CDBG-CV Coronavirus Program

Policies and Procedures Manual

Updated February 2023
Incorporating Public Law 116-136,
Federal Register Notice: Vol. 85, No. 162, Thursday, August 20, 2020, Page 51457

OKLAHOMA Commerce

NOTES

Web links will not work in Internet Explorer. Firefox and Google Chrome web browsers work best for the web links in this document.

The attachments and forms will need to be opened, choose “file save as” for accessibility to complete and save for uploads.

RECENT ADDITIONS AND REVISIONS

February 2021

Requirement No. 411 Low to Moderate Income- Section Added (Pg.98)

CDBG-CV Subrecipient Quarterly Performance Report- Updated (Pg. 73)

Mortgage Assistance Requirement- Updated (Pg.15)

April 2021

CDBG-CV Reimbursement Claim Form- Updated (Attachment 50)

May 2021

Instructions for Rent Reasonableness Checklist- Updated (Pg. 15)

Clarification on When to Use CDBG-CV Equipment Inventory Form and Certification of Inventoried Items Form for equipment purchases of $5000 or more. – Added (Pg. 17)

Certification of Leverage Form - Added (Attachment 24)

Release of Funds Checklist-Updated (Attachment 15)

Administrator Responsibilities Checklist – Added (Attachment 46)

Request for Proposals - Administrative (SAMPLE) – Added (Attachment 47)

Statement of Price (SAMPLE)- Added (Attachment 48)

July 2021

Fair Market Rent-Updated (Pg. 15)

Clarification on When Arrearage Begins/Ends- Updated (Pg.14)

Floodplain Insurance Regarding Environmental Review– Updated (Pg. 17)

August 2021

Monthly Expenditure Report- Updated (Pg. 73)

Recapture Policy- Updated (Pg. 74)

Sole Source Procurement Process- Updated (Pg. 57)

Daycare or After-School, Job Training and Rehabilitation Assistance- Added (Pg.16)

October 2021

Pre-Contract Costs- Updated (Pg. 41)

December 2021

Release of Funds Checklist- Updated (Attachment 15)

Duplication of Benefits (DOB) Checklist Form – Added (Attachment 73)

March 2022

CDBG-CV Staff Timesheet Form -updated (Attachment 49)

June 2022

Added Memo of Designation for Environmental Reviews

July 2022

Procurement methods updated to require sealed bid process for contracts over $100,000

July 2022

Added a construction flowchart under Section 403 – Environmental Review.

August 2022

Expanded on Section 3.

November 28, 2022

Updated LMI Beneficiary Tracker (Attachment 74) and Reimbursement Claim Form (Attachment 50).

Updated formatting

Added Cumulative Beneficiary Tracker Required with QPR for Public Service Activities

December 2022

Added job training program requirements and documents

Equipment purchases policies and procedures updated

February 2023

Updated Attachment numbers

Fixed formatting issues

March 2023

Re-added language about using the Low Mod Clientele (LMC) National Objective

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REQUIREMENT NO. 401 - PROGRAM MANAGEMENT

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

1. CONTRACTUAL REQUIREMENTS

Community Development Block Grant Coronavirus (CDBG-CV) 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 CDBG-CV program does not require match funds however if included in the project activity budget, must be tracked and reported. **The announcement and subsequent award of a CDBG-CV 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-CV contract may be de-obligated. FUNDS CANNOT BE USED TO REIMBURSE THE STATE'S SUBRECIPIENT FOR COSTS INCURRED PRIOR TO JANUARY 21, 2020**. [See Requirement #405, pre-award costs, procurement of professional services].**

The CARES Act and The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) require the (ODOC/CD) to ensure that there are adequate procedures in place to prevent any duplication of benefits as required by section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 42 U.S.C. 5121 et seq.). HUD provided guidance for CDBG-CV through the Federal Register (Vol. 85, No. 162, 51473). The Federal Register Notice outlines the concept of a duplication of benefits and how to ensure that no entity receives more financial assistance for a specific activity than is needed.

2. REMOVING CONTRACT CONDITIONS & 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.**

2.1 **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 Subrecipient 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.]

2.2 **Insurance and Bonding:**
The State's Subrecipient 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.

2.3 **Anti-Displacement Plan:**
All State's Subrecipients must have a current anti-displacement plan adopted by council resolution on State's Subrecipient's letterhead. [See 402 Property Acquisition & 404 Civil Rights, E.O., & Fair Housing.]

Special conditions are identified in **Part II of the contract** between ODOC and the State's Subrecipient.

3. UPDATED DISCLOSURE REPORT

Before signing the contract agreement, there should be 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.

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.

4. PROJECT/BUDGET MODIFICATIONS

NOTE: Project and budget modifications will be performed in OKGrants. Please contact your project manager 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 because 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 Project Manager for instructions or review the My Training Materials tab in OKGrants for instructions. All modifications must be submitted on OKGrants.

4.1 **Project Expansion:**

During 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 Project Manager for approval.

Examples are listed below:

- Example #1: A State's Subrecipient has a grant for Personal Protective Equipment (PPE) for all hospital and mental health staff. After buying their supply of PPE, the Subrecipient has unused funds because the price of equipment was lower than initially projected. Buying additional PPE for hospital and mental health staff would not be considered a change of scope. The State's Subrecipient may use remaining funds to purchase additional PPE if the individuals benefiting meet the requirement of being at least 51% low to moderate income.
- Example #2: A State's Subrecipient has a grant for purchasing coronavirus test for LMI individuals. Upon completion of the project as described in the application, the State's Sub- recipient has funds remaining. The State's Subrecipient desires to utilize the remaining funds to purchase iPads for LMI individuals to adhere to the social distance guidelines. 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 from ODOC.**

4.2 **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; 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-CV 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 needs a modification, the subrecipient must submit a Budget Modification in OKGrants. The Budget Modification must include a letter on letterhead signed by the Authorized Official requesting the modification, a revised budget and updated CDBG Certification of Leverage Form if leverage amounts have changed.

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

5. 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-CV funded project:

- Assign the responsibility to someone on the Subrecipient's staff. (Note: While ODOC/CD does not require employees of the municipality to be a Certified Grant Administrator for CDBG-CV projects, it is highly recommended that staff regularly attend CDBG training offered by ODOC/CD and HUD Exchange); 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-CV 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 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-CV 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.

5.1 **Mentorship:**

In the event an individual wishes to act as an administrator, and the individual has not previously been tested and failed, the 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 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. If 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.

6. RECORDS MAINTENANCE

One of the most important aspects of federal grant administration is documentation and record maintenance and retention. The reason for this is:

- These are public funds, and they demand a high level of accountability.
- 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 subrecipient 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.

6.1 **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 Sub-recipient's filing system, State's Subrecipients are encouraged to utilize the instructions provided.

6.2 **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. 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-CV 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.

6.3 **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.

6.4 **Confidential Records:**

State's Subrecipients may receive confidential information. In some cases, an individual's right to privacy protection will necessitate those 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 Sub- recipient's right to apply for funds.

7. 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. These requirements include:

- Reasonable advance notice, as stated in the Citizens Participation Plan, 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;
- 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.

8. 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 Sub- recipient to submit Section 3 Reports for **any contracts over $200,000** upon completion of activities.

Section 3 Reports can be submitted by utilizing the fillable form found in the forms section of the CDBG-CV Policy and Procedure Manual.

9. PROCESS FOR ELIGIBLE ACTIVITIES

All grantees will be required to upload documentation for eligible activities that receive CDBG-CV funds to ensure compliance with Federal and state regulations. For a subrecipient application intake process to be considered effective for utility and rental/mortgage assistance, subsistence payment records must be verified by using the following criteria to ensure expenses are necessary and reasonable:

- Low- to Moderate- Income
- Duplication of Benefits
- Loss of Income
- Household Income
- Late Payment Notices
- Tieback to COVID

Keep in mind these are just some of the examples that can be used to verify eligibility. Subrecipients are encouraged to use additional methods to certify costs are necessary, reasonable, and eligible.

If the subrecipient has not created an effective application intake process, the subrecipient will be required to use forms listed below for compliance. Examples of these forms can be located in the attachments section of this manual. Grantees will be required to have documentation on file for each activity as follows:

9.1 **Utility Assistance**

Utility assistance may be provided for up to six months of arrears to bring the beneficiary current for a family or individual for water, electric or gas. These payments may only be made for families or individuals who are delinquent on such bills because of COVID-19. When providing these payments, the period begins when the payment is made, not when the individual's or family's arrearage began. If an individual or family is one or more months in arrears, a grantee may cover some or all the amount in arrears within the first month of assistance and continue through the applicable consecutive period of assistance. All families or individuals receiving assistance must submit:

- Householder Duplication of Benefits for Assistance Affidavit **[Attachment 1]**

- Non-Profit Duplication of Benefits for Assistance Affidavit **[Attachment 2]** *if applicable
- Self-declaration Form **[Attachment 3]**

9.2 **Rent/Mortgage Assistance-**

Rent or mortgage assistance may be provided for up to six months of arrears to bring the beneficiary current for a family or individual. When providing subsistence payments such as rental or mortgage assistance for consecutive months, the period begins when the payment is made, not when the individual's or family's arrearage began. If an individual or family is one or more months in arrears, a grantee may cover some or all the amount in arrears within the first month of assistance and continue through the applicable consecutive period of assistance. For mortgage assistance, the household must be **owner-occupied**. These payments may only be made for families or individuals who are delinquent on such bills due to the effects of COVID-19. **IF rental or mortgage assistance is made for over 100 days and IF the dwelling unit was built before 1978, a Lead Based test will be required for the unit as outlined in 24 CFR Part 35.** All families or individuals receiving assistance must submit:

- Rent Reasonableness Checklist and Fair Market Rent Certification **[Attachment 4]**
- **Instructions for Rent Reasonableness Checklist and Fair Market Rent (FMR):** Compare at least 3 units with like amenities (ex. Utilities included laundry facilities onsite, or pool) in the area or surrounding areas to ensure rent is reasonable in comparison to the rent in the surrounding areas. Call properties or identify rental prices for units with a similar number of bedrooms or square footage. Add all additional information on comparable units and rough estimates on utilities. Finally, use HUD's (FMR) at https://www.huduser.gov/portal/datasets/fmr.html to ensure rent is reasonable in comparison to the FMR. When providing rental assistance that includes a utility allowance (ex. tenant lives in an apartment in which utility costs are included in the monthly rental payment) rent plus utilities should not exceed the FMR.
    1. Click on Red button "Click Here for FY2021 FMRs."
    2. Select "Oklahoma – OK" from the dropdown menu"
    3. Select the applicable county in the second dropdown, such as "Adair County, OK"
    4. Click "Next Screen…"
    5. Find applicable bedroom size and rental price. The rent for you proposed unit should not be over this price.
    6. Add price and county to Certification Part B
    7. Save this record and any extra documentation in the client's file.
- Rental Agreement Plan Landlord Statement **[Attachment 5]**
- Householder Duplication of Benefits for Assistance Affidavit **[Attachment 1]**
- Non-Profit Duplication of Benefits for Assistance Affidavit **[Attachment 2]** *if applicable
- Self-declaration Form **[Attachment 3]**

9.3 **Medical Assistance**

Medical assistance may be provided in the form of personal protective equipment (PPE) for employees of medical facilities and the general public, chemicals, and equipment for sanitation of facilities, and COVID-19 testing equipment. All entities receiving funding must submit:

- CDBG-CV Equipment Inventory Form (use for equipment purchases of $5000 or more) **[Attachment 6]**
- Certification of Inventoried Items (use for equipment purchases of $5000 or more) [**Attachment 7]**

9.4 **Mental Health Assistance**

Mental Health assistance may be provided in the form of personal protective equipment (PPE) for employees of mental health facilities and the general public, chemicals, and equipment for sanitation of facilities, electronic equipment for mental health services that adhere to social distancing guidelines, and data plans for such electronic equipment (2-year maximum plan). All entities receiving funding must submit:

- CDBG-CV Equipment Inventory Form (equipment purchases of $5000 or more) **[Attachment 6]**
- Certification of Inventoried Items (equipment purchases of $5000 or more) **[Attachment 7]**
- Duplication of Benefits (DOB Checklist **[Attachment 73]** ***Please refer to Requirement 410- Duplication of Benefits for more details*.

9.5 **Nutrition Assistance:**

Nutrition assistance may be provided in the form of perishable or non-perishable foods, personal protective equipment (PPE) for employees, or useful equipment or materials for serving foods while maintain social distancing guidelines. These resources may benefit organizations such as food banks or any organization offering drive-through food pickups or at-home food deliveries. Any entity receiving such assistance must submit:

- Nutrition Assistance Application **[Attachment 8]**
- CDBG-CV Equipment Inventory Form **[Attachment 6]** *if applicable
- Certification of Inventoried Items **[Attachment 7]** *if applicable

9.6 **Daycare or After-School Services:**

Daycare or after-school services will include assistance made directly to the daycare or after-school service program for persons that need care for their children due to work hours, job changes, or other issues directly related to COVID-19. These services are generally offered only for children under the age of 13.

9.7 **Job Training Assistance:**

Job training assistance will be provided to carry out job training in communities or neighborhoods affected by coronavirus-related job loss to revitalize the affected labor force or to help workers re-train for expanding sectors. Any entity receiving funds for job training assistance must submit:

- Job Training Resolution **[Attachment 10]**
- Job Training Placement Goals **[Attachment 11]**
- Job Tracking Log **[Attachment 12]**

Each document can be adapted to fit the job training program as necessary but must account for the overarching measures of success in a job training program: employment and job retention.

9.8 **Rehabilitation Assistance:**

Rehabilitation Assistance will include the rehabilitation of a commercial building or public facility to improve indoor air quality and ventilation to prevent the spread of Coronavirus.

10. ATTACHMENTS

1- Householder Duplication of Benefits for Assistance Affidavit
2- Non-Profit Duplication of Benefits for Assistance Affidavit

3- Self-Declaration Form
4- Rent Reasonableness Checklist and Fair Market Rent Certification
5- Rental Agreement Plan Landlord Statement
6- CDBG-CV Equipment Inventory Form
7- Certification of Inventoried Items
8- CDBG-CV Nutrition Assistance Application
9- Sample Rent Reasonableness Checklist and Fair Market Rent Certification
10- Job Training Resolution Sample
11- Job Training Placement Goals
12- Job Tracking Log

REQUIREMENT NO. 402 –EQUIPMENT

1. EQUIPMENT

If CDBG-CV funds are used to acquire equipment, the equipment must be used in whole or as part of the public service. Subrecipients must ensure that the equipment continues to be used for its intended (and approved) purpose, proper records are maintained to keep track of it, steps are taken to protect and maintain it, and that if it is sold, proper disposition of the equipment is conducted as stated in 2 CFR 200.313.

HUD prohibits using CDBG-acquired equipment to provide services for a fee that competes unfairly with private companies that provide equivalent services unless specifically authorized by Federal statute.

All entities receiving funding for equipment must submit:

- CDBG-CV Equipment Inventory Form (use for equipment purchases of $5000 or more) **[Attachment 6]**
- Certification of Inventoried Items (use for equipment purchases of $5000 or more) [**Attachment 7]**

2. MANAGEMENT REQUIREMENTS

2.1 **Equipment Management System**

The equipment 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 possible and result in the highest possible return for equipment sold when the fair market value exceeds $5,000. For the sale of equipment owned by local governments, competitive disposal procedures are required to be followed according to local, state, and federal requirements, and price competition, contract award to the highest responsive, responsible bidder, and governing board approval of the conveyance.

2.2 **Private Property vs Real Property**

The rules about property management and disposition differ slightly depending on whether you are a public-sector or a private sector subrecipient (the rules are generally more restrictive for governmental subrecipients). The rules depend on the nature of the property; the rules treat

real property (e.g., land and buildings) differently than personal property (e.g., equipment, supplies, and intangible property like copyrights).

2.3 **Records Required**

2.3. For equipment (including replacement equipment) acquired in whole or in part with CDBG-CV funds, Subrecipients must have procedures and control systems in place to keep adequate equipment records where applicable to include:

- Description of the property.
- Identification (such as an ID or serial number).
- Funding source.
- Titleholder.
- Acquisition date and cost.
- Federal share of the cost.
- Location, use, and condition.
- Unit acquisition or rental cost.
- When appropriate, disposition data (date of disposition and sale price).
- Conduct a physical inventory of the property no less often than every two years, with a reconciliation of the inventory with the equipment records (2 CFR 200.313(d)(2)).
- Ensure adequate safeguards for preventing loss, damage, or theft of property (2 CFR 200.313(d)(3)).
- Maintain the equipment in good condition (2 CFR 200.313(d)(4)).

3. DISPOSITION

3.1. When original or replacement equipment acquired under a Federal Award is no longer needed for the original project, program, or other activities currently or previously supported by ODOC, except as otherwise provided in Federal statutes or regulations, the Subrecipient must request the disposition of equipment from ODOC. Guidelines for the disposition of equipment will include but is not limited to the following:

(1) Contact ODOC staff to discuss proper procedures for the disposition of equipment costing $5,000 or more. Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further responsibility to ODOC.

(2) Subrecipients will be required to take appropriate disposition actions as instructed by ODOC and as outlined in 2 CFR 200.313.

4. SUMMARY

Subrecipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation when preparing for and acquiring equipment. Subrecipients must take great care to follow all requirements for purchasing, acquiring, and disposing of equipment. Subrecipients must also avoid the existence or appearance of coercion in any purchasing or selling of equipment**. For more detailed information, please see HUD.gov. Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0) [Attachment 13]**

5. ATTACHMENTS

13-HUD Real Property Policy

REQUIREMENT NO. 403 - ENVIRONMENTAL REVIEW

1. 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 CDBG-CV grant, per 24 CFR 58.5. Activities under the CDBG-CV are mainly considered public services and will be required to obtain environmental clearance under Exempt and Categorically Not Subject to 58.5 activities. Please refer to the CDBG Environmental Compliance Handbook for more information. **[Attachment 14]**

For projects that require construction, environmental clearance will need to follow procedures outlined in 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.

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 "CDBG Environmental Compliance Handbook", located on the OKCommerce.gov website.

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-CV administrators, staff and/or State resources may provide technical assistance to support local efforts.

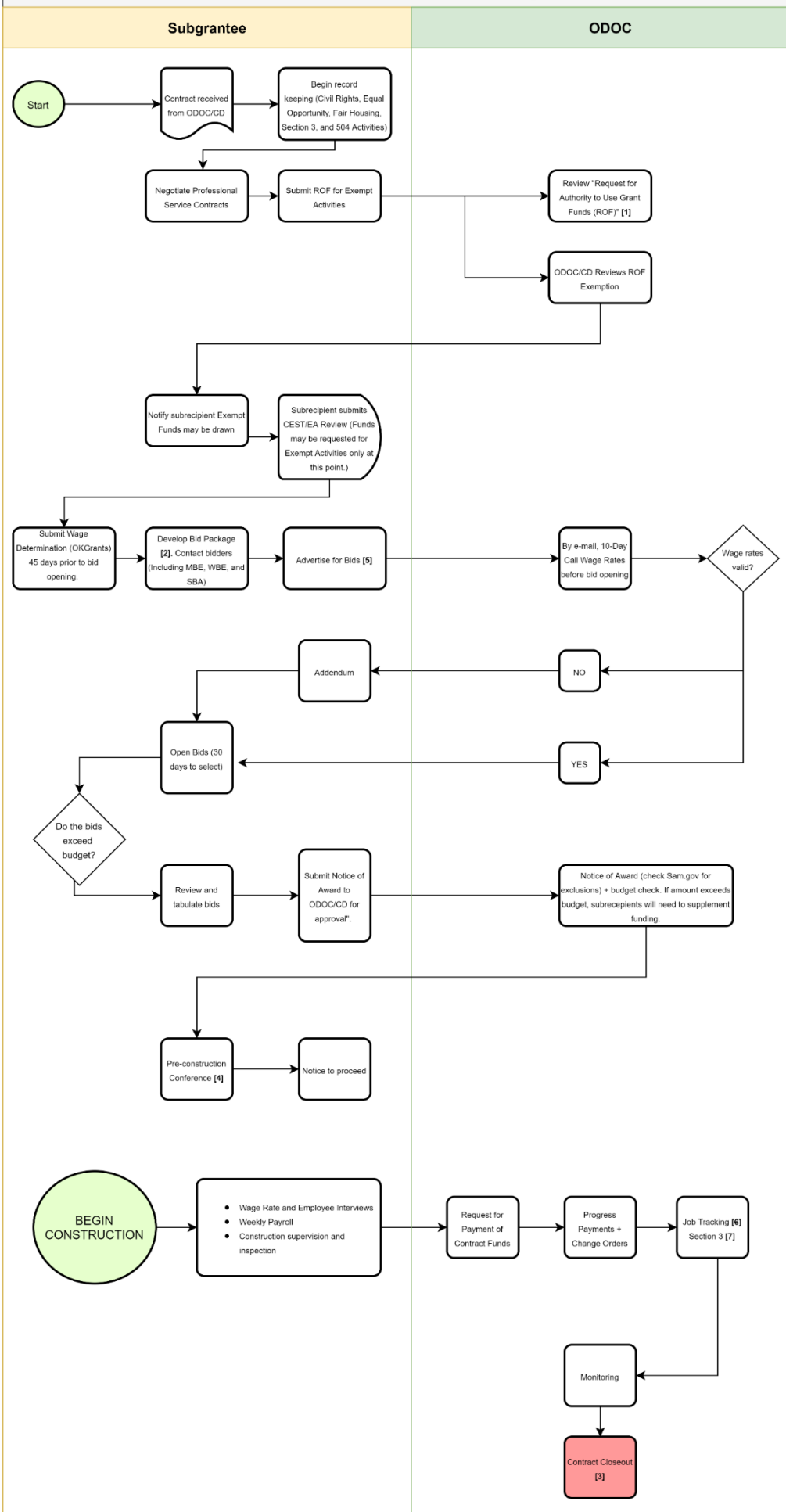
Local officials should review the liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. If a suit is filed against a program in Federal court on findings/environmental grounds, the chief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

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).

Community Development Block Grant Construction Flow Chart

Version 1.2 (July 28, 2022)



Notes

[1] ROF needs Environmental Review, Leverage Certification, Insurance/Bonding, Placement Plan, Anti-Displacement Plan, and Special Conditions. Note: *This step in the process only occurs after a CEST/ Environmental Assessment Review.*

[2] Bid Advertisement: This must contain Federal Labor Standards, Section 3, Section 109, Certificate of Non-Segregation, Equal Opportunity, MBE/WBE, Sam.gov, and Bonding.

[3] Contract closeout: Required -> Final Expenditure Report, Benefiary Report, Contract Closeout Certification, Final Public Hearing, Final Wage Compliance Report, Proof of Insurance, Board Minutes, Final Inspection Report, Section 3 Summary Report, Project expenditure ledget, Certificate of Completion, Section 3 total worker hours, and project photographs.

[4] Pre-construction conference: ODOC requires that every contractual relationship between the Grant Recipient and the construction contractor be initiated by a meeting to define the terms, conditions, deliverables, and performance schedules that will govern the contract.

[5] Advertise for Bids: refer to OK State Public Competitive Bidding Act. (O.S Title 61 - bid notices - advertise in two consecutive weekly issues in the county of the work for 21 days for construction contracts over 100,000 and also advertise in one in-state trade publication. Under 100,000 is for 10 days.)

[6] Job Tracking: Quarterly Job tracking for EDIF projects.

[7] Section 3 Projects: CDBG awards of $200,000.00 or more - Tracking and Reporting of Qualitative and Quantitative efforts.

2. 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-CV 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 [Attachment 15]** for submittals in the OKGrants system.

2.1 **Exempt Activities (Attachment 16)- 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).

2.2 **Categorically Excluded Activities (CENST) [Attachment 16] - 24 CFR Part 58 (58.35b, not Subject to 24 CFR 58.5, subject to CFR 58.6):**
Supportive services including but not limited to, health care, nutritional services, short-term payments for rent/mortgage, and utility costs. The State’s Subrecipient is still required to address the requirements under 24 CFR 58.6.

Activities 2.1 and 2.2 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/

2.3 **Categorically Excluded Activities (CEST) [Attachment 17] - 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).

2.4 **Environmental Assessment (EA) [Attachment 18]- 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.

2.5 **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.

3. 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/

3.1 **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.

3.1(a). 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/

3.1(b). 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/

3.1(c). 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/

3.1(d). 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/

3.1(e). 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, 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.

3.1(f). 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/

3.1(g). 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

3.1(h). 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-CV there is a federal statutory requirement to maintain flood insurance on the property in perpetuity. Compliance with this requirement must be monitored by the grantee per the requirements listed at 24 CFR 58.6. Flood insurance is provided through the National Flood Insurance Program (NFIP). For CDBG-CV properties located outside the SFHA, HUD cannot mandate that flood insurance be purchased and maintained, but a grantee 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/

3.1(i). 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 in an SFHA.

If the project activity(s) are 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.

3.1(j). 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/

3.1(k). 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/

3.1(l). 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/

3.1(m). 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/

3.1(n). 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/

3.1(o). 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/

When the environmental worksheets are completed, the appropriate forms must be executed as follows:

3.2 **Finding of Categorical Exclusion/Exempt from Release of Funds Publication:**
Pursuant to 58.34(a); when it is determined, after completing all 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.

3.3 **Finding of Categorical Excluded (Subject to Section 58.5):**
Pursuant to 24 CFR 58.35(a); When it is determined, after completing all 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.

- **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.

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

3.4 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 significantly affects 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 Sub- recipient'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.

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.

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

- **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.
- **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.

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).

4. 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 Sub-recipient 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.

5. ATTACHMENTS

14- CDBG Environmental Compliance Handbook
15- Release of Funds Checklist
16- Exempt/ Categorically Excluded Not Subject To (CENST) Activities Form
17- Categorically Excluded Subject To (CEST) Activities Form
18- Environmental Assessment Form
19- Grantee's Request for ROF 7015.15 Form
20- Env. Review-Sample-Notice of Intent-RROF
21- Env. Review Sample Distribution List for Notices
22- Env. Review-Sample-Combined Notice-FONSI-RROF
23- Env. Review-Sample Flood Notices for publication

24- Certification of Leverage Form
25- Engineer Architect Acknowledgement
26- Residential Anti Displacement Relocation Asst Plan
27-Designation Memo HUD 5.23.22. A copy of this memo is shown below:
28- Certification of Continued Environmental Compliance

memo

Oklahoma Department of Commerce

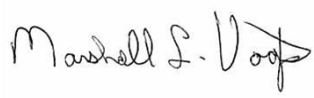
To: Jade Shain, Kellon Dixon, Alicia Hibbets, Robin Slawson, Amanda Marcott-Thottunkal, Jessica Izquierdo

From: Marshall Vogts

Date: May 23, 2022

Re: Designation

As the Director of Community Development for the Oklahoma Department of Commerce, and as the authorized official and signatory for non-entitlement funds from HUD for the state of Oklahoma, I am designating the Oklahoma Department of Commerce, Community Development Division's Directors of Programs to act as the Certifying Officers to satisfy HUD requirements for environmental reviews, when appropriate.



REQUIREMENT NO. 404 - CIVIL RIGHTS, EQUAL OPPORTUNITY, FAIR HOUSING, SECTIONS 3 & 504

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

1. 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-CV grants. Specific laws, the persons those laws cover, and the types of discrimination prohibited are outlined at the end of this Requirement.

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-CV 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.

1.1 **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.

1.2 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-CV 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. For more information on **Women-Owned Business Certifications** please visit https://www.okcommerce.gov/doing-business/business-services/women-owned-business-certifications/

1.3 §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-CV 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.

2. SECTION 3

Section 3 of the Housing and Urban Development Act of 1968 requires that grantees, subgrantees, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part by CDBG-CV 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-CV assistance, and contractors that are awarded covered contracts that exceed $200,000, 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 Community Development Act of 1992]** This requirement applies to the following:

A local government (State's Subrecipient), including private entities receiving CDBG-CV funds, if it receives CDBG-CV funds for housing rehabilitation and/or public construction and the CDBG-CV 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 contractor and the construction contract or sub-contract exceeds $200,000. **[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]

3. 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-CV activity funded by ODOC, *for each fiscal year the State's Sub- recipient has received a CDBG-CV 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-CV 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-CV 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 to further fair housing. The State's Subrecipient is not required to undertake multiple fair housing activities if it has multiple CDBG-CV 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.

Advise 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.

3.1 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-CV funds are required to comply with the provisions of Section 504. **[24 CFR 8]**

CDBG-CV 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-CV 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:

- 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

- Effective Communication 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.

3.2 **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 (recreational 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;

3.3 **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 Sub- recipient 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.

3.4 **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-CV 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; and

- Contact appropriate State agencies, boards, and commissions.

By establishing a citizens' advisory committee made up of the above types of individuals, the State's Sub- recipient 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**.

3.5 Develop a 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 Sub- recipient 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.

3.6 **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 of "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.

4. EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS PARTICIPATING IN CDBG-CV

Consistent with CPD Notice 04-10 regarding faith-based organizations participating in the CDBG-CV program, the following guidelines are to be used:

- Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive CDBG- CV funds. Neither the Federal Government nor a State or local government receiving funds under CDBG-CV shall discriminate against an organization on the basis of the organization's religious character or affiliation.

- Organizations that are directly funded under the CDBG-CV program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the programs or services funded under CDBG-CV. If an organization conducts these activities, the activities must be offered separately, in time or location, from the programs or services funded under CDBG-CV, and participation must be voluntary for program participants.
- Any religious organization that receives CDBG-CV funds retains its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that the religious organization does not use direct CDBG-CV funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide CDBG-CV funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, an CDBG-CV funded religious organization retains its authority over its internal governance, and the organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.
- An organization that receives CDBG-CV funds shall not, in providing CDBG-CV assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.
- CDBG-CV funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. HUD funds may not be used to acquire or improve sanctuaries, chapels, or any other room that faith-based entities receiving HUD funds use as their principal places of worship.
- If the recipient or a subrecipient that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or subrecipient has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

5. ATTACHMENTS

29- Section 3 Guidance & Forms
30- Business Registry- Get Connected Poster
31- Business and Employment Notice Sample
32- Section 3 Clause
33- Section 3 Contractor Business Self Certification
34- Section 3 Monthly Utilization Report
35- Section 3 Worker Status Certification
36- Section 3 Grantee Checklist
37- Section 3 Grantee Sample Plan
38- Section 3 Grantee Sample Resolution
39- Section 3 Contractor Estimated Workforce Breakdown
40- Section 3 Contractor Sample Plan
41- Section 3 HUD Complaint Form
42- Compendium of Federal Civil Rights Laws

REQUIREMENT NO. 405 - PROCUREMENT

1. INTRODUCTION

The Oklahoma Department of Commerce (ODOC) follows the Oklahoma Central Purchasing Act, Tile 74, for all procurement. ODOC is required by the State Purchasing Director to develop internal policies and procedures that comply with the Central Purchasing Act. These policies and procedures are submitted to the State Purchasing Director for review and approval.

To remain eligible for CDBG-CV funding, recipients of CDBG-CV funds must comply with the requirements of 2 CFR 200 Subpart D regarding procurement of equipment, materials, property, or services. Subrecipients must also comply with State and local procurement standards. Moreover, procurement under the CDBG-CV program must comply with the most restrictive Federal, State, or local requirements.

Oklahoma Department of Commerce follows the State's Central Purchasing Act, located in Title 74 of Oklahoma Statutes. Units of General Local Government as "subrecipients" are to follow 2 CFR Part 200.318-326, listed at end of this section.

The procurement of all purchases utilizing CDBG-CV funds will be subject to the requirements set forth at 24 CFR subpart I, §570.489 (g), "COMMUNITY DEVELOPMENT BLOCK GRANTS", 24 CFR Part 85, Subpart A" THE COMMON RULE", as applicable, Title 19 of the Oklahoma Statutes, as required, the by Competitive Bidding Act and local ordinances where applicable.

State's Subrecipients shall comply with the requirements set forth in this document in the procurement of all goods and services that utilize CDBG-CV funds. Where local and State rules address the same matter/requirements as 2 CFR Part 200 follow the most restrictive standard unless it conflicts with the Federal requirement (if there is a conflict, follow Part 200 rule or contact ODOC for guidance). Non-compliance with required procedures may result in disallowance of any or all costs associated with the procurement action.

State's Subrecipients shall follow 2 CFR Part 200.318-326 federal guidelines for procurement as well as:

- **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. These Statutes are revised each year by the Oklahoma Legislature to keep them current and beneficial.
- **Cities and Towns** are required to follow their own procurement procedures as established by local ordinance for the purchase of all goods and services. In the absence of procurement procedures, Cities and Towns should use the procurement requirements outlined in this manual.

State's Subrecipients are required to provide ODOC with Cities and Towns procurement policy at the execution of contract period. If the Grantee does not have a current procurement policy, then no funds will be distributed until the Governing Board approves such policy and then submitted to ODOC for verification.

State's Subrecipients are required to maintain documentation of all procurement procedures and actions on file for ODOC review, i.e., Request for Proposals (RFPs), Request for Qualifications (RFQs), newspaper or on-line advertisements, written solicitations, and board minutes, etc.

2. PRE-CONTRACT COSTS

CDBG-CV funds shall not be obligated or used for the payment of goods or services received prior to the start date of the contract, except for reimbursement costs ONLY when:

1. Proper procurement requirements were followed at the time the procurement occurred; and
2. Services are directly related to the proposed CDBG-CV project and are required for preparation of the application for CDBG-CV funding.

Any request to deviate from these requirements must be submitted in writing and written approval must be received from ODOC/CD prior to taking any procurement action.

3. REGULATORY & STATUTORY REQUIREMENTS

24 CFR 570, Subpart I, §489(g) requires that: "The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition". "**FULL AND OPEN**" competition is defined as: procurement procedures that provide all suppliers of goods and services the ability to be made aware of the proposed procurement action with no restriction placed on their ability to compete. Methods of procurement shall include but not be limited to small purchase, sealed bid, formal advertising, competitive proposals, and sole source procurement.

3.1 **Self-Procurement Warning:**

Any Certified Administrator who engages in either of the following practices shall be de-certified consistent with the following procedures listed in the certification regulations:

- Assisting the municipality or county in the conduct of the procurement process, ultimately resulting in the selection of that administrator to provide CDBG-CV administrative services.
- Offering to prepare an application to ODOC for CDBG-CV funding assistance with the understanding that no fee for preparing the application will be charged if that administrator is selected to administer the project.

3.2 **Exemptions from Competitive Procurement Requirements:**

The following are exempt from competitive procurement procedures:

- Certified CDBG-CV Administrator or Apprentice employed by a Sub state Planning District.
- Purchase of equipment or materials from other units of government, including those on state or county contract/bid list(s).
- The purchase of used fire equipment when the purchase is made from a reputable company dealing in used vehicles that clearly qualifies as emergency equipment. Vehicles that could be converted to use as an emergency vehicle are not included in this provision.
- If a State's Subrecipient chooses to use their leverage/matching funds to pay for engineering, architecture, and/or grant administration the State's Subrecipients are exempted from ODOC competitive procurement requirements.

For exemption from all other competitive procurement requirements written approval from ODOC is required.

4. METHODS OF PROCUREMENT

The methods of procurement include Micro and Small Purchases, Sealed Bidding, Competitive Proposals, and Non-Competitive Proposals per [24 CFR 85.36(d)]. The appropriate method for any given product or service is dependent on the estimated cost or price, whether the procurement is for a service or product and the type of contract to be utilized, whether the service or product is unique or available from only one source and whether there is any eligible, qualified competition. The following are brief descriptions of each of the procurement methods as indicated by Title 61 O.S.§§ 101-138 of the Public Competitive Bidding Act of 1974 (Amended November 1, 2021).

4.1 **Counties**

- Small Purchase: Small Purchases are those made for services, supplies or other items costing less than $10,000.00 in the aggregate. Small purchases may be made directly from local vendors. State's Subrecipients are required to obtain the best price possible.
- Sealed Bids: If the purchase exceeds $10,000 (in the aggregate), the Contractor is required to advertise, solicit, and receive sealed bids.

4.1(a). For formal advertising to be feasible, appropriate conditions must be present. These include:

- A complete, adequate, and realistic specification or purchase description;
- Two or more responsible suppliers willing and able to compete effectively for the Contractor's business; and
- The procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can appropriately be made principally based on price.

4.1(b). The following steps are to be followed in the sealed bid procurement process:

1 Bidder's Instructions are to be prepared, usually by the certified administrator and/or consulting architect/ engineer on a construction project. Once completed, these instructions should be reviewed by legal counsel and a determination should be made that all required compliance notices have been included in the package. This information must be communicated to potential bidders at the time bids are solicited and not merely when contracts are to be signed. Proposals or bidders need to be alerted that they are bidding on a project involving Federal funding and that they will be required to comply with several laws and regulations. The Bidder's Instructions should provide cost estimating forms to facilitate both the presentation and review of financial information, including (if unit prices are required) cost formats that correspond exactly to the bid information sought.
NOTE: Davis Bacon Act applies to all construction contracts more than $2,000.00. Workers' Compensation and General Liability insurance is required for all construction contracts starting at $2,500.00 (O.S.61, Sec. 103, A & B, Section 113 A-D (2)

2 Notice of solicitation of bids shall also be published one time in a newspaper of general circulation in the county. Notices shall be mailed and published at least **ten (10) days** prior to the date on which the bids are opened. Proof of

the mailing shall be made by the affidavit of the person mailing the request for bids and shall be made a part of the official records of the Contractor files.

3 Bids shall be solicited by mailing a notice to all persons or firms who have made a written request of the Contractor that they be notified of such bid solicitation and to all other persons or firms who might reasonably be expected to submit bids.

4 The State's Subrecipient, in an open meeting, shall open the sealed bids, and if applicable compare them to the state contract price. The Contractor shall select the lowest and best bid based in accordance with the bid specification. The Contractor shall award the contract within **thirty (30) days** of the meeting.

5 Where specified in the bid documents, factors such as availability of materials, transportation cost to the job site and life-cycle costs should be considered in determining which bid is lowest.

6 The State's Subrecipient shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and the best bid, the reason for such conclusion shall be recorded in the official Board Minutes.

7 When bids have been solicited as provided and no bids have been received, the State's Sub- recipient must submit documentation to ODOC that bids were sought (solicitations, proof of publication). Upon notification that no bids were received, ODOC will provide requirements that must be met before an award can be made.

4.2 **Cities and Towns**

- Small Purchases: Small Purchases are those made for services, supplies or other items costing $10,000 or less in the aggregate. Small purchases may be made directly from local vendors. State's Subrecipients must take documented steps that indicate that a competitive process was utilized.
- Small Purchases: If the Small Purchases costs between $10,000 and $100,000 the State's Sub- recipient must request and receive in writing at least 3 bids or quotes.
- Sealed Bids: If the purchase exceeds $100,000 Sealed Bids must be received by the State's Subrecipients. The State's Subrecipient must advertise as well as take any other steps necessary to assure that fair and open competition was achieved as well as assuring that the State's Subrecipient received the best product/service for funds expended.

4.1(a). For formal advertising to be feasible, appropriate conditions must be present. These include:

- A complete, adequate, and realistic specification or purchase description;
- Two or more responsible suppliers willing and able to compete effectively for the Contractor's business; and
- The procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.

4.1(b). The following steps are to be followed in the sealed bid procurement process:

1 Bidder's Instructions are to be prepared, usually by the certified administrator and/or consulting architect/ engineer on a construction project. Once completed, these instructions should be reviewed by legal counsel and a determination should be made that all required compliance notices have been

included in the package. This information must be communicated to potential bidders at the time bids are solicited and not merely when contracts are to be signed. Proposals or bidders need to be alerted that they are bidding on a project involving Federal funding and that they will be required to comply with several laws and regulations. The Bidder's Instructions should provide cost estimating forms to facilitate both the presentation and review of financial information, including (if unit prices are required) cost formats that correspond exactly to the bid information sought.
NOTE: Davis Bacon Act applies to all construction contracts in excess of $2,000.00. Workers' Compensation and General Liability insurance is required for all construction contracts starting at $2,500.00 (O.S.61, Sec. 103, A & B, Section 113 A-D (2)

2 Notice of solicitation of bids shall also be published one time in a newspaper of general circulation in the county. Notices shall be mailed and published at least **ten (10) days** prior to the date on which the bids are opened. Proof of the mailing shall be made by the affidavit of the person mailing the request for bids and shall be made a part of the official records of the Contractor files.

3 Bids shall be solicited by mailing a notice to all persons or firms who have made a written request of the Contractor that they be notified of such bid solicitation and to all other persons or firms who might reasonably be expected to submit bids.

4 The State's Subrecipient, in an open meeting, shall open the sealed bids, and if applicable compare them to the state contract price. The Contractor shall select the lowest and best bid based in accordance with the bid specification. The Contractor shall award the contract within **thirty (30) days** of the meeting.

5 Where specified in the bid documents, factors such as availability of materials, transportation cost to the job site and life-cycle costs should be considered in determining which bid is lowest.

6 The State's Subrecipient shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and the best bid, the reason for such conclusion shall be recorded in the official Board Minutes.

7 When bids have been solicited as provided and no bids have been received, the State's Sub- recipient must submit documentation to ODOC that bids were sought (solicitations, proof of publication). Upon notification that no bids were received, ODOC will provide requirements that must be met before an award can be made.

5. PROCUREMENT OF CONSTRUCTION CONTRACTS

APPLICABLE TO COUNTIES, CITIES, AND TOWNS

61 O.S. §101 et seq. requires the use of the sealed bid procurement process for any public construction project exceeding **$50,000**.

NOTE: THE SPLITTING OF BIDS IN ORDER TO AVOID THE COMPETITIVE BIDDING ACT IS A VIOLATION OF STATE LAW.

The purpose of the bid document is to provide prospective bidders with sufficient information to know the exact scope of work and performance requirements. The architect or engineer who designed the project should take the lead in assembling the bid document. Things to include:

- Topographic maps, a site plan and a site layout identifying all adjacent structures, utilities, easements, rights-of-way, sewer, or drainage services that might have any underground installations within the project area, that are critical to design;
- Plans and specifications, including names of manufactured items, model numbers, sizes, colors, styles, and all other information necessary for the construction contractor to easily price and secure the products specified (or those "equal to");
- Required wage rates, certifications, bid guaranties and affidavits;
- Notification of all public utility, gas, water, and electrical services;

Deductive alternatives: The use of deductive alternatives is highly recommended if there is any chance that all bids will exceed available funding. The bid document must be specific in describing the method and order in which alternates will be applied in determining the low bid and such alternates in the plans and specifications.

5.1 Davis-Bacon Wage Rate Determinations:

Construction Contractors are required to pay their laborers at the "prevailing wage rate" for any project involving CDBG-CV funds, if the project costs more than $2,000.

These rates are periodically adjusted. This request must be submitted at least **45 days prior** to the formal bid opening date. This is a critical step since these rates can significantly affect construction cost estimates.

The State's Subrecipient may obtain the wage rates from the web site: http://sam.gov and submit wage rate information into OKGrants.com.

Certified wage rates are valid for 180 days. Subrecipients must contact CDBG-CV Staff by e-mail **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 Subrecipient 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-CV 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

It is normally the responsibility of the Certified Grant Administrator to furnish a current wage rate determination to the architect/engineer for inclusion in the bid document. However, the State's Subrecipient is not relieved of the responsibility to ensure the wage rates are correct.

If a specific job classification is not included in the wage determination, contact an ODOC Project Manager for specific instructions.

Other Requirements:

- Title VI of the Civil Rights Act of 1964;
- Section 3, Housing and Urban Development Act of 1968, as amended; Section 504 of the Rehabilitation Act of 1973, as amended;
- Age Discrimination Act of 1975;
- Section 109, Housing and Community Development Act of 1974, as amended;
- Section 402, Veterans of Viet Nam Era (if $10,000.00 or over); and
- Minority and Women Owned Business (see Requirement 404) CFR 200.321 **[Minority and Women owned Business Form]**

5.2 **Bonding and Insurance Requirements:**

- A bond or irrevocable letter of credit.
- 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;
- 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
- 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.

Effective July 1, 2008, Oklahoma and U. S. Government laws require that all U. S. employers check to ensure that all employees, regardless of citizenship or national origin, are allowed to work in the United States. If an employee is not a citizen or a lawful permanent resident, he/she may need to apply for an Employment Authorization Document (EAD) to prove that he/she may work in the United States. Contractors may retrieve the appropriate forms from the U. S. Citizenship and Immigration services web site at www.uscis.gov. Although the project managers under ODOC's CDBG-CV program are required to monitor the CDBG-CV State's Subrecipients and their contractors, the burden to ensure compliance with this requirement lies with the State's Sub- recipient.

A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of this section, provided such single irrevocable letter of credit would meet all applicable requirements of Subsection B of this section.

If the contractor needs additional time in which to obtain the bonding required, the contractor may request, and the awarding agency may allow the contractor an additional sixty (60) days in which to obtain the bonds.

NOTE: Many of the regulations regarding contract provisions require specific clauses to be included. These regulations may not be referenced.

NOTE: 59 O. S. § 46.21 b utilizes the guidelines of the 2003 International Building Codes which requires, in part, that: a **licensed architect** be used in the planning, designing and preparation of drawings and specifications for the alteration or construction of any building to be used as an assembly hall, municipal building or county building where the reasonably estimated total cost for constructing, remodeling or repairing such building exceeds the sum of One Hundred Fifty Eight Thousand Dollars ($158,000).

5.3 **Soliciting Bids:**

Bid Notice: The State's Subrecipient is required to prepare a Bid Notice. The Bid Notice should include but not be limited to the following:

- The nature of the proposed project in sufficient detail that all bidders will know exactly what their obligations will be, either in the Bid Notice or by reference to the bidding documents
- The name and location (address) of the officer, agent, or employee from whom a complete set of bidding documents can be obtained and the cost of obtaining those documents;
- The date, time, and place of opening the sealed bids;
- The name of the individual and location (address) of the office where bids should be submitted
- The publication must call bidders' attention to the requirement for prevailing wages as well as equal opportunity requirements;
- State's Subrecipients must make a good faith effort to seek contracting possibilities with small businesses, women's business, and minority-owned businesses.
- Any other information considered appropriate for prospective bidders or the public.

This notice is to be advertised and distributed as follows:

- Provision of a notice to all known prospective bidders via first class mail at least **20 days prior** to the scheduled bid opening;
- Request for Bids must be published in two (2) consecutive weekly issues of a general circulation newspaper. The first publication must be at least **20 days prior** to the date set for opening bids;
- If the project is expected to exceed $50,000, submit bid notice to industry, trade, or construction publications. However, providing this notice is **not** a requirement to publish the notice in these publications.

5.4 **Pre-Bid Conferences:**

A pre-bid conference may be held by the architect/engineer if there are multiple funding agencies, and they desire it or if the project has been determined to be complex. The primary

purpose of such a meeting is to explain to prospective bidders the requirements of the project and answer any questions of the bidders.

If a pre-bid conference is to be held, all prospective bidders and any other interested individuals must be notified at least **10 days prior** to holding such a meeting.

The State's Subrecipient may also desire to pre-qualify bidders as a means to ensure that only responsible proposals are submitted. Under this arrangement, the Contractor may evaluate potential bidders to determine that they have the experience, manpower, financial strength, or other relevant characteristics sufficient to presume they could undertake the project if selected.

5.5 Bid Opening and Evaluation:

The primary purpose of the review process is to find the most qualified construction contractor to do the job at the best possible price. All bids should be logged with the time and date of receipt, name of applicant and a procurement number. All bids received must remain sealed and in a safe place until the bid opening. Bidders shall accompany their bids 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 State's Subrecipient as guaranty; or 2) an irrevocable letter of credit issued by a financial institution on behalf of the State's Subrecipient in an amount equal to five percent (5%) of the bid.

The process for selecting a construction contractor will normally take the following steps:

1. Bid Opening: The bids must be opened publicly at the time and place stated in the bid advertisement. The bids should be read aloud and recorded for bid tabulation for the apparent low bidder determination. The apparent low bid is the least expensive proposal after the initial tabulation, prior to taking any deductive alternates and prior to establish responsiveness. If none of the bids comes in at or below budget, all proposals are reviewed for alternate bids, if stipulated in original bid documents. As a result of this process, the bidder with the lowest net bid may not be the same bidder who had the lowest original bid.

2. Evaluation of Responsiveness: After the initial bid tabulation, the next step is to review proposals for responsiveness. Check each proposal to determine that all requirements of the invitation have been met. Any proposal that fails to pass this threshold test is automatically rejected regardless of price. While it is easy to determine the apparent low bid, it can take some time to evaluate proposals for technical merit and responsiveness. The Contractor **has 30 days** from the bid opening date to award a contract or reject all bids. The Contractor is allowed to extend this period for an additional 90 days, which requires ODOC approval.

Some of the deficiencies that might void a bid are:

- Failure to provide an adequate bid guaranty;
- Failure to include affirmative action certifications;
- Failure to provide necessary affidavits.

Construction Contractors "self-certify" their compliance with debarment requirements by executing the Notice of Award. State's Subrecipients are required to confirm construction contractor eligibility to avoid any chance of problems. To check on any construction contractor's

eligibility, please go to the following website: https://beta.sam.gov/ for a current debarment list. Upload into OK-Grants, along with the Contractor Review Debarment and Grantee Debarment Forms. This rule applies to any contract over $2,500.

Copies of Board Minutes and copies of bid tabulation MUST be placed in the construction contract file.

3. Competitiveness: The next step depends on whether there are at least two qualified bids left to consider. If there are at least two, there are two options:

- Select one bid. The lowest and best cost bid would normally be selected, so long as that bidder was technically qualified to undertake the project. If a bid other than the lowest is selected, the Contractor must prepare a statement of justification, which must be made available for public inspection. In either case, selection of a bid can only be made if the cost of that bid falls within the budget available for the project.

  Deductive alternates may be used only if the bid package was specific in defining what they were and how they would be applied.
  Deductive alternates must be applied to every bid, not just the lowest original bid.

- Reject all bids. Any or all bids may be rejected when there is a sound, documented reason. For example, this might be appropriate if the pricing of all bids, after taking deductive alternates, exceeds funding available and there is no hope of securing additional funds or rearranging the budget. **[24 CFR 85.36(d) (2)]**

- If only one responsible bid was received, **contact ODOC prior to award. State's Subrecipient must have written ODOC approval before the contract can be awarded.**

- If the lowest responsible bid exceeds the currently available funding, the Contractor has three options (in order of preference):
  - Select deductive alternates until cost comes under (or near) budget; and/or
  - Make up the funding shortfall from non-CDBG-CV resources; and/or
  - Reject all bids. ODOC will not approve a budget modification if it would cause the total grant amount to exceed program limitations, reduce the benefit to low-/ moderate-income families below 51% or alter the circumstances under which the grant award was originally made.

4. Once a responsible bidder has been selected for a cost within budget, the next step is to issue a Notice of Contract Award to the successful bidder **(Attachment 52 - Notice of Contract Award)**. The Notice must include a statement signed by the construction firm, certifying that the firm does not appear on the "list of Parties Excluded from Federal Procurement or Non-Procurement Programs". A copy of the executed Notice of Award is submitted to ODOC. The State's Subrecipient shall return a certified check or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution 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.

6. PROCUREMENT OF PROFESSIONAL SERVICES

For the purposes of the implementation and management of a CDBG-CV project, professional services shall be separated into three categories:

Administrative Grant Administrators/Consultants/Community Action Agencies, inspectors other than engineers.

Requests for Proposals (RFPs): Regardless of cost, a Request for Proposal shall be used for the procurement of grant administrators and other professional service providers listed below.

NOTE: Any person or firm preparing or assisting in the preparation of RFP documents shall be precluded from submitting a proposal.

State's Subrecipients seeking to contract with an individual or firm to provide grant administration services may undertake one of two types of competitive methods: Advertisement or Direct Solicitation.

6.1 Public Advertising Requirements:

When seeking Professional Service Contracts as defined in 1 above, the Contractor may choose to advertise in a newspaper with the largest general circulation within the county. When advertising for these services the RFP's or RFQ's must be publicly advertised **10 days prior** to opening regardless of cost; or

6.2 Direct Solicitation:

When seeking Professional Service contracts, The State's Subrecipient may choose to directly solicit from known individuals or firms in place of public advertisement. A minimum of three (3) professional service providers must be contacted to obtain proposals. (For procurement of administrative services, certified administrators must be contacted.) If the State's Subrecipient chooses to directly solicit these services, they must maintain documentation of the names and dates of the firms or individuals that were contacted.

6.3 Request for Proposal process requires the following:

An RFP must be prepared in advance of soliciting proposals and provided to all interested parties. **Note**: The Sample "Request for Proposals for Administrative Services for the Community Development Block Grant" must be used in its entirety. This Sample meets the requirements below. If an RFP other than the Sample is developed or if the Sample is altered in format or content, approval from ODOC must be obtained prior to proceeding with the planned procurement.

- A cover letter clearly identifying the purpose of the RFP. The cover letter is used for transmitting the proposal package to interested parties.
- Complete information and instructions necessary for interested parties to provide a responsible proposal. The information required to be in the RFP shall include the following:
- The complete scope of services to be provided;
- General design information regarding the project to be undertaken or specific services to be provided;
- A statement of price for services to be rendered;

- Anticipated start and completion dates of both the project and the services being requested; Statement of minimum acceptable qualifications;
- The method for reviewing and rating all proposals, including a list of all evaluation criteria to be used;
- A sample of the proposed contract containing all contract terms and conditions so interested parties have the opportunity to know beforehand the specific requirements they must meet.

The procurement process shall be carried out only upon completion of the final RFP. The process will include public advertisement as applicable, solicitation of proposals from known service providers, evaluation, and selection.

All proposals received in response to the RFP shall be equally evaluated in accordance with the evaluation criteria and method of evaluation identified in the RFP. When necessary, due to the complexity of the procurement or number of responses received, a review committee with knowledge of the proposed project may be selected to perform the reviews. The evaluator(s) should be given a copy of all RFP requirements prior to the beginning of the review process so they can be provided with any additional information or clarification of the process. Specific requirements for evaluation of proposals:

No proposals received after the stated due date for proposals may be evaluated. Proposals received after the due date should be returned to the submitter with appropriate correspondence.

Only the specific evaluation criteria identified in the RFP shall be applied to each proposal to make the final determination. Proposal should not include more information than is required in the RFP. Any additional information received should not be considered in the evaluation process.

The evaluation process shall be properly documented, and adequate files established to enable any State or Federal reviewers to clearly determine the basis for the award to the specific party.

Specific evaluation criteria to be used in rating all proposals are listed below:

Each applicant must provide a Statement of Qualifications in such format as are required to provide a clear determination of the level of qualification. Minimum standards for consideration must be established for qualifications of the applicant.

Each applicant must provide a brief explanation of their technical competence. Minimum competency standards can be established, if desired.

Statement of Price Requirements: All RFPs, with the exception of A/E services, shall require a firm, fixed total cost or fee for all services being requested, along with an established rate or fee for each service being delivered.

For all contracts other than A/E services, the State’s Subrecipient must request confirmation in writing from ODOC that the selected applicant of the services is not on a Federal or State list of

ineligible State's Subrecipients before the contract can be executed. This request may be made in advance of the final selection of the successful applicant. The confirmation letter from ODOC must be maintained in the contract file.

All unsuccessful applicants should be notified in writing that their proposals were not selected.

> **NOTE**: When less than two (2) responsive proposals are received, the requirements stated below "Use of Non-Competitive Proposals" shall apply.

6.4 Engineers, Architects, Landscape architects, and Attorneys, etc.:

Requests for Qualifications (RFQs): Regardless of cost, a Request for Qualification shall be used for the procurement of Engineers, Architects, and Landscape Architects. State's Subrecipients must understand that under Oklahoma State Statutes providers of Engineering, Architectural, and Landscape architectural services are not allowed to submit a price for fee until the initial evaluation process has taken place and a qualified individual or firm has been determined. After an individual or firm has been determined the price can be negotiated (2 CFR Part 200.320). State's Subrecipients seeking to obtain and contract with an individual or firm to provide Engineering, Architectural, and Landscape architectural services may undertake one of two types of competitive methods:

1. Public Advertising Requirements: When seeking Professional Service contracts, the State's Subrecipient may choose to advertise in a newspaper with the largest general circulation within the county. When advertising for these services the RFQ's must be publicly advertised **10 days prior** to opening of the statement of qualifications.

2. Direct Solicitation: When seeking Professional Service contracts, the State's Subrecipient may choose to directly solicit from known individuals or firms in place of public advertisement. A minimum of 3 professional service providers must be contacted to obtain a statement of qualifications. If the State's Subrecipient chooses to directly solicit these services, they must maintain documentation of the names and dates of the firms or individuals that were contacted.

The State's Subrecipient must fully develop a Request of Qualifications. This RFQ must clearly communicate the following:

- Type of service being sought;
- Level of education and experience desired by the State's Subrecipient;
- Exact description of the work/project;
- List of references;
- A cover letter clearly identifying the purpose of the RFQ. The cover letter is used for transmitting the proposal package to interested parties;
- Complete information and instructions necessary for interested parties to provide a responsible proposal. The information required to be in the RFQ shall include the following:
- The complete scope of services to be provided;
- General design information regarding the project to be undertaken or specific services to be provided;

- Anticipated start and completion dates of both the project and the services being requested;
- Statement of minimum acceptable qualifications;
- The method for reviewing and rating all proposals, including a list of all evaluation criteria to be used.

The selection phase of procurement process shall be carried out only upon completion of the final RFQ. The process will include public advertisement or solicitation of RFQs from known service providers followed by evaluation and selection. All proposals received in response to the RFQ shall be equally evaluated in accordance with the evaluation criteria and method of evaluation identified in the RFQ. When necessary, due to the complexity of the procurement or number of responses received, a review committee with knowledge of the proposed project may be selected to perform the reviews. The evaluator(s) should be given a copy of all RFQ requirements prior to the beginning of the review process so they can be provided with any additional information or clarification of the process.

Specific requirements for evaluation of RFQs:

- No RFQs received after the stated due date for RFQs may be evaluated. RFQs received after the due date should be returned to the submitter with appropriate correspondence.

- Only the specific evaluation criteria identified in the RFP shall be applied to each proposal in order to make the final determination. Proposal should not include more information than is required in the RFP. Any additional information received should not be considered in the evaluation process.
- The evaluation process shall be properly documented, and adequate files established to enable any State or Federal reviewers to clearly determine the basis for the award to the specific party.

Specific evaluation criteria to be used in rating all RFQs are listed below:

- Each applicant must provide a Statement of Qualifications in a format that will provide a clear determination of the level of qualification. Minimum standards for consideration must be established for qualifications of the applicant.
- Each applicant must provide a brief explanation of their technical competence. Minimum competency standards can be established, if desired.
- Once the State's Subrecipient has determined which individual that is most qualified, final negotiation of the contract between the contractor and the successful applicant will take place prior to execution of the contract.
- All unsuccessful applicants should be notified in writing that their proposals were not selected.
- When less than two (2) responsive proposals are received, the requirements stated below "Use of Non-Competitive Proposals" shall apply.

6.5 **Independent Auditors**

Audit Requirements: Each ODOC contract includes an audit requirement. Several factors affect the audit that is required including:

- Whether the jurisdiction is a municipality or county (11 O.S. Subsection 17-105 or 19 O.S. Subsection 171);
- The total level of funding received in a given year from all sources; and
- The total level of federal funds expended in a given fiscal year (OMB Circular A- 133)

- If the Grant Recipient's annual revenue is $25,000 or more in funds (from any and all sources), it must conduct an annual audit of all funds received which complies with the Oklahoma statute; or
- If the Grant Recipient's revenue is $25,000 or more, but its population is less than 2,500, it has the option of having an agreed upon procedures agreement conducted by an independent licensed public or certified accountant in lieu of an independent audit as cited in O.S. 17-105; or
- If the Grant recipient expends $750,000 or more in total federal funds (regardless of the source), it is subject to the requirements of the Single Audit Act.

Additional Notes: Grant Recipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.

Audits should be uploaded on OKGrants in a PDF file. Hard Copies will be accepted if necessary.

7. NON-COMPETITIVE PROPOSALS (SOLE SOURCE)

Non-Competitive Proposals are proposals solicited from only one source. The solicitation may be required by one of the situations listed below or after solicitation through a Sealed Bid or Request for Proposal process from a number of sources results in inadequate competition.

Non-Competitive Proposals require the prior written approval of ODOC and may only be utilized when:

- The item is available from a single source;
- The public emergency for the required purchase of goods or services will not permit the delay resulting from competitive solicitation;
- After solicitation of a number of sources, competition is determined to be inadequate or only one response is received.

Subrecipients must make an official request on letterhead and forward the request to ODOC staff. If the request is approved or denied, ODOC staff will forward a letter back to the subrecipient.

8. PROCUREMENT 2 CFR PART 200.317 THRU 200.326

As noted in the introduction, Oklahoma Department of Commerce adopts 24 CFR 200.317 and Imposes 2 CFR 200.318 through 200.326 for subgrantees and subrecipients as follows:

8.1 **§200.317 Procurements by states.**

When procuring property and services under a federal award, a state must follow the same policies and procedures it uses for procurements from its Non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other Non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

8.2 §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 standards.

(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 means 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.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 43309, July 22, 2015]

8.3 **§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]

8.4 §200.320 Methods of Procurement to be Followed.

The Non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold. It is $3,000 except as otherwise discussed in Subpart 2.1 of that regulation, but this threshold is periodically adjusted for inflation (§200.67 Micro-purchase). To the extent practicable, the Non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). 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 bid method is the preferred method for procuring construction if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) 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.

(2) If sealed bids are used, the following requirements apply:

(i) Bids must be solicited from an adequate number of known suppliers, 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;

(ii) 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;

(iii) 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;

(iv) 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

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of 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. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The Non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor 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 are a potential source to perform the proposed effort.

(e) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

8.5 §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.

8.6 §200.322 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]

8.7 §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.

8.8 **§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.

8.9 §200.325 Bonding Requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, 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.

8.10 §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.

9. 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 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 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 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.

10. ATTACHMENTS

43- Procurement Policy (2 CFR Part 200.317-326)
44- Grantee Debarment Review Certification Form
45- Contractor Debarment Review Certification Form
46- Administrator Responsibilities Checklist
47- Request for Proposals (SAMPLE)
48- Statement of Price (SAMPLE)

REQUIREMENT NO. 406 – FINANCIAL MANAGEMENT

1. 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-CV grant. **[24 CFR 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 Sub-recipient 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 Subrecipient's office on paper.

2. ACCOUNTING SYSTEM 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]:

2.1 **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-CV 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, rental assistance, 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-CV 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, rental assistance, etc.
- A payroll registers for any State's Subrecipient employees paid from CDBG-CV 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- CV project.

2.2 **Accounting Systems:**

You may apply your normal accounting systems to CDBG-CV 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 $100 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 $100 per year if they are able to document allowable CDBG-CV administrative expenses in accordance with 24 Part CFR 570.489 and 85.21 Interest Earned on Advances.

In order to receive CDBG-CV by electronic transfer Subrecipients will need to contact the Oklahoma Management and Enterprise Services (OMES) at 405-521-2444. Once CDBG-CV 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-CV funds.

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 funds. Any money not expended after the maximum time allowed is considered excess cash on hand and must be returned to ODOC. The returned funds can be drawn at a later date when needed. **[Treasury Circular 1075]**

The only exception to the "cash-on-hand" prohibition is that State's Subrecipients are allowed to maintain funds (up to $2,000) after the final drawdown of funds for the payment of the CDBG-CV pro-rata share of a State-required "Yellow Book" audit. Although the State's Sub- recipient may technically have cash on hand at the time of closeout, these funds will be reported as expended on the closeout documents.

2.3 Internal Controls:

Adequate internal controls must be established to ensure CDBG-CV 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-CV 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-CV 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-CV bank statement should be reconciled. The statement balance (not including other sources of funds) should be reconciled back to the CDBG-CV general ledger cash account. It is recommended that the reconciliation be performed by someone other than the CDBG-CV accountant. All persons performing the reconciliation must initial and date the reconciliation to indicate approval.
- CDBG-CV dollars cannot be placed in a petty cash fund.

2.4 **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.

2.5 **Leverage Funds Requirements:**

The CDBG-CV program does not require match funds however if included in the project activity budget, must be tracked, and reported.

2.6 **Allowable and Unallowable Expenses:**

Items that are considered allowable and unallowable expenses to your CDBG-CV 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-CV 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.

As a general rule, activity delivery costs for the subrecipient may include:

- Contracted certified CDBG administrative consulting services;
- Personnel costs for staff time on project. The payroll account can be reimbursed with CDBG-CV funds rather than creating an additional payroll for employees assisting with carrying out CDBG-CV activities. Timesheets are required for all staff paid with CDBG-CV funds and should be completely weekly and must be signed. Reimbursement claims for personnel costs should be completed monthly. **[Attachment 49 - CDBG-CV Personnel Timesheet]**

2.7 **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/Reimbursement Claim (Requests for Funds): Advances will be initiated and submitted by utilizing OKGrants. Supporting documentation such as invoices, purchase orders, LMI documentation and reimbursement claim forms 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 with routing numbers and account numbers blacked out, and board minutes approving the expenditure, must be uploaded.

- Any other correspondence between the State's Subrecipient and ODOC concerning the financial management of your CDBG-CV 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.

3. DRAWING DOWN FUNDS (ADVANCE REQUEST OR REIMBURSEMENT CLAIMS)

All requests for payments must be entered into OKGrants. Hard copies will not be accepted. State's Subrecipients may request a drawdown of funds necessary to meet immediate needs. This is accomplished through the submission of a Pay Advance initiated and submitted by utilizing OKGrants. The CDBG-CV grant writer/grant administrator may prepare this form but the authorized official or financial officer in OKGrants must review and submit.

It will take approximately ten to twelve working days from the date ODOC processes your Pay Advance to receive your grant funds.

In order to receive funds for CDBG-CV subrecipients will be required to submit the following:

3.1 **For Public Service Activities:**

- Reimbursement Claim Form
- Purchase Order
- LMI Beneficiary by Beneficiary Tracker
- Personnel Timesheets (if applicable)
- Invoice (if applicable)

3.2 **For Construction Activities:**

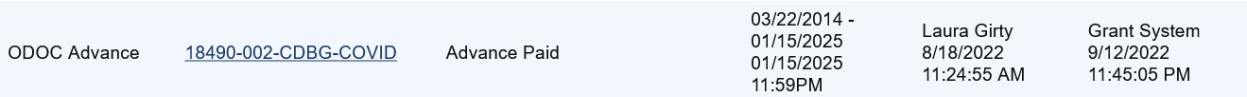
- Notice of Award- Submitted with the Release of Funds. The NOA must be approved for construction contractor before payment.
- Wage and Hour Division (WHD) Payrolls- Subrecipients will not be required to use this exact form. However, the form used must capture the same detail shown on the WHD Payroll form
- Payroll Certification Form- Must be submitted one time with the first funding request.
- Certificate of Appointing Officer to Approval Payroll- Must be submitted one time with the first funding request.
- Section 3 Worker Status Certification- Must be submitted with payroll on the first draw request for employee.
- Section 3 Monthly Utilization Report (for CDBG awards at $200,000 or above)
- Invoice (also referred to as Pay Estimate)
- Purchase Order

4. CDBG-CV MONTHLY EXPENDITURE REPORTS

Monthly Expenditure Report must be prepared and submitted in OKGrants by **the 10th of every month** following a month in which there has been a draw, expenditure, or cash balance of CDBG- CV funds. Subrecipients are only required to submit a monthly expenditure report following the month in which funds were expended. As a reminder, subrecipients have 15 working days to expend funds. For example, if a subrecipient receives funds on July 8th, a

monthly expenditure report is due by August 10th. If a subrecipient receives funds on July 20th, a monthly expenditure report will not be due until September 10th.

The Monthly Expenditure Report should be based on the date the payment is processed in OKGrants. For example, if payments are processed on August 15th, September 7th and another on October 17th, data reported on the Monthly Expenditure Report should only include information from the August 15th and September 7th payments. Payments can be confirmed in OKGrants by the timestamp labeled “Grant System” shown in the screenshot below. The payment processed on October 17th should not be reported until the following quarter because it falls after the 10th of the month when the report is due.



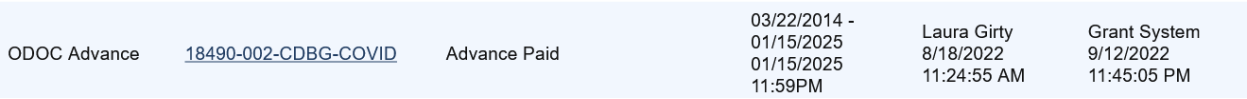
ODOC Advance	18490-002-CDBG-COVID	Advance Paid	03/22/2014 - 01/15/2025 01/15/2025 11:59PM	Laura Girty 8/18/2022 11:24:55 AM	Grant System 9/12/2022 11:45:05 PM

Timely submission of the Monthly Expenditure Report is important. Pay Advances will not be processed if there are any delinquent reports outstanding.

Inaccurate reports will be rejected and returned for corrections by ODOC staff.

5. CDBG-CV QUARTERLY PERFORMANCE REPORTING

On a quarterly basis, subrecipients must submit a report to reflect program performance on contracts, expenditures, and beneficiaries. This will be completed and submitted via OKGrants by the 10th of January, April, July, and October until closeout documents are submitted. The data submitted on the reimbursement claims should be cumulative and reflected on the quarterly performance report. Subrecipients may use **(Attachment 51 - CDBG-CV Subrecipient Quarterly Report)** to manually enter and collect information but the actual data must be submitted through OKGrants. The QPR should be based on the date the payment is processed in OKGrants. For example, if payments are processed on August 15th, September 7th and another on October 17th, data reported on the QPR should only include information from the August 15th and September 7th payments. Payments can be confirmed in OKGrants by the timestamp labeled “Grant System” shown in the screenshot below. The payment processed on October 17th should not be reported until the following quarter because it falls after the 10th of the month when the report is due.



ODOC Advance	18490-002-CDBG-COVID	Advance Paid	03/22/2014 - 01/15/2025 01/15/2025 11:59PM	Laura Girty 8/18/2022 11:24:55 AM	Grant System 9/12/2022 11:45:05 PM

The QPR should not count beneficiaries more than once. For instance, if Sue receives utility assistance in May and July, Sue should only be counted once in the total number of beneficiaries receiving utility assistance.

5.1 **Cumulative Beneficiary Data Required with QPR for Public Service Activities**

Subrecipients with public service activities are required to submit cumulative beneficiary data on the LMI BBT **(Attachment 74)** for those public service activities with each QPR. This cumulative beneficiary data serves as back-up documentation to enable ODOC staff to verify the numbers submitted on the QPR. The documentation also serves to ensure that subrecipients are not counting beneficiaries more than once. This cumulative beneficiary data can be tracked using the LMI BBT (**Attachment 74**) and must contain all beneficiaries assisted by the program up to that point. The cumulative beneficiary data should also be divided by type of activity. For

example, rental assistance beneficiaries should be separate from utility assistance beneficiaries. The tracker must be uploaded in Excel format. The tracker should be accurate and complete to the best of the subrecipient's ability.

6. TIMELY EXPENDITURE PLAN

FR 6218-N-01 mandates that 80 % of CDBG-CV funds must be obligated and expended within **three (3) years** of the date funds are obligated unless a waiver is granted by HUD. To meet this requirement:

Subrecipients will be required to adhere to the following:

- At the end of one year, the subrecipient will have eligible expenditures and will have drawn a minimum of ten percent (10%) of the total contract amount.
- All requests for funds must include supporting documentation. Program income earned will be reported on a monthly basis and must be expended before drawing additional grant funds.
- At the end of eighteen months the subrecipient will have eligible expenditures and drawn a minimum of eighty percent (80%) of the total contract amount.
- At time of closeout submission, the subrecipient will have submitted the final request for all eligible expenditures.

7. RECAPTURE POLICY

7.1 CDBG-CV Funds Recapture Policy when no CDBG-CV funds have been spent and the de-obligation is voluntary:

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 chief 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 Program 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 representative sends the closeout to the ODOC Program Manager and/or ODOC Director of Programs to review the accuracy.

The ODOC Director of Programs then emails the ODOC Program Manager – Financial that the contract is being voluntarily de-obligated and ODOC should recapture said funds to be used for future contracts. The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

7.2 CDBG-CV Funds Recapture Policy when the process is voluntary and CDBG-CV 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 chief 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 Program Representative reconciles the financial records to see if any CDBG-CV funds had been drawn and expended. If funds were drawn or expended, then the ODOC representative would notify the Subrecipient of the amount of funds to be returned to ODOC by a given date. These funds must be returned via check to the Oklahoma Department of Commerce Financial Services Division. The Subrecipient would also be told that they would be ineligible for any future CDBG-CV funding until all the funds drawn from the de-obligated contract were paid back to ODOC.

The Subrecipient would be required to also submit a new advance request showing the negative amount and a revised expenditure report that indicates the return of all CDBG-CV funds drawn and expended. The ODOC Program Representative sends the closeout to the ODOC Program Manager/ ODOC Director of Programs to review the accuracy. The ODOC Director of Programs then emails the ODOC Program Manager – Financial that the contract is being voluntarily de-obligated and ODOC should recapture said funds to be used for future funding or returned to HUD depending on the stage of the grant lifecycle. The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

7.3 **CDBG-CV Funds Recapture Policy when the process is involuntary and CDBG-CV funds were spent**:

When a Subrecipient does not meet the contractual requirements of their project then ODOC 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, Planner and Program 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. These funds must be returned via check to the Oklahoma Department of Commerce Financial Services Division. The Sub- recipient would also be advised that they would be ineligible for any future CDBG-CV 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 Program Representative to make sure all required documents had been reconciled and then send the closeout to the Programs Manager/Director of Programs for review.

The ODOC Director of Programs then emails the ODOC Program Manager – Financial that the contract is being de-obligated and ODOC should recapture said funds to be used for future funding or returned to HUD depending on the stage of the grant lifecycle. The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

7.4 **CDBG-CV Funds Recapture Policy when it is involuntary, and no CDBG-CV funds spent:**

When a subrecipient does not meet the contractual requirements of their project then ODOC 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, Planner and Program 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 Sub- recipient 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 Program Representative would then fill out the One-Page Closeout in OKGrants, upload all pertinent documentation and send the closeout to the ODOC Programs Manager/Director for review. The ODOC Director of Programs then emails the ODOC Program Manager – Financial that the contract is being de-obligated and ODOC should recapture said funds to be used for future funding or returned to HUD depending on the stage of the grant lifecycle.

The next step would be for the Director of Programs/Program Manager to send the closeout documents to financial services for their review and completion of the closeout process.

7.5 **CDBG-CV Funds Recapture Policy when contract has been closed:**

If a contract has been closed and it comes to the attention of ODOC that CDBG-CV funding were in fact not all spent, then the ODOC OKGrants System Administrator would have to re-open the contract and the subrecipient would be notified in writing of which of the above processes they would need to follow to remedy the situation.

8. 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 subrecipient.

9. PROGRAM INCOME POLICY

Program income is defined as gross income generated from the use of CDBG-CV funds and received by a State or a subrecipient of a State. When income is generated by and activity that is only partially assisted with CDBG-CV funds, the income shall be prorated to reflect the percentage of CDBG-CV funds used. Program Income is also defined as the amount of revenue received in a single program year which is greater than or equal to $35,000, as program income generated from a CDBG-CV federally funded project, it is subject to all federal requirements. (See 2 CFR 200.307, 24 CFR 570.489 & 570.504, Federal Register Notice Friday February 9, 2018, Title I of the HCD Act 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-CV program and general local program income retained by the unit of general local government (UGLG).

In the event that any program income is generated in connection with a subrecipient's administration of the CDBG-CV funding, such funds will remain with the subrecipient and expended under the method of distribution annotated 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 or return the funds to HUD.

Program income—use, closeout, and transfer, (1) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue CDBG-CV activities, is treated as additional CDBG–CV funds subject to the requirements of this notice and must be used in accordance with the grantee's action plan for CDBG-CV funds. (2) In addition to the regulations addressing program income found at 24 CFR 570.489(e) and 570.504, the following rules apply: A State grantee may transfer program income to its annual CDBG program before closeout of the grant that generated the program income. In addition, a state grantee 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 a grantee after closeout of the grant that generated the program income might also be transferred to a grantee's annual CDBG award. In all cases, any program income received that is not used to continue the CDBG-CV activity will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the State grantee's regular CDBG program rules.

Program Income Policy for Subrecipients:

Program income is money received by the State's Subrecipient, in the amount of $35,000 or more per year that has been generated from the use of CDBG-CV funds. [Federal Register Notice Friday February 9, 2018; and 24 CFR 570, Subpart I, § 489(e)]. Program income is not the initial receipt of CDBG-CV 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-CV funds; proceeds from the sale of equipment purchased with CDBG-CV funds and gross income from the use of real or personal property acquired with CDBG-CV funds, less the costs incurred in creating the program income; and payment of principal and interest on loans made using CDBG-CV funds.

10. ATTACHMENTS

49- CDBG-CV Personnel Timesheet
50- CDBG-CV Reimbursement Claim
51- CDBG-CV Subrecipient Quarterly Report

REQUIREMENT NO. 407 - CONTRACT DEVELOPMENT

1. INTRODUCTION

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.]**

2. GENERAL REQUIREMENTS

1.1. 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.

2.1 **Contract Provisions:**

ODOC will focus its review on the following issues, which are critical to ensure compliance with the CDBG-CV Program:

- 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, 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.

3. SPECIFIC REQUIREMENTS

3.1 **Non-Construction Contracts:**

The State's Subrecipient should carefully review Requirement 404 for affirmative action, Section 504, and Section 3 requirements to determine which provisions will be required in any non-construction contract utilized during the course of the project.

3.2 **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-CV 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-CV 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:

- Parties to the agreement;
- Project location;
- Scope of services;
- Financial commitments;
- Starting and ending dates;
- Performance schedule and milestones;
- Contract representatives:
- State's Subrecipient;
- Construction contractor; if applicable
- Subcontractor(s).
- Conflict of interest;
- Reporting requirements;
- Suspension clause;

- Incorporation of attached requirements [Requirement 404, Affirmative Action, Section 504, and Section 3 requirements.]
- 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/. 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-CV legislation.

Note: ODOC will review the contract only to ensure compliance with CDBG-CV 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.

4. 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 Sub- recipient 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.

5. NOTICE OF CONTRACT AWARD AND 10-DAY CALL

5.1 **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 Subrecipient 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-CV 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

5.2 **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. **[Attachment 52]**

The Contractor shall accomplish release of funds of the funded project within 120 days or less.

The Contractor shall commence actual construction of the funded project within 270 days from contract date on all construction 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, with appropriate status change as necessary and an email notification to the project manager that the upload is complete. Please note that ODOC will not process a payment for construction funds such as materials or equipment until the Notice of Award has been received.

When submitting a Notice of Award for approval subrecipients will also be required to submit the following documents:

- Sam.gov check (printout from website)
- Grantee Debarment Review Certification Form
- Contractor Debarment Review Certification Form
- Payroll Certification Form
- Section 3 Contractor Sample Plan
- Section 3 Business Self-Certification
- Section 3 Workforce Breakdown

All the above documents are included in the **Notice of Contract Award Packet (Attachment 56).** They are also included as individual attachments.

6. INTERLOCAL AGREEMENTS WITH SUBGRANTEE

It is not uncommon for the State's Subrecipients to carry out project activities through a subgrantee. A subgrantee is defined as a public or private non-profit agency, authority or organization or other eligible entity provided CDBG-CV funds carry out eligible activities on behalf of the State's Subrecipient, rather than directly and immediately by the State's Sub-recipient. 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 subrecipient working with a Community Action Agency to determine duplication of benefits analysis.

The most likely scenario under which a State's Subrecipient would opt to utilize a subgrantee 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 subgrantees, 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.

6.1 **When is an entity not a subrecipient?**

An organization or individual is not considered a subrecipient 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 subgrantee 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/subgrantee relationship. The State's Subrecipient does not reduce its responsibilities by utilizing a subgrantee 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-CV 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 subgrantee'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-CV 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:

- Scope of Work in sufficient detail to provide a sound basis for evaluating performance in schedule and budget;
- 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;
- Administrative Requirements specifically requiring compliance with all applicable uniform administrative mandates such as A-110, A-122 and A-133;
- Program Requirements specifying the conditions for convenience and cause;
- Reversion of Assets stipulating that, upon expiration of the agreement, the subrecipient must transfer to the State's Subrecipient any CDBG-CV 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-CV funds in excess of $25,000 is either:
    - 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
    - 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-CV expenditures. (Reimbursement is not required after five years.)
- Cessation of the subrecipient: providing remedies and procedures in the event the subrecipient ceases to exist;

- Standard Provisions required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.)
- Duplication of Benefits Subrogation Agreement will be required to ensure there is no duplicative assistance. Grantees will be required to provide documentation of their consultation with local agencies. **[Attachment 71]**

7. 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:

- Contracts for more than the simplified acquisition threshold currently set at $250,000, which was increased by Sections 805 and 806 of the National Defense Authorization Act for the Fiscal Year of 2018, Public Law No. 115-91, 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.

- 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.

- 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.”

- 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.

- 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.

- 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.

- 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).

- 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.

- 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.

8. ATTACHMENTS

52- Notice of Contract Award
53- Required Provisions for Non-construction Contracts
54- Sample Contract Documents including Bid Advertisements
55- Notice to Proceed
56- Notice of Contract Award Packet
57- Grantee Debarment Review Certification Form
58- Contractor Debarment Review Certification Form
59- Payroll Certification Form

REQUIREMENT NO. 408 – LABOR STANDARDS AND CONSTRUCTION MANAGEMENT

1. 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.

2. 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:

- Review the technical aspects of the project;
- Identify the laws applicable to the contract and establish the documentation, reporting and performance that will constitute compliance;
- Establish the State's Subrecipient's obligations to monitor labor standards and the procedures that will be employed;
- Establish specific requirements for reporting between the construction contractor and the State's Subrecipient;
- Accept bonds and securities for performance and payment of labor and materials;
- 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.
- 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.
- Return the construction contractor's bid bonds;
- Provide for a record of the pre-construction conference to be prepared and subsequently signed by the parties to the agreement;
- Issue a notice to proceed to the construction contractor.

3. 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:

- All materials with cost per item;
- Itemization of all labor with number of hours per operation and cost per hour;
- Itemization of insurance cost, bond cost, social security, taxes, Workers' Compensation, employee fringe benefits and overhead costs; and

- 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.

4. 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]**

5. LABOR STANDARDS ADMINISTRATION

Statutory Requirements: State's Subrecipients should be aware of the major labor standards requirements for CDBG-CV projects. The three principal laws and their terms are identified below.

5.1 **Davis-Bacon Act:**

To download the "Making Davis-Bacon Work" guidebook go to: https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors- guide-prevailing-wage-requirements/

5.1(a). 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:

- State's Subrecipients must include a copy of the current prevailing wage rate determination in each Request for Bids (RFB);
- 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.
- Construction contractors must pay laborers the wage rate determined by the USDOL to be the prevailing rate in that labor market;
- Construction contractors must pay wages at least once a week; and
- State's Subrecipients are required to report all suspected, reported or confirmed violations over $100 to ODOC, who may investigate these alleged violations.

5.1(b). Sub-contractors: To qualify as a subcontractor, the following criteria must be met:

- Current liability insurance must be maintained;
- Must have Federal Tax Identification number (EIN or SSN as appropriate); 5.1.1.2.3. 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.

5.1(c). 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.

5.1(d). 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

5.2 **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.

5.3 **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.

- Construction contractors must compute the wages of each laborer and mechanic on the basis of a standard work week of 40 hours.
- 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.
- Construction expenditures paid with leverage funds are required to conform to the Davis Bacon wage rate requirements.
- 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.

5.4 **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- CV 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:
    - The information covers the proper period and is complete and accurate;
    - Each worker has been paid the proper wages and benefits and no "rebates" have been taken;

- 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.
- 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 are 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;
  - 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, document, document.
- 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:
  - Weekly payrolls and Statements of Compliance have been received, checked and discrepancies resolved;
  - Discrepancies identified during on-site interviews have been satisfactorily resolved;
  - Other required equal opportunity and labor standards have been satisfied;
  - Other contract requirements have been satisfied;
  - Files are complete; and
  - 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.

6. 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.

7. ATTACHMENTS

60- Payroll Form (WHD Form 347)
61- Fringe Benefit Determination
62- Record of Employee Interview Form
63- Final Wage Compliance Report
64- Certificate Appointing Officer to Approve Payroll
65- Pre-construction Checklist
66- Payroll Deduction Authorization Form
67- Request for Authorization of Additional Classification Form

REQUIREMENT NO. 409 - MONITORING AND CLOSEOUT

1. EVALUATING STATE'S SUBRECIPIENT PERFORMANCE (MONITORING & OVERSIGHT)

When the State agreed to assume administrative responsibilities for the CDBG-CV 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 Sub-recipients. 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:
- Lack of recent history in administering a CDBG-CV project;
- Evidence of numerous accounting or financial tracking errors on current or previous projects;
- A record of serious findings or sanctions in previous monitoring session;
- High turnover of administrative staff;
- Delays in submitting required reports;
- Prior violations;
- Failure to attend and participate in implementation workshops;
- Excessive tardiness in responding to prior monitoring findings. Monitoring is accomplished in two ways:

1.1 **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. The frequency and depth of such on-site monitoring is dependent on the risk factors cited above.

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 Sub- recipient responses or actions.

If there were problems discovered during the monitoring, the State's Sub- recipient might 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 in a specified manner and/or timeframe. 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 an appropriate or timely manner, 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.

1.2 **Desk Monitoring:**

ODOC places priority on this form of monitoring as a means of staying in touch with project progress and preventing 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. The CDBG-CV program will require increased desk monitoring which may include submitting additional backup documentation for pay request and expenditure reports.

1.3 **Pre-Monitoring:**

Due to increased oversight, ODOC may conduct a pre-monitoring after the first reimbursement claim. This monitoring may include reviewing the application intake processes and review of backup files to ensure all proper documentation has been obtained to determine eligibility.

2. 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.

2.1 **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 have been 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-CV contract. However, they can be requested up to **sixty (60) days** after your CDBG-CV 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 data plan contracts have expired.
- All issues from ODOC monitoring have been resolved.

3. REQUIRED DOCUMENTATION AND CLOSEOUT DOCUMENTS

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 subrecipient 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 subrecipient 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-CV 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 LMI Beneficiary QPR 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 (if applicable): 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-CV funds.

Inventory (Real Property): In case 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 years 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 (if applicable): 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 Total Worker Hours Report (if applicable): The State’s Subrecipient must collect the information on the form from all construction contractors as soon as the project is complete.

Project Photos (if applicable): The State’s Subrecipient must submit applicable photos of project. This may include photos before, during and after completion.

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-CV 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, data plans, and program income, and reporting real property inventory & insurance on an annual basis;

Maintenance of Records: All program records must be maintained for **three (3) years** after the Dept. of Commerce closes the CDBG-CV Program with HUD. ODOC will issue a Notice to all subrecipients of the official closeout date with HUD;

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).

4. ATTACHMENTS

68- Section 3 Grantee Total Worker Hours Closeout
69- Certificate of Project Completion
70- CDBG-CV Closeout Checklist

REQUIREMENT NO. 410 - DUPLICATION OF BENEFITS

1. FEDERAL REQUIREMENTS

The Robert T. Stafford Disaster Relief and Emergency Assistance (Stafford) Act requires that grantees maintain adequate procedures and documentation of Federal funds to ensure that there is no duplication of benefits (DOB) as required by section 312 of the Stafford Act, as amended by section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 42 U.S.C. 5121 et seq.). Duplication of benefits occurs when Federal financial assistance is provided to a person, household, business, government, or entity through a program to address losses resulting from a Federally declared emergency or disaster, and the person or entity has received (or would receive, by acting reasonably to obtain available assistance) financial assistance for the same costs from any other source (including insurance), and the total amount received exceeds the total need for those costs.

A grantee is required to develop and maintain adequate written procedures to prevent a duplication of benefits that address (individually or collectively) each activity or program. A grantee's policies and procedures are not adequate unless they include, at a minimum, a signed agreement that any person or entity receiving assistance (including subrecipients and direct beneficiaries) must agree to repay assistance that is determined to be duplicative and a standard method of assessing and identifying whether the use of funds is duplicative. Duplicative funds can be funds already received or funds likely to be received by the entity acting reasonably to evaluate unmet need and the resources they possess readily available to meet that need.

Grantees will be required to consult with their local Community Action Agencies (CAA) or other non-profit organizations to ensure there is no duplicative assistance. Grantees will be required to provide documentation of their consultation with local agencies.

2. DOCUMENTATION

- A Subrogation Agreement is a requirement for CDBG-CV funding to ensure that any duplicative funds will be paid back to ODOC/CD. Should any analysis arise that shows grantees received a greater amount of funds than were necessary, the grantee is required through the subrogation agreement to pay back any funds deemed duplicative.
- A Duplication of Benefits (DOB) Chart is a required form for CDBG-CV funding. The DOB Chart must be filled out as complete as possible, to the knowledge of the grantee. The DOB chart should include all other funds provided to the grantee for each specific activity to be paid for by CDBG-CV funding. Activities may be paid for by several funding sources, as long as the total funding is not greater than the need. Application numbers of other grants acquired for each specific activity are required on the DOB Chart, as well as any necessary attachments proving the exact dollar amount of funds received by other funding sources. The current or annual funds that the grantee normally allots for each specific activity (if any), should also be included in the DOB chart to ensure there are no duplicative funds for each activity.
- Duplication of Benefits (DOB) Policies and Procedures are required for CDBG-CV funding. Proof of such policies and procedures must be shown to receive Federal funds. At a minimum, these policies must include:
    - A policy to ensure program design targets primary needs that are unlikely to be addressed by other sources.
    - Documented (if applicable) any unmet needs or gaps in funding.
    - Documented (if applicable) availability of other funding sources or possible partners when funding is exhausted.
    - Methods and procedures to ensure the prevention of duplication of benefits such as monitoring of subrecipient's budgets and expenditures, auditing of activities during and after the complete disbursement of grant funds, and signed agreements of payback of any duplicative funds to the grantee.
- The Duplication of Benefits Checklist (Client File) is used when confidential information cannot be shared about the beneficiary such as patient information due to HIPAA laws. This form would be ideal for those communities involved in medical or mental health assistance activities and need to report client data to prove eligibility. ODOC/CD will not ask for a client's personal information to ensure HIPAA guidelines are maintained but will request to verify the following checklist is signed and accurate. This document will serve as verification that the CDBG CV grant subrecipient is following ODOC/CD policies and procedures concerning DOB.

3. ATTACHMENTS

71- DOB Subrogation Agreement
72- DOB Chart
73- Duplication of Benefits Checklist (Client File)

REQUIREMENT NO. 411 – MEETING THE LOW TO-MODERATE INCOME NATIONAL OBJECTIVE

Meeting a CDBG National Objective is a federal requirement for all CDBG funded activities. ODOC commits 100% of its CDBG funds to activities that benefit low- to moderate- income households. This section describes the methods for meeting two commonly used categories of the Low/Mod National Objective: Low Mod Area Benefit (LMA) and Low Mod Limited Clientele (LMC). All subgrantees of the CDBG-CV program are required to meet the LMC or LMA standards.

1. DOCUMENTING LMI BENEFICIARY BY BENEFICIARY(LMC)

For individual and household level services, LMI should be documented beneficiary by beneficiary, one at a time as services are provided. This may be accomplished best by including a method within the application intake process to determine if beneficiaries meet the criteria to be considered LMI. Documenting LMI beneficiary by beneficiary would be ideal for providing assistance for utilities, rental/mortgage and mental health services. After verifying LMI eligibility, subrecipients will be required to track LMI individuals by using the LMI Beneficiary by Beneficiary Tracker **(Attachment 74).** This form will be required to be uploaded in OKGrants with any reimbursement claim/advance request submitted for individual services.

2. DOCUMENTING LMI BY TARGET AREA (LMA)

The random sample, income survey and Census data technique is only necessary for area wide services. The following are mandatory uploads for those conducting Random Sample Income Surveys:

- LMI Beneficiary Summary Form – **(Attachment 75)**
  - **NOTE:** The LMI Beneficiary Summary Form summarizes the uploaded Direct Project Beneficiary Income Survey Field Worksheet **(Attachment 76)** on one form and is required to be completely filled out to include: Town/City/Target Area, County and Survey Date
- Random Number Table
- Survey Map
- Copy of the Original LMI Field Survey Sheets

2.1 **Qualifying under the National Objective of Benefit to Low- and Moderate-Income Person.**

To qualify for CDBG-CV 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). Please visit Section 8 HUD Income Limits for current data.

Each activity proposed for funding with CDBG-CV 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-CV 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-CV 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.

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.

Only the Random Sample Survey methodology will be accepted by ODOC/CD. For low-to moderate area benefit (LMA) **only new 2021 income surveys will be accepted**. Subrecipients may also use HUD Low- and Moderate-Income Summary Data .

2.2 Conducting an Income Survey

For those conducting Random Sample Income Surveys, a sample Direct Project Beneficiary Income Survey Field Worksheet Form can be found in **Attachment 75**. The following LMI documentation is required to be uploaded in OKGrants:

- Upload a copy of the Random Number Table that was generated by ODOC/CD to perform the survey.
- 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-CV and leverage activities, and the central business district.
- Upload all scanned copies of the original Direct Beneficiary Income Field Survey sheets.
- Upload a copy of the Direct Project Beneficiary Income Survey Field Worksheet. (A blank copy of this form is located in **Attachment 76**)
    - **NOTE:** The LMI Beneficiary Summary Form summarizes the uploaded Direct Project Beneficiary Income Survey Field Worksheet 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 composing 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 **Attachment 76** (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.

Step 7. Complete and upload **Attachment 75** LMI Beneficiary Summary Form to OKGrants as instructed by your CDBG-CV project manager.

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	
1 - 55	50 or all if less than 50 households in universe
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. Subrecipients performing income surveys are cautioned that incorrectly administered surveys will be rejected. **Failure to include a properly marked map could cause delays in the project such as denied reimbursement claims/advance request or contract closeout.**

2.3 Census Data Method

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-CV funded activity requires prior ODOC/CD review and approval. Any subrecipient intending to use Census data to document the project's percentage of low and moderate-income beneficiaries must contact the ODOC/CD CDBG-CV Planner via email. 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-CV Program Planner in order to receive the proper guidance on meeting HUD Census based eligibility and compliance requirements. **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 denied reimbursement claims/advance request or contract closeout.**

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. Subrecipients 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. Subrecipients 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.

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 subrecipients should take the time to discuss their project activities and surveys with ODOC/CD staff before performing their survey(s).

3. LOW MOD LIMITED CLIENTELE

The limited clientele category is another way to qualify specific activities under the LMI benefit national objective. This national objective requires a minimum of 51 percent of the beneficiaries of an activity to be LMI persons. In contrast to the area benefit category, **it is not the LMI concentration of the service area of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity**. Please refer to Chapter 3 of the HUD Handbook for more information: https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-3.pdf

A L/M income limited clientele activity is an activity which provides benefits to a specific group of persons rather than everyone in an area generally. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. **In either case, at least 51% of the beneficiaries of the activity must be L/M income persons.** Examples of activities that qualify under the limited clientele category include:

- Acquisition of a building to be converted into a shelter for the homeless;
- Rehabilitation of a center for training severely disabled persons to enable them to live independently;
- Clearance of a structure from the future site of a neighborhood center that will exclusively serve the elderly; and
- Public services activities like the provision of health services.

The listed examples qualify under the limited clientele category because the beneficiaries can be identified as LMI residents.

LMC activities must meet one of the following tests:

- Exclusively benefit a clientele who are *generally presumed by HUD to be principally L/M income persons*. The following groups are currently presumed by HUD to be made up principally of L/M income persons:

  abused children,
  elderly persons,
  battered spouses,
  homeless persons,
  adults meeting Bureau of Census' definition of severely disabled persons,
  illiterate adults,
  persons living with AIDS, and
  migrant farm workers.

Note: This presumption may be challenged in a particular situation if there is substantial evidence that the persons in the actual group that the activity is to serve are *most likely **not*** principally L/M income persons.

OR

- Require documentation on family size and income in order to show that at least 51 percent of the clientele are LMI.

OR

- Have income eligibility requirements limiting the activity to LMI persons only

OR

- Be of such a nature and in such a location that it can be concluded that clients are primarily LMI. An example is a day care center that is designed to serve residents of a public housing complex.

OR

- Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," provided it is restricted, to the extent practicable, to the removal of such barriers by assisting:
  - the reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the L/M income area benefit criteria;
  - the rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the L/M income area benefit criteria or the L/M income jobs criteria;
  - or the rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the L/M income housing criteria.

At least one of the following will be required to document LMC activities:

- **Documentation showing that the activity is designed for exclusive use by a segment of the population presumed by HUD to be LMI persons** (e.g., abused children). Subrecipients can document this by providing a letter on letterhead attesting that the activity is designed for exclusive use of a group that meets the presumed benefit criteria. See the above list of groups that may be presumed to be LMI. Backup documentation will also be required; or,
- **Data showing the size and annual income of the family of each person receiving the benefit.** This data should be compiled into the LMI Beneficiary by Beneficiary Tracker (**Attachment 74)** or a similar format that includes household size, income, and racial and ethnic data; or,
- Documentation describing how the nature and the location of the activity establishes that it will be used predominantly by L/M income persons. Please note that most LMC activities will not meet the "nature and location" standards.

For a full list of types of documentation and standards for meeting the LMC National Objective, see the HUD handbook on eligible activities here: https://www.hudexchange.info/sites/onecpd/assets/File/Basically-CDBG-State-Chapter-3-Nat-Obj.pdf

4. ATTACHMENTS

74- LMI Beneficiary by Beneficiary Tracker
75- LMI Beneficiary Summary Form
76- Direct Project Beneficiary Income Survey Field Worksheet

REQUIREMENT NO. 412 - PROPERTY ACQUISITION & RELOCATION

1. PROPERTY ACQUISITION

Many projects funded by CDBG 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 Grant Recipients when they must acquire private property 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 found at the end of this section in the CDBG-CV Manual.

These procedures may apply even if the property was acquired prior to submission of the grant application and even if CDBG 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 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. To determine which procedures must be followed, the Grant Recipient 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 Grant Recipient 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.

1.1 **Voluntary Acquisition**

In a voluntary acquisition, the Grant Recipient 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. 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 Grant Recipient 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 Grant Recipient 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 Grant Recipient 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 Grant Recipient 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 Grant Recipient 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.

All notices must be personally served to owners and occupants or sent by registered first-class or certified 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 Grant Recipient 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.

Following tenant notification, the Grant Recipient 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 Grant Recipient from its obligation to appraise the property; or
- The Grant Recipient 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 Grant Recipient shall prepare a waiver valuation. A waiver valuation is the valuation process used and the product produced when the Grant Recipient 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. The Grant Recipient 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 Grant Recipient must submit a written offer to purchase the property. The Fair Market Value (FMV) established by the Grant Recipient 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 Grant Recipient decides it does not wish to acquire the property, regardless of the reason, it must notify the property owner of this fact.

The Grant Recipient 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 funds will be used to pay for the acquisition. If CDBG funds are to be used, this documentation must be submitted with the request for payment. Unjustified payments in excess of 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: Grant Recipients 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 Grant Recipient will not be allowed to use any CDBG funds for acquisition, leaving the Grant Recipient financially liable. If some form of offer and acceptance is crucial prior to ODOC approval, it should be contingent upon formal ODOC approval.

1.2 **Non-Voluntary Acquisition:**

Whenever the Grant Recipient undertaking the CDBG-funded project has the power of eminent domain and will use it, if necessary, to acquire specific parcels of property in order to carry out project activities, it must follow the non-voluntary procedures of acquisition.

[Refer to HUD Handbook 1378, Chapter 5, for detailed guidance. Grant Recipients 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.

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 Grant Recipient'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.

If the property owner requests an appraisal, the Grant Recipient must conduct it, even if the estimated FMV is less than $10,000.

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.

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 the property owner had not indicated a willingness to donate the property, the Grant Recipient 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 Grant Recipient 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 Grant Recipient must submit an offer of just compensation with attached statement of basis.

- If the property owner accepts the offer of just compensation, either immediately or after a period of successful negotiation, the Grant Recipient must prepare and submit a statement of settlement costs. This statement reflects the price agreed upon plus incidental costs associated with transfer of title, e.g., recording fees, transfer taxes, etc. If the Grant Recipient pays in excess of the FMV, this is called an administrative settlement and the file must contain a written justification of the excess costs. Unjustified payments in excess of 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 funds are to be used to cover these costs.
- If the Grant Recipient and property owner are unable to negotiate a settlement, the Grant Recipient must decide which of two options to pursue:
    - A decision not to acquire the property. If this decision is made, the Grant Recipient must notify the property owner of this decision in writing; or
    - A decision to initiate condemnation proceedings.

- 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.

1.3 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 Grant Recipient 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. Grant Recipients should be mindful when proceeding with a condemnation that a prolonged legal fight may jeopardize the ability of the Grant Recipient to implement the project within the contract 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 economic (not large enough for any reasonable use), the Grant Recipient 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 Grant Recipient must re-establish its offer.

The Grant Recipient or subrecipient (whichever is acquiring the property) must guard against both the existence and appearance of a conflict of interest in using CDBG funds to acquire property. Special measures must be taken if an officer or employee of the acquiring Grant Recipient sells property to the Grant Recipient.

1.4 Qualifications of Appraisers and Review Appraisers:

The Grant Recipient 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 Grant Recipient 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.

2. RELOCATION

1.1. If the property owner or tenant is forced to move, either temporarily or permanently, because of CDBG-funded activities, that person or household is considered to be displaced. A displaced person is entitled to certain services, including counseling, payments for relocation and, in certain circumstances, assistance in obtaining replacement housing. The provision of this assistance is never optional for the Grant Recipient or its subrecipient and the burden of proof for demonstrating compliance falls squarely on the Grant Recipient.
www.hud.gov/relocation

1.2. The Grant Recipient must determine who might be affected if displaced, make reasonable efforts to provide the required assistance 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 Grant Recipients and will be provided by ODOC, upon request. [HUD Handbook 1378, Tenant Assistance and Real Property Acquisition]

1.3. 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;
- Provide the assistance to which displaced persons or households are entitled, not more or less [Under 49 CFR 24 (URA) and 24 CFR 570.104];
- Keep outstanding, detailed records on every aspect of the process.
    - Note: These requirements apply only to a non-voluntary property acquisition.

1.4. Note: The single most common mistake made by Grant Recipients 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 Grant Recipient to legal challenges and additional expenses.

3. 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 Grant Recipients 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 570.606 and HUD Handbook 1378, Chapter 7.]

In brief, these special provisions are triggered when any CDBG-funded activity causes the conversion of low- to moderate-income housing (including vacant occupiable units) into [24 CFR 570.606];

- Non-housing, i.e., 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-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 Grant Recipient'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 Grant Recipient'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 Grant Recipient should contact ODOC for detailed guidance];
- The replacement units must be Decent, Safe, and Sanitary [See 24 CFR § 5.703]
- 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.

4. RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION

The Grant Recipient must prepare and adopt a Residential Anti-Displacement and Relocation Assistance Plan (Plan), regardless of whether displacement or relocation is or is not anticipated. Submission of the Plan is one of the contract conditions that must be cleared prior to release of funds by ODOC. The Grant Recipient 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 funds.

The two major components of the Plan are requirements to

- Replace all occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a result of the CDBG- funded activity [HUD Handbook 1378, 701]; and

- 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-funded activity.

The nature and extent of a given Plan are dependent on whether the Grant Recipient 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 Grant Recipient 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.

5. 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.

Grant Recipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation. Grant Recipients 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 Grant Recipient must take great care to avoid the existence or appearance of coercion.

6. ATTACHMENTS

77- General Information Notice- Residential Tenant Not Displaced
78- General Information Notice- Nonresidential Tenant Not Displaced
79- General Information Notice- Residential Tenant to Be Displaced
80- General Information Notice- Nonresidential Tenant to Be Displaced
81- Notice of Eligibility for Relocation Assistance-180-day Homeowner Occupant (Involuntary)
82- Notice of Eligibility for Relocation Assistance- Residential Tenant
83- Notice of Eligibility for URA Relocation Assistance- Nonresidential
84- Notice of Nondisplacement for Rehabilitation to Residential Tenant

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