (**This will be a requirement to submit to ODOC**).

If only one bid is received, the bid should be compared to in-house estimate of the cost and prices paid for the same or substantially similar item(s) in the past. Information from the marketplace should be gathered if it was not done so when developing the estimate. If the sealed bid is cancelled and negotiations proceed with the single bidder, a complete cost breakdown must be obtained, and cost analysis performed. If the bidder refuses to comply, bids must be resolicited. All rationale for decisions must be documented.

Any final contracts awarded must be done so in compliance with the most recent federal wage decision. Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

For all Cities, Towns, and Counties, all bids shall be sealed and opened only at the time and place mentioned in the bidding documents and read aloud in the presence of an administrative officer of the awarding public agency. Such bid opening shall be open to the public and to all bidders. (61 O.S. § 110).

For all Cities, Towns, and Counties, the awarding of a contract to the lowest responsible bidder or bidders shall be made within thirty (30) days after the opening of bids unless the governing body of the awarding public agency, by formal recorded action and for good cause shown, provides for a reasonable extension of that period, which extension period shall not in any event exceed fifteen (15) days

where only state or local funds are involved, or not to exceed ninety (90) days on any award of contract for the construction of a public improvement where funds are utilized which are furnished by an agency of the United States Government. Upon mutual written agreement between the lowest responsible bidder or bidders and the awarding public agency, the Division may extend the contract award period no more than one hundred twenty (120) days from the bid opening date. (61 O.S. § 111).

Step 5: Award the Contract

A firm, fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

Subrecipients must verify that the vendor is not debarred under the System for Award Management prior to awarding a contract. If only one bid is received, the Subrecipient must receive approval from the ODOC CDBG-DR Programs Planner/Programs Representative/staff before awarding the applicable contract.

COMPETITIVE PROPOSALS

The procurement by competitive proposals technique is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. A Request for Proposal (RFP) is used when qualifications and price are used in evaluating proposals and is the preferred method for administrative services. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used in evaluating proposals and price is not used as a selection factor.

Competitive Proposal Procedures (All subrecipients shall follow)

Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

Request for Proposals (RFPs)

RFPs are used to procure professional services such as grant administrative services. This does not include architectural and engineering (“A/E”) professional services where the competitive negotiation method is utilized.

Request for Qualifications (RFQs)

RFQs are used to procure professional services such as engineering or architectural firms. RFQs use a competitive negotiation method. The selection is made based

upon the competitor's qualifications, subject to negotiation of fair and reasonable compensation.

This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort. RFQs cannot be used to procure project management or construction management services.

All A/E contracting fees, even those provided for under either a fixed price contract or a cost reimbursement contract must be deemed reasonable and justifiable. If, after a project has been funded, there is a substantial change in the scope of the project, then ODOC CDBG-DR Programs Planner/Programs Representative/staff must review and approve these changes and determine whether or not any additional funds are allowable.

The provision of funds for A/E services is entirely contingent upon the amount of funds deemed allowable by ODOC CDBG-DR Programs Planner/Programs Representative/staff. Firms will not be compensated from the applicable CDBG DR program in the event of a project not receiving funding.

NONCOMPETITIVE PROPOSALS (SOLE SOURCE)

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may only be used when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, competition is determined inadequate

The following table outlines the five procurement methods used to procure materials, supplies, construction and services. **This table is applicable to all subrecipients but note that thresholds are different for certain entities.**

Procurement	Cost	Contract Type	Solicitation	Applications

Type	Reasonableness		Method	
Micro-Purchase	Price Analysis	Purchase Order Fixed Price	No solicitation required	Supplies, Produced items, Single-task service
Small Purchase	Price Analysis	Purchase Order Fixed Price	Quotations Submitted Bids	Supplies, Produced items, Single-task service
Sealed Bid (formal advertising)	Price Analysis Cost Analysis	Fixed Price	Submitted Bids	Construction items, Produced or designed items
Competitive Proposals	Price Analysis Cost Analysis	Cost Reimbursement Fixed Price, Time & Materials	Submitted Proposals	Professional services, Multi-task services, Designed items
Noncompetitive Proposals	Cost Analysis	Cost Reimbursement Fixed Price, Time & Materials	Submitted Proposals	Produced items, Single task service, Professional services, Multi-task services, Designed Item

Noncompetitive Proposal Procedures (Sole Source) (All Subrecipients shall follow)

Subrecipients MUST obtain written approval from ODOC CDBG-DR Programs Planner/Programs Representative/staff prior to using this procurement method. All requests to utilize non-competitive procurement must be submitted in writing by the Subrecipient to ODOC CDBG-DR Programs Planner/Programs Representative/staff and include a justification as to why the contractor is the only known source to provide the goods or services under the contract. The justification and ODOC approval must be maintained for record-keeping requirements.

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may only be used when one or more of the following circumstances apply:

- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- · The federal awarding agency or pass through entity expressly authorizes noncompetitive proposals in response to a written request from the Subrecipient; or
- After solicitation of a number of sources, competition is determined inadequate.

Subrecipients should conduct a cost analysis to determine if proposed costs are allowable, reasonable and allocable. Subrecipients must also verify that the vendor is not debarred under the System for Award Management.

§200.321 contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

a) The Non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
b) Affirmative steps must include:
    1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
    4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
    6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

State Requirements for Cities and counties for these issues:

There is no state requirement for Cities, Towns, and Counties to contract with minority of women owned businesses. Therefore, 2 CFR 200.321 will be followed.

Tribal Requirements for these issues:

Tribal Nations are required to follow 2 CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Subrecipients Must Follow:

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

a. The subrecipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible;
b. Affirmative steps must include:
    i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
    iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
    v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
    vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (i) through (v) of this section

Subrecipient Documentation:

Subrecipients are required to submit their vendor lists when procuring goods and services with CDBG-DR funds. Subrecipients will be required to submit current vendor lists with their policies and procedures at the time of application and the vendor lists used when procuring goods and services. The affirmative steps should be documented and submitted to ODOC CDBG-DR staff within 30 days of the signing of a contract.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and

women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

More information on ODOC's certification of Women and Minority owned businesses can be found here:

https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/

https://www.okcommerce.gov/wp-content/uploads/Minority-Business-Certification-Programs.pdf

§ 200.322 Domestic preferences for procurements

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

All other subrecipients should follow 2 CFR 200.322 by providing preference to goods and services within the United States. Subrecipients can solicit for products, materials, and goods that are produced in the United States in order to fulfill the above Federal requirement.

Note that Subrecipients of CDBG-DR funds **are NOT allowed to follow 74 O.S. § 85.17A or 74 OS § 85.44E** Bidding Preferences when receiving CDBG-DR funds. All subrecipients must allow for full and open competition and cannot preference in-state bidders, nor disabled veteran businesses. All CDBG-DR subrecipients will be required to follow 2 CFR 200.322 and disregard the State bidding preferences **based on the following State statute allowing Federal regulations to supersede State regulations**:

74 O.S. § 85.14. Federal Law to Govern

Notwithstanding any provision of this act to the contrary, in all cases where federal granted funds are involved, the federal laws, rules and regulations thereto shall govern to the extent necessary to insure the benefit of such funds to the State of Oklahoma.

§200.323 Procurement of recovered materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

All Subrecipients Must Follow:

All subrecipients must note which vendors on their vendor lists utilize recovered materials and make an effort, when practicable, to purchase such items when the purchase price exceeds $10,000. All subrecipients will be required to note which vendors offer such items and allow such vendors equal opportunity in submitting bids.

The following items should be solicited with the intent to identify goods that have the highest percentage of recovered materials, when practicable and maintain a satisfactory level of competition. **Subrecipients will be required to note the percentage of recovered materials used by bidders**:

§ 247.10 Paper and paper products.

Paper and paper products, excluding building and construction paper grades.

§ 247.11 Vehicular products.

(a) Lubricating oils containing re-refined oil, including engine lubricating oils, hydraulic fluids, and gear oils, excluding marine and aviation oils.

(b) Tires, excluding airplane tires.

(c) Reclaimed engine coolants, excluding coolants used in non-vehicular applications.

§ 247.12 Construction products.

(a) Building insulation products, including the following items:

(1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;

(2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);

(3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and

(4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).

(c) Cement and concrete, including concrete products such as pipe and block, containing coal fly ash or ground granulated blast furnace (GGBF) slag.

(d) Carpet made of polyester fiber for use in low- and medium-wear applications.

(e) Floor tiles and patio blocks containing recovered rubber or plastic.

(f) Shower and restroom dividers/partitions containing recovered plastic or steel.

(g)(1) Consolidated latex paint used for covering graffiti; and

(2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

(h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.

(i) Flowable fill containing coal fly ash and/or ferrous foundry sands.

(j) Railroad grade crossing surfaces containing coal fly ash, recovered rubber, or recovered steel.

§ 247.13 Transportation products.

(a) Traffic barricades and traffic cones used in controlling or restricting vehicular traffic.

(b) Parking stops made from concrete or containing recovered plastic or rubber.

(c) Channelizers containing recovered plastic or rubber.

(d) Delineators containing recovered plastic, rubber, or steel.

(e) Flexible delineators containing recovered plastic.

§ 247.14 Park and recreation products.

(a) Playground surfaces and running tracks containing recovered rubber or plastic.

(b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

(c) Park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete.

(d) Playground equipment containing recovered plastic, steel, or aluminum.

§ 247.15 Landscaping products.

(a) Hydraulic mulch products containing recovered paper or recovered wood used for hydroseeding and as an over-spray for straw mulch in landscaping, erosion control, and soil reclamation.

(b) Compost made from yard trimmings, leaves, grass clippings, and/or food waste for use in landscaping, seeding of grass or other plants on roadsides and embankments, as a nutritious mulch under trees and shrubs, and in erosion control and soil reclamation.

(c) Garden and soaker hoses containing recovered plastic or rubber.

(d) Lawn and garden edging containing recovered plastic or rubber.

(e) Plastic lumber landscaping timbers and posts containing recovered materials.

§ 247.16 Non-paper office products.

(a) Office recycling containers and office waste receptacles.

(b) Plastic desktop accessories.

(c) Toner cartridges.

(d) Plastic-covered binders containing recovered plastic; chipboard and pressboard binders containing recovered paper; and solid plastic binders containing recovered plastic.

(e) Plastic trash bags.

(f) Printer ribbons.

(g) Plastic envelopes.

(h) Plastic clipboards containing recovered plastic.

(i) Plastic file folders containing recovered plastic.

(j) Plastic clip portfolios containing recovered plastic.

(k) Plastic presentation folders containing recovered plastic.

§ 247.17 Miscellaneous products.

(a) Pallets containing recovered wood, plastic, or paperboard.

(b) Sorbents containing recovered materials for use in oil and solvent clean-ups and as animal bedding.

(c) Industrial drums containing recovered steel, plastic, or paper.

(d) Awards and plaques containing recovered glass, wood, paper, or plastic.

(e) Mats containing recovered rubber and/or plastic.

(f)(1) Non-road signs containing recovered plastic or aluminum and road

signs containing recovered aluminum.

(2) Sign supports and posts containing recovered plastic or steel.

(g) Manual-grade strapping containing recovered steel or plastic.

§200.323 Contract cost and price.

a. The Non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
b. The Non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
c. Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
d. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used. 2 CFR 200.323(d) prohibits cost plus percentages

The State does not have specific requirements for cost/price analysis. Therefore 2 CFR 200.323 will be followed for all subrecipients.

Subrecipients Must Follow:

Cost and Price Analysis

For procurement actions in excess of the Federal Simplified Acquisition Threshold, Subrecipients must perform a cost or price analysis. This requirement also applies to

contract modifications and change orders. Note that Subrecipients must consider price reasonableness for micro-purchases as well as small purchases.

Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services and should be documented in the procurement file. In conducting a proper price analysis Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, Subrecipients should review for significant discrepancies to determine if the goods or services are comparable.

Cost Analysis

Subrecipients will utilize this process to help determine if proposed costs are allowable, reasonable and allocable as described in 2 CFR 200.403-405. Prior to receiving bids or proposals, Subrecipients should establish an independent estimate for the goods or services to be procured. When conducting a cost analysis, Subrecipients must review and evaluate the separate elements of cost and negotiate profit in a received proposal.

A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

- The competitive proposal method is used;
- The sole source procurement method is used;
- Only one bid is received during a sealed bid procurement; and
- A contract modification is requested that changes the price or total estimated cost (either upwards or downwards)

Conducting a price and cost analysis:

- Check the accuracy of the prices submitted;
- Evaluate the necessity of the proposed cost items;
- Evaluate the separate elements of cost;
- Review proposal for potential cost overruns, taking into consideration the vendor's
- past performance;
- Compare proposed prices to Subrecipient's independent cost estimate; and
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work

Subrecipient Documentation:

Subrecipients should have their own forms to conduct cost and price analysis. Any documentation proving that subrecipients did a cost and price analysis should be submitted to ODOC/CD to ensure that subrecipients are following all necessary Federal guidelines.

§200.324 Federal awarding agency or pass-through entity review.

a. The Non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
b. The Non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
    1) The Non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
    2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
    3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a “brand name” product;
    4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
    5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
c. The Non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
    1) The Non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third party contracts are awarded on a regular basis;
    2) The Non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

Relation to Subrecipient:

ODOC/CD will ensure compliance with all Federal guidelines for procurement by requiring all subrecipients to submit procurement policies and procedures at the time of application. Subrecipients will also be required to submit all documents on the procurement of goods and services throughout their contract period. ODOC/CD requires all subrecipients to provide procurement documentation upon request. Likewise, ODOC/CD will make all documentation as it pertains to procurement available to HUD upon request.

§200.325 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (or $50,000 for Cities, Towns and Counties), the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

a. A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
b. A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

State Requirements for Cities and Counties for these issues:

61 O.S. § 113

A. Except as otherwise provided by law, within the period of time, not to exceed sixty (60) days, specified in the bid notice by the awarding public agency, a contract embodying the terms set forth in the bidding documents shall be executed by the awarding public agency and the successful bidder. No bidder shall obtain any property right in a contract awarded under the provisions of the Public Competitive Bidding Act of 1974 until the contract has been fully executed by both the bidder and the awarding public agency.

B. Except as otherwise provided by law, within the period of time specified in subsection A of this section, the following shall be provided by the contractor to the awarding public agency for contracts exceeding Fifty Thousand Dollars ($50,000.00):

1. A bond or irrevocable letter of credit complying with the provisions of Section 1 of this title;

2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;

3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of one (1) year after acceptance of the project; and

4. Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.

C. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of subsection B of this section, provided such single irrevocable letter of credit meets all applicable requirements of subsection B of this section. If the contractor needs additional time in which to obtain the bond required pursuant to subsection B of this section, the contractor may request, and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bond.

Tribal Requirements for these issues:

Tribal Nations are required to follow CFR 200.318-326. Tribal Nations, like all other subrecipients, will be required to submit a copy of their policies and procedures at the time of application. ODOC/CD will review all policies and procedures to ensure that they adhere to 2 CFR 200.318-326. Tribal Nations, like all other subrecipients will be required to submit documentation of the goods and services they procure. ODOC/CD will continue to check such documentation that subrecipients are following 2 CFR 200.318-326, as well as the policies and procedures they submitted at the time of application. ODOC/CD, being required to upload monthly updates of all procured goods and services for its subrecipients to the CDBG-DR website, will be continuously checking for accurate procurement procedures for all subrecipients.

Other subrecipients Will Follow:

Other subrecipients are encouraged to accept the bonding policy in 2 CFR § 200.326 for construction and facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. For contracts over the simplified acquisition threshold, subrecipients should require a bid guarantee from each bidder equivalent to five percent of the bid price consisting of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of this bid, execute such contractual documents as may be required within the time specified;

- Subrecipients should require a performance bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Subrecipients should require a payment bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided exceeding fifty thousand dollars ($50,000) as defined in Title 61 of the Oklahoma Statutes.

§200.326 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, next section.

APPENDIX II to Part 200—CONTRACT PROVISIONS NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

a) Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
b) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
c) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41

CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

d) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

f) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit

Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

g) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
h) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
i) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. 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 officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Subrecipients Must Follow:

All subrecipients will be required to sign contracts with the Appendix 2 CFR 200 requirements. Further, if subrecipients have contracts with their own subrecipients, they must have the same requirements in all such contracts. Contract templates will be required to submit to ODOC at the time of application. Such contracts will also be required to submit to ODOC within 30 days of the signing of such contracts.

Additional Contract Requirements:

In addition to the above contract requirements, ODOC/CD must also include contract conditions found at 570.503 and 24 CFR 570.600 – 615 (subpart K). Where applicable, subrecipient in turn must put those provisions in contracts they award.

2 CFR 570.503:

ODOC is required to follow the below policies before disbursing funds to subrecipients. These requirements are further outlined in ODOC's CDBG-DR contracts with subrecipients Part I & II. All requirements that are not outlined in Parts I & II will be detailed in Contract Part III Specific Conditions. This contract part details terms and requirements that are specific to the subrecipient such as their schedule for completing work and reversion of assets:

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) **Statement of work**. The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) **Records and reports**. The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) **Program income**. The agreement shall include the program income requirements set forth in § 570.504(c). The agreement shall also specify that, at the end of the program year, the grantee may require remittance of all or part of any program income balances (including investments thereof) held by the subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).

(4) **Uniform requirements**. The agreement shall require the subrecipient to comply with applicable uniform requirements, as described in § 570.502.

(5) **Other program requirements**. The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR part 52.

(6) **Suspension and termination**. The agreement shall set forth remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

(7) **Reversion of assets**. The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the

time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) in excess of $25,000 is either:

(i) Used to meet one of the national objectives in § 570.208 (formerly § 570.901) until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Not used in accordance with paragraph (b)(7)(i) of this section, in which event the subrecipient shall pay to the recipient an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the recipient. (No payment is required after the period of time specified in paragraph (b)(7)(i) of this section.)

PROCEDURES FOR BIDS THAT EXCEED COST ESTIMATES

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the Subrecipient shall consult with ODOC CDBG-DR Programs Planner/Programs Representative/staff to determine the best course of action. Options include:

- Reject all bids received and re-advertise the project;
- Revise or reduce specifications and re-advertise the project, if approved by ODOC staff;
- Reallocate funds to cover the overage;
- Seek other funding sources such as local funds to cover the overage; and
- Enter into a legally binding contract with the lowest bidder for the amount of the bid presented and, subsequently, execute a change order* to bring the project cost within the limits presented by the allocated funds

*The change order would change the project's scope of work and must be reviewed and approved by ODOC CDBG-DR Programs Planner/Programs Representative/staff prior to execution. It is strongly advised that the Subrecipient thoroughly analyzes how exercising this option would affect the other bidders prior to awarding the contract.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

For all Cities, Towns, and Counties, by majority action of the governing board of the awarding public agency or the chief administrating officer of an awarding public agency without a governing board, **the awarding public agency shall have the right to reject any or all bids and solicit bidders again as herein provided if, in**

the opinion of the governing body of the public agency, the best interests of the people of the State of Oklahoma would be best served by so doing. (61 O.S. § 119).

Step 6: Execute the Contract

Subrecipients must submit all documentation of advertisement of bids, minutes of bid opening, and reasoning for acceptance or denial of bids to ODOC CDBG-DR Programs Planner/Programs Representative/staff within 30 days of executing a prime contract.

Cities, Towns, and Counties must follow the above procedure, but according to State law, must also follow:

All bids, both successful and unsuccessful, and all contracts and required bonds shall be placed on file and maintained in the main office of the awarding public agency for a period of five (5) years from the date of opening of bids or for a period of three (3) years from the date of completion of the contract, whichever is longer, shall be open to public inspection and shall be matters of public record (61 O.S. § 112)

CONDUCTING AN RFP/RFQ

Step 1: Develop the Request for Proposals (RFP)/Request for Qualifications (RFQ) package

The RFP/RFQ should include a clear and accurate description of the technical requirements for the material, product, or service to be procured. At a minimum, the RFP/RFQ package should include the following:

Description of Subrecipient's requirements and the scope of services. Subrecipients may utilize the Sample Bid Document provided by ODOC CDBG-DR in their contracts for grant administrators, engineers and environmental service providers.

- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance;
- Detailed instructions on proposal requirements;
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.
    - A solicitation may authorize offerors to propose alternative terms and conditions.
    - When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

Step 2: Advertise the RFP/RFQ

Requests for proposals/requests for qualifications must be publicized and identify all evaluation factors and their relative importance. Subrecipients should allow sufficient time between the solicitation date and proposal deadline. Any response to publicized requests for proposals must be considered to the maximum extent practical.

Proposals must be solicited from an adequate number of qualified sources. Subrecipients must take all necessary steps to affirmatively assure, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

The Oklahoma Department of Commerce certifies Minority and Women owned businesses within the State. It should be noted which vendors are minority and women owned businesses on a subrecipients vendor lists, which will be cross-referenced with ODOC's business certifications. Note that it is a Federal law to take all necessary steps to assure that such businesses receive equal bidding opportunities and are utilized whenever possible.

More information on ODOC's certification of Women and Minority owned businesses can be found here:

https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/

https://www.okcommerce.gov/wp-content/uploads/Minority-Business-Certification-Programs.pdf

Step 3: Evaluate and rate the proposals

Subrecipients must have a written method for conducting technical evaluations of the proposals received and for selecting respondents. Materials received in response to RFPs and/or RFQs are typically reviewed in accordance with one of the following processes:

- Competitive Point Range. In using this review process, the Subrecipient shall establish a predetermined range of points for proposals that would be considered adequate for qualifying a responder for a particular solicitation. All responders whose proposals or qualification statements score within that range would be invited to an oral interview and asked to submit a best and final offer. The proposals would then be re-evaluated, and the highest scoring firm would be selected;
- Highest Point Earner. In using this review process, the Subrecipient shall evaluate all proposals or qualification statements in accordance with predetermined selection criteria and award the contract to overall highest scoring firm.

For counties, municipalities, and other public entities the local governing body has the final authority to award contracts and may select another respondent if the minutes of the local governing body meeting include justification for the selection.

Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

Step 4: Award the contract

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

Subrecipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract. If only one bid or proposal is received, the Subrecipient must receive approval from the ODOC CDBG DR Programs Planner/Programs Representative/staff before awarding the applicable contract.

Step 5: Execute the Contract

ODOC CDBG-DR recommends Subrecipients submit the Financial Interest Report within 30 days of executing the contract.

Other Program Requirements - 24 CFR 570.600-615 (Subpart K)

ODOC, and its subrecipients, must also ensure full compliance with the following:

§ 570.600 General.

(a) This subpart K enumerates laws that the Secretary will treat as applicable to grants made under section 106 of the Act, other than grants to states made pursuant to section 106(d) of the Act, for purposes of the Secretary's determinations under section 104(e)(1) of the Act, including statutes expressly made applicable by the Act and certain other statutes and Executive Orders for which the Secretary has enforcement responsibility. This subpart K applies to grants made under the Insular Areas Program in § 570.405 and § 570.440 with the exception of § 570.612. The absence of mention herein of any other statute for which the Secretary does not have direct enforcement responsibility is not intended to be taken as an indication that, in the Secretary's opinion, such statute or Executive Order is not applicable to activities assisted under the Act. For laws that the Secretary will treat as applicable to grants made to states under section 106(d) of the Act for purposes of the determination required to be made by the Secretary pursuant to section 104(e)(2) of the Act, see § 570.487.

(b) This subpart also sets forth certain additional program requirements which the Secretary has determined to be applicable to grants provided under the Act as a matter of administrative discretion.

(c) In addition to grants made pursuant to section 106(b) and 106(d)(2)(B) of the Act (subparts D and F, respectively), the requirements of this subpart K are applicable to

grants made pursuant to sections 107 and 119 of the Act (subparts E and G, respectively), and to loans guaranteed pursuant to subpart M.

§ 570.601 Public Law 88-352 and Public Law 90-284; affirmatively furthering fair housing; Executive Order 11063.

(a) The following requirements apply according to sections 104(b) and 107 of the Act:

(1) Public Law 88-352, which is title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and implementing regulations in 24 CFR part 1.

(2) Public Law 90-284, which is the Fair Housing Act (42 U.S.C. 3601-3620). In accordance with the Fair Housing Act, the Secretary requires that grantees administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Each community receiving a grant under subpart D of this part, shall submit a certification that it will affirmatively further fair housing, consistent with §§ 5.150 and 5.151 of this title.

(b) Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959-1963 Comp., p. 652; 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing), and implementing regulations in 24 CFR part 107, also apply.

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

§ 570.603 Labor standards.

(a) Section 110(a) of the Act contains labor standards that apply to non-volunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(b) The regulations in 24 CFR part 70 apply to the use of volunteers.

§ 570.604 Environmental standards.

For purposes of section 104(g) of the Act, the regulations in 24 CFR part 58 specify the other provisions of law which further the purposes of the National Environmental Policy Act of 1969, and the procedures by which grantees must fulfill their environmental responsibilities. In certain cases, grantees assume these

environmental review, decision-making, and action responsibilities by execution of grant agreements with the Secretary.

§ 570.605 National Flood Insurance Program.

Notwithstanding the date of HUD approval of the recipient's application (or, in the case of grants made under subpart D of this part or HUD-administered small cities recipients in Hawaii, the date of submission of the grantee's consolidated plan, in accordance with 24 CFR part 91), section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106) and the regulations in 44 CFR parts 59 through 79 apply to funds provided under this part 570.

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

(a) General policy for minimizing displacement. Consistent with the other goals and objectives of this part, grantees (or States or state recipients, as applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of activities assisted under this part.

(b) Relocation assistance for displaced persons at URA levels.

(1) A displaced person shall be provided with relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24, which contains the government-wide regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655).

(2) Displaced person.

(i) For purposes of paragraph (b) of this section, the term “displaced person” means 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, or acquisition for an activity assisted under this part. A permanent, involuntary move for an assisted activity includes a permanent move from real property that is made:

(A) After notice by the grantee (or the state recipient, if applicable) to move permanently from the property, if the move occurs after the initial official submission to HUD (or the State, as applicable) for grant, loan, or loan guarantee funds under this part that are later provided or granted.

(B) After notice by the property owner to move permanently from the property, if the move occurs after the date of the submission of a request for financial assistance by the property owner (or person in control of the site) that is later approved for the requested activity.

(C) Before the date described in paragraph (b)(2)(i)(A) or (B) of this section, if either HUD or the grantee (or State, as applicable) determines that the displacement directly resulted from acquisition, rehabilitation, or demolition for the requested activity.

(D) After the “initiation of negotiations” if the person is the tenant-occupant of a dwelling unit and any one of the following three situations occurs:

(1) The tenant has not been provided with a reasonable opportunity to lease and occupy a suitable decent, safe, and sanitary dwelling in the same building/complex upon the completion of the project, including a monthly rent that does not exceed the greater of the tenant's monthly rent and estimated average utility costs before the initiation of negotiations or 30 percent of the household's average monthly gross income; or

(2) The tenant is required to relocate temporarily for the activity but the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary location and any increased housing costs, or other conditions of the temporary relocation are not reasonable; and the tenant does not return to the building/complex; or

(3) The tenant is required to move to another unit in the building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

(ii) Notwithstanding the provisions of paragraph (b)(2)(i) of this section, the term “displaced person-” does not include:

(A) A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement. To exclude a person on this basis, the grantee (or State or state recipient, as applicable) must determine that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance under this section;

(B) A person who moves into the property after the date of the notice described in paragraph (b)(2)(i)(A) or (B) of this section, but who received a written notice of the expected displacement before occupancy.

(C) A person who is not displaced as described in 49 CFR 24.2(g)(2).

(D) A person who the grantee (or State, as applicable) determines is not displaced as a direct result of the acquisition, rehabilitation, or demolition for an assisted activity. To exclude a person on this basis, HUD must concur in that determination.

(iii) A grantee (or State or state recipient, as applicable) may, at any time, request HUD to determine whether a person is a displaced person under this section.

(3) Initiation of negotiations. For purposes of determining the type of replacement housing assistance to be provided under paragraph (b) of this section, if the displacement is the direct result of privately undertaken rehabilitation, demolition, or acquisition of real property, the term “initiation of negotiations” means the execution of the grant or loan agreement between the grantee (or State or state recipient, as applicable) and the person owning or controlling the real property.

(c) Residential anti-displacement and relocation assistance plan. The grantee shall comply with the requirements of 24 CFR part 42, subpart B.

(d) Optional relocation assistance. Under section 105(a)(11) of the Act, the grantee may provide (or the State may permit the state recipient to provide, as applicable) relocation payments and other relocation assistance to persons displaced by activities that are not subject to paragraph (b) or (c) of this section. The grantee may also provide (or the State may also permit the state recipient to provide, as applicable) relocation assistance to persons receiving assistance under paragraphs (b) or (c) of this section at levels in excess of those required by these paragraphs. Unless such assistance is provided under State or local law, the grantee (or state recipient, as applicable) shall provide such assistance only upon the basis of a written determination that the assistance is appropriate (see, e.g., 24 CFR 570.201(i), as applicable). The grantee (or state recipient, as applicable) must adopt a written policy available to the public that describes the relocation assistance that the grantee (or state recipient, as applicable) has elected to provide and that provides for equal relocation assistance within each class of displaced persons.

(e) Acquisition of real property. The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B.

(f) Appeals. If a person disagrees with the determination of the grantee (or the state recipient, as applicable) concerning the person's eligibility for, or the amount of, a relocation payment under this section, the person may file a written appeal of that determination with the grantee (or state recipient, as applicable). The appeal procedures to be followed are described in 49 CFR 24.10. In addition, a low- or moderate-income household that has been displaced from a dwelling may file a written request for review of the grantee's decision to the HUD Field Office. For purposes of the State CDBG program, a low- or moderate-income household may file a written request for review of the state recipient's decision with the State.

(g) Responsibility of grantee or State.

(1) The grantee (or State, if applicable) is responsible for ensuring compliance with the requirements of this section, notwithstanding any third party's contractual obligation to the grantee to comply with the provisions of this section. For purposes of the State CDBG program, the State shall require state recipients to certify that they will comply with the requirements of this section.

(2) The cost of assistance required under this section may be paid from local public funds, funds provided under this part, or funds available from other sources.

(3) The grantee (or State and state recipient, as applicable) must maintain records in sufficient detail to demonstrate compliance with the provisions of this section.

§ 570.607 Employment and contracting opportunities.

To the extent that they are otherwise applicable, grantees shall comply with:

(a) Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR 1964-1965 Comp. p. 339; 3 CFR, 1966-1970 Comp., p. 684; 3 CFR, 1966-1970., p. 803; 3 CFR, 1978 Comp., p. 230; 3 CFR, 1978 Comp., p. 264 (Equal Employment Opportunity), and Executive Order 13279 (Equal Protection of the Laws for Faith-Based and Community Organizations), 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and the implementing regulations at 41 CFR chapter 60; and

(b) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 75.

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

§ 570.609 Use of debarred, suspended or ineligible contractors or subrecipients.

The requirements set forth in 24 CFR part 5 apply to this program.

§ 570.610 Uniform administrative requirements, cost principles, and audit requirements for Federal awards.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with 2 CFR part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, as set forth at § 570.502.

§ 570.611 Conflict of interest.

(a) Applicability.

(1) In the procurement of supplies, equipment, construction, and services by recipients and by sub recipients, the conflict of interest provisions in 2 CFR 200.317 and 200.318 shall apply.

(2) In all cases not governed by 2 CFR 200.317 and 200.318, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, 570.204, 570.455, or 570.703(i)).

(b) Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are 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 themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

(d) Exceptions. Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.

(1) Threshold requirements. HUD will consider an exception only after the recipient has provided the following documentation:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(vi) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

§ 570.612 Executive Order 12372.

(a) General. Executive Order 12372, Intergovernmental Review of Federal Programs, and the Department's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on proposed Federal financial assistance programs.

(b) Applicability. Executive Order 12372 applies to the CDBG Entitlement program and the UDAG program. The Executive Order applies to all activities proposed to be assisted under UDAG, but it applies to the Entitlement program only where a grantee proposes to use funds for the planning or construction (reconstruction or installation) of water or sewer facilities. Such facilities include storm sewers as well as all sanitary sewers, but do not include water and sewer lines connecting a structure to the lines in the public right-of-way or easement. It is the responsibility of the grantee to initiate the Executive Order review process if it proposes to use its CDBG or UDAG funds for activities subject to review.

§ 570.613 Eligibility restrictions for certain resident aliens.

(a) Restriction. Certain newly legalized aliens, as described in 24 CFR part 49, are not eligible to apply for benefits under covered activities funded by the programs listed in paragraph (e) of this section. “Benefits” under this section means financial assistance, public services, jobs and access to new or rehabilitated housing and other facilities made available under covered activities funded by programs listed in paragraph (e) of this section. “Benefits” do not include relocation services and payments to which displacees are entitled by law.

(b) Covered activities. “Covered activities” under this section means activities meeting the requirements of § 570.208(a) that either:

(1) Have income eligibility requirements limiting the benefits exclusively to low and moderate income persons; or

(2) Are targeted geographically or otherwise to primarily benefit low and moderate income persons (excluding activities serving the public at large, such as sewers, roads, sidewalks, and parks), and that provide benefits to persons on the basis of an application.

(c) Limitation on coverage. The restrictions under this section apply only to applicants for new benefits not being received by covered resident aliens as of the effective date of this section.

(d) Compliance. Compliance can be accomplished by obtaining certification as provided in 24 CFR 49.20.

(e) Programs affected.

(1) The Community Development Block Grant program for small cities, administered under subpart F of part 570 of this title until closeout of the recipient's grant.

(2) The Community Development Block Grant program for entitlement grants, administered under subpart D of part 570 of this title.

(3) The Community Development Block Grant program for States, administered under subpart I of part 570 of this title until closeout of the unit of general local government's grant by the State.

(4) The Urban Development Action Grants program administered under subpart G of part 570 of this title until closeout of the recipient's grant.

§ 570.614 Architectural Barriers Act and the Americans with Disabilities Act.

(a) The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

(b) The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable - that is, easily accomplishable and able to be carried out without much difficulty or expense.

§ 570.615 Housing counseling.

Housing counseling, as defined in 24 CFR 5.100, that is funded with or provided in connection with CDBG funds must be carried out in accordance with 24 CFR 5.111.

ODOC/CD's policies and procedures to adhere to the above requirements are furthered outlined throughout the manual in other sections

Attachments

501	Administrative Responsibilities Checklist
502	Request for Proposals For Administrative Services
503	Statement of Price
504	ODOC Purchasing Policies and Procedures
505	Procurement Policy (2 CFR Part 200.317-326)
506	OMB Uniform Guidance Procurement Crosswalk
507	Legal Proficiency of Purchasing Policies
508	Procurement Training to include 2 CFR Part 200

Requirement No. 406 – Financial Management

Introduction

In order to assist you in fulfilling your financial management obligations, this Requirement will outline the steps for the successful financial management of a CDBG-DR grant. [24 CFR Part 570, Subpart I, §489(d)].

OKGrants is required for the submission of applications, implementation of projects and subsequent closeout. It is important to note that some documents will be completed on forms that are programmed into OKGrants. Certain documents will be completed by the State's Subrecipient and then uploaded into OKGrants. Additional paper documents should be maintained by the State's Subrecipient at the State's Subrecipient's office. ODOC will provide guidance as to what documentation must be uploaded in OKGrants and which documentation must be maintained at the State's Subrecipients office on paper.

Accounting Systems Requirements

The seven major elements and actions to a complete financial management system including but are not limited to [11 O.S. §§17-207, 68 O.S. §§3003]:

ACCOUNTING RECORDS

All State's Subrecipients are required by State statute to track Federal dollars by fund. This simply means that a separate set of accounting records (books) must be set up for each CDBG-DR contract received. Each set of books will be considered a fund, much like the funds State's Subrecipients are already required by law to operate under, i.e., water, street and alley, general, special revenue, etc. Within each fund, however, specific accounts are required to track expenditures by budgeted line item activity (construction, administration, engineering, etc.).

At a minimum, each fund should contain:

A cash receipts and disbursements journal. Please note that a State's Subrecipient may utilize a manual accounting, i.e. paper books such as green columnar pad or a computerized set of books. What ODOC strenuously requires is that the accounting system can accurately account for the receipt and disbursement of CDBG-DR funds. This ledger format should also be used to account for the receipt and disbursement of leveraged funds.

A complete set of expense accounts for each budgeted line item, i.e., construction, engineering, administration, etc.

A payroll register for any State's Subrecipient employees paid from CDBG-DR funds.

The accounting records may be maintained on a cash or accrual basis.

All entries recorded in the cash disbursements journal must be traceable to some form of source documentation, i.e., invoices, partial pay estimates, employee time sheets, etc. Additionally, you will need to have all original documentation filed in an orderly manner and readily available for review in the event ODOC performs a financial monitoring on your CDBG- DR project.

ACCOUNTING SYSTEMS

You may apply your normal accounting systems to CDBG-DR funds, provided that all applicable State and Federal requirements can be met.

Funds should be placed in a non-interest-bearing checking account. If funds are placed in an interest-bearing checking account, the interest must be tracked. Any interest earned in a one-year period in excess of $500 must be paid to HUD. The check can be sent to ODOC but must be made payable to HUD. The one-year time frame begins from the date of the first deposit into the account. State's Subrecipients may keep interest amounts up to $500 per year if they are able to document allowable CDBG-DR administrative expenses in accordance with 2 CFR 200.305(9); 24 Part CFR 570.489 and 85.21 Interest Earned on Advances.

In order to receive CDBG-DR by electronic transfer Subrecipients will need to contact the Oklahoma Management and Enterprise Services (OMES) at 405-521-2444. Once CDBG-DR funds are requested, they will be automatically deposited by electronic funds transfer (EFT) into the checking account that has been designated for receipt of CDBG-DR funds, preferably.

EFT Inquiries:

Questions or changes regarding EFT bank information.

Email: Vendor.EFT@omes.ok.gov

State's Subrecipients, both municipalities and counties, are allowed fifteen (15) working days to expend the CDBG-DR funds received. Any money not expended after the maximum time allowed is considered excess cash on hand and must be returned to ODOC by check to include reference of the Contract and/or activity number. The returned funds can be drawn at a later date as needed. There will be no waivers or extensions to this policy.

INTERNAL CONTROLS

Adequate internal controls must be established to ensure CDBG-DR funds are properly safeguarded. These controls must include the following:

Payment approval procedures must be defined. All invoices must be approved by the Municipal Council or Board of County Commissioners prior to payment. You may use an authorized official if normal approval procedures by the Council or Board cannot be used. **[Per the requirements of 62 O.S. 310.1]**

An authorized official is defined as any municipal or county officer or employee the Council or Board gives the authority to approve invoices on their behalf. **[11 O.S. §17A-102]**

State's Subrecipient ordinance must reflect any departure from the normal approval procedures. An authorized official may approve all invoices prior to payment by initialing and dating each invoice. **[11 O.S. 2014, §§17A-102]**

All paid invoices must be defaced by writing the check number and date paid on each invoice or purchase order. A copy of the approved purchase order must be attached to each invoice. **REMEMBER**, purchase orders must be signed and dated prior to ordering goods and services and prior to receipt of the invoice (including contracts). If Council or Board members do not sign purchase orders, documentation of approval of purchase orders as reflected in the meeting minutes must be readily available for review. **Every purchase order issued for invoices paid from CDBG-DR funds must be identified in the meeting minutes**.

Non-Collusion Affidavits are required to be attached to all contracts for $25,000 or more. State's Subrecipients executing contracts for goods or services on a continuing basis may accept a single Non-Collusion Affidavit at the time of initial execution of the contract, which applies to all future work, services or materials completed or supplied under the terms of the contract. **[74 O.S. §85.22]**

CDBG-DR checks must be pre-numbered and signed by the proper officials as authorized by local ordinance or State statute. In the absence of such ordinance, the treasurer must sign all checks.

Blank checks, undelivered checks and signature stamps must be locked in a safe, drawer or file cabinet with access restricted to individuals authorized for their use.

Every CDBG-DR bank statement should be reconciled. The statement balance (not including other sources of funds) should be reconciled back to the CDBG-DR general ledger cash account. It is recommended that the reconciliation be performed by someone other than the CDBG-DR accountant. All persons performing the reconciliation must initial and date the reconciliation to indicate approval.

CDBG-DR dollars cannot be placed in a petty cash fund.

Written definition and delineation of duties among key personnel involved in financial transactions. – An accounting policy and procedures manual that includes: Specific approval authority for financial transactions and guidelines for controlling expenditures; A set of written procedures for recording of transactions; and A chart of accounts. – Adequate separation of duties so that no one individual has authority over a financial transaction from beginning to end. In other words, one person should not have responsibility for more than one of the following functions: Authorization to execute a transaction. Recording of the transaction. Custody of the assets involved in the transaction. – Hiring policies ensuring that staff qualifications are commensurate with job responsibilities. – Control over assets, blank forms and confidential documents so that these types of documents are limited to authorized personnel only. Periodic comparisons of financial records to actual assets and liabilities (i.e., reconciliation). In cases where discrepancies are found, corrective action must be taken to resolve such discrepancies.

PURCHASE ORDER SYSTEM

State's Subrecipients must use purchase orders as required by Oklahoma Statute, Title 62, Contracts and Expenditures, §310.1. Please note that this is not an optional requirement but rather a statutory requirement.

Unless otherwise provided by ordinance, officers, boards, commissions and designated employees of cities and towns, hereinafter referred to as the purchasing officer, having authority to purchase or contract against all budget appropriation accounts as authorized by law shall submit all purchase orders and contracts prior to the time the commitment is made, to the officer charged with keeping the appropriation and expenditure records or clerk, who shall, if there be an unencumbered balance in the appropriation made for that purpose, so certify in the following manor:

> I hereby certify that the amount of this encumbrance has been entered against the designated appropriation accounts and that this encumbrance is within the authorized available balance of said appropriation.
>
> Dated this day of , 20 . Encumbering Officer or Clerk of .

Provided, in instances where it is impossible to ascertain the exact amount of expenditures to be made at the time of recording the encumbrance, an estimated amount may be used and the encumbrance made in like manner as set forth above. Provided, no purchase order or contract shall be valid unless signed and approved by the purchasing officer and certified as above set forth by the officer or clerk

charged with keeping the appropriation and expenditure records. The clerk or encumbering officer shall retain and file one copy of the purchase order.

After satisfactory delivery of the merchandise or completion of the contract, the supplier shall deliver an invoice. Such invoice shall state the supplier's name and address and must be sufficiently itemized to clearly describe each item purchased, its unit price, where applicable, the number or volume of each item purchased, its total price, the total of the purchase and the date of the purchase. The appropriate officer shall attach the itemized invoice together with delivery tickets, freight tickets or other supporting information to the original of the purchase order and, after approving and signing said original copy of the purchase order, shall submit the invoices, the purchase order and other supporting data for consideration for payment by the governing board. All invoices submitted shall be examined by the governing board to determine their legality. The governing board shall approve such invoices for payment in the amount the board determines just and correct.

As an alternative to the provisions of subsection B of this section, the governing body may elect to pay claims and invoices pursuant to the provisions of subsection A of Section 17-102 of Title 11 of the Oklahoma Statutes, which provides for the adoption of an ordinance to ensure adequate internal controls against unauthorized or illegal payment of invoices. The governing body may also authorize the chief executive officer or designee to approve payment of such invoices. In absence of such authority, the governing board shall approve payment.

LEVERAGE FUNDS REQUIREMENTS

The CDBG-DR program does not require match funds however if included in the project activity budget, must be tracked and reported.

ALLOWABLE AND UNALLOWABLE EXPENSES

Items that are considered allowable and unallowable expenses to your CDBG-DR contract. The most important thing to remember is that you can only expend funds on the items that are listed in the detailed budget submitted with your application for funding.

The budget has been reviewed and approved for funding through ODOC, therefore, all costs set out in the budget are considered approved. Any requests to deviate from the budget must be approved in writing by ODOC. Any CDBG-DR funds expended on items not pre- approved by ODOC will be considered disallowed expenses and must be paid for from local funding sources.

Procurement for services (non-construction and construction) records will need to be uploaded in OKGrants system along with approval processes for review.

FINANCIAL MANAGEMENT FILES

The State’s official subrecipient books of record will be maintained in the OKGrants management system. However, the subrecipient may choose to keep traditional paper files for their records.

OKGrants Pay Advance (Requests for Funds): Advances will be initiated and submitted by utilizing OKGrants. **Supporting documentation such as invoices and purchase orders must be uploaded with the submitted request.** The supporting documentation must be maintained at the State's Subrecipient's office.

Monthly Expenditure Reports: Monthly Expenditure Reports will be submitted to ODOC utilizing OKGrants. Along with the submitted Monthly Expenditure Report, supporting documentation such as cancelled checks and bank statements and board minutes approving the expenditure must be uploaded with private and/or sensitive information such as routing numbers and account numbers blacked out or redacted before being uploaded into OKGrants.

Any other correspondence between the State's Subrecipient and ODOC concerning the financial management of your CDBG-DR contract. Correspondence and other financial management documentation such as the general ledger and internal controls not uploaded in OKGrants must be maintained in the conventional manner at the State's Subrecipient's offices.

Drawing Down Funds (Advance/Pay Requests)

The Subrecipients Financial Officer (FO), in OKGrants, will complete an Advance/pay request within their OKGrants Contract, by entering the amount needed for all locally approved invoices as per the approved application budgeted activity/contract items.

Once completing the Advance Request with the amounts needed per claim(s) and per budgeted activity and saving the information, the Financial Officer (FO) will upload the invoices and purchases orders and any other supporting documents necessary to explain the claims via OKGrants Upload Section located within that pay advance and save the page.

The next step in the OKGrants system is to change the status to submit. The Financial Officer's (FO) information, time and date stamp, is recorded in the system as submitted. The OKGrants system will then alert the ODOC DR Staff/Programs Planner/Programs Representative via OKGrants Task Box that a request has been submitted. The Programs Planner/Programs Representative will review the supporting documentation for accuracy & compare against the contract budget as an allowable cost as well as the availability of funds. During the review, the DR Staff/Programs Planner/Programs Representative may require additional information or may find a discrepancy when at that time, the claim will be returned to the subrecipient via OKGrants, alerting the subrecipient via OKGrants task box and email with instruction for the subrecipient located in the Message Section for tasks to be completed before re-submission. The DR Programs Planner/Programs Representative will make comments in the Notes Section of the report documenting the review and saves the document.

The DR Programs Planner/Programs Representative then changes the status to "Approved send Advance for Payment" via OKGrants submission to the ODOC Financial Services Department. The Accountant III staff located in Financial Services will be alerted via OKGrants receipt of a pay advance request. The Accountant III

staff will review the amount submitted for each activity budget and obligation in the DRGR System and creates a voucher in the system. The Accountant III will then print the voucher and take to the ODOC Accounts Manager for approval. The remaining payment process occurs within the Financial Services Department. This entire process from receipt of initial request, ODOC Review, and Process for payment will take approximately 10-12 days until the requested funds are deposited into the subrecipient's bank account set-up for the CDBG-DR contract via EFT. This process repeats for each Pay Advance Request submitted by the subrecipient. (NOTE: The subrecipient's Authorized Official (AO) may perform the Advance in place of the Financial Officer (FO). The subrecipient may also set-up an authorized "writer" who may assist with preparing the Advance and upload documents, but the Authorized Official/Financial Officer must log-in, review and submit the request).

CDBG Monthly Expenditure Reports

The Subrecipient's designated Financial Officer (FO) in OKGrants will initiate and prepare a Monthly Expenditure Report to be submitted via OKGrants by the **4th of every month**. The report will reflect the activity expenditures and cash balance of budgeted funds. Before changing the status to submit, the subrecipient shall provide evidence of the expenditure within the upload section of the expenditure report and save. Supporting documents should include cancelled checks redacting the account number, board minutes approving payment of the invoices, and/or a certified ledger/spreadsheet reflecting all expenditures. The Financial Officer (FO) submits the report in OKGrants time and date stamped. The Programs Planner receives an alert via OKGrants Task Box that a report has been submitted for review. The Programs Planner reviews the report for accuracy against all funds drawn per activity and notes any discrepancy or Cash on Hand as well as review of the supporting documentation.

The ODOC Programs Planner will make comments in the Modification Comments section of the report if changes are required. The report will be checked for accuracy and timeliness by the Programs Planner by checking that all funds expended match the drawdown requests in OKGrants every month and subrecipients are meeting their expenditure milestones. If a discrepancy is noted, the Programs Planner will return the report to the subrecipient via OKGrants Task Box Notification for corrections. The subrecipient will have seven (7) calendar days to revise any discrepancy. If subrecipients do not resubmit a revised report within seven (7) calendar days, the Programs Planner will contact the subrecipient and provide technical assistance in order to resolve any issue related to the monthly expenditure report. Finally, the Programs Planner will change the status to submit the Expenditure Report via OKGrants notification to Financial Services to confirm the expenditure to their system records. The Programs Planner will also report the expenditure in the HUD DRGR system where the draws are reported as well.

HUD Contract Reporting Template: Subrecipients will also upload the HUD Contract Reporting Template every month. The subrecipient's Financial Officer (FO) shall submit a completed report as well as any supporting documents as an upload to OKGrants with the Monthly Expenditure Report also due by the 4th of month.

ODOC Programs Representative will review the HUD contract report submissions every month and summarize the reports for the CDBG-DR website. The programs representative will then send the summary to the Marketing Manager, Bryan Boone, to post the summary to the website.

Monthly Check-In for Timely Expenditure: In addition to the Monthly Expenditure Report and HUD Contract Reporting, the subrecipient must complete a virtual monthly check-in. The subrecipient completes this check-in by answering additional questions at the end of the Monthly Expenditure Report in OKGrants. The Monthly Check-in is required with the Monthly Expenditure Report by the fourth of every month. The responses to these questions will be reviewed with the Monthly Expenditure Report. Completing the monthly check-in via OKGrants meets the monthly requirements of the Timely Expenditure Plan.

CDBG Quarterly Performance Reporting

On a quarterly basis, subrecipients must submit a report to the ODOC Programs Planner and Programs Representative via OKGrants by completing and uploading the "CDBG-DR Program Quarter Performance Report" (QPR) form/template located as an attachment to this guide due on the 4th of April, July, October, and January until closeout documents are submitted.

The Report shall be completed to reflect the expenditure and accomplishment metrics for the quarter. Information such as performance on contracts, program income, overall LMI benefit, and total number of beneficiaries to an activity must be provided on the QPR form. Expenditure and Accomplishment metrics on DRGR, as well as projected accomplishments outlined in the subrecipient's contract, will be compared with quarterly reports to ensure that subrecipients are meeting projected milestones. Programs Planner and Programs Representative will use all uploaded documents from subrecipients on OKGrants to check the accuracy of the report submitted.

The Quarterly Performance Reports will ensure timeliness by requiring subrecipients to submit "Cumulative Actual Total" amounts versus "Expected Total" amounts for accomplishments. This allows the Programs Planner and Programs Representative to identify what project milestones the subrecipient has and has not completed and note the timeliness of the subrecipient's projects. Using these reports, the Programs Planner and Programs Representative can provide Technical Assistance to subrecipients that are not meeting their Expected Total accomplishments. The Programs Planner and Programs Representative will contact any subrecipient that has not met their Expected Total for any accomplishment within the QPR. If a subrecipient does not meet their Expected Totals for two (2) consecutive quarters, the Programs Planner and Programs Representative will require a technical assistance meeting and an evaluation of project milestones for the subrecipient.

The ODOC Programs Planner and Programs Representative will receive the most recent Monthly Expenditure Report for review along with the DRGR expenditure and accomplishment metrics and Subrecipient Quarterly Report and Contract Reporting Template, as well as all supporting documentation (Supporting documents should include cancelled checks redacting the account number, board minutes approving

payment of the invoices, and/or a certified ledger/spreadsheet reflecting all expenditures) as provided in the uploads section of OKGrants. The Programs Planner and Programs Representative will make comments in the Notes Section of the Subrecipient Quarterly Report, documenting the review, save and submit the report as noted in the OKGrants System. They will also review all reports and supporting documentation to ensure that all information received by ODOC is consistent throughout the reports and documents. Programs Planner and Programs Representative will then send the QPR to the Accountant III to report that Program Income has been reported as earned and/or expended. Accountant III will keep an internal record of subrecipient program income for ODOC. Additional grant funds for subrecipients cannot be drawn until all program income has been reported as expended (Note: Program Income reporting is further outlined in the following section).

The ODOC Programs Planner will use all Monthly Expenditure Reports, the DRGR expenditure and accomplishment metrics, Subrecipient Quarterly Reports, Contract Reporting Templates, as well as all supporting documentation (as provided in the uploads section of OKGrants), to report activity accomplishments and program income in the DRGR Quarterly Performance Report and Contract Reporting Template due by the 30th of the month following the Quarter to HUD. NOTE: The current Quarter Report template is subject to changes as additional data may be required as the program activities are developed.

Timely Expenditure Plan

As per 83 Federal Register Notice 5844 dated February 9, 2018, the Oklahoma Department of Commerce (State) as the Grantee **must expend 100 percent of its allocation of CDBG-DR funds on eligible activities within Six (6) years** of HUD's execution of the initial grant agreement with the State. For the State to meet this requirement, the DR Staff will provide technical assistance to each subrecipient with following the policies and procedures of the program requirements & guidelines to meet the milestones for all activity(s) from contract award through contract closeout.

Each subrecipient will have specific milestones identified in the award agreement. This may include, but not limited to, the following milestones:

- Complete the Environmental Review and Release of Funds within 4 months (120 days) for each activity
- Award a construction contract for each activity within 9 months (270 days)
- Each subrecipient agreement will have milestones established in Contract Part III; Special Conditions. Subrecipients are required to meet the milestones and expenditure deadlines established in the subrecipient agreement;
- Expend all funds 6 months (180 days) before the ODOC-HUD expenditure deadline

To stay on track with expenditures and in addition to the Financial Policies contained in this guidance for pay advance/draws and expending funds including

program income, the subrecipient shall follow a strict expenditure timeline as outlined below.

NOTE: In the event that an activity is stalled or cannot be completed for any reason, (e.g., cannot be cleared environmentally or cannot acquire required property), the ODOC/CD Programs Planner and Programs Representative shall contact the subrecipient immediately for a possible resolution as the funding for that activity may be in jeopardy. Programs Planner and Programs Representative will ensure awareness of such delays through desk monitoring of documents uploaded by subrecipients and consistent subrecipient meetings and check-ins as outlined below.

Programs Planner and Programs Representative will review the monthly check-in submitted via OKGrants to ensure timeliness of projects and to ensure that subrecipients are meeting activity milestones. The Monthly Check-in can be completed by the subrecipient by answering several questions on the Monthly Expenditure Report. While completing these check-ins, subrecipients will address any changes in construction and non-construction activities, which may include, but are not limited to, the following:

- Award budget, expenditures and reimbursements, and progress to date
- Change in the scope or the objective of the project or number of projects within the program.
- Stalled/halted projects (i.e., started projects with no expenditures) - Reallocation/reprogramming of funds committed to projects that have been stalled for 2 months (60 days) or with starts that are delayed and present feasibility questions.
- The transfer of funds budgeted for participant support costs as defined in §200.75, Participant support costs, to other categories of expense.
- Unless described in the application and funded in the approved Federal awards, the sub-awarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in §200.332, Fixed amount subawards (this provision does not apply to the acquisition of supplies, material, equipment or general support services).

Amendments to project applications, allocations, and grant agreements will be made as appropriate based impact to the grant.

For all subrecipient activities, the ODOC DR Programs Planner/Programs Representative tracks each budgeted activity's draws and expenditures through desk monitoring in the OKGrants system as well as the HUD DRGR system. To assist with this task, the Programs Planner will run a consolidated report from the OKGrants system by the 11th of every month to determine total amount of funds spent for each subrecipient and determine any remaining funds from the last draw, often referred to as cash on hand (COH).

Note that a 15-day expenditure rule will be followed and implemented by ODOC for CDBG-DR among its subrecipients and can found in in Requirement No. 406 Section 2.2.3 and in accordance with 83 FR 5844.The Programs Planner will review the COH report and contact the subrecipient to find out if the funds have been expended and

need to be reported or request for the funds to be returned to ODOC to be drawn at a later time. If funds are returned, the Programs Planner, will enter the repayment amount into ODOC's grant management system OKGrants, contact the Accountant III, and then the Accountant III will make a voucher revision in the DRGR system (putting the funds back to that contract). Unexpended funds returned to ODOC will either be applied to the next need of funding for grant or be returned to the line of credit.

Alternatively, if a Subrecipient's does not spend funds within the 15-day expenditure deadline and does not return the COH within three (3) days of the expenditure deadline, this will prompt the ODOC Programs Planner, and Programs Representative, to prepare a notification to the subrecipient for a "COH findings letter" and the subrecipient will be required to return the COH within two (2) days of receiving this letter (a total of twenty (20) days from the initial draw). Failure to meet this deadline will result in an additional notification letter that the subrecipient will be on a "reimbursement only status" for the remainder of the contract, meaning that, the subrecipient will pay all future invoices received for the project activity from sources other than the grant funds and will be reimbursed through normal advance requests through OKGrants and a technical assistance visit with ODOC staff will be required and scheduled. Failure to meet any and all future deadlines required of the subrecipient will result in possible de-obligation and/or restrictive funding for any future grants applied for through the Oklahoma Department of Commerce. Implementing a strict expenditure policy with repercussions along with ODOC oversight will maintain program compliance for timely expenditures.

Any issues other than the expenditure deadlines noted in the consolidated report will require the Programs Planner to contact subrecipients and resolve such issues in a timely manner. Subrecipients will have seven (7) calendar days to resolve and resubmit any reports or documentation necessary. Because consolidated reports and monthly expenditure reports are due monthly, the Programs Planner/Programs Representative will use these reports to track issues prior to the submission of quarterly progress reports to ensure that subrecipients are meeting all milestones. Due to the monthly expenditure deadline of the 4th of every month and the consolidated report run on the 11th, it will be unlikely that the Programs Planner will be able to communicate with subrecipients before the consolidated report is run. The Programs Planner will communicate to subrecipients so they can resolve any issues within two (2) business days from the time the consolidated report is run.

SUBRECIPIENTS OF NON-CONSTRUCTION (3 YEAR) CONTRACTS

Each subrecipient will have a unique expenditure and project milestone timeline in Contract Part III, Special Considerations. All Non-construction contracts will be for three (3) years and adhere to the timelines outlined in Contract Part III, Special Considerations. Each contract may have requirements such as:

- Complete the Environmental Review and Release of Funds within 4 months (120 days) for each activity;

- Award a construction contract for each activity within 9 months (270 days); and
- Expend all funds 6 months (180 days) before the ODOC-HUD expenditure deadline.

SUBRECIPIENTS OF CONSTRUCTION (5 YEAR) CONTRACTS

Each subrecipient will have a unique expenditure and project milestone timeline in Contract Part III, Special Considerations. All Construction contracts will be for five (5) years and adhere to the timelines outlined in Contract Part III, Special Considerations. Each contract may have requirements such as:

- Complete the Environmental Review and Release of Funds within 4 months (120 days) for each activity;
- Award a construction contract for each activity within 9 months (270 days); and
- Expend all funds 6 months (180 days) before the ODOC-HUD expenditure deadline.

ODOC/CD will ensure timeliness for projects from the start by including performance milestones and penalty language in the contracts with subrecipients. Performance milestones will include expenditure and construction progress deadlines and consequences for non-compliance. Penalty language will include direct consequences for missed milestones. Additionally, the expenditure deadlines will be set to occur prior to the contract expiration date, allowing subrecipients to ensure beneficiary data is reported prior to the contract expiration date.

As outlined above, the combination of OKGrants and DRGR are used by ODOC/CD to manage the grant allocations, obligations, and expenditures. All CDBG-DR programs and projects will be tracked in OKGrants and appropriate parties involved in a specific project will have access to the relevant files and information. Subrecipients and contractors will submit funds requests through OKGrants. In addition to the signed funds requests form(s), subrecipients upload required back up documentation including scanned copies of contracts, invoices, inspection reports, timesheets and other documentation outlined in the contract. OKGrants produces monthly consolidated reports to inform ODOC/CD of program and project progress.

Project and fund request tracking provides ODOC/CD staff with monthly and quarterly detail on activities. This allows ODOC/CD to:

- Review and process expenses against eligible reimbursements provided by subrecipients and draw down expenditures in DRGR on a quarterly reimbursement basis.
- Monitor the progress of activities in order to address any delay in production which could lead to the slow expenditure of funds.
    - Change in the scope or the objective of the project or number of projects within the program.
    - Reallocation of funds from a project that has halted in either project activities or expenditures for two (2) months, or a 25 percent reduction in program staff time dedicated to project management activities.

    - The transfer of funds budgeted for participant support costs as defined in §200.75, Participant support costs, to other categories of expense.
- The transfer of funds budgeted for participant support costs as defined in §200.75, Participant support costs, to other categories of expense.

All obligations and expenditures for the grant will be accounted for in OKGrants. OKGrants will track the grant for the duration of the period of performance from HUD.

Recapture Policy

The below explains the different DR Grant Fund Recapture/De-obligation/Re-allocation procedures between ODOC and the subrecipient during a voluntary or involuntary situation.

If a subrecipient decides to voluntarily return their grant, ODOC requires the subrecipient to initiate a closeout in OKGrants and upload an official letter signed by the top local elected official stating they would like to voluntarily return the contract.

The subrecipient will also be required to fill out the Closeout Certification page embedded in the OKGrants system. At that point the ODOC DR Programs Planner/Programs Representative reconciles the financial records to see if any CDBG funds had been drawn and expended. If no funds were drawn or expended then the ODOC DR program representative sends the closeout to the ODOC DR Program Lead for accuracy.

The ODOC DR Program Lead then emails Financial Services Accounts Manager that a contract is being voluntarily de-obligated and a recapture of said contract funds is subject to reallocation to another eligible DR activity. The next step would be for the DR Programs Planner/Programs Representative to send the closeout documents to ODOC financial services for their review and completion of the closeout process as well as work with the DR Program Lead/Planner & DR Programs Planner/Programs Representative in the budget/obligation process in DRGR as necessary to re-purpose the de-obligated funds in a timely manner to eligible DR activities.

CDBG FUNDS RECAPTURE POLICY WHEN THE PROCESS IS VOLUNTARY AND CDBG FUNDS WERE DRAWN

If a Subrecipient decides to voluntarily return their grant, ODOC requires the Subrecipient to initiate a closeout in OKGrants and upload an official letter signed by the top local elected official stating they would like to voluntarily return the contract.

The Subrecipient will also be required to fill out the Closeout Certification page embedded in the OKGrants system. At this point the ODOC DR Programs Planner/Programs Representative reconciles the financial records to see if any CDBG funds had been drawn and expended. If funds were drawn or expended, then the ODOC DR Programs Planner/Programs Representative will notify the Subrecipient of the amount of funds to be returned to ODOC by a given date. The Subrecipient would also be told that they would be ineligible for any future CDBG funding until all the funds drawn from the de-obligated contract were paid back to ODOC.

The Subrecipient would be required to also send in a revised payment request and a revised expenditure report that indicates the return of all CDBG funds drawn and expended. The ODOC DR Programs Planner/Programs Representative sends the closeout documents via OKGrants to the ODOC DR Program Lead to review for accuracy. The ODOC DR Program Lead then emails the ODOC Financial Services that a contract is being voluntarily de-obligated and a recapture of said contract funds is subject for reallocation to another eligible DR activity. The next step would be for the DR Programs Planner/Programs Representative to send the closeout documents to ODOC financial services for their review and completion of the closeout process as well as work with the DR Program Lead/Planner & DR Programs Planner/Programs Representative in the budget/obligation process in DRGR as necessary to re-purpose the de-obligated funds in a timely manner to eligible DR activities.

CDBG FUNDS RECAPTURE POLICY WHEN THE PROCESS IS INVOLUNTARY AND CDBG FUNDS WERE SPENT

When a Subrecipient does not meet the contractual requirements of their project then ODOC DR Program Lead will notify the Subrecipient by official letter notification that they are in violation of their contract (with citations provided) and the subrecipient is being considered for de-obligation. The Subrecipient will be given a deadline to respond with explanations as to why their contract should not be de-obligated. An ODOC review committee made up of Division Director, Director of Programs – Planning, Director of Programs – Monitoring, DR Program Lead and DR Programs Planner/Programs Representative/Representative will meet and review all documentation that relates to the decision of whether to de-obligate or not. After the ODOC review committee has made their decision an official letter is sent via email to the Subrecipient.

If the decision was to de-obligate the contract and if the Subrecipient had drawn funds then the decision letter would include a statement about paying back all funds drawn and expended. The Subrecipient would also be advised that they would be ineligible for any future CDBG funding until all the funds from the de-obligated contract were paid back to ODOC.

Corrected pay requests and expenditure reports would need to be submitted to ODOC through OKGrants along with the required Closeout Certification Page. The next step would be for the ODOC Programs Planner/Program Representative to make sure all required documents had been reconciled and then send the closeout to the Director of Programs for review.

The ODOC DR Program Lead then emails the ODOC Financial Services that a contract is being voluntarily de-obligated and a recapture of said contract funds is subject for reallocation to another eligible DR activity.

The next step would be for the DR Programs Planner/Programs Representative to send the closeout documents to ODOC financial services for their review and completion of the closeout process as well as work with the DR Program Lead/Planner & DR Programs Planner/Programs Representative in the

budget/obligation process in DRGR as necessary to re-purpose the de-obligated funds in a timely manner to eligible DR activities.

RECAPTURE POLICY WHEN IT IS INVOLUNTARY AND NO CDBG FUNDS SPENT

When a subrecipient does not meet the contractual requirements of their project then the ODOC DR Program Lead will notify the Subrecipient by official letter notification that they are in violation of their contract (with citations provided) and the subrecipient is being considered for de-obligation.

The Subrecipient will be given a deadline to respond with explanations as to why their contract should not be de-obligated.

An ODOC review committee made up of Division Director, Director of Programs – Planning, Director of Programs – Monitoring, DR Program Lead and DR Programs Planner/Programs Representative/Representative will meet and review all documentation that relates to the decision of whether to de-obligate or not. After the ODOC review committee has made their decision an official letter is sent via email to the Subrecipient.

If the decision was to de-obligate and if no CDBG funds had been drawn or expended then the Subrecipient would be informed that ODOC would be performing a One-page closeout and nothing further would be necessary for them to do. They would also be informed that they would be eligible to apply for future funding when the next eligibility period occurs.

The ODOC DR Programs Planner/Programs Representative will fill out the One-Page Closeout in OKGrants, upload all pertinent documentation and send the closeout to the ODOC DR Program Lead for review. The ODOC DR Program Lead then emails the ODOC Financial Services that a contract is being de-obligated and a recapture of said contract funds is subject for reallocation to another eligible DR activity.

The next step would be for the DR Programs Planner/Programs Representative to send the closeout documents to ODOC financial services for their review and completion of the closeout process as well as work with the DR Program Lead/Planner & DR Programs Planner/Programs Representative in the budget/obligation process in DRGR as necessary to re-purpose the de-obligated funds in a timely manner to eligible DR activities.

RECAPTURE POLICY WHEN CONTRACT HAS BEEN CLOSED

If ODOC receives a contract closeout document because all activities have been completed (checklist & supporting documents in OKGrants and a final expenditure report), those documents provide that all budgeted funds drawn were expended and that any remaining contract funds is a recapture and the activity should be reduced to the drawn & expended amount, reducing the budget and obligation in the DRGR system, thus becoming “un-obligated” in order for possible re-allocation to another contract, either current or new activity (see Timely Re-use of Funds-Recapture Spreadsheet).

REPROGRAMMING OF RECAPTURED FUNDS

In the event that obligated funds are recaptured for any of the aforementioned reasons, ODOC/CD will make every effort to reprogram funds for another CDBG-DR eligible activity. In the event that funds are recaptured with substantial time to reprogram funds, ODOC/CD will execute the following steps in order to delegate funds to the most necessary project:

- Identify projects within the same category of funds and activity type- If funds were recaptured for a project for the restoration or repair of Low-Income Multi-family housing, identify other projects that serve this same need.
- If projects within the same category of funds and activity type are not available, identify projects that support a similar need- If multi-family housing projects cannot be identified, look for projects that support overall housing needs identified by the unmet needs survey.
- If projects cannot be identified that support the same category of funds and support identified unmet needs through needs survey, identify projects that support the MID areas and support LMI persons.

If another project can be identified and funds can be reprogrammed in a timely manner, ODOC/CD will enter into a contractual agreement with the subrecipient and include project milestones and penalty language in any contracts between the two parties. All requirements of subrecipients will be required for the new subrecipient receiving reprogrammed funds.

For any recapture of grant contract funds, ODOC will try to re-allocate the grant funds to another eligible DR activity that can be completed within the expenditure deadline as provided in the Federal Register for this allocation. If there are no viable projects or activities that can be provided these recaptured funds, then the amount will remain unobligated and subject to recapture by HUD. There are situations that cause for a de-obligation of grant funds that may not be prevented or remedied between both parties, such as a Duplication of Benefits, the proposed project developed an environmental situation, the Subrecipient cannot meet it contractual duties for some reason or no resolution can be determined to continue the project. ODOC will perform due-diligence to resolve a situation before a de-obligation occurs. De-obligation or recapture of funds could also mean remaining funds that weren't used after completion of the DR project, as in the project came in under budget or a violation to a requirement was found during an ODOC Monitoring, would require a re-payment of partial or complete return of the DR contract award.

Reprogramming of recaptured funds could trigger a substantial amendment. This could be due to reallocating over ten percent (10%) of funds to another project or activity (set at $3.6 million) or the addition or deletion of an activity. The reprogramming of funds could also change the overall benefit requirement for CDBG-DR funds to benefit at least 70% of Low-to-Moderate-Income Individuals. In order to maintain the allocated funds for each activity and meet the required National Objective, ODOC/CD will make every effort to identify projects that fit within the same scope of work and meet all necessary Federal requirements. In the event that this is not possible, ODOC/CD may be required to submit a substantial

amendment, adhering to all public hearing and public comment periods, and recalculate the overall LMI benefit.

Audit Requirements

Each ODOC contract includes an audit requirement. Several factors affect the audit that is required including: Oklahoma Administrative Code Title 150 Chapter 1 Subchapter 21 (See Exhibit) establishes the policy and procedures for the audit of state and federal funds administered by the Oklahoma Department of Commerce (ODOC). If a subrecipient receives $25,000 or more during a fiscal year, it is required by Oklahoma State Statute (See Exhibit) to have an audit prepared and filed with the State Auditor and Inspector (SA&I). When such funds are awarded through the Oklahoma Department of Commerce, a report also needs to be submitted to ODOC.

If a subrecipient expends a total of $750,000 or more in Federal awards during the fiscal year, a Single Entity Audit or program specific audit in accordance with the provisions of 2CFR part 200, Subpart F, Audit Requirement, needs to be conducted and the report must be submitted to ODOC within thirty (30) days of completion of report but no later than nine (9) months after the end of the contractor's fiscal year. After receipt of an audit, the Department has six months to review the audit and take appropriate action if necessary.

State's Subrecipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.

Audits are required to be uploaded on OKGrants in a PDF file by the sub recipient.

Program Income Policy

Program income is defined as gross income generated from the use of CDBG-DR funds, and received by a State or a subrecipient of a State. When income is generated by an activity that is only partially assisted with CDBG-DR funds, the income shall be prorated to reflect the percentage of CDBG-DR funds used. Program Income is also defined as the amount of revenue received in a single year which is greater than or equal to $35,000, as program income generated from a CDBG-DR federally funded project, it is subject to all federal requirements. (See 2 CFR 200.307, 24 CFR Part 570.489 & 570.504, 85 Federal Register Notice 5844, Friday February 9, 2018; the Title I HCD Act of 1974, and the CDBG regulations at 24 CFR Part 570).

ODOC is required to receipt program income payments, including general program income returned to the CDBG-DR program and general local program income retained by the unit of general local government (UGLG) in the Disaster Recovery Grant Reporting System (DRGR). As a nationwide database, DRGR provides HUD with current information regarding the program activities underway across the nation, including funding data. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed in the DRGR Quarter Program Report (QPR). The DRGR system requires subrecipients to use program income

before drawing additional grant funds. In order to obtain this information for tracking and reporting to HUD, the subrecipient is required to report Program Income on the quarterly Report Form attached to this guide and upload with the monthly expenditure report which will be processed by the ODOC DR Programs Planner/Programs Representative to Financial Services for tracking in the financial system. (Refer to the Program Income Policy for Subrecipients (below) for further instructions).

Based on CDBG-DR programs, it is unlikely that any CDBG-DR projects will generate program income. In the event that any program income is generated in connection with a subrecipient's administration of the CDBG-DR funding, such funds will remain with the subrecipient and expended under the method of distribution annotated below and within the Action Plan. If the subrecipient cannot successfully fulfill this program income obligation, the State will assume the program income and reallocate the funds based on its then current method of distribution as described in the applicable Action Plan.

Program income—use, close out, and transfer, (1) Program income received (and retained, if applicable) before or after close out of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–DR funds subject to the requirements of this notice and must be used in accordance with the State's action plan for disaster recovery. (2) In addition to the regulations addressing program income found at 24 CFR Part 570.489(e) and 570.504, the following rules apply: The State may transfer program income to its annual CDBG program before closeout of the grant that generated the program income. In addition, the State may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government within the State. Program income received by the State after the close out of the grant that generated the program income might also be transferred to the State's annual CDBG award. In all cases, any program income received that is not used to continue the disaster recovery activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the State's regular CDBG program rules.

PROGRAM INCOME POLICY FOR SUBRECIPIENTS

Program income is money received by the State's Subrecipient's, in the amount of $35,000 or more per year that has been generated from the use of CDBG-DR funds. [Federal Register Notice Friday February 9, 2018 (83 FR 5844); and 24 CFR part 570, Subpart I, § 489(e)] and 570.504. Program income is not the initial receipt of CDBG-DR funds, but money made from the use of those funds. Examples of program income are: Proceeds from the sale of real property purchased or improved with CDBG-DR funds; proceeds from the sale of equipment purchased with CDBG-DR funds and gross income from the use of real or personal property acquired with CDBG-DR funds, less the costs incurred in creating the program income; and payment of principal and interest on loans made using CDBG-DR funds.

If the State's Subrecipient earns less than $35,000 per year from the use of CDBG-DR funds, such earnings are not considered program income. The State's Subrecipient may keep any amount less than $35,000 for its own use; however, the State's

Subrecipient is encouraged to use it for community development disaster related activities.

Any revenue received by the State's Subrecipient in the amount of $35,000 or more per year must be reported to ODOC. In order to obtain this information for tracking and reporting to HUD, the subrecipient is required to complete the Program Income Section of the Quarterly Reporting Form attached to this guide and upload with the monthly expenditure report in OKGrants. This form will reflect the amount earned/received per program activity that earned the funds as program income and will be reported in the DRGR system by the ODOC Programs Planner/Programs Representative. Any amount reported as earned must also be reported as expended per eligible program activity before additional grant funds can be drawn. The ODOC DR Programs Planner/Programs Representative will review the form submitted and may request supporting documentation as necessary. As Noted in the Quarterly Reporting Section: The Programs Planner, and Programs Representative, will make comments in the Notes Section of the report, documenting the review, saves and submits the Expenditure Report as noted for that report as well as note to the Accountant III that Program Income has been reported as earned and/or expended to be reflected and provided on an additional tracking spreadsheet as noted, additional grant funds cannot be drawn until all program income has been reported as expended. The Programs Planner/Programs Representative will have downloaded the Quarterly Report and any supporting documents to be used to report activity accomplishments and program income in the DRGR Quarterly Performance Report due by the 30th of the month following the Quarter. This report will also contain a HUD Contractor Reporting Template, containing a listing and detailed information for all of the contracts executed and reported during the quarter and will be listed/updated on the ODOC website on a quarterly basis.

Additionally, the following will also apply to Program Income for Single Family Housing Rehab Activity: The program activity provides for forgivable loans used to fund repairs of homes and residential structures impacted by disaster. Housing rehabilitation activities under this Program is limited to unfunded or unreimbursed owner-occupied housing damage resulting from the events that occurred as referenced in the FEMA Notice 4438-OK Severe Storms, Straight-Line Winds, Tornadoes, and Flooding. In addition, all activities under this section shall comply with the Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Public Law 116-20, June 6, 2019); and the Housing and Community Development Act of 1974.

Subrecipients with a housing rehab activity shall file liens on each homeowner's property by providing a 5 year forgivable loan with recapture of all or a portion of the grant in the event of any noncompliance of the subrecipients program requirements during that period.

Based on the scale (see below) thru the five (5) years, any recapture of grant funds shall be tracked by the subrecipient to be reported to ODOC as potential program income and shall be used in accordance with program income requirements. In the event the funds cannot be used within the same program activity, or in the case funds received following a completed program activity, the funds shall be returned

to ODOC. ODOC will receipt the program income in DRGR and a drawdown request for returned excess program income will be submitted to HUD for HUD recapture. Please see Post Completion or Post Closeout procedures for further guidance in the Monitoring and Closeout Section of this guide.

Attachments

601	2019 CDBG-DR Subgrantee Quarterly Performance Report (QPR)
602	Advance Request OKGRANTS EXAMPLE
603	Monthly Expenditure Report EXAMPLE
604	HUD Contract-Reporting-Template

Requirement No. 407 – Contract Development

Once necessary services have been properly procured, it is time to develop the legal instruments necessary to establish contractual obligations and rights. This Requirement provides general guidance concerning the compliance aspects of contract administration. As with all contractual obligations, the State's Subrecipient is advised to seek legal counsel regarding rights, duties, obligations and liabilities arising from these legal arrangements. ODOC will also provide general advice concerning contract administration. [See Requirement 405 for additional guidance on required procurement for contracts.]

General Requirements

Contract Format: As a general rule, contracts will include the following provisions:

General Administrative Provisions, including effective date of contract, names and addresses of the parties to the contract, reference to the authority of the local unit of government to enter into the contract, conditions and terms for violation or breach of the contract and procedures for contract amendment;

Scope of Services, including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance and specification of materials;

Method of Compensation, including fee or payment schedules, retainage, rates and maximum amounts payable;

Special Conditions, including provisions mandated by State and Federal law.

Contract Provisions

There are essentially two issues, which are critical to ensure compliance with the CDBG-DR Program and upon which ODOC will focus its review:

Consistency of the contract with the requirements of the contract agreement between ODOC and the State's Subrecipient. This is particularly true of those terms and conditions involving scope of project, implementation schedules and method and amount of payments. The contract agreement between ODOC and the State's Subrecipient is the "master" contract with which all subsequent contracts between the State's Subrecipient and any construction contractors must be consistent and with which they must comply;

Inclusion of specific provisions required by State and Federal law. These provisions are dependent on a combination of:

Whether the contract is for construction or non-construction, i.e., professional services such as administration, accounting, legal, etc. [24 CFR 85.36(L)];

The dollar value of the contract; and statutory mandates.

Specific Requirements

NON-CONSTRUCTION CONTRACTS

The State's Subrecipient should carefully review the citations noted in Attachment 22 to determine which provisions will be required in any non-construction contract utilized during the course of the project. [See Requirement 404 for affirmative action, Section 504 and Section 3 requirements.].

CONSTRUCTION CONTRACTS

The construction contract will include all items included in the bid package as well as the standard terms and conditions, construction contractor certifications and bond and insurance forms. As this is a legal document, the State's Subrecipient is strongly advised to consult legal counsel and obtain the attorney's signed letter certifying the review of documents. Remember: Neither the cost-plus-a-percentage nor percentage-of- construction cost method of contracting is allowed.

Depending on the amount of the contract, various contract clauses must be utilized in CDBG-DR project contracts. Most of the specific clauses included in this chapter are required only if the project is in excess of $10,000. A matrix has been compiled to assist in selecting the most appropriate package of contract clauses. The State's Subrecipient must determine the specific CDBG-DR Program statutory requirements with which they must comply.

The State's Subrecipient should be concerned with both the body of the contract as well as the compliance requirements that are frequently included as exhibits to the base contract. Review the following for inclusion in the contract text:

1. Parties to the agreement;
2. Project location;
3. Scope of services;
4. Financial commitments;
5. Starting and ending dates;
6. Performance schedule and milestones;
7. Contract representatives:
    a. State's Subrecipient;
    b. Construction contractor;
    c. Subcontractor(s).
8. Conflict of interest;
9. Reporting requirements;
10. Suspension clause;
11. Incorporation of attached requirements [Requirement 404, Affirmative Action, Section 504 and Section 3 requirements.]
12. Signatures.

The State's Subrecipient and the contractor, when applicable, shall submit to ODOC a Section 3 Summary Report and a Final Wage Compliance Report as part of the closeout documents.

Additional areas that are required by the Federal government and must be incorporated in the contract can be found at http://www.dol.gov/ofccp/. Those which require specific language, and which must be inserted verbatim into the contract are noted. These paragraphs advise construction contractors that they must comply with specific Federal laws pertaining to the environment, civil rights, labor and other laws attached to the CDBG-DR legislation.

Note: ODOC will review the contract only to ensure compliance with CDBG-DR and other Federal requirements. This review will occur during a scheduled monitoring or technical assistance visit. It is the State's Subrecipient's responsibility to ensure that all State and local contract requirements are complied with. While ODOC will provide assistance to State's Subrecipients, including sample contracts, ODOC accepts no responsibility for errors or omissions in any contracts between the State's Subrecipient and any construction contractor.

Bonding

Bonds are negotiable instruments required from construction contractors as a form of insurance. State law requires that, for project contracts over $50,000 construction contractors must secure a maintenance bond, a performance bond and a payment bond from surety companies. [61 O.S. §113] These surety bonds are then turned over to the State's Subrecipient to protect against situations such as:

- Construction contractor bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events;
- Work not completed as specified and/or the construction contractor refusing to finish the work without a change order or price escalation;
- Laborers or subcontractors not being paid for work and suing the State's Subrecipient to recover their loss; or
- Payment of liquidated damages arising from labor standards violations;
- Bonding requirements must be satisfied prior to finalizing contract award.
- The law also requires that construction contractors provide public liability and workers' compensation insurance during construction in reasonable amounts.

10-Day Call and Notice of Contract Award

10 DAY CALL

Subrecipients must contact CDBG-CV Staff ODOC by e-mail or by documented telephone call 10 days prior to bid opening to determine if wage decisions included in the bid document are still current. If rates have changed, this information must be included in an addendum, which will allow prospective bidders to amend their bids. The State's Sub-recipient must document the 10- day call for the CDBG-CV file.

When seeking approval of the 10-day call, subrecipients will be required to email the CDBG-DR Staff to confirm the wage rates have not changed. The email should include the wage decision number, modification number and last revised publication date. For example, OK20220035, Mod #3, 09/02/2022

NOTICE OF CONTRACT AWARD

The Notice of Contract Award is a formal method whereby the State's Subrecipient reports the execution of contracts and subcontracts to ODOC.

The Contractor shall commence actual construction of the funded project within 270 days from contract date on all construction contracts.

The Contractor shall commence actual construction of the funded project within 120 days from the Release of Funds date on all 3-year contracts.

The State's Subrecipient Information section of the Notice of Award includes type of trade, business ownership, and racial, ethnic, minority and Section 3 status. Please submit this form to ODOC within **seven (7) days** of execution by all parties.

The Notice of Award must be uploaded in OKGrants in Release of Funds module, with appropriate status change as necessary with a generated email notification to the ODOC DR Programs Planner/Programs Representative that the upload is complete. Please note that ODOC will not process a payment for construction funds until the Notice of Award has been received. After receipt of the Notice of Award, the contract information will be transferred to many reports to HUD, including a Quarterly Contractor Reporting Template required to be uploaded by the ODOC Programs Planner/Programs Representative on the ODOC website for Disaster Recovery on a quarterly basis as required in the FR Notice, as well as information necessary for completing the Semi-Annual Labor Standards Report, Minority and Women owned business report, and Section 3 Report for the Disaster Recovery program.

Interlocal Agreements with Subrecipient

It is not uncommon for the State's Subrecipient to carry out project activities through a sub grantee. A sub grantee is defined as a public or private non-profit agency, authority or organization or other eligible entity provided CDBG-DR funds to carry out eligible activities on behalf of the State's Subrecipient, rather than directly and immediately by the State's Subrecipient. If a State's Subrecipient plans to carry out eligible activities in conjunction with another entity, the State's Subrecipient's legal counsel needs to review the Inter-local Cooperation Act [74 O.S. 31-1001 et. seq.] A typical example might include a rural water district developing new or expanded water service to the City/Town/County residents.

The State's Subrecipient can make interlocal agreements with out-of-state entities and are subject to the competitive bidding rules of the Central Purchasing Act.

The most likely scenario under which a State's Subrecipient would opt to utilize a sub grantee is when they (the State's Subrecipient) wish to support certain eligible

activities that are either being carried out or are the primary responsibility of some agency outside the State's Subrecipient. In effect, the State's Subrecipient's goals coincide with the sub grantees and it usually makes more sense to utilize the capacities of an existing organization rather than create the apparatus necessary to carry out project activities.

When is an entity not a sub recipient? An organization or individual is not considered a sub recipient if the assistance is:

- For the purpose of housing rehabilitation;
- For the purpose of relocation payments and assistance when displaced;
- For a for-profit business in a special economic development project; or
- Passed through an agency of the State's Subrecipient, i.e. public authority and becomes the responsibility of the designated public agency of the State's Subrecipient.

The State's Subrecipient has some latitude in selecting the sub grantee to undertake activities on its behalf. In most cases, the State's Subrecipient simply designates a non-profit agency to carry out the activities.

It is crucial to stress the importance of the State's Subrecipient/sub grantee relationship. The State's Subrecipient does not reduce its responsibilities by utilizing a sub grantee to carry out project activities. In fact, many activities cannot be undertaken by anyone but the State's Subrecipient (such as environmental findings and requesting funds from ODOC).

All CDBG-DR requirements are applicable to subrecipients in terms of how they carry out project activities (procurement, financial management, labor compliance, etc.).

In order to protect the State's Subrecipient and to ensure the sub grantee's compliance with all relevant requirements, the relationship between the two entities must be formally defined through an agreement or contract. Such an agreement's purposes are to clearly establish the terms and conditions under which the CDBG-DR funding is provided and establish a legal basis for action if those terms and conditions are not met. This agreement must contain the following provisions:

1. Scope of Work in sufficient detail to provide a sound basis for evaluating performance in schedule and budget;
2. Records and Reporting specifying the records that must be maintained and reports that must be submitted in order for the State's Subrecipient to meet its own record-keeping and reporting responsibilities;
3. Administrative Requirements specifically requiring compliance with all applicable uniform administrative mandates such as A-110, A-122 and A-133;
4. Program Requirements specifying the conditions for convenience and cause;
5. Reversion of Assets stipulating that, upon expiration of the agreement, the sub recipient must transfer to the State's Subrecipient any CDBG-DR funds on hand and any accounts receivable. [Consistent with 24 CFR 570.503] This must also include provisions designed to ensure that any real property acquired or improved, in whole or in part, with CDBG-DR funds in excess of $25,000 is either:

a) Used to meet one of the three national objectives for at least five (5) years after the expiration of the agreement or longer if stipulated by the State's Subrecipient; or
b) Disposed of in manners that result in the State's Subrecipient's being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-CDBG-DR expenditures. (Reimbursement is not required after five years.)

6. Cessation of the sub recipient providing remedies and procedures in the event the sub recipient ceases to exist;
7. Standard Provisions required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.)

Appendix II to Part 200 – Contract Provisions for Non-Federal ENtity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60- 1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non- Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than

the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the

non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. 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 officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Attachments

701	Sample Contract Documents Including Bid Ads
702	Notice of Award Packet
703	Notice to Proceed
704	Notice of Contract Award
705	Required Provisions for Non-Construction
706	Grantee Debarment Review Certification Form
707	Contractor Debarment Review Certification
708	Payroll Certification Form

Requirement No. 408 – Labor Standards and Construction Management

Introduction

The construction phase of a project is divided into two major components:

- The pre-construction conference and start of construction; and
- Monitoring construction progress, including labor compliance.

Phases are subject to various State and Federal requirements, which will be discussed at greater length in this Requirement.

Pre-Construction Conference

ODOC requires that every contractual relationship between the State's Subrecipient and the construction contractor be initiated by a meeting to define the terms, conditions, deliverables and performance schedules that will govern the contract. This approach represents good management practice and reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the construction contractor and the State's Subrecipient.

After contract award, but before any work is performed, the State's Subrecipient, the architect or engineer and any technical advisors to the State's Subrecipient must hold a pre-construction conference with the construction contractor to explain contract requirements.

The construction contractor should be notified in writing of the time and place for the conference. The contractor must require the attendance of subcontractors expected to undertake major portions of the work. Documentation required from the construction contractor at the time of the meeting should be identified. Satisfaction of all bonding provisions will be required at this time especially the Davis Bacon wage rate requirements.

Prepare an agenda. Plan to utilize and distribute a Pre-construction Checklist as a guide to assure that all areas are properly addressed. (Especially Davis/Bacon Requirements.) A recording may be used to document the meeting and/or a stenographer may be asked to prepare notes. It is the State's Subrecipient's responsibility to clearly present the Federal Statutory Compliance requirements as well as performance expectations. A copy of the minutes should be signed by the parties to the contract and placed in the files.

ODOC recommends the following procedures as the minimum coverage of topics at the pre- construction conference:

1. Review the technical aspects of the project;

2. Identify the laws applicable to the contract and establish the documentation, reporting and performance that will constitute compliance;
3. Establish the State's Subrecipient's obligations to monitor labor standards and the procedures that will be employed;
4. Establish specific requirements for reporting between the construction contractor and the State's Subrecipient;
5. Accept bonds and securities for performance and payment of labor and materials;
6. Review the contract provisions, including all attachments regarding labor standards, civil rights, job safety standards and environmental protection as well as the Davis Bacon wage rate requirements.
7. Explain the objectives of Executive Order 11246 and require a copy of the construction contractor's Affirmative Action Plan and the specific affirmative action strategy to be employed on this contract.
8. Return the construction contractor's bid bonds;
9. Provide for a record of the pre-construction conference to be prepared and subsequently signed by the parties to the agreement;
10. Issue a notice to proceed to the construction contractor.

Change Orders

It is not uncommon for circumstances to require modifications to various construction contracts. Change orders are permitted provided the cumulative impact of all such change orders does not increase the original contract amount by more than 15%. Change orders or cumulative change orders which exceed 15% shall require re-advertising of bids on the incomplete portions of the contract. If the construction contract was bid on a unit price basis and the change order is based on the unit price basis, such change order will not be subject to this requirement. [For more detailed guidance, see 61 O.S. 1995 §121.]

The State's Subrecipient must formally approve any change order and maintain written documentation as to the reasons for the change. All change orders must contain a unit price and total for each of the following items:

1. All materials with cost per item;
2. Itemization of all labor with number of hours per operation and cost per hour;
3. Itemization of insurance cost, bond cost, social security, taxes, Workers' Compensation, employee fringe benefits and overhead costs; and
4. Profit for the construction contractor.

If the change order would cause any change in a budget line item, scope of project or change in beneficiaries, the State's Subrecipient must request a contract modification from ODOC. The State's Subrecipient may not approve such a change order until and unless ODOC approves a contract modification.

Construction Supervision, Inspections, And Contract Payments

One of the provisions of most design contracts (engineering and architectural) is for on-site supervision of construction in progress. [61 O.S. 2014 §123] It is the design professional's responsibility to ensure, on the State's Subrecipient's behalf, all statements or invoices submitted to the awarding public agency for work performed shall contain a certification by the supervising architect or engineer, or other supervisory official, if no supervisory architect or engineer is employed for the project, that work for which payment is claimed has been performed and that such work conforms to the plans and specifications for the project. No such statement or invoice shall be paid by the awarding public agency without such certification. The execution of a certificate, as herein provided, shall not constitute a defense or in any other manner affect any cause or causes of action which the awarding public agency might otherwise have against the contractor for nonperformance of a public construction contract.

If project progressive payments are based on the public agency's estimated quantities of materials provided and work performed, certifications are not required. Payment of progressive estimates shall not constitute a defense or in any manner affect any cause or causes of action which the awarding public agency might have against the contractor for failure to properly perform in accordance with the project contract, plans, specifications, or special provisions. Final estimates shall contain a sworn certification signed by the contractor that the work performed and the material provided conform to the requirements of the contract, plans, specifications, and special provisions.

The amount of funding requested by the State's Subrecipient from ODOC must be net after retainage. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to five percent (5%) of all partial payments made shall be withheld as retainage. [61 O.S. 2014 §113.1 A]

Labor Standards Administration

Statutory Requirements: State's Subrecipients should be aware of the major labor standards requirements for CDBG-DR projects. The three principal laws and their terms are identified below.

DAVIS-BACON ACT

To download the "Making Davis-Bacon Work" guidebook goes to: https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors- guide-prevailing-wage-requirements/

State's Subrecipients:

All construction contracts in excess of $2,000 awarded by State's Subrecipients and Subrecipients must include a provision for compliance with Davis-Bacon and associated USDOL regulations. The entire project regardless of whether paid with

grant funds or leveraged funds fall within the Davis Bacon Requirements. The principal requirements are:

1. State's Subrecipients must include a copy of the current prevailing wage rate determination in each Request for Bids (RFB);
2. State's Subrecipients may only award contracts to eligible construction contractors and subcontractors that have accepted the wage rate determination and signed a Payroll Certification Form to pay wages on that basis and comply with other labor standards; Contractors listed as debarred per (SAM) are considered ineligible for award. Three forms must be submitted for debarment certification; Contractor Debarment Review Certification, Grantee Debarment Review Certification and the Sams.gov check. This rule applies to any contract over $2,500.
3. Construction contractors must pay laborers the wage rate determined by the USDOL to be the prevailing rate in that labor market;
4. Construction contractors must pay wages at least once a week; and 1.12.1.1.5. State's Subrecipients are required to report all suspected, reported or confirmed violations over $100 to ODOC, who may investigate these alleged violations.

Sub-contractors

To qualify as a subcontractor, the following criteria must be met:

1. Current liability insurance must be maintained;
2. Must have Federal Tax Identification number (EIN or SSN as appropriate);
3. If the subcontractor does not meet both of these criteria, he/she must be listed by the prime contractor as an employee of the contractor and must be paid the prevailing Davis-Bacon hourly rate for the work.

Owner/Operators

Bona fide owner/operators of trucks who are independent contractors are excluded from DBRA/WCHSSA provisions concerning their own hours of work and rate(s) of pay. These truck "owner/operators" must be reported on weekly payrolls, but the payrolls do not need to show the hours worked or the rates; only the notation "owner/operator". This policy does not pertain to owner/operators of other equipment such as backhoes, bulldozers, scrapers and cranes (power equipment).

Owner/operators of power equipment may not submit their own payrolls certifying to payment of their own wages but must be carried on the responsible contractor's or subcontractor's payroll and must be paid the prevailing Davis- Bacon hourly rate for the work.

Administrative/Clerical Provisions

People whose duties are primarily administrative, executive or clerical, e.g., supervisors, office staff and timekeepers, are not laborers or mechanics and are excluded from Davis Bacon and Related Acts/Contract Work Hours and Safety Standards Act (DBRA/CWHSSA). Foremen or supervisors who regularly spend more than 20% of their time performing construction work do not meet this exclusion and

are covered as "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.

Two special classes of employees may be employed on projects of this type and be compensated at less than the Davis-Bacon prevailing wages. These classes are:

Apprentices provided they are individually registered in a bona fide apprenticeship program in which the construction contractor participates and which is approved by the USDOL and that they also satisfy other conditions as specified in the labor standards contract provisions.
https://www.hud.gov/sites/documents/13441C4SECH.PDF

Trainees provided they are in a USDOL-approved training program and satisfy other conditions as specified in the labor standards contract provisions.
https://www.hud.gov/sites/documents/4010.PDF

Helpers are not recognized unless they are contained in the wage determination or a conformable rate has been approved by the USDOL. If and when these employee classes appear on the construction contractor's weekly payrolls, it is the construction contractor's responsibility to provide the documentation necessary to determine compliance with the Davis-Bacon wage rate determination.
https://www.hud.gov/sites/documents/13441C4SECH.PDF

COPELAND ANTI-KICKBACK ACT [18 USC 874, 29 CFR 3]

Construction contractors are prevented, under the terms of this statute, from withholding any employee wages, which are not prescribed by law, union agreement or without the employee's permission. The State's Subrecipient must conduct confidential interviews with employees to assure compliance with the terms of this law and the construction contractor is required to maintain payroll records and to submit weekly certified payrolls documenting compliance. This requirement applies to all Federally-assisted contracts.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT [40 USC 3701]

All construction contracts in excess of $2,000 must comply with the following provisions of this law:

1. Construction contractors must compute the wages of each laborer and mechanic on the basis of a standard work week of 40 hours.
2. Work in excess of 40 hours a week is permitted provided compensation for the amount in excess of the standard is calculated at a rate not less than 1-1/2 times the basic rate of pay.
3. Construction expenditures paid with leverage funds are required to conform to the Davis Bacon wage rate requirements.
4. Construction contractors may not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety as determined under construction, safety or health standards issued by the USDOL.

COMPLIANCE ADMINISTRATION

Labor standards compliance begins with the issuance of a Notice to Proceed and is usually submitted as part of the bid or incorporated in the contract. To assure proper coverage when project activities are reviewed, the construction contractor must follow the requirements and administrative procedures listed below.

Review Certified Payrolls and Compliance

For each weekly period covered by the CDBG- DR construction contract, copies of certified payrolls and an executed Statement of Compliance are required from all construction contractors and sub-contractors and must be in the files. Payroll forms must be compared with wage determination for each class/craft to assure that wages are being paid as prescribed by law. The Statement of Compliance contains certifications that:

1. The information covers the proper period and is complete and accurate;
2. Each worker has been paid the proper wages and benefits and no "rebates" have been taken;
3. Deductions are only those permitted by law and approved by the workers. Other deductions, other than Child Support, must be approved by the worker by having the worker complete a Payroll Deduction Authorization Form.
4. Payments to workers are consistent with the wage rate determination. NOTE: Use of WH-347 Payroll form is not mandatory, as long as all information contained in WH-347 is similarly recorded. If you choose to use the form, it can be located online at: https://www.dol.gov/whd/forms/wh347.pdf

Visit the Work Site

The State's Subrecipient must determine that the labor standards information is properly posted at the job site. The wage rates and job classifications must be posted and an Employee Federal Labor Law poster(s) must be prominently displayed. https://www.dol.gov/whd/regs/compliance/posters/davis.htm

In addition to this technical review, the State's Subrecipient should also identify the specific jobs being performed and identify the workers to be interviewed regarding wages and job duties.

Conduct Employee Interviews

On-site interviews must be conducted of enough employees (at least 10% coverage) to provide a reasonable representation of the crafts and trades utilized on the project (interviewing at least one employee in each job classification). [These interviews are strictly confidential. See Requirement 401 for instructions concerning the maintenance of confidential records.] Interviews must be conducted at least once during the course of construction. Using the Record of Employee Interview form, documentation must demonstrate that:

- The payroll information is consistent with the wage rate determination; and
- Employees are working in proper job classifications;
- These interviews form the basis for determining whether any violations are occurring and facilitate subsequent follow-up by the State's Subrecipient.

Note: Talk to the job-site foreman to let him/her know who you are and what you're doing. Try to conduct interviews on break time but observe the employees at work to verify job classifications.

Deal with Violations

Violations less than $1,000, which are not willful, should be dealt with as follows:

- Require the construction contractor to prepare a supplemental payroll to make appropriate restitution to affected employees, retain a copy of the cancelled check in the Construction Labor File; and/or
- Assess liquidated damages for non-payment of overtime and require a separate supplemental payroll. The amount to be paid to the U.S. Government (HUD) is $10 for each day the employee was eligible for overtime but not paid overtime at 1-1/2 times the approved rate; or
- If construction contractors refuse to comply with these requirements, the State's Subrecipient must withhold sufficient amounts from the construction contractor to make restitution. This amount is to be recorded and ODOC is to be notified immediately.

All wage restitutions/liquidated damages should be aggregated on the Final Wage Compliance Report.

Serious violations, i.e., those representing under-payment greater than $1,000, are to be reported immediately to ODOC. Technical assistance will be provided to assure proper resolution.

Documentation

As with all other compliance areas, if there is not a piece of paper to show for it, ODOC assumes it was not done, so document accordingly.

Construction Wrap-up

When the construction has been completed, there are a few (critical) items to take care of:

The construction contractor must submit a Certification of Project Completion, along with the final request for payment;

The State's Subrecipient must confirm that all:

1. Weekly payrolls and Statements of Compliance have been received, checked and discrepancies resolved;
2. Discrepancies identified during on-site interviews have been satisfactorily resolved;
3. Other required equal opportunity and labor standards have been satisfied;
4. Other contract requirements have been satisfied;
5. Files are complete; and
6. As-built plans have been filed.

When all contract requirements have been satisfied, the State's Subrecipient will issue an Acceptance of Work.

The State's Subrecipient then submits a Request for Payment to ODOC. The amount requested at this time should not include the current retainage (of up to 10% of the total contract**). [See 61 O.S. 2014 §113.1 for retainage limitations.]**

Forty-five (45) days after the acceptance and upon receipt of a Release of Claimants from the construction contractor, the State's Subrecipient may request the amount of retainage from ODOC and subsequently release this amount to the construction contractor.

Summary

This Requirement has summarized the various State and Federal requirements pertaining to construction management and labor compliance. The State's Subrecipient is ultimately responsible for knowing all of these requirements and for ensuring compliance with them.

Attachments

801	Contractor Payroll WHD 347
802	Fringe Benefit Determination
803	Final Wage Compliance Report
804	Pre-Construction Checklist
805	Request for Authorization of Addtional Classification and Rate- SF1444
806	Certificate Appointing Officer to Approve Payrolls
807	Payroll Deduction Authorization
808	Record of Employee Interview

Requirement No. 409 – Monitoring and Closeout

Evaluating the State's Subrecipient Performance (Monitoring & Oversight)

When the State agreed to assume administrative responsibilities for the CDBG-DR Program, it certified that activities would be conducted in a manner consistent with all applicable Federal laws. The primary tool for confirming this assurance being met is for the State to monitor the activities of its State's Subrecipients, just as HUD monitors the State.

ODOC has developed a monitoring strategy that targets a sampling of projects or activities. This sampling is based on risk factors associated with various types of projects and/or State's Subrecipients. While every project receives some level of monitoring, priority for in-depth evaluation and review is given to projects that are:

- Multi-jurisdictional, i.e., involving more than one unit of local government.
- Involve some level of risk, as evidenced by:
  1. Lack of recent history in administering a CDBG-DR project;
  2. Evidence of numerous accounting or financial tracking errors on current or previous projects;
  3. A record of serious findings or sanctions in previous monitoring session;
  4. High turnover of administrative staff;
  5. Delays in submitting required reports;
  6. Prior violations;
  7. Failure to attend and participate in implementation workshops;
  8. Excessive tardiness in responding to prior monitoring findings.

Monitoring is accomplished in two ways:

ON-SITE MONITORING

Certain activities can only be evaluated on-site. The most obvious of these include the examination of State's Subrecipient files to ensure adequate documentation. On-site monitoring will be performed when subrecipients have expended 50% and 85% of funds. In the case that a subrecipient is considered a high-risk, earlier on-site monitoring may be required.

An on-site monitoring visit will be scheduled in advance. The chief executive officer of the State's Subrecipient and the project administrator will be notified of the date, time, location and purpose of the visit. Upon arrival, ODOC Representative will conduct an entrance interview, reiterating the purpose of the visit and outlining files and documentation needed. Utilizing appropriate checklists, the Representative review the State's Subrecipient files to determine if all requirements have been met. The primary issues that are being examined are consistency with the specific terms of the contract agreement and compliance with State and Federal requirements.

At the conclusion of the visit, the ODOC Representative will conduct an exit interview, providing a tentative summary of the results of the visit. If there appear to be problems, the State's Subrecipient has an opportunity to provide more information or clarification.

Within twenty-one (21) days of the monitoring visit, the State's Subrecipient will receive a formal monitoring result(s) letter through OKGrants. This letter will summarize the area(s) reviewed, performance expectations, an analysis of what was discovered on-site, a conclusion or finding and, if necessary, required State's Subrecipient responses or actions.

If there were problems discovered during the monitoring, the State's Subrecipient may receive a finding of non-compliance. A finding of non-compliance is a violation of law or regulation that must be remedied. A finding can result in an immediate sanction or threat of sanction if corrective action (if appropriate and required) is not taken within ninety days (90). For each finding, ODOC will determine if a corrective action, either to correct a past problem or to avoid future problems, must be taken by the State's Subrecipient.

If the required corrective action is not addressed in ninety days (90), ODOC may impose a progressive level of sanctions, ranging from additional reporting to suspension of funding, additional special conditions, return of misspent funds, termination of the contract or even legal action.

The monitoring letter may also include one or more concerns. These are matters that, if not properly addressed, can become findings and can ultimately result in sanctions. Concerns are often used to point out operational or management problems or patterns of performance that could lead to larger problems later. Concerns may require some form of response on the part of the State's Subrecipient.

DESK MONITORING

ODOC places priority on this form of monitoring as a means of staying in touch with project progress and heading off problems early, thereby avoiding costly problems left unattended too long. This method of monitoring is the most efficient and cost-effective way ODOC can employ to meet a portion of its oversight responsibilities.

Closeout

Closing out of an individual contract confirms that the intended benefits of providing the funding have been accomplished and that all of the legal requirements imposed on use of the funds have been examined. All State's Subrecipients are expected and required to conduct an orderly and timely closeout of their contract with ODOC.

PROCEDURES

Closeout documents are to be uploaded into OKGrants within sixty (60) days after the contract expiration date or completion of the project. If the State's Subrecipient cannot meet this requirement, a written request for an extension of time may be submitted to ODOC through

OKGrants. Permission to extend the due date for submission of closeout documents will be granted for good and valid reasons.

ODOC will have no objections to a State's Subrecipient initiating close-out procedures prior to the current expiration date, provided the following conditions can be met:

All final costs to be covered by the contract have been incurred or obligated, including payment of any unsettled third-party claims or contract commitments. This means no additional funds can or will be requested from ODOC. Costs are considered incurred when goods and services are received and contract work is performed. [2 CFR 200.16] (Note: If you have funds that have not been drawn as of the completion of the project, a request for payment of these contract funds must be submitted prior to initiation of the closeout process or submission of the closeout documents. Additional funds can only be requested for expenses incurred before the expiration date of the CDBG-DR contract. However, they can be requested up to sixty (60) days after your CDBG-DR contract expires.)

All project activities have been completed. This means that, depending on the project:

All infrastructure construction is complete, final inspection has been made, the project is operational and all beneficiaries are being served;

All persons being relocated have been relocated or provided cash assistance to relocate; Planned job creation has occurred.

All issues from ODOC monitoring have been resolved.

Required Documentation And Closeout Instructions

The State's Subrecipients will close out their program activities in OKGrants. The Authorized Official will prepare and submit the closeout. The Authorized Official must initiate and submit required closeout documents to ODOC; however, utilizing the assistance of the grant writer is beneficial and encouraged.

All original signed documents must be submitted within sixty (60) days after the contract ending date or upon completion of the project activity - whichever comes first.

For All Activities funded under each program category, the sub recipient must provide documentation requested on the Closeout Checklist. Final inspections and completion approvals describing the improvements made for each activity, final performance measures and beneficiaries served by each improvement must be documented before the project can be officially closed.

The Contract Period listed on each document must correspond to the dates listed on the sub recipient contract Part I and subsequent modifications. If the ending date was changed, the latest modification date must be used.

Note: Once the contract closeout is submitted to ODOC, no further requests for funds or expenditure reports can be submitted. The Final Expenditure Report is required for contract closeout. If additional funds are due to the State's Subrecipient, the proper Request for Funds and Final Expenditure Report must be submitted prior to submission of the closeout documents.

CLOSEOUT CHECKLIST FORM

Must be completed and uploaded into OKGrants.

FINAL EXPENDITURE REPORT

Must be submitted through OKGrants with the closeout. This form is completed through the same process as the Monthly Expenditure Report, but the "Final" radio button is marked to indicate that no further reports should be expected. Enter the correct total expenditures by line item in the appropriate column. All matching/leverage final expenditures must be reported and broken down in dollar amounts by category (i.e. federal, state, etc.) "Remaining Balance" is the budget less expenditures year-to-date. The interest reconciliation is for interest earned on deposits of CDBG-DR funds only. Any unexpended interest must be returned to

ODOC with the check made payable to HUD. NOTE: Matching expenditures must be reported by type, i.e., federal, local, etc.

CONTRACT CLOSEOUT CERTIFICATION

Must be submitted in OKGrants once the Authorized Official has changed the status of the grant to "Closeout in Process". Total Cash Received/Requested must be for the total contract period. Total Accrued Expenditures must be the total amount expended as shown on the Final Expenditure Report. The form must be completed and saved by the local Authorized Official.

FINAL QUARTERLY REPORT

Must be submitted through OKGrants to report all final accomplishments, however, may also be required for any post closeout reporting.

PROOF OF PUBLICATION OF NOTICE OF SECOND PUBLIC HEARING

The State's Subrecipient must upload documentation that a public notice was posted/advertised informing citizens of the second public hearing to be held. A copy of the hearing minutes must also be included. The Public Hearing and minutes must provide detailed activity accomplishments and beneficiary data.

FINAL WAGE COMPLIANCE REPORT

Enter information on liquidated damages or wage restitution paid by the construction contractor(s) & sub-contractor(s).

PROOF OF INSURANCE

The State's Subrecipient must attach proof of property coverage insurance for any above ground facility built or renovated and/or for equipment purchased with CDBG-DR funds.

INVENTORY (REAL PROPERTY)

In case of real property is acquired, the required form must be uploaded as a final five year reporting requirement but may also include post-closeout reporting if five year has not been met at time of project completion.

BOARD MINUTES ACCEPTING COMPLETED PROJECT

The State's Subrecipient must provide ODOC with Board Minutes acknowledging project activities are complete, listing out each activity and authorizing final payment to contractor(s).

CERTIFICATE OF COMPLETION

The State's Subrecipient must attach a certified copy of the final inspection report(s) provided by the Engineer/Architect, indicating the project activities are complete and accepted as evident in Board minutes. (NOTE): If no engineer/architect services are utilized, then Board Minutes will suffice, however, as noted above, both or either documents must provide a detail of program activities completed and beneficiaries served.

SECTION 3 SUMMARY REPORT

The State's Subrecipient must collect the information on the form from all construction and non-construction contractors as soon as the project is complete.

Post Closeout Responsibilities

It is entirely possible that submission and acceptance of the Closeout documents does not signal the end of the State's Subrecipient-ODOC relationship. There are several circumstances under which the State's Subrecipient will have continuing responsibilities resulting from the closed project.

Loans: Responsibility for loan administration and program income, as stipulated in the original contract, continues for as long as there are any funds flowing that can be attributable to the original disbursement of CDBG-DR funds. Responsibilities include loan portfolio management, accounting and reporting;

Audits

In some instances, the project may be conditionally closed out pending submission and acceptance of a final audit. The project is not technically closed until the final audit has been received and accepted;

Other Contract Requirements

Some contracts will have special conditions requiring post-closeout responsibilities. The most common of these involve quarterly reporting for job creation (resulting from public improvement projects), housing tenants, and program income, and reporting real property inventory & insurance on an annual basis;

Maintenance of Records

The subrecipient MUST maintain ALL program documents and related financial records in a safe place on site for access to be made available upon request for three (3) years following the Dept. of Commerce closing of the CDBG-DR Grant with HUD as per FR Notice NOT the closing of the ODOC contract with the subrecipient. The ODOC Program Planner will issue a Notice to all subrecipients of the official closeout date with HUD to begin the clock. Any documents uploaded to the Subrecipient's contract in OKGrants will remain in that file and will be made available for review by request. These files do not have an expiration date.

NOTE: State CDBG regulations for recordkeeping responsibilities at 24 CFR 570.490(d) require states and UGLGs to retain records for 3 years from the time of closeout of HUD's grant to the State or for the period provided in the CDBG regulations at 24 CFR 570.487 (other applicable laws and program requirements) and 24 CFR 570.488 (displacement, relocation, etc.) or for 5 years after the completion of a CDBG funded project pursuant to 42 USC 12707(a)(4), whichever may be longer. Records involving acquisition and improvement of real property must be kept for 5 years after closeout of the local government's grant, as stated in 570.489(j)(2). Records that are the subject of investigation, audit or review should be

retained until the reviews are completed in order to allow HUD to complete it oversight functions.

It should be noted that the Department recommends that States and State recipients should retain all applicable documents for 5 years after closeout of the grant to the State to ensure that all applicable record retention requirements are met. ODOC will not accept hard copies of any closeout documents. All program documentation shall be uploaded into OKGrants and it is the responsibility of the State's Subrecipient to file and store all hard copies (refer to Records Maintenance Section of this guide).

Attachments

901	Certification of Project Completion
902	CDBG-DR Closeout Checklist

Appendices

A1	Public Facilities and Public Improvements Program
A2	Flood Buyout Program
A3	Housing Rehabilitation Program
A4	Homeowner Reimbursement Program
A5	Multifamily Housing Program
A6	2 CFR Part 200 – Subpart D-Post Federal Award
A7	Index

Change History of This Document

09/23/2021 (Taylor Huizenga)

Modified Requirement No. 403 Environmental Review to point the reader to the OEE Handbook.

Enhanced description of ODOC's internal process of reviewing and signing Environmental Reviews submitted by subrecipients.

09/24/2021 (Taylor Huizenga)

Significantly improved the Table of Contents

Made a comprehensive PnP document instead of having an individual document per section.

Fixed minor spelling mistakes.

12-13-2021 (Taylor Huizenga)

Significant reduction in the number of styles in the previous version of the PnP.

12/27/2021 (Jade Shain)

Significant changes were made to this document per the requirements of the Oklahoma Department of Commerce's Style Guide. For example, Headings and Subheadings are now using Arial instead of Times New Roman. The typeface used in the body text is now Google's Montserrat instead of Times New Roman. All colors in the Headings and Subheadings were chosen from the Style Guide. The following Colors are used in this document.

Heading 1 = HEX #464646

Heading 2 = HEX #0066A6

Heading 3 = HEX #000000

Body/Normal = HEX #000000

10/24/2022 (Jade Shain)

Removed the following the Buyout section: "Churches may also be purchased under a CDBG-DR Buyout program. Neither 24 CFR 570.200(j) nor the Department-wide faith-based requirements at 24 CFR 5.109 preclude the use of CDBG-DR funds to acquire a church building as part of a floodplain buyout program."

4/10/2023 (Rebecca LaVictoire)

Fixed formatting issues. Reorganized content to reduce duplicative information, increase clarity, and increase ease of navigation. Updated Attachment list.

05/23/2023 (Jade Shain)

Changed body text from #4D4D4D back to HEX #000000 to improve legibility.