



COMMUNITY DEVELOPMENT
BLOCK GRANT
DISASTER RECOVERY
IMPLEMENTATION MANUAL

Texas General Land Office
Community Development and Revitalization

Last Updated February 7, 2019

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The GLO Implementation Manual provides guidance on how to design, implement, close and comply with regulations for CDBG-DR Programs, and should not be construed as exhaustive instructions.

CHAPTER 1 – **INTRODUCTION**

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Last Updated October 31, 2018

CHAPTER 1 - INTRODUCTION

The Community Development Block Grant-Disaster Recovery (CDBG-DR) Program is authorized under Title I of the Housing and Community Development Act of 1974, as amended. The U.S. Department of Housing and Urban Development (HUD) is the administering agency for the CDBG-DR program.

A key principle of the CDBG-DR regulations is offering maximum feasible deference to state programs within the parameters established by the CDBG-DR statute. For this reason, the CDBG-DR Program may differ from other state-administered Community Development Block Grant (CDBG) Programs, prioritizing activities based on the needs of the low-income population in the State of Texas.

1.1 Purpose

This Implementation Manual is to assist Texas CDBG-DR grantees and subrecipients (cities, counties, Indian tribes, local governmental agencies (including Council of Governments (COGs)), private non-profits (including faith-based organizations), or a for-profit entity authorized under 24 CFR 570.201(o)) in implementing disaster recovery grants and provide guidance regarding the general requirements.

This manual contains policies and procedures to ensure effective communication and coordination related to your CDBG-DR program. The policies and procedures with referenced regulations, guidelines and action plans outline programs, eligible activities, required records management, procurement requirements, subrecipient oversight, technical assistance, monitoring procedures, cost allocation methodology, the requirements for timely expenditure of funds while outlining training for subrecipients on federal and state CDBG-DR requirements.

It is the responsibility of each recipient of CDBG-DR funds to understand both the federal and state requirements and to adhere to them. It is important to thoroughly read this manual and the referenced regulations, Federal Registers, Action Plans, and guidance documents prior to implementing a program. Grantees and subrecipients must also carry out proper and efficient grant administrative practices.

1.2 Background

The GLO's Community Development and Revitalization division (GLO) oversees the administration of CDBG-DR funds allocated to Texas by HUD following a disaster. These funds support communities working to build back stronger and more resilient following natural disasters. Since 2011 the Governor of Texas has designated the GLO as the agency to oversee the CDBG-DR grant program.

CDBG-DR funds are a special appropriation from Congress associated with a Presidentially declared disaster under supplemental appropriation laws ("Supplemental Appropriations Acts" authorize CDBG-DR funding). Specific requirements are typically included in the appropriation law adopted to cover a specific disaster (found in the published Public Law and Federal Register). These requirements may modify, or authorize HUD's Secretary to modify, various statutes and

regulations that could impede the prompt implementation of disaster relief and associated community development programs. These waivers and alternate requirements are published in the Federal Register(s) for the specific disaster event (See **Resources** at the end of each chapter for links to Federal Registers).

The entity having responsibility for designing and administering the CDBG-DR programs depends upon the nature of the disaster. In recent catastrophic disasters, HUD left the design and implementation of the disaster relief programs to the affected state; or in some instances to local governments directly; or to local governments with state oversight. HUD's role is to: work with the states and/or local governments to ensure the designs of the Action Plans (and Amendments) are acceptable; grant waivers of existing statutory requirements and the associated implementation regulations; define alternate requirements when necessary; and, monitor state implementation activities. The states (or when applicable, local governments) submit Action Plans and Amendments for approval to HUD, thus assuring the proposed actions are within the intent of existing statutes.

The Action Plans, as amended, define the scope of and allocate the funds appropriated to the programs described. Upon acceptance by HUD, the states implement each program or delegate the responsibility to grantees and subrecipients. The delegation of responsibility is accomplished through conditions of grant awards associated with the program.

Individual projects are implemented through an application process and grant award agreements and contracts. These agreements and contracts will define the activities to be undertaken and establish a budget for the project and contain requirements that the grantee must comply with.

Each grantee and subrecipient must become familiar with the terms of the grant awards and associated statutory and regulatory waivers.

1.3 National Objectives (NO)

Recovery projects using CDBG-DR funds must meet one of the following HUD-designated National Objectives (NO) and must document how they have met the CDBG-DR National Program Objectives (NPO) specified in their application. The NPO is not met until funds have been expended and documentation has been completed.

Every grant must meet one of three National Objectives (NO) (see additional information on NO in **Resources** at the end of the Chapter and within the Federal Registers).

- 1) Principally benefit low and moderate income (LMI) persons.
- 2) Eliminate or prevent slums and blight.
- 3) Address an urgent need.

A low and moderate-income person means a member of a family whose total combined family income is equal to or less than the Section 8 lower income limit as established by HUD. The term family means all persons living together in the same housing unit, as further defined under 24 CFR 570.3. You will find the LMI Summary Data website link in **Resources**, at the end of this chapter.

Public facilities activities generally qualify under the low to moderate income area benefit NO. In some instances, an activity may qualify under limited clientele criteria or job creation and retention. Public facilities and improvements that aid in the prevention or elimination of slums or blight in a designated slum/blight area may qualify under the slum/blight area basis, or, if the improvement corrects a CDBG-defined urgent situation, the urgent need NO may be met. An urgent need could include an activity designed to address disaster relief.

In addition to the NPO requirements, there are many other regulations that apply and will be discussed in this manual.

Principal among these are:

- Environmental review;
- Davis-Bacon wage rates;
- Civil rights legislation; and
- Procurement.

1.4 Beneficiaries

For area benefit projects qualified for funding under the LMI national objective of the Housing and Community Development Act, documentation must be maintained to verify that at **least 51%** of the beneficiaries are low and moderate-income persons.

An area-wide project benefit is an activity in which residents claimed as beneficiaries in the target area must be served by the activity. Some examples of area benefit are:

- Water/sewer line replacement;
- Street reconstruction; or
- Utility work benefiting a water supply corporation service area.

A city-wide benefit is an activity that will benefit the entire community. Some examples of city-wide benefits are:

- Water/sewer plant improvements;
- Water storage tank; or
- Water wells.

Individual benefit is an activity that will benefit an LMI individual directly. Some examples of individual LMI benefit are:

- Housing rehabilitation or reconstruction for single family homes;
- Reimbursement of costs to repair event damaged homes; or
- Relocation and down payment assistance.

Subrecipients must keep a record of the number of people who are receiving either area-wide or city-wide benefits from the CDBG-DR project. CDBG-DR requires applicants to document and report the beneficiaries of each funded activity regardless of the national program objective met by the activity. Therefore, applicants must document the beneficiaries for each activity included in a CDBG-DR application under each of the CDBG-DR fund categories. See the CDBG-DR guidance provided in the Housing Guidelines in **Resources** at the end of this chapter.

1.5 Eligible Activities

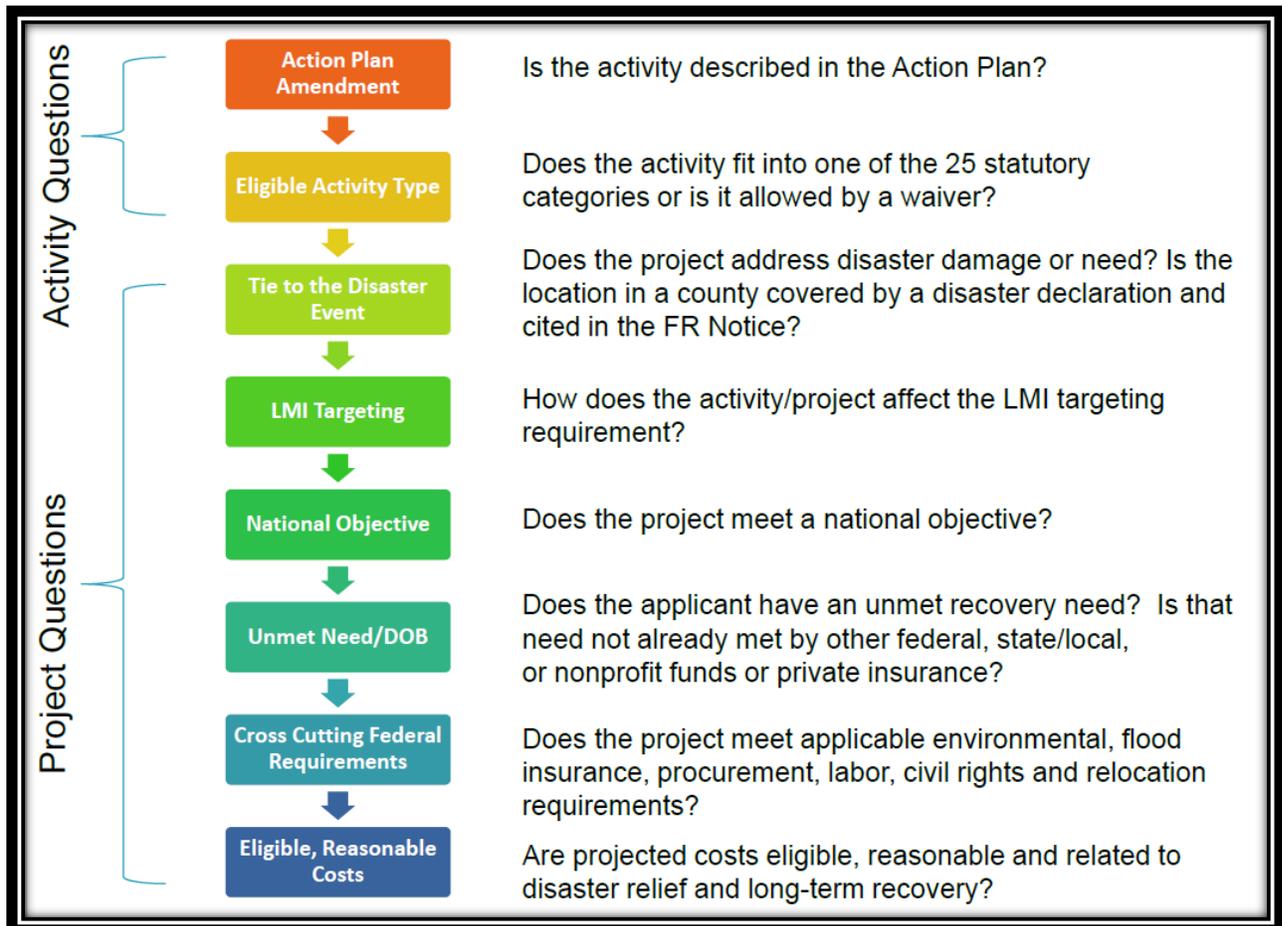
Eligible Activities will be detailed in the Approved Action Plan. Examples of eligible activities are acquisition, construction, reconstruction, rehabilitation or installation of homes or public facilities.

Public facilities include water facilities, sewer facilities, solid waste disposal facilities, other publicly owned utilities, public systems, fire protection equipment, and community or senior citizens centers. Street improvements and drainage/flood control improvements are also eligible public facilities activities. For a more detailed list see the CDBG-DR application guide.

The CDBG-DR program provides a great amount of flexibility in the activities eligible for funding, but CDBG-DR prioritizes the range of activities based on the needs identified in its applicable Action Plan. A full list of eligible activities can be found at Section 105(a) of the HCDA 42 USC Section 5305 and additional parameters are found at 24 CFR 570.482. The CDBG-DR Action Plans can be found on the GLO website at <http://recovery.texas.gov/> or can be obtained by contacting GLO.

Determination of Eligibility

When assessing an activity (program), project or applicant it is helpful to ask a series of questions, all of which must be answered in the affirmative & documented before making a funding decision:



1.6 Ineligible Activities

In general, any activity not authorized under the Action Plan or CDBG-DR statute and/or regulations is ineligible to be assisted with CDBG-DR funds. In addition, the following activities as referenced in 24 CFR 570.207 may not be assisted with CDBG-DR funds:

- Buildings for the general conduct of government, except to create accessibility for the disabled population, and as waived by HUD (e.g., city hall);
- General government expenses;
- Political activities;
- Purchase of equipment or furnishings for a property except under certain conditions, including authorization as a special economic development activity or activities carried out by a special nonprofit;
- Income payments, except under certain conditions (Income payments are defined in the regulations as direct payments to subsidize rent and/or utilities.); and
- Operating and maintenance expenses of public facilities, improvements and services.
Example: Various methods used to identify specific sections of wastewater line that require maintenance to reduce or eliminate the amount of inflow or infiltration routed to the treatment facilities, such as smoke testing, televising (TV'ing), and line cleaning (vacuuming, jetting, etc.), are considered maintenance activities. The process of identifying target areas for wastewater line replacement must be completed prior to the submission of an application in order for the scope of the project to be fully identified and to expedite construction completion. Similar methods may also be used as a part of construction and inspection of the new lines. Use of TV'ing and similar methods is considered acceptable for:
 - Pre-construction testing on a specific reach of line (manhole to manhole); and/or
 - Inspection of newly constructed lines to verify proper installation.
- Software is generally ineligible unless it is integral to the function of an improvement and not utilized for billing or other Operation and Maintenance (O&M) purpose. E.g. Software required for the operation of a SCADA system is eligible. If software is used for both functional and O&M (billing) purposes, up to 50% of the software costs may be considered eligible.

1.7 Tie Back to Disaster Event

All activities and projects must be related to recovery from the disaster(s) covered by the appropriation. For every funded applicant or project, the grantee must document a tie to the storm.

Documentation could include damage or building estimates for physical losses or post-disaster analyses or assessments for economic or non-physical losses. Simply being located within a declared county is not sufficient documentation –the subrecipient must demonstrate that the specific project or applicant has a tie back to damage from the event. As time post-disaster advances, documenting tie to the storm can get increasingly challenging.

Subrecipients may fund new construction, rehabilitate units or assist with new home purchase when units are not damaged by the disaster if the activity clearly addresses a disaster-related impact and is located in a disaster-affected area. For instance, disaster-related impact results in the inability of the existing stock to meet post-disaster needs and population demands. To do these activities, subrecipients must quantify & document the event's impact on the quality, quantity, and

affordability of the housing stock for residents of the impacted counties. In making this assessment, grantee should consider how the event caused displacement and put households at risk of homelessness, as well as the economic impacts on rents, housing prices, etc.

1.8 Constitutional Prohibition

Faith-based organizations are eligible for CDBG-DR funding but may not use direct CDBG-DR funding to support inherently religious activities and must serve all eligible beneficiaries without regard to religion.

1.9 CDBG-DR Expenditure Parameters

There are three basic parameters that HUD places on the state's CDBG-DR program:

- 1) GLO must generally ensure that at least seventy percent (70%) of CDBG-DR funds received are used to benefit low and moderate-income persons.
- 2) Special types of economic development activities must meet a specific public benefit standard.
- 3) The timeframe in which CDBG-DR funds must be expended- this is clearly defined within the applicable Federal Registers and Action Plans.

GLO ensures compliance with these requirements through its project review, funding, and monitoring process.

1.10 Recordkeeping/Administration

The subrecipient is ultimately responsible for the project. If using a consultant to administer the project, coordination is very important. It should be determined who will manage each task on the project. The subrecipient must be able to fully document compliance with all applicable regulations of the CDBG-DR program.

The records should provide a historical account of the CDBG-DR project for examination and review by local staff, GLO, HUD, state and federal auditors, other state agencies, and any other interested persons. The subrecipient must maintain one complete set of files at the city or county offices.

The record retention period for CDBG-DR contracts is 3 years after GLO closes the contract with HUD.

The record retention period for subrecipients' contracts does NOT begin when the contract between the subrecipients and the state is closed.

All local records relating to a CDBG-DR contract must be maintained for 3 years after close-out in HUD's grant to the State of Texas. If a subrecipient is notified by GLO in writing, or if other applicable laws and regulations as described in 24 CFR 570.490 applies to a project, the record retention period may be extended. If any litigation, public information request, claim, or audit is started before the expiration of the record retention period, the records must be kept until the action has been resolved.

All CDBG-DR contract records must be available for review by HUD until the retention period is satisfied.

1.11 Complaint Procedures

GLO has adopted a public complaints process to investigate and resolve issues arising from its operations. The subrecipients should adopt a similar or equivalent provision that provides for a local complaint system. The subrecipient must retain records related to any complaint received and the resolution (see Housing Guidelines in **Resources** for additional information).

1.12 Training

The GLO will provide training to subrecipients on an as needed basis and upon request. The GLO will also provide all necessary resources for the successful implementation of the program.

1.13 Manual Structure

This manual is designed to provide information about how to implement a CDBG-DR program and project. Each section describes each task needed to accomplish these activities. The referenced supporting materials include samples of forms, documents, letters, and checklists.

This manual is designed to provide information about how to implement a CDBG-DR program and projects. Each chapter describes each task needed to accomplish these activities. Throughout each chapter of the Manual supporting materials (forms, documents, letters, checklists) may be referenced and/or provided to assist with those topics at the end of each chapter in **Resources**. Attachments referenced in **Resources** will be found in the corresponding chapter's **Appendix**.

This manual is available on the GLO website so that subrecipients may easily search for terms, rules, procedures, and forms needed to implement their activities.

Please note that certain chapters and sections within the Manual and the supporting documents provided in **Resources** may not apply to every activity. For example, the level of an Environmental Review will differ for a planning study than a construction project and infrastructure projects will not require verification of timely child support payments. If in doubt of the specific requirements, contact your assigned GLO Grant Manager with questions.

During the grant lifecycle each subrecipient will be assigned a GLO Grant Manager and given contact information for their Grant Manager. Regular meetings and on-site visits with the Grant Manager will be scheduled and conducted. The subrecipient is to utilize their Grant Manager as the main point of contact and refer all questions and requests to their assigned Grant Manager. Subrecipients will also be given contact information for a back-up contact for when their Grant Manager is unavailable.

Your assigned GLO Grant Manager will be your program's primary contact throughout your program's lifecycle. If you have not yet been assigned, or are not sure of who is your assigned Grant Manager, contact the GLO by phone at 1(800) 998-4GLO or by email at CDR@recovery.texas.gov.

1.14 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
Federal Registers for Texas CDBG-DR Allocations	https://www.govinfo.gov/content/pkg/FR-2018-02-09/pdf/2018-02693.pdf https://www.govinfo.gov/content/pkg/FR-2018-08-14/pdf/2018-17365.pdf	P
Action Plans for Texas CDBG-DR Allocations	http://recovery.texas.gov/local-government/hud-requirements-reports/hurricane-harvey/index.html	P
Public Notices and Press Releases for Texas CDBG-DR Allocations	http://recovery.texas.gov/local-government/hud-requirements-reports/citizen-participation-plans/index.html http://recovery.texas.gov/press-releases/index.html links to the following: http://www.glo.texas.gov/the-glo/news/press-releases/2018/november/cmr-george-p-bush-announces-amendment-2-to-state-action-plan-is-posted-for-public-comment.html http://www.glo.texas.gov/the-glo/news/press-releases/2018/september/texas-glo-announces-public-comment-period-for-harris-county-and-city-of-houston-local-plans.html http://www.glo.texas.gov/the-glo/news/press-releases/2018/april/texas-glo-extends-public-comment-period-for-state-action-plan-outlining-allocations-for-5-point-024-billion-in-housing-recovery-disaster-funds.html http://www.glo.texas.gov/the-glo/news/press-releases/2018/april/texas-glo-releases-state-action-plan-outlining-allocations-for-5-point-024-billion-in-housing-recovery-disaster-funds.html	P
Housing Guidelines for Texas CDBG-DR Allocations	http://recovery.texas.gov/local-government/hud-requirements-reports/housing-guidelines/index.html	H
LMI Summary Data	https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-block-groups-places/	P
Definitions	Appendix 1 Attachment A	P

Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 2 – **ADMINISTRATION**

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CHAPTER 2 ADMINISTRATION

2.1 Introduction

This chapter discusses steps and considerations in starting and implementing your CDBG-DR program for successful project management. Prior to implementing a program, subrecipients should put systems in place that will allow it to track and report on its activities as required by its agreement with GLO.

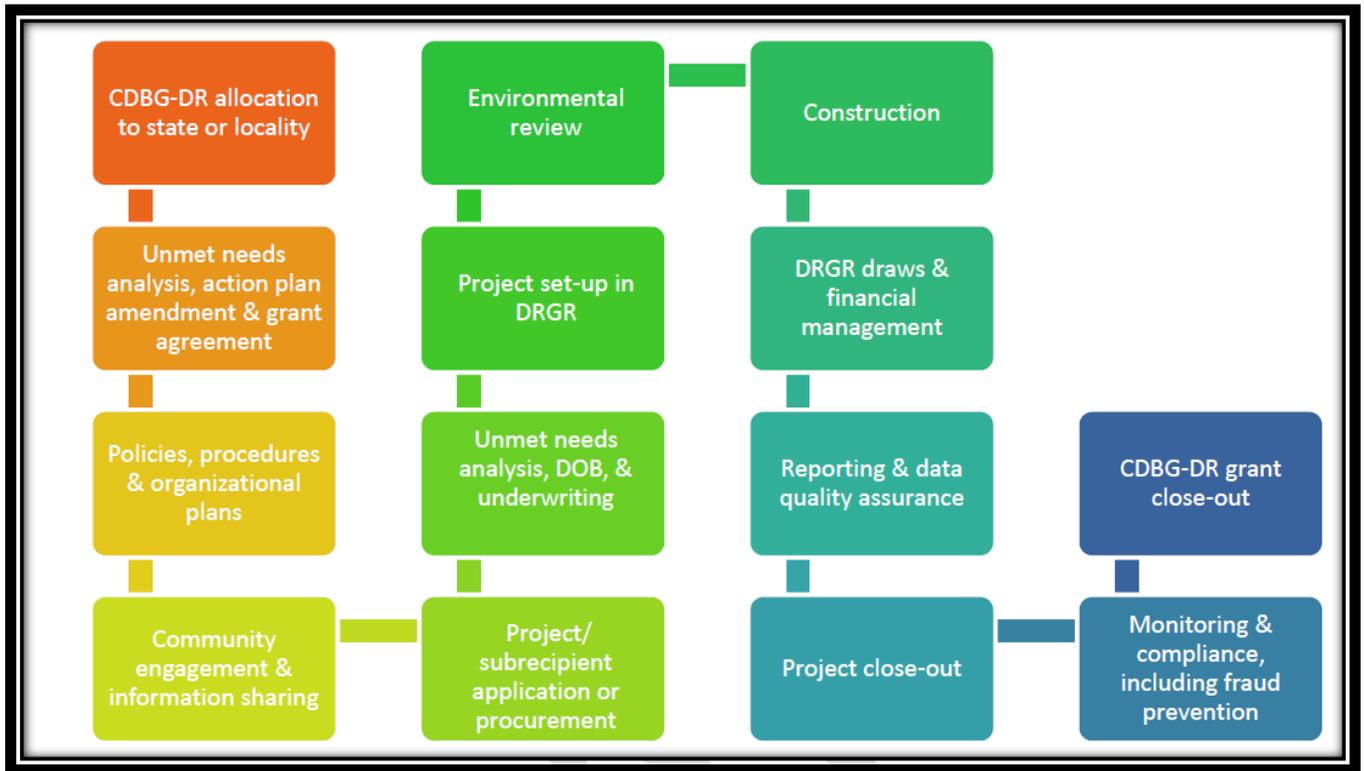
CDBG-DR grants depart from the regular CDBG programs in many respects. The purpose of this section is to provide an overview of the criteria for grant administration and reporting requirements to be used by Disaster Recovery CDBG grantees. These requirements may vary from those applied to the state or state agencies also involved in administering Disaster Recovery CDBG programs.

The CDBG-DR Implementation Manual starts at a point where the grantee has been selected and details of the allocation published in the Federal Register. At this point GLO will develop an Action Plan to determine methods and allocations not specified in the Federal Register. Based upon the approved Action Plan, Councils of Governments (COGs) and subrecipients may be required to perform additional actions which may include developing Methods of Distribution (MODs) or Local Action Plans prior to the application for funds.

The focus of the manual will begin with the subrecipient having been identified for an allocation and the steps for application, initial determinations of need, national objectives, citizen participation requirements, compliance with regulations, eligible activity limitations, implementation and closeout.

The requirements for citizen participation and eligible activities will have been provided to the grantee in conjunction with its program through the approved Action Plan. The waivers and alternate requirements related to the individual disasters may be located in the Federal Register in **Resources**, at the end of the chapter. The subrecipient should contact its assigned GLO Grant Manager in the event that further guidance is required in these areas.

During the CDBG-DR timeline, a series of tasks must occur:



2.2 GLO Responsibilities

GLO (the grantee or the state) is responsible for:

- 1) Day-to-day program management;
- 2) Subrecipient/Unit of General Local Government monitoring;
- 3) Vendor/Contractor management;
- 4) Beneficiary data;
- 5) Grantee's internal audit function;
- 6) Record keeping;
 - a. Document day-to-day management;
 - b. Retain all records for three years after closeout of the State's Disaster Recovery grant by HUD;
- 7) Privacy;
- 8) Freedom of Information Act (FOIA) Requests; and
- 9) Public Information Act (PIA) Requests.

HUD provides the following general guidance for program administration:

- 1) Put all procedures in writing. Follow them or document why they aren't followed.
- 2) Build performance targets into contracts. Hone the scopes of work.
- 3) Make the files tell the story.
- 4) Build compliance into day-to-day management. Project completion can be undone by noncompliance.
- 5) Sign off on the work.
- 6) Catch problems early and take action.
- 7) Communication

The GLO, and perhaps HUD, will monitor the subrecipient's program activities for compliance with program requirements, approved Action Plans and Amendments, and applicable statutes and regulations. Implementing the HUD guidance above will ensure efficient program operation and less disruptive monitoring sessions for the grantee and subrecipient.

HUD provides CDBG-DR Program information, training, guidebooks, toolkits, and other resources for grantees and subrecipients to implement programs on their website.

GLO strongly suggests all subrecipients, grant administrators, vendors, and contractors read and become familiar with HUD's resources which may be found at the link included within Resources, below.

2.3 Action Plans

Subrecipients must become familiar with the GLO developed approved Action Plan. The Action Plan development criteria is defined under the Federal Register and will detail the proposed use of all funds. The Action Plan includes criteria for eligibility and how the use of these funds will address long-term recovery and restoration of housing, infrastructure, planning, and economic development in areas affected by the disaster. As the state receives additional funding, reallocates funds, or changes activities, amendments to the Action Plan are submitted for public comment and HUD approval.

Action Plans consist of the following components:

- Disaster impact and unmet needs
- Eligible activities, applicants, and allocations
- Information regarding Method of Distribution (MOD)
- Public comments and responses

In addition, citizen participation and engagement are encouraged and required for approval of long-term disaster recovery plans.

2.4 Methods of Distribution

The approved Action Plan will designate how the GLO will allocate funds to units of local government to carry out projects. There may be different methodologies for the distribution of those funds. The GLO will collaborate with local governments to account for many variables in the local recovery process which will be reflected in the distribution models.

2.5 Grant Administrators

The GLO, and upon approval, subrecipients may directly administer programs or procure and use the support of outside parties (vendors and grant administrators) to serve needs.

Subrecipients are ultimately responsible for proper implementation of programs and insuring expenditure of funding adheres to all applicable federal and state requirements. Vendors and contractors employed by the state and subrecipients will be required to comply with executed contracts.

2.6 Pre-Agreement

Pre-award costs are those incurred by the subrecipient prior to the contract start date of the CDBG-DR grant award directly pursuant to the negotiation and in anticipation of the CDBG-DR grant award, where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the contract start date of the CDBG-DR award.

GLO will allow the subrecipient to incur costs for CDBG-DR activities before the CDBG-DR contract start date and to charge these pre-agreement costs to the grant, provided that the activities are eligible costs, meet the objectives of the program, and are authorized pursuant to applicable state and/or federal law. Procurement for grant expenditures must be specific to the CDBG-DR funding and must be supported by adequate documentation. All requests for reimbursement of pre-award costs are subject to review by GLO for determination of whether such expenses are allowable and eligible costs. Failure to meet all contract obligations will result in the required repayment of any pre-agreement expenses which were reimbursed by GLO.

The subrecipient may not incur costs or expend any contract funds for project construction prior to:

- Meeting the Environmental Review requirements in the CDBG-DR contract; and
- Submitting all applicable start-up documentation.

2.7 Application

Subrecipients will be required to submit an application to GLO for their allocated CDBG-DR funding prior to contract execution. GLO recommends submitting a draft application to the designated Grant Manager for review prior to final application submittal. Links to Applications may be found below in **Resources**.

2.8 Contract Execution

The subrecipient must have an executed contract with GLO before funds can be drawn.

Besides the contractual obligations owed between the state and the subrecipient, the contract specifies the following as Exhibits:

- 1) Exhibit A - the Performance Statement - Outlines the scope of the work to be performed under this contract by activity;
- 2) Exhibit B - the Budget – Specifies the contract budget line item by line item, which is used in the drawdown process. This Exhibit also includes all “Other” funds involved that are necessary to complete the Performance Statement specifics of this contract;
- 3) Exhibit C – Project Implementation Schedule – Specifies a timetable for milestones in project implementation.

The chief local elected official for the subrecipient or designee and the GLO Chief Clerk/Deputy Commissioner both must sign the contract before the contract is considered fully executed.

Please contact your GLO Grant Manager for procedures to sign electronically.

2.9 Establish a Local Administrative Structure

Each subrecipient must establish a local administrative structure to complete the grant. The Eligible Activity and National Objective requirements are not met until the project is completed, and there is sufficient documentation to ensure that the project is consistent with the designated National Objective.

The subrecipient must:

- Establish a record-keeping system to document compliance with all federal, state, local, and program requirements and submit all necessary documents in the GLO system of record.
- Grant files must be kept at city or county offices or buildings in which government records are maintained and accessible to the public throughout the contract period.
- Records shall be retained for the greater of three years from closeout of the grant between the state and HUD, or the period required by other applicable federal and state laws and regulations.
 - Review local charters, resolutions, ordinances, and policies that may be relevant to the project;
 - Determine whether day-to-day administration of the project will be conducted by local staff or by third-party consultant, and which party will conduct each administrative activity;

Community Development Block Grant Disaster Recovery program recipients have the final legal responsibility for the locally maintained grant files, the timely submission of reports, and compliance with program guidelines.

Best Practice: CDBG-DR recommends that the subrecipient review this document item-by-item and identify the activities that will be performed by subrecipient staff and those that will require outside assistance. It is also helpful to walk each staff member responsible for implementing the contract through the HUD website on CDBG-DR program requirements.

2.10 Needs Assessment

The subrecipient may be required to determine the survivor's unmet needs for the implementation of the program. The subrecipient's Needs Assessment (NA) will be described more fully in the Housing Guidelines and supporting documents in **Resources** and will advise subrecipients on how they are to offer activities to meet the types of needs experienced by the affected population and their demographics in order to maximize recovery efforts.

Housing and infrastructure projects NA will vary.

Housing

Regional or area NA will be conducted and will be followed by individual unmet need assessments to be performed as defined in the NA and retained in the individual's set-up file.

Infrastructure

The unmet need of the service area will be defined in the project application.

2.11 Marketing and Outreach Plan

The subrecipient will be required to provide outreach and market the program for maximum participation for the implementation of the individual benefit programs. The subrecipient's Marketing and Outreach Plan development will be described more fully in the Housing Guidelines and supporting documents in **Resources** and will advise subrecipients on how they are to offer activities to meet the types of needs experienced by the affected population and their demographics to maximize recovery efforts.

2.12 Program Guidelines

The GLO publishes Program Guidelines which provide a blueprint for designing, implementing, and closing a CDBG-DR Program. For certain direct allocations subrecipients may be required to develop their own local program guidelines and will be responsible for the implementation of their programs in their jurisdictions. A link to the GLO Housing Program Guidelines may be found in **Resources** at the end of the chapter.

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2.13 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting	https://cdrportalprd.dynamics365portals.us/	P
Needs Assessment Guidance	http://recovery.texas.gov/files/resources/housing/s3-needsassessmentchecklist.xlsx	H
Marketing and Outreach Plan Guidance	http://recovery.texas.gov/files/resources/housing/s3-housingmarketingandoutreachplanchecklist.xlsx	H
Housing Guidelines Checklist	Link down (http://recovery.texas.gov/local-government/resources/housing/index.html)	H
Urgent Need Form - Infrastructure	http://recovery.texas.gov/files/resources/infrastructure/s1-urgent-need-national-objective.pdf	I
Urgent Need Form - Housing	http://recovery.texas.gov/files/resources/housing/s4-form1405-urgentneednationalobjective.docx	H

Intake SOP Checklist	http://recovery.texas.gov/files/resources/housing/s3-intakesopchecklist.xlsx	H
Financial Interest Report	http://recovery.texas.gov/files/resources/housing/s2-financial-interest-report.pdf	P

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

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CHAPTER 3 – RECORDKEEPING & REPORTING

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CHAPTER 3 - RECORDKEEPING & REPORTING

3.1 Reporting

Accurate record keeping is crucial to the successful management of CDBG-DR funded activities. Insufficient documentation could lead to monitoring findings and even if project implementation has been “successful” a lack of documentation could also lead to audit issues, accusations of fraud, or repayment.

The record of a project or activity should “tell the story” on its own and completely. Subrecipients will report all required data into the GLO system of record which is the Texas Integrated Grant Reporting (TIGR) System. The subrecipient must also keep a full set of all program related documents at the city or county offices.

Subrecipients are required to submit monthly housing reports and quarterly infrastructure reports as detailed in the contract.

3.2 Establish a Record-Keeping System

The subrecipient must establish a record-keeping system to document compliance with all federal, state, local, and program requirements. The subrecipient must document and clearly define all processes for acquiring, organizing, storing, retrieving and reporting information about CDBG-DR funded activities.

If using electronic records, the subrecipient must have ownership of the records and be able to access the information long term. It is important to have a clearly identified person(s) responsible for record keeping and reporting tasks and to ensure they are properly trained and supported. The standardized policies and procedures must ensure no gaps, and processes for consistency and streamlining. Subrecipient files must be maintained and accessible to the public throughout the contract period.

3.3 Other Technical Assistance

GLO will provide technical assistance at the subrecipient’s request and as considered appropriate by CDBG-DR staff. Technical assistance may include:

- Email correspondence;
- Individual and conference phone calls; and/or
- On-site visits and meetings.

3.4 Files to Maintain

The files listed below provide a sample of some of the major file categories that should be maintained. Additionally, in **Resources** you will find checklists based on your program and a listing of materials that should be kept in each recipient’s file. These lists are not to be construed as all inclusive.

General Administrative Records

- Published Action Plans and amendments, certifications, etc.
- Description, geographic location and budget of each activity
- Eligibility and national objective determinations for each activity
- Personnel files
- GLO monitoring correspondence

- Citizen participation compliance documentation
- Complaint procedures
- Fair Housing and Equal Opportunity records
- Environmental review records
- Documentation of compliance with crosscutting requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint)
- Limited English Proficiency documentation

Financial Records

- Budget
- Accounting procedures, including internal controls
- Accounting journals, ledgers & chart of accounts
- Source documentation (purchase orders, invoices, canceled checks)
- Procurement files (including bids, contracts, etc.)
- Real property & equipment inventory info
- Bank account records (including program income records, if applicable)
- Draw down requests
- Payroll records and reports
- Financial reports
- Audit reports and documentation
- Relevant financial correspondence

Project and Activity Records

- Eligibility and national objective of the activity
- Any bids or contracts
 - Characteristics and location of the beneficiaries including race and ethnicity of beneficiaries
- Compliance with special program requirements (e.g. environmental review records)
- Budget and expenditure information (including draw requests)
- The status of the project/activity

Documenting “Tie Back” to the Disaster

- All activities and projects must be related to recovery from the disaster(s) covered by the appropriation
- For every funded applicant or project, the subrecipient must document a tie to the storm. There are two possible approaches:
 - Applicant suffered physical or economic damage from the storm
 - OR
 - Funded project will help to economically revitalize an impacted community, including new construction
- Tie to the storm is not the same as duplication of benefits (DOB)
 - Tie to the storm documents whether the project will directly address a storm-related impact
 - DOB tells us whether that need has already been met by other sources or whether there is a remaining unmet need

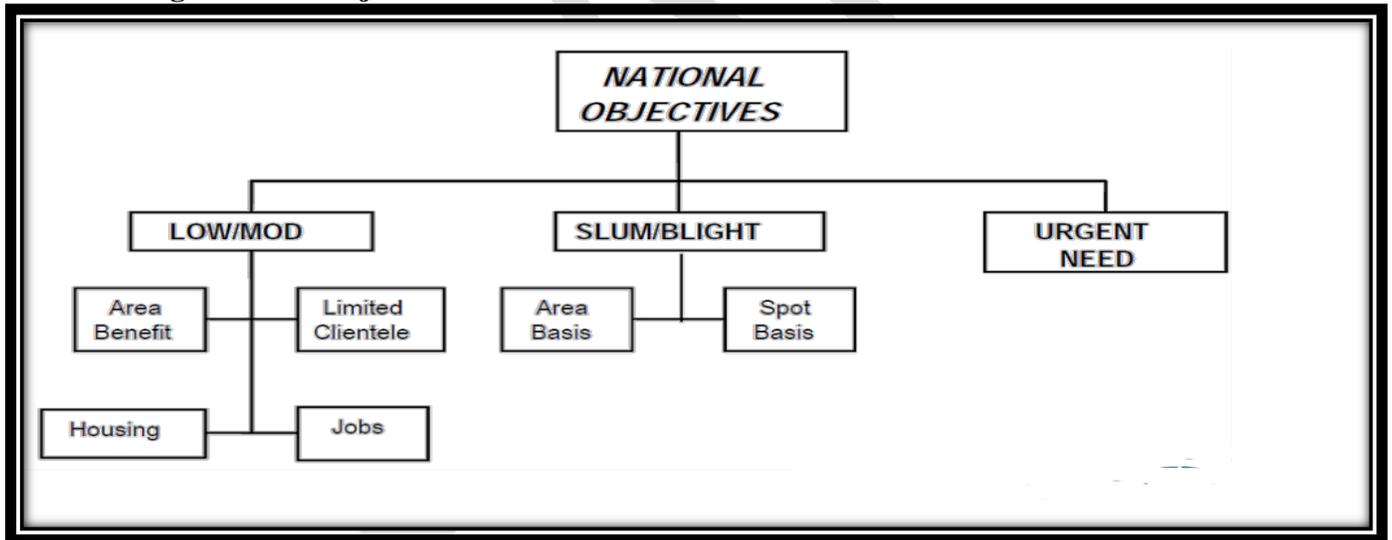
- Documentation could include damage or building estimates for physical losses or post-disaster analyses or assessments for economic or non-physical losses
 - If subrecipient is using the economic impact approach, work with GLO to develop an acceptable set of criteria given the disaster
- Simply being located within a declared county is not sufficient documentation – the subrecipient must demonstrate that the specific project or applicant has a tie to the event funded by the appropriation
- As time post-disaster advances, documenting tie to the storm can get increasingly challenging

Documenting Duplication of Benefits

- Overall policies and procedures on DOB, data sharing with SBA, NFIP and FEMA
- For individual files:
 - Identification of CDBG-DR need
 - Identification of sources of assistance
- For example: FEMA award letter, insurance letter, SBA data provided to subrecipient
 - Verification of sources of assistance
 - Calculation of CDBG-DR award
 - Subrogation agreement (or similar agreement)
 - Treatment of SBA declined loans

See **Resources** at the end of the chapter for additional information.

Documenting National Objective



Urgent Need (UN) is used to address emergency situations, including disaster recovery

- Does NOT count toward LMI targeting
- To meet the urgent need test:
 - Existing conditions pose serious & immediate threat to health/welfare of community
 - Existing conditions are recent or recently became urgent
- Generally identified within 18 months of becoming an issue
 - Recipient cannot finance on its own
 - Other funding sources not available

LMI

- Determining and documenting income
- The total cost of the activity, including both CDBG and non CDBG funds
- The size, annual income, and FHEO characteristics of households occupying CDBG-assisted and designated LMI units
- A copy of the written agreement indicating the total number of dwelling units and the number of LMI units
- For rental housing only:
 - Rent charged (or to be charged) after assistance for each assisted unit
 - Documentation showing the affordability of units occupied (or to be occupied) by LMI households
 - Pro-rata option
- For infrastructure:
 - documentation of area benefit to LMI population served by the project

Slum and Blight

- Boundaries of the area
- Description of conditions demonstrating how the area met qualifying criteria (i.e. the area meets a definition of a slum, blighted, or deteriorated/ing area under state or local law)
- How the assisted activity addressed one or more of the conditions that contributed to the deterioration of the area.

3.5 Records Retention

Records must be retained for a minimum of 3 years from closeout of the grant between the GLO and HUD.

3.6 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
DOB Data Sharing Memo	Appendix 3 Attachment A	
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
Monthly Report	http://recovery.texas.gov/files/resources/infrastructure/s1-	P
Project Schedule	Dead link: http://recovery.texas.gov/local-	P
File Checklists	Only program specific: HAP Activity: http://recovery.texas.gov/files/resources/housing/s4-form402ahapactivityfiledocumentationchecklist.xlsx Buyout/Acquisition Applicant: http://recovery.texas.gov/files/local-buyout-acquisition/sample-checklist-for-down-payment-assistance-and-buyouts.pdf	P

** Type of Form: P = Program, I = Infrastructure, H = Housing

CHAPTER 4 – **FINANCIAL MANAGEMENT**

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CHAPTER 4 - FINANCIAL MANAGEMENT

4.1 Introduction

The subrecipient must review the financial requirements of the contract and set up a financial accounting system consistent with the requirements of the CDBG-DR Program.

Federal and State Cost Guidelines

The financial requirements for local governments receiving CDBG-DR grants are governed by regulations issued by HUD, the Federal Office of Management and Budget (OMB), federal, state, and local policy.

Applicable Regulations and Requirements

Subrecipients are required to follow all federal, state and local regulations. GLO is responsible for monitoring the subrecipient's compliance with applicable financial management standards, for processing CDBG-DR payment requests for funds, and for audit review.

HUD Guidelines

The following is a list of key federal regulations governing financial management.

- 24 CFR Part 570 Subpart I govern the state CDBG-DR program;
- Section 570.489 details program administration requirements;
- Various sections of 2 CFR 200, including all of Subpart E Cost Principles.

4.2 Accounting Procedures

The subrecipient is responsible for ensuring that all CDBG-DR expenditures are authorized in the approved budget and do not exceed the total budget amount. Separate accounting records must be maintained for CDBG-DR project funds (i.e., separate from the general municipal/county funds). These records should be developed to be consistent with the subrecipient's general accounting system.

Subrecipients must take the following steps to ensure an adequate local accounting system for CDBG-DR funds.

4.3 Establish Internal Controls

The subrecipient should establish internal controls and guidance documentation for procedures that provide for responsible management of CDBG-DR funds. The system of internal controls should meet the following criteria:

- All federal, state, and local conflict of interest provisions apply.
- The foundation of a good internal control system is segregation of duties. The duties of authorization (signing a check or releasing a wire transfer), custody (having access to the blank check stock or the ability to establish a wire transfer), and recordkeeping (ability to record the transaction in the accounting system) should be separated so that one individual cannot complete a transaction from start to finish. No person should have complete control over every phase of a significant transaction. For example, the person who authorizes payments to contractors should not draft and issue the payment check.

- Best practices also provide that fiscal record keeping for CDBG-DR contracts should be maintained separately from the general accounting operations.
- Where feasible, monthly bank reconciliation and/or direct deposit monthly statements should be made by someone who is not responsible for handling cash or issuing checks.
- The person issuing checks for grant expenses should not also handle payroll preparation/issuance of paychecks.

4.4 Conflicts of Interest

Subrecipients of a CDBG-DR contract must avoid, neutralize or mitigate actual or potential conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the CDBG-DR contract or impact the integrity of the procurement process.

Every subrecipient 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. The subrecipient may choose to broaden local conflict of interest policies to additional family members and relatives.

For the procurement of goods and services, no employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a 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. (24 CFR 570.489(g), Uniform Grant Management Standards (UGMS) of the Texas Comptroller, 2 CFR 200.318(c)(1)).

Example: Bay County, Texas and the Village of Seaside Creek sought a contractor to compete for some drainage improvement by sealed competitive bids. The project was funded with CDBG-DR funds. Eric Smith and Associates is the engineering firm which will oversee the project. Jones Constructors, Inc. was the low bidder and has been selected for the award. The principals of both the engineering firm and the construction company are brothers-in-law. Under the procurement regulations, such procurement would be a conflict of interest because they are immediate family members. It would be a conflict of interest of Eric Smith and Associates to oversee a construction contract funded with CDBG-DR money, since Eric Smith's brother-in-law is a principal of Jones Constructors, Inc.

For all other cases other than the procurement of goods and services, non-procurement conflict of interest provisions are applicable to any person or entity including any benefitting business, utility provider, or other third party entity that is receiving assistance, directly or indirectly, under a CDBG-DR contract or award, or that is required to complete some or all work under the CDBG-DR contract in order to meet a National Objective, that might potentially receive benefits from CDBG-DR awards.

In such instances (non-procurement), the general rule is that no person/entity described above whom:

- exercise or have exercised any functions or responsibilities with respect to CDBG-DR activities;
- are in a position to participate in a decision-making process; or
- are in a position to gain inside information with regard to such activities may:

obtain a *financial interest or benefit* from a CDBG-DR-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-DR-assisted activity, or with respect to the proceeds of the CDBG-DR-assisted activity, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Example: Central City, Texas applied for CDBG-DR funds for a street repair project in the West Addition neighborhood. One of the residents included in the project is the mother-in-law of City Council member Bob Thompson. Councilman Thompson does not have a financial interest in the project; however, there is a conflict of interest due to the CDBG-DR-funded benefit to be provided to his family member. The City must disclose this conflict and request an exception to the prohibition on such conflicts from GLO before proceeding with the project.

GLO will evaluate persons in similar roles for benefitting organizations, such as utilities providing service through the project or businesses creating jobs as a result of the project, in determining a conflict of interest. The person may not have an interest in any contract or agreement related to the CDBG-DR proceeds/program for themselves or their family/business ties during their tenure or one year after conclusion of their tenure.

In addition, 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. (See 2 CFR 200.319). For example, an administrative consulting firm that participates in developing or distributing the request for proposals (RFP) may not then submit a proposal in response to that RFP.

Some determinations of conflicts of interest:

- The same individual or firm has an interest in both a benefitting business identified in the contract Performance Statement of the CDBG-DR contract and any consultant or construction contracts required to complete the project;
- Elected officials voting on awarding of funds to organizations where a family member is on the staff or where the elected official is on the subrecipient's board;
- Local officials entering into contracts with companies they are affiliated with through employment of, or ownership by, themselves or their relatives;
- Subrecipient officials or staff who have relatives who may benefit from a subrecipient's programmatic activities;
- Failure to notify GLO about conflicts of interest.

Questions regarding Conflicts of Interest: If there is any question regarding a potential conflict of interest the Subrecipient should contact the GLO Grant Manager

Regulations: The regulations related to conflict of interest and nepotism may be found at the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, 24 CFR 570.489(g) and (h), the Uniform Grant Management Standards (UGMS) of the Texas Comptroller of Public Accounts and guidance under 2 CFR 200.

4.5 Establish/Maintain Document Files and Records

CDBG-DR grant funds must be carefully tracked and documented. GLO strongly recommends that the subrecipient establish a separate, non-interest-bearing bank account for grant and local funds. Regarding the use of checking accounts, best practice is for the subrecipient to deposit CDBG-DR grant funds in a non-interest-bearing account. If the subrecipient chooses to deposit grant funds into an interest-bearing account, contact GLO. (See 2 CFR 200.305(b)(9) for additional regulations for interest bearing accounts).

Financial Records must include the following:

- 1) Transaction registry documenting:
 - All invoices associated with each Request for Payment; and
 - Source of funds for each invoice (grant funds by activity, matching funds, other funds).

- 2) Source documentation, including the following:
 - Copies of Requests for Payment;
 - Addendum record of direct deposit payments;
 - Verification of deposits;
 - Monthly bank statements with canceled checks;
 - Check register/transaction ledger;
 - Employee time and attendance sheets;
 - Equipment time record sheets;
 - Property inventory;
 - Purchase orders, invoices, and contractor requests for payments; and
 - All original source documents.

4.6 Establish Responsible Persons

The program must identify the persons responsible for both contractual documents (executed contract, contract amendments, and various program certifications) and requests for payment.

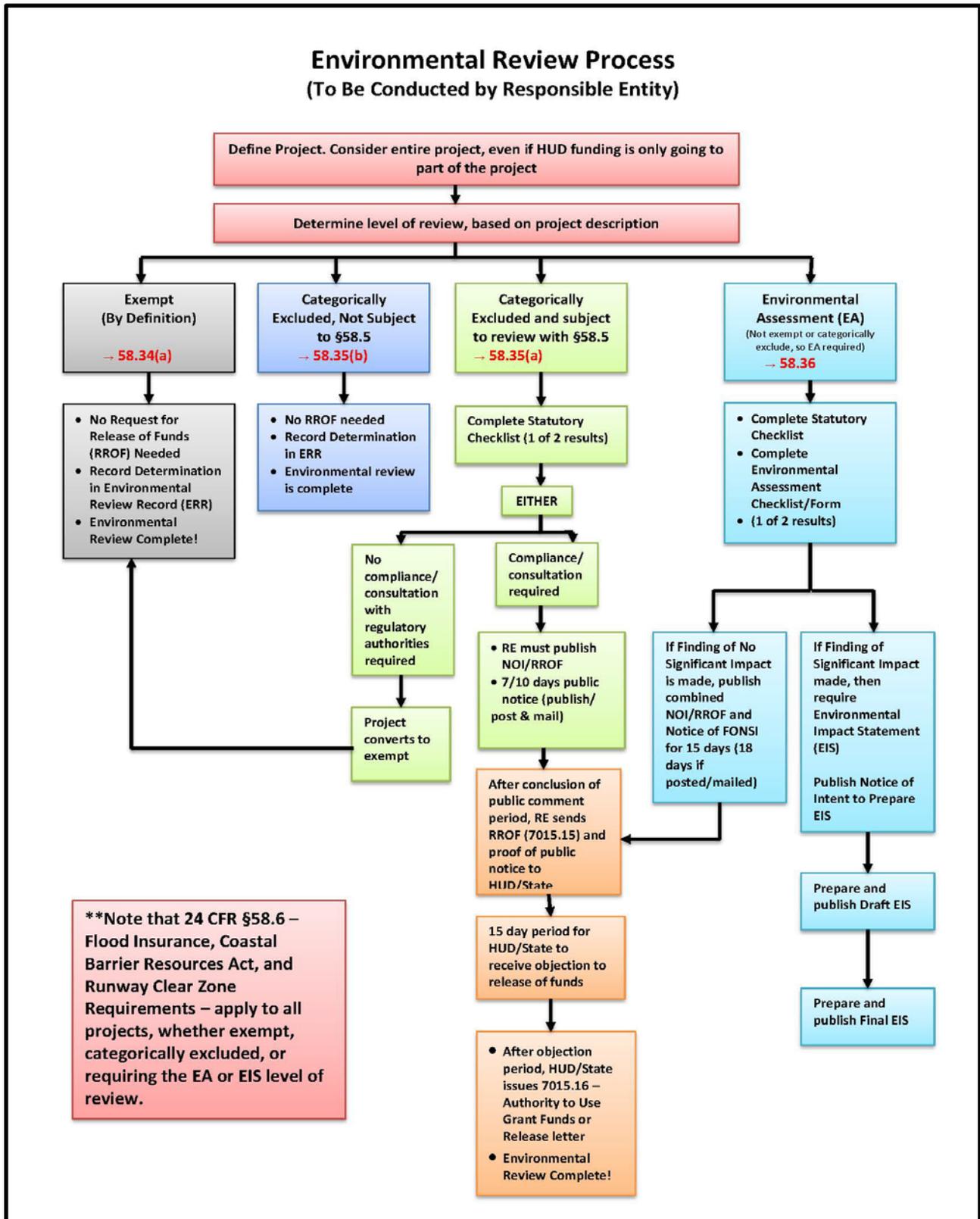
- Signatures of the persons (at least 2) authorized by the local governing body to sign these documents for the Subrecipient must be included on the form.
- A copy of the resolution passed by the city council or county commissioner's court authorizing the signatories (by job title or by name).
- The form and/or resolution must be updated in the event that an authorized signatory of the Subrecipient changes (elections, illness, resignations, etc.).

4.7 Direct Deposit Authorization

The Subrecipient is strongly encouraged to authorize direct deposit to receive payments from a state agency posted directly to the local bank account and send the completed form to their Grant Manager. Grant payments released after the form is submitted and processed will be deposited using this method; allow 30 days for processing.

4.8 Release of Funds

Please see the following flowchart below and more information in Chapter 6 for the Environmental Review Process required to initiate fund release.



GLO requires certain documents to be submitted prior to releasing contract funds. Additional documentation may be required based on the specific fund category or project description and will be listed in the CDBG-DR contract.

The Subrecipient must submit the following documentation:

- 1) Executed CDBG-DR contract;
- 2) Depository authorization and supporting resolution;
- 3) As provided in the HUD Environmental Review Process flowchart above, evidence of environmental compliance documents including, but not limited to, CENST form (for exemption of environmental studies, administrative and engineering services), completed and approved CEST or EA document, Notice of Intent and Request for Release of Funds (NOI/RROF), or Finding of No Significant Impact/Request for Release of Funds (FONSI/RROF) and the signed Authorization to Use Grant Funds (AUGF) form;
- 4) Applicable Financial Interest Report(s);
- 5) Documentation of Compliance with Civil Rights requirements;
- 6) Code of Conduct Policy;
- 7) Documentation to support Environmental Authorization to Use Grant Funds;
- 8) Labor Standard's Officer Appointment;
- 9) Labor Standards documentation if applicable; and
- 10) Other documents requested by the GLO Grant Manager, as required.

4.9 Drawdown Procedures

Subrecipients may submit draws in TIGR. Please see the TIGR User Manual in **Resources**, below for additional instructions.

4.10 Submitting a Request for Payment

The following must be submitted for processing **each** drawdown request:

Backup documentation that justifies payment for each budget line item from which CDBG-DR funds are requested.

- All costs must be supported by invoices or similar documentation, which includes price, quantity, and service delivery dates.
- Backup documentation included with a request for payment must include enough information to confirm that an item is eligible under the CDBG-DR contract and that the work billed has been completed.
- Requests for reimbursement will not be processed unless acceptable back-up supporting documentation, including the price and the quantity of the item, is provided. In addition, the backup documentation must justify payment for each budget line item from which CDBG-DR funds will be drawn.

GLO will accept requests for payment with accompanying backup documentation in the designated reporting and draw system.

GLO staff may request additional information regarding requests for reimbursement, even if supporting documentation has been provided.

4.11 Minimum Drawdown Requests and Disbursement

Subrecipients may drawdown for eligible costs as often as is actually needed.

Subrecipients should base their drawdowns on:

- actual costs incurred – Subrecipients must disburse funds as soon as administratively feasible - a maximum of 5 business days, not including state and federal holidays, from the time of receipt/deposit of funds to the time of actual local disbursement (For state and federal holidays, the Subrecipient should note such holidays on their ledger to assist GLO monitoring staff.); and
- Subrecipients must draw funds under each budget activity at least once a year or as directed by GLO.

4.12 Delays, Ineligible Costs, and Denial of Payment

GLO staff will review all requests for payment.

Ineligible Costs

The following list includes common, but not limited to, items that will not be approved for grant or match funding. For eligible costs, see Overview in the manual and the appropriate CDBG-DR Application Guide. Please contact your contract specialist with any questions.

- Individuals and homes not approved as beneficiaries in the application and contract.
- Billing software and related equipment not physically connected to the CDBG-DR-funded projects. Any software must be considered against the functionality of TIGR.
- Generators that are not permanently installed at the designated location (trailer mounted generators are not considered permanently installed)
- Cost of obtaining permits or other documentation that would be required regardless of the current projects, including CCN applications, renewal of TCEQ permits, etc.;
- Commercial advertising and public relations costs such as the replacement or addition of a logo, water system name, or other cosmetic painting on CDBG-DR-funded water tanks and other structures; and
- Other similar costs.

Refer to 2 CFR Part 200 Subpart E – Cost Principles for the basic guidelines of eligible costs. If the Subrecipient will be incurring any special or unusual costs, the Subrecipient should seek prior written approval from GLO. (See 2 CFR 200.407).

4.13 Matching Funds

Most CDBG-DR allow matching funds to be provided; however, GLO strongly recommends consulting with your assigned GLO Grant Manager prior to committing additional or matching funds as additional requirements apply and inadvertent Duplication of Benefits (DOB) may require program fund reimbursement to the GLO or HUD.

Matching funds are defined as funding provided by the Subrecipient, FEMA, SBA, insurance, charitable donations. Requests to claim force account costs as match funds must comply with **Chapter 10**.

Expenditures of matching funds must be reflected in the transaction register.

4.14 Acceptability of Matching Funds

Funds can be considered as matching funds only if the matching funds will be used for:

- activities described in the CDBG-DR Performance Statement; or
- activities that are directly related to supporting the activities proposed for CDBG-DR funding.

Match can be considered only if the subrecipient has used an acceptable and reasonable method to document the value of the match. Except for cash match, the subrecipient must submit an attachment/schedule which shows how the value of each type of match was determined. Please note that local match can only be counted for expenditures that would not occur if the CDBG-DR contract were not funded. Local match will only be considered for expenses that meet the eligibility and prior approval requirements of GLO.

Cost Eligibility

Matching funds are subject to all CDBG-DR cost eligibility requirements, except that the following items are not eligible for grant funding but may be eligible for matching funds:

- Donated property. The value of property owned by the subrecipient that will own new grant-funded facilities, excluding easements, rights-of-way, existing locations for the same infrastructure system, or similar property, may be claimed as matching funds.
- Waived Fees. Fees associated with grant or match funded infrastructure that are normally collected by the subrecipient or the utility that will own the infrastructure but that are waived for the CDBG-DR project may be claimed as matching funds with prior GLO approval. These fees may include assessment fees, impact fees, capital improvement fees, utility connection fees for low- to-moderate-income households, and similar fees.

Federal, State, and Program Requirements

Matching funds are generally subject to all CDBG-DR program requirements. However:

- For construction contracts funded entirely through non-CDBG-DR funds but used to complete the CDBG-DR project, the construction contract may be exempt from Davis-Bacon and related requirements. A 10-day confirmation is required to document the work to be performed, the exemption status, and the reason that Davis Bacon requirements do not apply.

4.15 Reducing the Commitment of Matching Funds

Each subrecipient is required to expend the amount additional or local funds to CDBG-DR funds as submitted in the application.

4.16 Matching Funds Provided by Other Funding Agencies

If matching funds for a CDBG-DR project are provided by other federal or state sources, the subrecipient must document those matching funds according to the rules and regulations of the funding agency from which the funds are requested. The subrecipient must submit documentation of the following to GLO:

- The amount of funds actually received from each source;
- The scope of the project funded through sources other than CDBG-DR (to confirm that the funds are match to the CDBG-DR-funded project); and
- Completion of that project.

All sources of funding (other than CDBG-DR) should be identified in the application. If additional funding is obtained after the submission of the application, the subrecipient should submit the funding award notification and/or other documentation to GLO within **thirty (30) days** of any change in the expected sources or uses of funds that exceed the lesser of \$250,000 or 10 percent of previously disclosed sources. Other sources include state and federal funding agencies other than CDBG-DR as well as local Water Supply Corporations or other local entities participating in the project.

All projects funded in whole or in part through CDBG-DR funds must comply with federal, state, and program requirements which are most stringent of those funding source requirements. Except as otherwise indicated, the procedures and requirements of the CDBG-DR Implementation Manual apply to all work described in the CDBG-DR contract Performance Statement including work performed by or funded in part through other funding sources.

If a construction contract includes both a CDBG-DR project and a separate project (not included in the Performance Statement or claimed as matching funds) to be paid by the subrecipient or another funding source, the construction contract should clearly indicate the work and the costs associated with each project.

4.17 Program Income

Program income is defined as gross income received by the subrecipient that was generated from activities funded in whole or in part by the CDBG-DR contract. As program income generated from a CDBG-DR federally funded project, it is subject to all federal requirements. If a subrecipient earns program income, contact GLO. (See 2 CFR 200.307 and 24 CFR 570.489 for additional regulations.)

The GLO is required to receipt program income payments (including general program income returned to the CDBG-DR program, general program income retained by the unit of general local government (UGLG), revolving fund, and state revolving fund payments) in the Disaster Recovery Grant Reporting System (DRGR). As a nationwide database, DRGR provides HUD with current information regarding the program activities underway across the nation, including funding data.

An exemption in the definition of program income is when renting property; program income is the gross income less any costs incidental to the generation of that income. For example, if renting a community center for events, the portion of the rental payments used for maintenance and staff would be incidental to the operations, and therefore would not be considered program income.

See **Resources** at the end of the chapter for additional information and forms.

4.18 Investigation of Fraud Allegations

Allegations of fraud may be reported to GLO or to the HUD Office of the Inspector General. Allegations of fraud involving any CDBG-DR funds will be investigated immediately after being brought to the attention of GLO, through whatever source.

An investigation will be conducted if the allegations are made in connection with the services provided by a subrecipient using CDBG-DR funds. GLO will immediately:

- Notify the subrecipient of the allegation and advise that GLO will conduct an investigation; or
- Advise the subrecipient that it must conduct a preliminary investigation and submit a written report within 7 working days from the date of notification. The report must include:

- Nature of the allegation, dollar amount involved, whether a fidelity bond exists and its dollar coverage;
- Who is involved (i.e., individual(s) accused of fraud), subrecipient's name, names of the subrecipient's council/commission, and the Subrecipient's chief elected officer;

Contact information to report FRAUD or WASTE in HUD-funded Programs and Operations

HUD Inspector General Hotline (GFI)

451 Seventh Street, SW
Washington, D.C. 20410

HUD-OIG Hotline Toll-Free 1-800-347-3735
FAX: 202-708-4829

- When the allegations were made;
- Time period involved;
- Where the incident occurred; and
- How the alleged incident occurred.

The GLO compliance staff will review the report and make a determination as to whether further investigation is warranted.

- If further investigation is not warranted, the file is closed or the subrecipient is directed to conclude the issue administratively.
- If it is determined that further investigation is warranted, GLO will conduct a full investigation of the allegations and may recommend withholding payments to the subrecipient, pending completion of the investigation. The scope of the investigation will be determined by the facts surrounding the incident.

Upon completion of the investigation GLO will:

- Prepare an Incident Report that includes all findings and any initial corrective action taken to date by GLO;
- Prepare a plan for corrective action, debt collection, and a plan for prosecution, if applicable;
- Cause a claim against the fidelity bond to be filed, if applicable;
- Proceed with the resolution process on any costs which are questioned as a result of the investigation;
- Conduct a follow-up visit to ensure that corrective action has been implemented; and
- Initiate debt collection procedures with the subrecipient, as applicable.

4.19 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
TIGR User Manual	??	
DOB Data Sharing Memo	Appendix 3 Attachment A	P
Housing Forms and Guidance	http://recovery.texas.gov/local-government/resources/housing/index.html	
Infrastructure Guidance Forms and Resources	http://recovery.texas.gov/local-government/resources/infrastructure/index.html	
Depository/Authorized Signatories Form	http://recovery.texas.gov/files/resources/infrastructure/s2-depository-authorized-signatories-designation-form.pdf	P
Direct Deposit Authorization Form	http://recovery.texas.gov/files/resources/infrastructure/s2-direct-deposit-form.pdf	P
Request for Payment	http://recovery.texas.gov/files/resources/infrastructure/s2-request-for-payment.pdf	I
Category Excluded not Subject to (CENST) Form	http://recovery.texas.gov/files/resources/housing/s2-censt-form.docx	P
Form 16.08 APPD Draw Request Checklist	http://recovery.texas.gov/files/resources/housing/s6-form1608-appddrawrequestchecklist.docx	H

Draw Support Invoice – Admin, Planning, Project Delivery, (APPD) Draws	http://recovery.texas.gov/files/resources/housing/s6-appddrawsupportforinvoice.xlsx	H
Refund, Subrogation, and Program Income Policy	http://recovery.texas.gov/files/resources/housing/s6-refundsubrogationprogramincomepolicy.doc	H

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

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CHAPTER 5 – PROCUREMENT

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Last Updated October 31, 2018

CHAPTER 5 – PROCUREMENT

5.1 Introduction

This Section establishes standards and guidelines for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services for CDBG-DR programs. These standards and guidelines are being furnished to ensure that recipients of CDBG-DR funds obtain such materials and services in an efficient and economical manner that is in compliance with the applicable provisions of Federal and State laws and executive orders.

The foregoing standards do not relieve the CDBG-DR subrecipients of any contractual responsibilities under its contracts or local, state, or federal law. Subrecipients are responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of procurement entered in support of the grant.

The Texas General Land Office will relay the information contained herein to subrecipients via the Texas General Land Office Community Development and Revitalization ('GLO') website, through trainings and checklists, and during onsite monitoring and reviews.

5.2 Definition of Terms

- 1) **Acquisition.** The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.
- 2) **Architect/Engineer Services ('A/E Services').** As defined by 40 U.S.C. §1102:
 - a. Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;
 - b. Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; or,
 - c. Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.
- 3) **Bid or Sealed Bid.** An offer in response to invitations for bids.
- 4) **Change Order.** A written order, signed by the contracting officer, directing the contractor to make an authorized change to order without the contractor's consent.
- 5) **Contract.** A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all

types of commitments that obligate the subrecipient to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

- 6) **Contracting.** Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes the description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.
- 7) **Cost Analysis.** The review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.
- 8) **Cost-Reimbursement Contracts.** Provide for payment of allowable incurred costs, to the extent prescribed in the contract.
- 9) **Firm-fixed-price contract** - Provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.
- 10) **Offer** -A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids"; responses to requests for proposals (negotiation) are offers called "proposals"; however, responses to requests for quotations (simplified acquisition) are "quotations", not offers.
- 11) **Price analysis** -The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.
- 12) **Requests for proposals (RFPs)** - Solicitations under negotiated procedures and are used in negotiated acquisitions to communicate subrecipient requirements to prospective contractors and to solicit proposals.
- 13) **Request for qualifications (RFQs)** - Solicitations under negotiated procedures and are used in negotiated acquisitions to procure the services of an engineering or architectural firm.
- 14) **Sealed bidding** - A method of contracting that employs competitive bids, public opening of bids, and awards.
- 15) **Sole Source Acquisition** - A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.
- 16) **Solicitation** - Any request to submit offers or quotations to the subrecipient. Solicitations under sealed bid procedures are called "invitations for bids". Solicitations under negotiated procedures are called "requests for proposals." Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.
- 17) **Subcontract** - Any contract as defined above "Contract" entered into by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract. It

includes but is not limited to purchase orders, and changes and modifications to purchase orders.

- 18) **Subcontractor** means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

5.3 General Procurement Standards

Each recipient of grant funds must adopt a written procurement policy for securing contract services. If a procurement policy is already in place, the recipient of grant funds must evaluate the current policy and determine whether that policy is compliant with the provisions outlined in this document.

If the current procurement policy is not compliant with the provisions outlined in this document, the recipient of grant funds must amend the policy accordingly. Each recipient of grant funds procurement policy *must* address the following:

- 1) **Oversight.**¹ 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.
- 2) **Standards of Conduct.**² Non-federal entities 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. The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
 - a. 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 contract.
 - b. The officers, employees, or agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
- 3) **Avoidance of Unnecessary or Duplicative Items.**³ The Non-Federal entity's procurement procedures must avoid the acquisition of unnecessary or duplicative items by giving consideration to consolidating or breaking out procurements to obtain a more economical purchase.
- 4) **Value Engineering Clauses.**⁴ 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.
- 5) **Awarding to Responsible Contractors.**⁵ The Non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the

¹ 2 CFR 200.318(b)

² 2 CFR 200.318(c)(1)

³ 2 CFR 200.318(d)

⁴ 2 CFR 200.318(g)

⁵ 2 CFR 200.318(h)

terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Record Keeping.⁶ The Non-Federal entity must maintain records sufficient to detail the history or procurement. These records shall include, but are not limited to, the following:

- i. Rationale for the method of procurement;
- ii. Selection of contract type;
- iii. Contractor selection or rejection; and
- iv. The basis for the contract price.

6) **Time and Materials Contracts.**⁷ 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 contracts are the sum of:

- a. The actual cost of materials; and
- b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

7) **Dispute Resolution.**⁸ 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.

5.4 Competition

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards outlined in this section. In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or request for proposals must be excluded from competing for such procurements.⁹

1) **Prohibition Against Restrictive Competition.** Some situations considered to be restrictive of competition include, but are not limited to, the following:

- a. Placing unreasonable requirements on firms in order for them to qualify to do business;
- b. Requiring unnecessary experience and excessive bonding;
- c. Noncompetitive pricing practices between firms or between affiliated companies;
- d. Noncompetitive contracts to consultants that are on retainer contracts;
- e. Organizational conflicts of interest;
- f. Specifying only 'brand name' products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; and
- g. Any arbitrary action in the procurement process.

⁶ 2 CFR 200.318(h)(i)

⁷ 2 CFR 200.318(j)

⁸ 2 CFR 200.318(k)

⁹ 2 CFR 200.319(a)

- 2) **Written Procurement Procedures.**¹⁰ The Non-Federal entity must have written procedures for procurement transactions that ensure all solicitations do the following:
 - a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
 - b. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals; and
 - c. All other factors to be used in evaluating bids or proposals.

5.5 Methods of Procurement

Non-federal entities must utilize one of the following methods of procurement:

5.5 Micro-Purchases¹¹

Micro-purchases, the acquisition of supplies or services which do not exceed the micro-purchase threshold, must be distributed equitable among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

5.6 Small Purchases¹²

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property. If small purchase procedures are used, price or rate quotations must be obtained from a minimum of three qualified sources.¹³ Quotations may be requested via telephone, fax, email, mail, or any other reasonable method. The non-Federal entity must clearly explain to all entities providing quotations that the information provided is being sought for informational purposes only and the request for quotation does not constitute a formal solicitation.

When obtaining price or rate quotations from vendors, extra care must be given to avoid giving a vendor any competitive advantage in a future procurement initiative.

5.7 Sealed Bids (Formal Advertisement)¹⁴

Sealed bids, bids that are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest price.

Procurement by sealed bids is the preferred method for procuring construction services *if the following conditions apply*:

- 1) A complete, adequate, and realistic specification or purchase description is available;
- 2) Two or more responsible bidders are willing and able to compete effectively for the business; and
- 3) 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.

If procurement by sealed bids is used, the following *requirements* apply:

¹⁰ 2 CFR 200.319(c)

¹¹ 2 CFR 200.320(a)

¹² 2 CFR 200.320(b)

¹³ Tex. Gov't Code §§2155.132(h): A state agency making a purchase under this section for which competitive bidding is required must attempt to obtain at least three competitive bids from sources listed on the master bidders list that normally offer for sale the goods being purchased.

¹⁴ 2 CFR 200.320(c)

- 1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;
- 2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- 3) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- 4) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- 5) Any or all bids may be rejected if there is a sound documented reason.

5.8 Creating, Advertising, and Opening Sealed Bids

A base bid should include all components of the approved project and should not include any items which were not included in the approved applications or which have not received subsequent approval.

- 1) **Creation of Sealed Bid Packages.** The non-Federal entity must create a bid package, usually written by an architect or engineer and based off of prepared plans or working drawings, that provides a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project. This package must:
 - a. Be sealed by an architect or engineer registered in The State of Texas and, if the project falls under the jurisdiction of another state agency, approval is required prior to construction;
 - b. For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility by the handicapped have been or will be satisfied must be executed and co-signed by a local jurisdictional official, filed in the contract documents file, and a copy must be sent to the State;
 - c. Contain all properly obtained lands, rights-of-way, and easements necessary for carrying out the project; and
 - d. Contain processes and procedures that any acquisition of land that occurs during the project is undertaken in accordance with the provisions of the Uniform Relocation Act.

1-A. When preparing the plans and specifications for the bid package, the following requirements pertaining to service connection line and hookup fees should be taken under advisement:

- a. The financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines is an eligible cost as a rehabilitation and will be considered an integral part of the overall sewer or water project.¹⁵
- b. Cost and pricing formats need to be developed;
- c. Generally, street, water, sewer, utility, and landscaping projects will be unit price contracts while building type contracts will be lump sum; and

¹⁵ 24 CFR §570.202(b)(6)

- d. For fixed price contracts with unit cost pricing, the bid specifications should delineate some type of item, estimated quality, unit price, and total cost.
- 2) **Public Opening of Sealed Bid Packages.** All sealed bid packages must be opened in accordance with the following standard in addition to any requirements imposed by local, state, and federal law:
- a. All bids shall be opened and read aloud during the bid opening and the apparent low bidder should be determined during this time;
 - b. Bids shall undergo a review for both technical and legal responsiveness;
 - c. Bidders must be evaluated as having the capacity to furnish the products and/or services required;
 - d. Minutes of the bid opening along with a tabulation of bids shall be placed in the contract file

The non-Federal entity must take action within 45 days of the bid opening to either award a contract to the lowest responsible bidder or reject any and all bids for just cause. If accepted, the non-Federal entity and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one of more extensions of 30 calendar days. Any final contracts award must be done so in compliance with the most recent federal wage decision.

5.9 Procedures for Bids that Exceed Cost Estimates

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project, if this occurs, the non-Federal entity shall consult with the GLO to determine the best course of action.

In coordination with the consultation requirement presented above, each non-Federal entity should develop procedures that outline the policies and procedures for each of the following options:

- 1) Process for the rejection of all bids received;
- 2) Process to reworking the specifications of the bid package;
- 3) Process for consultation with the GLO to ensure the approval of any reworking outlined in #2;
- 4) Process for re-advertising the project if specifications of the bid package are reworked and approved by the GLO;
- 5) Process to evaluate the feasibility of providing the difference between the estimated cost of the project and the lowest bid presented by exploring the reallocation of funds;
- 6) Process to evaluate the feasibility of providing the difference between the estimated cost of the project and the lowest bid presented by exploring other sources of funding such as local funds; and
- 7) A process for the formation and entrance into a legally binding contract with the lowest bidder for the amount of the bid presented and, subsequently, execute a change order to bring the project cost within the limits presented by the allocated funds.
 - a. ****It is strongly advised that the non-Federal entity thoroughly analyze how exercising this option would affect the other bidders in the process prior to awarding the contract. The change order proposed in #7 would change the project's scope of work and must be reviewed by the GLO prior to execution.*

5.10 Competitive Proposals¹⁶

The procurement by competitive proposals technique is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded.

It is generally used when conditions are not appropriate for the use of sealed bids.

IF procurement by competitive proposal 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 where by competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
 - a. This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms are a potential source to perform the proposed effort.

If only one bid or proposal is received, the non-Federal entity must receive approval from the GLO before awarding the applicable contract.

5.11 Noncompetitive Proposals

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

- 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.

*****Entities MUST obtain prior written approval from the GLO prior to using this procurement method.**

5.12 Solicitation Process

5.12.1 Request for Proposals (RFPs)

RFPs are used to procure professional services except A/E professional (design) services when the competitive negotiation method is utilized. An RFP must contain, at a minimum, descriptions of the following:

¹⁶ 2 CFR 200.320(d)

- 1) The non-Federal entity's requirements;
- 2) Anticipated terms and conditions that will apply to a contract awarded under the solicitation;
 - a. A solicitation may authorize offerors to propose alternative terms and conditions.
 - b. When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.
- 3) Information required to be in the offeror's proposal; and
- 4) Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance.

5.12.2 Request for Qualifications (RFQs)

RFQs are used to procure the professional (design) services of an engineering firm or architectural firm when using the competitive negotiation method. A selection is made based upon the competitor's qualifications, subject to negotiation of fair and reasonable compensation.

The services that may be provided may include, but are not limited to, the following:

1. Designing system improvements and construction engineering.
 - 1) Assisting the administrative consultant with the construction bid package in conformance with applicable federal requirements and supervising the bid advertising, tabulation, and award process, including preparing the advertisements for bid solicitation, conducting the bid opening, and issuing the notice to proceed.
 - 2) Assist in conducting the preconstruction conference.
 - 3) Field staking, on-site supervision of construction work and preparing inspection reports.
 - 4) Reviewing and approving all contractor requests for payment and submitting approved requests to the governing body.
 - 5) Providing reproducible plan drawings to the City/County upon project completion.
 - 6) Prepare operating and maintenance manuals.
 - 7) Conducting final inspection and testing.

RFQs cannot be used to procure project management or construction management services.

5.12.3 Review of Responses and Criteria for Award

Materials received in response to RFPs and/or RFQs are reviewed in accordance with one of the following:

- 1) **Competitive Point Range.** In using this review process, the non-Federal entity shall establish a predetermined range of points for proposals that would be considered adequate for qualifying a responder for a particular solicitation. All responders whose proposals or qualification statements score within that range would be invited to an oral interview and asked to submit a best and final offer. The proposals would then be re-evaluated and the highest scoring firm would be selected.
- 2) **Highest Point Earner.** In using this review process, the non-Federal entity shall evaluate all proposals or qualification statements in accordance with predetermined selection criteria and award the contract to overall highest scoring firm.

5.12.4 Verification of Contractor Eligibility

All non-Federal entities must ensure, prior to contract award, that all contractors receiving CDBG-DR funds meet all the eligibility requirements outlined in state and Federal law. At a minimum, the following steps must be taken to ensure contractor eligibility for all services procured:

- 1) **Prime Contractors.** All prime contractors must be cleared via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <http://www.sam.gov/portal/public/SAM>.
- 2) **Professional Consulting and Engineering Firms.** All professional consulting and engineering firms must be cleared via a search of SAM to ensure the professional consulting or engineering firm is in good standing and has not been debarred. The SAM portal can be found here: <http://www.sam.gov/portal/public/SAM>.
- 3) **Subcontractors.** All non-Federal entities must make their selected prime contractors aware that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

It should be noted that if any of the above listed parties are deemed ineligible to receive CDBG-DR funds after award of contract, the contract must be immediately terminated and the matter must be reported to the GLO for further action.

5.12.5 Bonding Requirements

For construction and facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding non-federal entity may accept the bonding policy and requirements of the GLO provided the GLO has made a determination that its interests are adequately protected. If such determination has **NOT** been made, the following minimum requirements must be met:

- 1) A bid guarantee from each bidder equivalent to five percent of the bid price consisting of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified,
- 2) A performance bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract, OR
- 3) A payment bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

5.13 Contract Cost and Price

The non-Federal entity must, in connection with every procurement action in excess of the Simplified Acquisition Threshold (\$15,000), perform a cost or price analysis

5.13.1 Price Analysis

In conducting a proper price analysis, the non-Federal entity must request several bids, proposals, or quotes for the materials, supplies, or services being procured. The firm that offers the most

competitive price and best value for the requested materials, supplies, or services shall be the front runner for contract award.

5.13.2 Cost Analysis

In conducting a proper cost analysis, the non-Federal entity must review and evaluate the separate elements of cost and profit in a received proposal. The non-Federal entity will utilize this process to determine how well proposed costs represent what a reasonable cost for the contract would be considering reasonable economy and efficiency.

A cost analysis necessary and required when:

- 1) The noncompetitive proposal method is used;
- 2) The action is a sole source procurement; and
- 3) When adequate price competition is lacking.

A cost analysis is also necessary for contract modifications and change orders unless price reasonableness can be established.

5.13.3 Procedure for when Price Exceeds Cost Estimates

5.14 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms

The non-Federal entity must take all necessary steps to affirmatively assure that small and minority businesses, women's business enterprises, and labor surplus firms are used whenever possible.

Affirmative steps *must* include the following:

- 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 parts (1)-(5) above.

5.15 Contract Formation

5.15.1 Types of Contracts

- 1) **Purchase Order.** Purchase orders are a form of contract utilized for the purchase of supplies, single task services, and produced items procured through the small purchase method. A Purchase Order should contain, at a minimum, the following¹⁷:

¹⁷ State of Texas Procurement and Contract Management Guide.

- a. Agency name and address;
 - b. Agency contract or Purchase Order number;
 - c. Date of the order;
 - d. Term of contract (delivery period after receipt of order or beginning and end dates);
 - e. Contractor's name, payee/vendor identification number, and address, including zip code;
 - f. NIGP class/item for each item;
 - g. Purchase Code Category;
 - h. List of contract documents and their order of precedence;
 - i. List of awarded items with quantity, unit of measure, and unit price with extended totals; and
 - j. Signature of authorized/certified purchasing representative.
- 2) **Fixed Price Contract.** A fixed price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset. This contract type (1) places maximum risk and full responsibility for costs and resulting profit loss on the contractor, (2) provides maximum incentive for the contractor to control costs and perform effectively, and (3) imposes a minimum administrative burden upon the contracting parties.
- 3) **Cost Reimbursement Contract.** A cost reimbursement contract is suitable for situations in which uncertainties are involved in contract performance that do not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. These types of contracts establish an estimate total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk).
- 4) **Time and Materials Contract.** A time and materials contract is suitable for use only after it has been determined that no other contract is suitable. This type of contract provides for the payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials.

5.16 Contract Preparation

5.16.1 Incorporation of CDBG-DR Program Requirements

All contracts executed by and between the non-Federal entity and a contractor must include the following CDBG-DR Program requirements:

- 1) Non-Federal entities must incorporate performance requirements and penalties into each procured contract or agreement;
- 2) Non-Federal entities must ensure that all contracts and agreements clearly indicate the period of performance and the date of completion; and
- 3) Non-federal entities must ensure that contracts do not contain any cost plus or incentive savings provisions and make no reference to compensation adjustments for cost plus or incentive savings provisions.

5.16.2 Requirements for Architectural and Engineering Contracts

A non-Federal entity may award A/E contracts using standard contract templates in addition to the inclusion of all required Provisions for Professional Services Contracts. All A/E contracting fees, even those provided for under either a fixed price contract or a cost reimbursement contract must be deemed reasonable and justifiable. If, after a project has been funded, there is a substantial

change in the scope of the project, then the GLO shall review these changes and determine whether or not any additional funds are allowable.

The provision of funds for A/E services is entirely contingent upon the amount of funds deemed allowable by the GLO. Firms will not be compensated from the applicable CDBG-DR program in the event of a project not receiving funding.

All final plans, specifications, and cost estimates must be submitted to the GLO for review prior to advertising for bids.

5.16.3 Required Contract Provisions

All non-Federal entities must, through the implementation of proper policies and procedures, ensure that all required contract provisions for CDBG-DR compliance are incorporated into each awarded contract.

For a full listing of all required CDBG-DR compliance contract provisions, see your GLO Grant Manager and **Resources** at the end of this chapter.

5.18 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

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Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
Subrecipient Procurement, Scopes of Work, Contract Templates, Resources	http://recovery.texas.gov/local-government/resources/procurement-contracting/index.html	P
Financial Interest Report	http://recovery.texas.gov/files/resources/housing/s2-financial-interest-report.pdf	P
Small Purchase Procurement Record	http://recovery.texas.gov/files/resources/infrastructure/s3-small-purchase-procurement-record.pdf	P

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 6 - ENVIRONMENTAL

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CHAPTER 6 ENVIRONMENTAL

Environmental Review Process (To Be Conducted by Responsible Entity)



****Note that 24 CFR §58.6 – Flood Insurance, Coastal Barrier Resources Act, and Runway Clear Zone Requirements – apply to all projects, whether exempt, categorically excluded, or requiring the EA or EIS level of review.**

6.1 Introduction

The subrecipient is responsible for compliance with federal environmental review requirements. This chapter includes a summary and basic understanding of the process. Any periodic updates provided by HUD environmental compliance staff will be required for CDBG-DR subrecipients, and personnel completing the environmental review should be familiar with the resources and forms found on the HUD Environmental Review website (also known as “HUD Exchange”) and should contact their GLO Grant Manager to request technical assistance. **See web address/link for HUD Exchange in Resources, below.**

HUD guidance uses the term Responsible Entity (RE) to refer to the unit of government responsible for meeting environmental review requirements, which includes the CDBG-DR subrecipient. This means that the subrecipient is responsible for completing the review, with or without assistance from a third party, and certifying the results. When the Certifying Officer signs the documents, (s)he certifies that not only has the project been found to have or not have significant impacts on the environment, but also that the required process was completed to reach this finding.

GLO must monitor the subrecipient’s compliance with HUD environmental review requirements; failure to comply with these requirements will jeopardize the project and could lead to disallowed costs, repayment of funds, and debarment from the program for the subrecipient and administrators involved with the environmental review process. **If it is not known how to proceed, contact your GLO Grant Manager.**

For important HUD environmental regulations, see 24 CFR 58.

6.2 Basis of Environmental Review

A key factor in performing an environmental review is the fact that the environmental review process must consider the ultimate effect of a proposed project. That is, the effects of both the CDBG-DR and related project activities must be considered. For example, if CDBG-DR funds are being used to acquire a site for a new construction project, the ultimate effect of the project is not solely the acquisition of the site, but also the construction of the project, including infrastructure. Therefore, the environmental review must address the impacts of both the CDBG-DR-funded land acquisition and the privately financed construction of the project. The review must address the actual project site and the surrounding area.

Basics of Environmental Review

- 1) What is there now?
- 2) What will be there when the project is complete?
- 3) How will this be accomplished?

6.3 Timing of the Environmental Review & Choice Limiting Actions

An important concept under environmental regulation is the timing of the environmental review. **An environmental review must be performed before any funds, regardless of source, are committed on an activity or a project. No activity or project may be undertaken if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. (24 CFR 58.22(a)).** This prohibition on “choice-limiting actions” prohibits physical activity, including acquisition, rehabilitation, and construction, as well as contracting for or committing to any of these actions.

Therefore, Responsible Entities are required to complete their environmental reviews, Requests for Release of Funds and clearance related paperwork **before**:

- Any commitment of CDBG-DR funds for activities; and
- Any commitment of non-CDBG-DR funds that would have an adverse environmental impact or limit the choice of alternative.
- A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. If the choice-limiting action was undertaken prior to the resolution authorizing submittal of the CDBG-DR application, the activity that was started is **not** required to be suspended. However, when a unit of local government applies for CDBG-DR funding, it must cease **further choice-limiting actions (including additional commitment of funds) on the project until the environmental review process is complete.** Please contact GLO if the preceding applies to your project.

6.4 Option Contracts

A contract to purchase property for a CDBG-DR project before the environmental review is completed is considered a “choice limiting action” and must be avoided until after the environmental review process is completed. However, there is one action that may be taken beforehand that might conclude in acquisition once the environmental review process is completed: an option contract. An option contract is a useful tool for grantees to obtain site control while allowing time to complete the environmental review.

Option contracts may be used to gain site control of any type of property, including commercial, industrial, residential for any proposed activity or reuse, including demolition, new construction, and conversion of use, so long as it specifically is contingent of environmental clearance.

A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the potential buyer the exclusive right to buy the property at a specific price within a specific time period. The option agreement does not impose any obligation upon the potential buyer to purchase the property. The option agreement does obligate the seller to sell at the specified price if the potential buyer exercises the option to buy in the manner described in the contract.

HUD’s regulations at 24 CFR 58.22(d) allow for an option agreement for any project prior to the completion of the environmental review when the following requirements are met:

- (1) the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and*
- (2) the cost of the option is a nominal portion of the purchase price.*

The provision allows flexibility regarding the term “nominal” and any reasonable interpretation is acceptable. For instance, it is reasonable to conclude that the nominal amount for option contracts will vary depending upon the local real estate market and the purchase price.

6.5 Environmental Laws and Regulations

The following provisions of law authorize state governments to assume HUD's environmental review responsibilities. GLO will act for HUD for environmental reviews, decision-making, and action that would otherwise apply to HUD under NEPA (National Environmental Policy Act) and other provisions

of laws that further the purposes of NEPA, as specified in 24 CFR Part 58. These regulations are referenced in 24 CFR 58.1(b).

6.6 Laws

The foremost Environmental law is the National Environmental Policy Act (NEPA) and implementing [Executive Order 11514](#) (35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902) as amended by [Executive Order 11991](#) and the implementing regulations of the [Council on Environmental Quality](#) (40 CFR parts 1500-1508). This is not an all-inclusive list as projects can cross over into other laws and authorities not listed here. See the HUD Websites on Federal Environmental Regulations in the links found below in **Resources**.

NEPA

42 USC § 4321 provides: The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Executive Order 11514

Protection and Enhancement of Environmental Quality

Executive Order 11991

Relating to Protection and Enhancement of Environmental Quality

Historic Preservation Requirements:

National Historic Preservation Act of 1966, 54 USC 300101 *et seq.*

Archeological and Historic Data Preservation Act of 1974, 54 USC 312501-312508

Executive Order 11593, Protection and Enhancement of the Cultural Environment

Antiquities Code of Texas, Chapter 191 Natural Resources Code

Tribal Consultation in Projects that are Reviewed under 24 CFR Part 58

See **Resources** for web address/link.

6.7 Regulations

24 CFR Part 51: Environmental Criteria and Standards

Description: This regulation provides environmental standards for determining project acceptability and necessary measures to ensure that activities assisted by HUD achieve the goal of a suitable living environment. The environmental criteria include noise abatement and control and the siting of HUD-assisted projects near hazardous operations including explosives, flammables, runway clear zones at civil airports, and accident potential zones at military airfields.

24 CFR Part 55: Floodplain Management and Protection of Wetlands

Description: HUD regulations to implement executive order on development in floodplains. See HUD Exchange for more information and publication requirements. This could add 15 days to the Environmental Process.

24 CFR Part 58: Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

Description: The procedures outlined in this regulation are used by entities that assume HUD's

environmental review responsibilities in determining program compliance with the intent of the NEPA and other related statutes. Applicable HUD programs under this regulation include only those in which a specific statute allows governing entities to assume the Federal responsibility.

36 CFR Part 800: Protection of Historic Properties

Description: The Advisory Commission on Historic Preservation Rules, used by HUD for all HUD projects.

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6.8 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

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Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
Environmental Review Resources	http://recovery.texas.gov/local-government/resources/environmental/index.html	P
HUD Environmental Regulations	https://www.hudexchange.info/programs/environmental-review/hud-environmental-regulations/#hud-environmental-regulations	P
HUD Federal Regulations	https://www.hudexchange.info/programs/environmental-review/hud-environmental-regulations/#related-federal-laws-and-authorities	P
Texas Historical Commission Project Review	http://www.thc.texas.gov/project-review	P

** Type of Form: P = Program, I = Infrastructure, H = Housing

CHAPTER 7 **CONTRACT CONDITIONS**

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CHAPTER 7 – CONTRACT CONDITIONS

7.1 Introduction

In addition to the standard federal, state, and program requirements, special conditions may apply to the grant contract based on the specific project description or location. **Subrecipients must document proof of compliance with all applicable provisions.** The special conditions are generally found in the CDBG-DR contract. In all correspondence with the appropriate agencies concerning the subrecipient's project, please be sure to reference the CDBG-DR contract number.

7.2 Temporary Project Signage

All CDBG-DR construction projects utilizing CDBG-DR funding must have temporary signage erected in a prominent location at the construction project site or along a major thoroughfare within the community as directed by the owner. A photo of this signage must be submitted to GLO prior to the release of construction funds.

Requirements of temporary signage include:

- placement in a prominent visible public area that is not blocked or obscured;
- constructed of durable materials;
- minimum size of 12" x 18" with lettering no smaller than 1/2";
- Required text (or similar)*:
"This project is funded by the Texas General Land Office with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Disaster Recovery Program."

Temporary signage may be reused for future CDBG-DR projects as appropriate.

7.3 Water Well Projects

Prior to submission of the Project Completion Report (PCR) to GLO for the water system improvements described in Exhibit A, Performance Statement, of the CDBG-DR contract, the subrecipient must submit a letter from TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to Title 30, TAC, Chapter 290–Rules and Regulations for Public Water Systems.

7.4 Septic System Replacement Projects

Prior to submission of the Project Completion Report for on-site sewer facilities improvements described in Exhibit A, Performance Statement, of the CDBG-DR contract, the subrecipient must provide documentation that final plans, specifications, and installation of its sewer system improvements (septic systems) have been reviewed and approved by the City or County Health Department through authority granted by TCEQ.

NOTE: All septic tanks installed in the State of Texas are required to be inspected by TCEQ or an authorized representative licensed by TCEQ. All existing facilities being replaced or abandoned must have the wastewater removed by a registered waste transporter, and all tanks or pits shall be filled to ground level with fill material (less than three inches in diameter) which is free of organic and construction debris. (30 TAC 285.36)

7.5 Building, Parking Lot, and Sidewalk Projects

For projects where accessibility to the public is a fundamental goal of the project and/or is a key factor in meeting the National Objective (ex. sidewalk improvements, public health clinics, senior centers, etc.):

Prior to submission of the Project Completion Report for buildings, parking lots and/or sidewalks constructed or renovations which are subject to Section 469.101 of the Texas Government Code and described in Exhibit A, Performance Statement, of the CDBG-DR contract, the subrecipient must submit a copy of the Registered Accessibility Specialist's signed and dated Inspection Transmittal Letter affirming that the building, renovations, parking lots and/or sidewalk construction activities are in compliance with Texas Department of Licensing and Regulation (TDLR) requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act and Texas Accessibility Standards. Additionally, all communities must ensure that all their project activities are in compliance with all provisions of the Americans with Disabilities Act of 1990 (ADA).

For other building projects (ex. fire stations, private employers assisted through TCF, etc.):

The contractor shall provide documentation verifying that plans and specifications for construction, significant renovation, or modification of a building or facility subject to Section 469.101 of the Texas Government Code has been registered with the Texas Department of Licensing and Regulation (TDLR). Plans and specifications must be designed by an architect or engineer licensed in the state of Texas. Documentation verifying submittal of the plans to TDLR must include an "Architectural Barriers Project Registration Confirmation Page," complete with the license number of the designing architect or engineer. The subrecipient is responsible for recordkeeping, which documents full compliance with all requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act, Texas Administrative Code, and Texas Accessibility Standards.

7.6 Projects in a Floodplain

Subrecipients completing projects in a floodplain must participate in the National Flood Insurance Program (NFIP). The subrecipient shall provide documentation to GLO prior to contract termination which indicates that it has received approval from the Texas Water Development Board as the NFIP State Coordinating Agency that ordinances or orders, as appropriate, necessary for the subrecipient to be eligible to participate in the NFIP have been adopted.

7.7 Projects Requiring Designs/Plans/Specifications

The subrecipient shall receive and maintain a copy of the final project record drawing(s) and/or engineering schematic(s), as constructed using funds under the CDBG-DR contract.

- These maps must be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as CD, which are compatible with computer systems owned or readily available to the subrecipient.
- The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the subrecipient.
- Complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be received and maintained by the subrecipient in written form.

- Upon request, the subrecipient shall provide GLO a copy of all the electronic files and other data received. Additional information on the data and format requirements is contained in the CDBG-DR contract.

7.8 Projects Requiring Permanent Signage

Permanent signage identifying the location as a CDBG-DR-funded project is required for any CDBG-DR funded public buildings, park areas, or other structures open to the public, in addition to commercial facilities funded through the TCF Real Estate program. Some examples of projects requiring permanent signage include community centers, parks/recreation facilities, fire stations, and significant improvements to existing facilities. Project signage is an eligible construction cost.

Requirements of permanent signage include:

- placement in a prominent visible public area that is not blocked or obscured;
- constructed of permanent materials;
- minimum size of 12" x 18" with lettering no smaller than 1/2";
- Required text: "This project is funded by the Texas General Land Office with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Disaster Recovery Program."

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7.9 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

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**** Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 8 **ACQUISITION & RELOCATION**

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CHAPTER 8

ACQUISITION & RELOCATION

8.1 Introduction and Purpose

CDBG-DR funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 et seq. (“URA”), and the federal regulations found in 49 C.F.R. Part 24 (See also Section 104(d) of the Housing and Community Development Act of 1974 and its implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD funded programs). The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses or farms as a result of rehabilitation, demolition or private acquisition carried out under federally assisted programs. The URA also establishes equitable land acquisition policies.

Relocation requirements of the URA are discussed in the relocation guidelines available on the HUD website (link in **Resources**, below).

The purpose of the URA is:

- 1) To ensure that owners of real property acquired for federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally-assisted land acquisition programs.
- 2) To ensure that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently and equitably and do not suffer disproportionate injuries as a result of projects that benefit the public as a whole.
- 3) To ensure that acquiring/condemning authorities implement these regulations in an efficient and cost-effective manner.

General Requirements

HUD’s Handbook 1378 provides thorough guidance on real property acquisition under URA. If there are questions whether any of the following apply to a specific situation, please consult your contract specialist.

Acquisition rules apply whenever an acquiring entity:

- undertakes the purchase of property directly;
- provides a nonprofit or for-profit entity with funds to purchase the property;
- hires an agent or consultant to act on its behalf in acquisition;
- undertakes acquisition on or after a CDBG-DR application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity;
- undertakes an acquisition before the application submission date and the acquisition were intended to support a subsequent CDBG-DR activity.

Each property owner must be properly informed of their rights, as required by law, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their land, even if they are a direct beneficiary of the project.

Before requiring the property owner to surrender possession of the real property, the acquiring entity must pay the agreed purchase price to the owner.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project. 49 CFR §24.102(k)

8.2 Environmental and Acquisition

A contract to purchase or lease property for a CDBG-DR project before the environmental review is completed is considered a commitment of funds and a choice limiting action according to 24 CFR §58.22(a) and must be avoided until after the environmental review process is completed and GLO has issued a release of funds. Note that any executed instrument, such as an easement document, which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. However, there is one action that may be taken beforehand that might conclude in acquisition once the environmental review process is completed: an option contract. An option contract is a useful tool for grantees to obtain site control while allowing time to complete the environmental review.

HUD's regulations at 24 CFR §58.22(d) allow for an option agreement for any project prior to the completion of the environmental review when the following requirements are met:

- (1) the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- (2) the cost of the option is a nominal portion of the purchase price.

8.3 Terms and Definitions

Acquiring Entity / Acquiring Agency

The term "acquiring entity" and "acquiring agency" are used interchangeably and refer to the entity (in most cases, the subrecipient) performing the acquisition or under whose authority the acquisition is performed. Ultimately, the subrecipient is responsible for ensuring compliance with all URA requirements, and the term subrecipient is used throughout this chapter. This does not, however, prevent another entity such as a water supply corporation from acquiring real property for the grant-funded project. All URA rules are applicable regardless of the type of entity completing the acquisition activity.

Eminent Domain

Eminent domain refers to the power of the government to take private property and convert it to public use. The Fifth Amendment to the US Constitution provides that government may only exercise this power if it provides just compensation to the property owner.

Important Note: The State of Texas' eminent domain authority is delegated by statute to state agencies, political subdivisions (cities, counties and special districts) and some private entities. Governmental entities have eminent domain authority over properties that are located both inside and outside their taxing jurisdiction. All municipalities in Texas (home rule, general law and special law) are provided the authority of eminent domain under Section 251.001 of the Local Government Code; authority for counties to exercise eminent domain is found in Section 261.001 of the Local Government Code. Section 49.222 of the Texas Water Code confers water districts and water supply corporations with eminent domain authority to acquire land, easements, or other property necessary for water, sanitary sewer, storm drainage, or control purposes. (Note that water supply corporations are considered private entities.) However, Section 2206.001 of the Government Code limits the eminent domain authority of governmental and private entities for acquisition that confers a private benefit on a private party or for economic development purposes (unless the economic development is a secondary purpose resulting

from a municipal community development or municipal urban renewal activities to eliminate slum or blight as provided by applicable provisions of the Local Government Code).

Condemnation

Condemnation refers to the legal process used for taking property under the authority of eminent domain. The use of the term should not be confused with its use in declaring a property to be uninhabitable or unsafe.

Real Property

All public improvements or activities related to an eligible CDBG-DR project must be constructed on real property that is publicly owned, owned by the subrecipient to the grant, or recorded as a right-of-way or easement. Real property in the context of acquisition refers to permanent interest in real property as well as certain less-than-full-fee interests in real property. Acquisition rules apply to CDBG-DR projects whenever:

- 1) Fee simple title to the property is acquired;
- 2) Permanent and temporary easements necessary for the project are acquired;
- 3) Properties subject to a life estate or a life use are acquired; and
- 4) Property that is leased for a term of 15 years or more is acquired. Note that a lease term for less than 15 years does not satisfy HUD's standard for real property acquisition and would, therefore, not meet the CDBG-DR program 'interest in property' requirement.

Improvements constructed on property that is not publicly owned or recorded as a right-of-way or easements are not eligible CDBG-DR projects. Federal acquisition procedures do not apply to temporary easements needed solely to perform work intended exclusively for the benefit of the property owner.

In general, permits and licenses, such as railroad permits, do not constitute real property acquisitions and, therefore, are not subject to the URA requirements. In distinguishing whether a permit/license is actually an easement, the subrecipient should carefully consider such factors as the cost of the permit or license; its term; whether the license/permit is revocable at will; and/or whether there is a transfer of interest in the property. If there is a question of whether the permit or license should be considered an easement, subrecipients should seek legal counsel.

8.4 Methods of Acquisition

An acquiring entity may acquire real property after determining whether the acquisition is voluntary or involuntary (see below description of determining whether an acquisition is voluntary or involuntary) through one of the following methods:

- 1) donation
- 2) just compensation purchase
- 3) negotiated purchase
- 4) condemnation

Donation: A transaction may be considered a donation if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions.

Just Compensation Purchase: The acquisition price is determined through a valuation process, such as an appraisal or valuation through property tax records or appraisal district records.

Negotiated Purchase: Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement.

Condemnation: An acquiring entity should use condemnation only as a last resort and must request and obtain approval from GLO in advance before commencing condemnation procedures. Acquiring entities must comply with Chapter 2206 of the Texas Government Code and all other applicable law. Any subrecipient considering condemnation must be aware of spending requirements associated with CDBG-DR funds. If a project requires condemnation the GLO must be notified immediately. In addition, the use of CDBG funds to support the use of eminent domain on an economic development project that primarily benefits a private entity is prohibited. See the applicable Federal Register and your GLO Grant Manager for additional information.

8.5 Determining Voluntary or Involuntary

Acquisition will be either voluntary or involuntary. The terms relate to whether or not the acquiring entity possesses the authority of eminent domain (condemnation), and if the transaction occurs as a result of the use or threat of use of that authority. URA provides different protections to property owners depending on whether the acquisition is voluntary or involuntary. (See 49 CFR 24, Subpart B Real Property Acquisition)

VOLUNTARY

Acquiring Entities with Eminent Domain Authority

Voluntary acquisitions are negotiated between the property owner and the acquiring entity without the threat of eminent domain or condemnation. For acquiring entities with the authority of eminent domain, acquisitions must meet the following conditions to be considered voluntary: (See 49 CFR 24.101(b)(1)(i)-(iv)).

- 1) No specific site is needed and any one of several properties could be acquired for project purposes.
- 2) The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits.
- 3) The acquiring entity must inform the owner in writing that the property will not be acquired through condemnation if negotiations do not reach an amicable agreement.
- 4) The acquiring entity must inform the owner in writing of the property's market value.

Acquiring Entities without Eminent Domain Authority

Public Land Acquisition - Acquiring entities do not have eminent domain authority to obtain publicly-owned land. Therefore, acquisitions of property owned by federal, state, local governments, or political subdivisions (such as school districts or river authorities) are considered voluntary acquisitions. The acquiring entity must still provide notification to the governmental entity regarding interest in the property, the lack of eminent domain to acquire the property, and the estimated market value of the property to be acquired before negotiating the sale, lease, or donation of the public land.

Economic Development - economic development projects benefiting a private entity acquisition may only be conducted through voluntary procedures using non-federal funds.

In no case is it permissible for an entity to subsequently undertake the acquisition under threat or use its eminent domain authority if initial negotiations for a voluntary acquisition fail. If the agency cannot ensure the applicable requirements of 49 CFR 24.101(b)(1)(i)-(iv) are satisfied, then such acquisitions must be pursued as an involuntary acquisition under the full requirements of 49 C.F.R. Part 24 Subpart B.

INVOLUNTARY

If the acquisition does not comply with the requirements above (see 49 CFR 24.101(b)(1)(i) – (iv)), the acquisition is considered involuntary. Involuntary acquisition procedures must be followed for any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs.

8.6 Voluntary Acquisitions

Step 1 – Determine property to be acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property that must be acquired for the project to be successful.

Step 2 – Consult with the GLO for review and acceptance.

Step 3 – Determine Market Value of the Property

The subrecipient may use a market estimate such as a tax valuation to determine value. An appraisal is not required for voluntary acquisitions.

Step 4 – Notify Owner of Property Rights

Voluntary acquisitions can occur only when an acquiring entity lacks the authority to condemn (eminent domain) or when it revokes its intent to use eminent domain by giving specific written notice to the property owner.

The subrecipient must notify the owner in writing, prior to making a purchase offer, of the following (49 CFR § 24.101(b)(1)(i)-(iv)):

- the property's market value and
- the subrecipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached.

Optional - In addition, the owner can also be invited to donate the property. The acquiring entity may include a form for the owner to complete allowing him/her to accept or decline the request to donate the land.

Step 5 – Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR §58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by GLO. If a significant environmental impact will occur, look at alternative sites.

Step 6 - Determine Price or Donation

The owner may choose to donate the property. However, after an acquiring entity has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an acquiring entity may negotiate freely with the owner in order to reach an agreement. Since

these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations for voluntary acquisition, it would be entirely appropriate for an acquiring entity to apply the administrative settlement concept and procedures in 49 CFR 24.102(i) to document the rationale for determining the negotiated price.

Step 7 – Execute Agreement

The subrecipient and the property owner must execute a sale or donation agreement and the deed must be recorded as required by State regulations.

Step 8 – Documentation Information

The subrecipient must prepare and submit to GLO all acquisition documentation. See to the GLO Grant Manager for additional information.

8.7 Involuntary Acquisitions

Step 1 – Determine property to be acquired

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property that must be acquired for the project to be successful.

Step 2 – Submit Form A600 Initial Acquisition Report to GLO for review and approval.

Involuntary acquisition requires GLO authorization prior to pursuing the property. See to the GLO Grant Manager for additional information.

Step 3 – Notify Owner of Property Rights

As soon as feasible, the acquiring entity must notify the owner in writing of its interest in acquiring the property and the basic protections provided to the owner under URA and HUD regulations.

The subrecipient must provide the owner with the following, prior to making a purchase offer:

- Notice to Owner for Involuntary Acquisition
- “When a Public Agency Acquires Your Property” - This HUD booklet describes important features of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended.
- “The Texas Landowner’s Bill of Rights” – This required informational booklet explains the rights and protections available to landowners. (See § 402.031, Texas Govt. Code and Property Code §21.0112)

Optional - In addition, the owner can also be invited to donate the property. The acquiring entity may include the following documents:

- Form for the owner to complete allowing him/her to accept or decline the request to donate the land.
- Form on which the owner may waive his/her right to an appraisal of the land.

Step 4 – Determine Just Compensation for the Property

An appraisal is required for property acquired under involuntary procedures unless the following (see 49 CFR 24.102(c)(2)):

- If the property valuation is simple and the anticipated value of the proposed acquisition is \$10,000 or less, no formal appraisal is required. The acquiring entity must prepare a waiver valuation and have a reasonable basis for the waiver valuation.
 - If the owner is donating the property and releases the acquiring/condemning authority from its obligation to appraise the property, no formal appraisal is required, 49 CFR § 24.102(c)(2).
 - If the value of the property exceeds \$10,000, but is less than \$25,000, GLO will consider written requests for waiver of appraisal. See your GLO Grant Manager for additional information.
-
- The process of estimating value when an appraisal is determined to be unnecessary is considered a “waiver valuation.” Appraisal standards are addressed in 49 CFR 24.103.

The property owner, or the owner’s designated representative, must be invited to accompany the appraiser and be given the opportunity to present facts and information which may affect the valuation. See 49 CFR §24.102(c)(1). The subrecipient should consult with their legal counsel for guidance with respect to the requirements and procedures of the URA in determining just compensation.

Qualifications of Appraiser and Review Appraiser

The appraisal procedures require that a qualified appraiser and a qualified review appraiser be retained (See 49 CFR 24.103 -.104) in compliance with GLO professional services procurement procedures and applicable state procurement law. A contract (fee) appraiser hired to perform an appraisal or a review appraisal must be a state licensed or certified real estate appraiser.

Appraiser – The appraiser must provide an independently and impartially prepared opinion of the value of an adequately defined property as of a specific date, supported by the presentation and analysis of relevant market information.

- **Review Appraiser** – Per 49 CFR 24.104, the review appraiser must examine the analysis of market information in appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103, and all other applicable requirements. The review appraiser may be a member of the staff of the acquiring entity but must have adequate experience, education, training, and certification/licensing. If the review appraiser is unable to recommend or approve an appraisal as an adequate basis for the establishment of just compensation, the review appraiser may, as part of the review, present market information to support a recommended value.

□

□ **Step 5 - Notification—Establishment and offer of just compensation**

Before the initiation of negotiations, the subrecipient must establish an amount believed to be just compensation to offer the property owner. The subrecipient must provide the just compensation value of the property to the owner in writing prior to making a purchase offer. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The just compensation determination statement and notification to the owner must be signed by an acquiring entity official and must include:

- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation.

(See 49 CFR 24.102)

Step 6 – Complete Environmental Review

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR §58.22, a subrecipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by GLO.

Step 7 – Determine Price

The owner may choose to donate the property or may accept the just compensation amount, in which case the parties may proceed with the execution of appropriate donation or sales documents in Step 8.

The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given reasonable opportunity to present material and information which the owner believes is relevant to determining the value of the property, and to suggest modifications in the proposed terms and conditions of the purchase.

The purchase price may differ or exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement have failed and an acquiring entity official approves such settlement as reasonable, prudent, and in the public interest. Once a final price is determined to be acceptable by both parties, an Administrative Settlement with written justification shall be prepared, which states pertinent information, including trial risk and other factors that support such a settlement (see 49 C.F.R. § 24.102(i)).

If negotiations are unsuccessful and the use of eminent domain has been approved by GLO, the acquiring agency must complete all required procedures. Please refer to your local attorney for specific guidance.

Step 8 – Execute Agreement

The subrecipient and the property owner must execute a sales or donation agreement. The deed must be recorded as required by State regulations.

Step 9 – Report Acquisition Parcel Information

The subrecipient must prepare and submit to GLO information regarding each parcel. See your GLO Grant Manger for additional information.

8.8 Acquisition and Other Program Requirements

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Procurement: Necessary surveyors, appraisers, title companies and other professionals whose services are required for acquisition must be procured under GLO rules for procurement of professional services.

Environmental Review: Environmental reviews must be completed prior to completion of acquisition activities.

Release of Funds:

- No CDBG-DR construction funds will be released until the initial acquisition information been submitted to GLO.
- All acquisition activities must be fully documented, completed, executed and recorded, prior to the execution of any related construction contracts.
- If acquisition is required additional documentation may be required before construction funds may be released. See your GLO Grant Manager for additional information.

Contract Modifications and Amendments: Addition or deletion of acquisition activities to the CDBG-DR contract must be approved by GLO.

Recordkeeping: The subrecipient is responsible for demonstrating compliance with URA requirements, regardless of who actually performs the duties. All records and notices and their date of delivery must be maintained locally for GLO and HUD monitoring purposes.

- Documents, as applicable, must be submitted to GLO and retained in the local file.
- All mailed communications should be “USPS Certified, Return Receipt Requested” or similar, or hand delivered with a notation on a copy by a witness to the delivery. The acquiring entity’s records must contain the complete record and demonstrate compliance.

Private to private acquisition of Real Property:

- URA - If an acquisition is a private to private acquisition of real property, the URA does not apply. The private development part of the project is considered separate; therefore, acquisition by a private entity from another private entity entirely for private use is not considered to be subject to URA. However, if CDBG-DR funds are invested in public infrastructure to support that private enterprise, any acquisition with respect to that public infrastructure is subject to URA.
- Environmental - If the private to private transfer of property would not have occurred if not for the federal project, then the real property must pass environmental clearance before the acquisition (a choice limiting action) occurs.

8.9 Best Practices

Whether acquisition is voluntary or involuntary must be determined at the beginning of the process, so the proper procedures and notifications are performed. Failure to follow the proper procedure for the type of acquisition may result in financial penalties, including possible contract termination.

GLO recommends the acquiring entity begin title research early in the acquisition process to correct title issues that may cause delays.

GLO also recommends acquisition matters be completed prior to construction activities being bid to avoid delays caused by last minute acquisition changes.

When a project includes multiple activities and only some of the activities require acquisition, the subrecipient must consult with GLO to determine which activities may occur prior to completing acquisition.

It is likely that the process of obtaining an appraisal and review appraisal will cause delays in the acquisition process. This may prevent completion of the CDBG-DR Performance Statement activities

within the contract period. In this circumstance, the project as contracted will need to be re-evaluated to determine its feasibility. Contact you GLO Grant Manager for technical assistance.

The use of condemnation procedures is not compatible with CDBG-DR projects. The use of condemnation procedures generally requires an extended time to accomplish and is not an eligible cause for contract extension.

See GLO website and **Resources** below for additional Sample documents.

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8.10 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information. Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
State of Texas Publication: “The Texas Landowners Bill of Rights”	https://www.texasattorneygeneral.gov/sites/default/files/fil	P
HUD publication: “When a Public Agency Acquires Your Property”	https://www.hud.gov/sites/documents/1041cpd.doc	P
Uniform Relocation Assistance Act General Information	http://recovery.texas.gov/local-government/resources/ura/index.html	P
Real Estate Acquisition and Relocation on the HUD website	https://www.hudexchange.info/programs/relocation/	P
HUD Handbook 1378	https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780	P
Initial Real Property Acquisition Report	http://recovery.texas.gov/files/resources/infrastructure/s4-initial-real-property-acquisiton-estimate-report.pdf	I
Real Property Acquisition (per parcel)	http://recovery.texas.gov/files/resources/infrastructure/s4-real-property-acquisition-detail-report.pdf	I
Notice of Intent— Involuntary Acquisition	http://recovery.texas.gov/files/resources/infrastructure/s4-hud-appendix-30---guideform---notice-to-owner_involuntary-acquisition.docx	I
Notice of Intent—Donation	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-notice-to-owner-for-donations-of-easements-and-rights-of-way.docx	I
Owner Release for Donated Property	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-owner-release-form-for-donated-property.docx	I

Notice of Agreement to Donate	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-notice-of-agreement-to-donate.docx	I
Voluntary Acquisition Informational Notice	http://recovery.texas.gov/files/resources/infrastructure/s4-hud-appendix-32---voluntary-acquisition-informational-notice.docx	I
Involuntary Acquisition Informational Notice	http://recovery.texas.gov/files/resources/infrastructure/s4-hud-appendix-31--voluntary-acquisition-informational-notice.docx	I
Owner Release Form for Donated Property	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-owner-release-form-for-donated-property.docx	I
Notice of Agreement to Donate	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-notice-of-agreement-to-donate.docx	I
Just Compensation Determination Statement	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-just-compensation-determination-statement.docx	I
Written Purchase Offer	http://recovery.texas.gov/files/resources/infrastructure/s4-sample-written-purchase-offer.docx	I
Buyout and Acquisition Guidance	http://recovery.texas.gov/local-government/resources/buyouts-acquisitions/index.html	H

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 9 - **LABOR & DAVIS-BACON**

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CHAPTER 9

LABOR & DAVIS-BACON

9.1 Overview

This chapter offers a brief description of the laws and regulations associated with federal labor standards administration and enforcement, including CDBG-DR contract requirements for Davis-Bacon compliance and responsibilities of the subrecipient.

This chapter refers to HUD Handbook 1344.1. Information about each requirement can be found on HUD's website at the following link:

https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441

Title I of the Housing and Community Development Act of 1974 requires the payment of Davis-Bacon Act prevailing wage rates (which are determined by the U.S. Department of Labor) to all workers on CDBG-DR construction projects in excess of \$2,000. (42 USC §5310; 40 USC 3142(d)). **These requirements apply regardless of whether the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process.**

Activities financed by CDBG-DR that are not “construction work” do not trigger Davis-Bacon requirements, for example:

- Real property acquisition;
- Architectural and engineering fees;
- Other professional services (legal, accounting, testing**); and
- Other non-construction items (furniture, business licenses, real estate taxes).

Even if CDBG funds finance only a **portion of a construction contract, Davis-Bacon requirements still apply to the **entire** construction contract.**

(**Note: Drilling a test well can be considered either a component of construction or a professional service. To determine if Davis-Bacon applies to a test well, please refer to DOL Field Operations handbook, 15d05, for additional guidance.)

9.2 Objectives of Davis-Bacon

The following five key labor standard objectives must be accomplished by the subrecipient and/or GLO in order to administer and enforce Davis-Bacon requirements and protect workers' rights. Submit all documentation to your assigned GLO Grant Manager.

Objectives for Davis-Bacon Labor Standards Compliance

- 1) Apply Davis-Bacon requirements properly.
- 2) Support subrecipient compliance with labor standards through education and advice.
- 3) Monitor subrecipient performance.
- 4) Investigate probable violations and complaints of underpayment.
- 5) Pursue debarment and other available sanctions against repeat labor standards violators.

By executing the CDBG-DR contract, subrecipients have agreed to administer and enforce Davis-Bacon requirements and have accepted the responsibilities described in this chapter.

9.3 Procedures for Labor Standards Compliance

A construction project covered by Federal labor standards requires a series of specific actions by labor standards personnel **prior to the actual start of construction.**

STEP 1 Designate a Labor Standards Officer (LSO) for the project.

The LSO is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction advice and support to the subrecipient and other project principals (for example, the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a contractor that is ineligible (i.e., debarred) for federally-assisted work;
- Providing the proper Davis-Bacon wage decision and ensuring that the wage decision and contract clauses are incorporated into the contract for construction and any sub-contracts;
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing payroll reports; and ensuring that the applicable Davis-Bacon wage decision and the Department of Labor’s “Notice to All Employees” are posted at the job site; and
- Overseeing any enforcement actions that may be required.

The LSO may be an employee of a city or county or a private consulting firm. An LSO is required for all grant contracts with construction activities, including those with force account approval.

STEP 2 Obtain an applicable Wage Decision for the project.

Wage decisions:

- Are established by the U.S. Department of Labor (DOL);
- List construction work classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates, and fringe benefits where prevailing, that people performing work in those classifications must be paid;
- Are categorized into four groups (Heavy, Highway, Building, and Residential Construction);
- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified from time to time to keep them current.

The LSO must obtain the applicable wage decision from the Department of Labor’s website at www.wdol.gov for all construction contracts where Davis-Bacon and Related Acts (DBRA) applies that are greater than \$2,000. The LSO must complete Labor Standard Record and submit to GLO.

WAGE RATE CLASSIFICATIONS

The following descriptions and illustrations are provided as guidelines. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply.

HIGHWAY CONSTRUCTION -- Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to building or heavy construction.

BUILDING CONSTRUCTION -- Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures greater than 4 stories, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be “habitable” to be building construction. The installation of heavy machinery and/or equipment does not generally change the project’s character as a building.

RESIDENTIAL CONSTRUCTION -- Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

HEAVY CONSTRUCTION -- Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

STEP 3 Include the wage decision in the bid documents

If the construction work will be procured through competitive bidding (either sealed bids or small purchase procurement), the wage decision (and any modifications) must be included in the bid package. See **Chapter 5: Procurement** for more information on the bid process and documents. Review the various Wage Decisions for each county and choose the one that is appropriate for the work to be done. The types of work and the locations where these decisions are applicable are listed in the first paragraphs of the decision.

STEP 4 Ensure that the wage decision is current before bid opening.

The LSO must confirm that the wage decision in the bid specifications for construction contracts in excess of \$2,000 is still current for the bid opening date. The LSO must submit a completed GLO *Labor Standard Record* no more than ten, but not less than five, days prior to the bid opening. If the LSO submits a Ten-Day Confirmation less than five days prior to bid opening or requests for quotes, then the contractor could be responsible for the new wage decision if it is discovered that the decision changed. This could require the subrecipient/contractor to repeat the bidding process. GLO considers 5 or more days prior to bid opening to be a “reasonable amount of time” to notify prospective bidders. HUD handbook 1344.1 (3-10(A)).

- A completed GLO *Labor Standard Record*, signed by the Labor Standards Officer, and a copy of the current wage decision must be retained in the local files with other labor standards documentation.
- The date the wage rates were confirmed by the Labor Standards Officer must be recorded.
- The Ten-Day Confirmation does NOT “lock in” wage rates. Wage rates may be modified until bids are open. If GLO is notified of any changes to this confirmed wage rate prior to the bid opening, and if the agency finds that there is sufficient time to notify bidders of the change, GLO’s Labor Standards Officer will notify the local LSO that the modified wage decision must be included in the bid and contract documents.

- If the construction contract is to be procured through means other than sealed bids, then the “**Bid Open Date**” is the due date for Requests for Quotes on the work to be done. This date is necessary to determine wage rate compliance and must be reported on the Semi-Annual report that goes to HUD and DOL. At minimum the subrecipient is required to confirm wages prior to the due date for the Quotes. Failure to comply with this process constitutes an unresolvable finding and costs may be disallowed.

STEP 5 Check the recommended construction contractor for active SAM registration and eligibility status.

The LSO must verify prior to awarding and executing the construction contract that all prime contractors (and their subcontractors) have active SAM registrations and are not listed as “debarred” in the [System for Award Management \(SAM\) https://www.sam.gov](https://www.sam.gov)

- The LSO must print records of these verifications from the SAM website and retain copies in the local files and include in the GLO system of record.
- The date the contractor is “cleared” must be recorded

All contractors must be verified prior to being eligible for funding. Eligibility of all contractors must be verified through the SAM website prior to any formal action authorizing the award of the construction contract to the contractor.

STEP 6 Award the construction contract.

Each contract subject to Davis-Bacon labor standards requirements must include contract provisions containing labor standards clauses and a Davis-Bacon wage decision.

The labor standards clauses:

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages;
- Obligate the construction contractor to comply with the labor requirements;
- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages; and
- Enable the LSO to enforce the Federal labor standards applicable to the project.
- Best Practice: Incorporate HUD Labor Standards Form 4010 in the construction contract and provide to contractor with preconstruction information.

If the construction contract has not been awarded within 90 days after bid opening, any wage decision modification published prior to the award of the construction contract shall be effective for that construction contract.

Additional Classification and Wage Rate

The LSO may request an additional classification in writing through the *Request for Additional Classification and Rate* along with a copy of the applicable wage decision for that particular construction contract. The request will represent what the employer (prime contractor or subcontractor) wants to pay workers performing a particular set of duties and must meet the following U.S. Department of Labor (DOL) regulations:

- 1) The work to be performed by the additional classification is not performed by a classification already on the applicable wage decision;
- 2) The classification is used by the construction industry in the area of the project; and
- 3) The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.

NOTE: As a general guide, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. “Trade classifications” are generally all work classifications, excluding Laborers, Truck Drivers, and Power Equipment Operators. Additional classifications proposed for Power Equipment Operators must specify the type(s) of power equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any Power Equipment Operator that appears on the wage decision.

GLO’s Labor Standards Officer will review the requested classification and wage rate to ensure that all required information is submitted.

- GLO’s Labor Standards Officer will refer it to the DOL for final approval. The LSO will receive a copy of the final determination letter once the DOL has reviewed the request.
- If the DOL *does not* approve the request, the LSO will be notified about what classification and wage rate should be used for the work in question. The LSO will also receive instructions about how to ask for DOL reconsideration if the subrecipient would like to pursue the issue further.
- *The CDBG-DR contract does not need to be held open if DOL has not responded before the close of the CDBG-DR contract. The LSO will be informed of how to proceed if this does occur.*

STEP 7 Contractor Posts Wage Decision at the Job Site

The prime contractor must post a copy of the wage decision and a copy of the DOL Davis-Bacon poster entitled “Employee Rights under the Davis-Bacon Act” (See **Resources**, below for link) at the job site in a place that is easily accessible to all of the construction workers employed at the project. If the contractor requests additional classification(s) as described above, the contractor must also post the notice of the request and the associated wage decision on the job site.

STEP 8 Hold a preconstruction conference to explain labor standards.

A preconstruction conference by phone, conference call, or in person should be held with the engineer/architect, prime contractor, subcontractor(s), inspector(s), LSO, and all applicable utility companies prior to the start of construction. The subrecipient must document and retain preconstruction conference minutes, including a list of attendees and an outline of the required federal/state labor requirements utilizing the GLO Preconstruction Conference Report.

The preconstruction conference should include:

- Advice to all parties regarding their responsibilities and obligations on a federally funded or federally assisted project;
- Discussion of applicable federal, state, local, and program guidelines;
- Discussion of all construction details, time frame of project, payment requirements, and labor standards;
- Delivery of all bonds and certificates of insurance to the subrecipient; and
- Delivery of all necessary General Wage Decisions, labor posters, and any additional classifications to the contractor along with instructions that will assist in completing the project.

The forms and posters must be posted by the contractor at the work site in a prominent and accessible place where the workers can easily read them. These posters are available from the HUD (Labor Standards and Enforcement) or DOL’s websites.

STEP 9 Review project payrolls during construction.

The LSO or other designated inspector must conduct on-site visits to the project site and interview some of the workers concerning their employment on the project. In addition, the LSO must periodically

review payrolls and related submissions to ensure that the labor standards requirements have been met. The LSO will notify the subrecipient if these reviews find any discrepancies or errors and will provide instructions about what steps must be taken to correct any problems.

On-site Interviews. Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the LSO, GLO's representative, HUD representative or DOL representative.

- Employee Interviews should be representative of all classifications of employees on the project. The number and quality of interviews documented should reflect that the LSO is diligently ensuring that workers are paid at least minimum prevailing wage rates.
- For each prime contractor and each subcontractor, a minimum of 1 employee in each classification must be interviewed, with at least 25% of the total number of the employees interviewed.
- The interviews are confidential, and the employee will be asked about the kind of work they perform and their rate of pay.
- Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work.
- Interview information must be recorded on the *Record of Employee Interview*
- If employees are not available for interview during the LSO's on-site visit, the LSO must document the date of the on-site visit, the reason employees were not available, and the attempt to obtain the required information through other means, such as mailed questionnaires.

Project payroll reviews. A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local contract files, beginning with the first week in which construction begins on the project and for every week after until the work is complete. The LSO must review the payroll submissions to ensure that:

- Workers are properly listed on the payrolls for the days, work classification, and rate of pay (compare to interview forms);
- The payrolls are complete and signed;
- Employees are paid no less than the wage rate for the work classification shown;
- Apprentice and trainee certifications are submitted (where needed); and
- Employee authorizations for other deductions are submitted (where needed).

Employers may use any other type of payroll, such as computerized formats, as long as all required information is included.

STEP 10 Submit construction completion reports – GLO Certificate of Construction Completion (COCC) & GLO Final Wage Compliance Report (FWCR)

Upon completion of the construction contract, after all work has been completed including punch list items, a final inspection must be conducted, and all parties must agree that the work is acceptable.

- A **final inspection** is required for each prime construction contract and documents acceptance of the project by the subrecipient, engineer, and contractor.
- A **Final Wage Compliance Report** signed by the LSO is required for each prime construction contract subject to Davis-Bacon.

The COCC and FWCR must be received and approved prior to reimbursement of the final draw for each prime construction contract and the final engineering draw. Both documents are required

to satisfy the construction contractor's obligations and should therefore be completed prior to the subrecipient's payment of the final pay estimate.

9.4 Restitution for Underpayment of Wages.

Where underpayments of wages have occurred, the employer must pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less any permissible and authorized deductions.

Notification to the prime contractor

The LSO must notify the prime contractor in writing of any underpayments found during payroll or other reviews.

- The notice must describe the underpayments and provide instructions for computing and documenting the restitution to be paid.
- The prime contractor is allowed 30 days to correct the underpayments.
- The prime contractor is responsible to the LSO for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing wage restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the *adjustment rate*. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

Overtime and underpayment

Overtime hours are defined as all hours worked on the work site in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits. If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- If the project is greater than \$100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (*CWHSSA*) *overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project.
- The employer will also be liable to the Department of Labor for liquidated damages (overtime violation dollar penalty) computed at \$25 per day per violation. Contact your Grant Manager at GLO for further information.
- Once liquidated damages are computed, **the subrecipient shall notify the prime contractor in writing of the fine and wage restitution owed.** A check (payable to GLO) in the amount of the liquidated damages should be forwarded to GLO to be processed for HUD.
- The employer may request a reduction or waiver of liquidated damages under one or both of the following reasons: 1) The computation of liquidated damages is incorrect; and/or 2) that the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer. The employer's request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted
- If Liquidated Damages are equal to or less than \$100.00, the employer is encouraged to seek a reduction or waiver of liquidated damages.

Employers are not required to submit checks (certified or otherwise) to GLO to correct underpayments, unless requested. The employer reports and certifies restitution payments on a correction payroll, which is kept in local files.

Correction payrolls

The employer will be required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6; or a beginning date and ending date). The correction payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A verified signed Payroll must be sent to the LSO.

Review of corrected payroll

The GLO LSO will review the corrected payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed, and documented on a supplemental correction payroll, within 30 days.

Inability to locate worker

Sometimes wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The LSO will continue to attempt to locate workers entitled to restitution for 3 years after the completion of the project. After 3 years, any amount remaining in the account for workers restitution will be credited and/or forwarded by the LSO to GLO.

9.5 Labor Disputes

Administrative Review on Labor Standards Disputes

The labor standards clauses in the CDBG-DR contract and DOL regulations provide for administrative review of issues by GLO where there is a difference of views between the LSO and any employer. The most common situations include:

Findings of underpayment: Compliance reviews and other investigations may result in findings of underpayment. The employer will have an opportunity to provide additional information to the LSO that may explain apparent inconsistencies and/or resolve the discrepancies.

Remember, the prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors.

Withholding: The LSO may cause withholding of payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor.

Deposits and Escrows

If corrective actions or disputes continue after the project is completed, provisions must be made to ensure that funds are available to pay any wage restitution that is found due. In these cases, GLO allows the project to proceed to final closings and payments *provided* the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the LSO. When a final decision is rendered, the LSO makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- Where the parties have agreed to amount of wage restitution that are due *but* the employer has not yet furnished evidence that all of the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers not supported by adequate documentation of payment. As proper documentation is received, amounts corresponding to the documentation are returned to the prime contractor. Amounts for any workers who cannot be located are held in the escrow account for three years and disbursed as described above (See Restitution on Underpayment of Wages).
- Where underpayments are suspected or alleged, and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the prime contractor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above. If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained earlier.
- Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

Debarment

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the DBRA will be ineligible (debarred) to participate in any DBRA contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest. Debarment proceedings can be recommended by the LSO or can be initiated by the DOL on its motion. Debarment proceedings are described at 29 CFR 5.12.

9.6 Exemptions

The following contracts and activities are exempt from Davis-Bacon requirements except where indicated:

- Construction contracts of \$2,000 or less;
- Construction contracts of \$100,000 or less are exempt from CWHSSA only;
- Single-family homeowner residences (*Making Davis Bacon Work-A Practical Guide for States, Indian Tribes and Local Agencies* (September 2011));
- Rehabilitation of residential property designed for fewer than eight families; (*Making Davis Bacon Work-A Practical Guide for States, Indian Tribes and Local Agencies* (September 2011));
- Demolition and/or clearance activities (for example, debris removal), unless related to construction (demolition and clearance as independent functions are not considered construction);
- Labor/installation charges on equipment or materials purchases, if that portion of the contract is less than 13% of the total cost of the item(s) purchased;
- Construction work performed by the employees of the subrecipient (force account) that are engaged on an otherwise covered project; and
- Construction work performed by a public utility extending its own utility system

NOTE: The Fair Labor Standards Act (FLSA) is usually applicable, whether or not the DBRA or CWHSSA apply.

The subrecipient must notify GLO if pursuing this method. GLO may request documentation prior to authorizing payment that the price charged by the public utility is less than the price that would be anticipated if the construction had been procured by sealed bids.

With the exception of the situations listed in this section, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under the CDBG-DR program shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

9.7 Recordkeeping Requirements

To show compliance with Davis Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract:

*(*Must be submitted to GLO)*

- Appointment of Labor Standards Officer*
- Copy of Wage Rate Issuance(s)
- Ten-Day Confirmation Forms*
- Additional Classification request(s)*
- Contractor Registration and Eligibility Verification printouts from SAM (for each prime and/or subcontractor)
- Pre-construction conference minutes and sign-in sheet(s)
- Payrolls, with evidence of compliance review
- Employee interviews
- Wage violations (amount of restitution, number of hours and days)*
- Interim inspection reports
- Certificate(s) of Construction Completion*
- Final Wage Compliance Report(s)*

9.8 Laws and Regulations

DAVIS-BACON ACT (40 USC Chapter 31, Subchapter IV)

CONTRACT WORK HOURS & SAFETY STANDARDS ACT (CWHSSA)

COPELAND (ANTI-KICKBACK) ACT (18 USC 874; 40 USC 3145)

FAIR LABOR STANDARDS ACT

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). 29 CFR Parts 1, 3, 5, 6 and 7

9.9 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
DOL	https://www.dol.gov/whd/govcontracts/dbra.htm	P
SAM	https://www.sam.gov/	P
HUD	https://www.hud.gov/program_offices/davis_bacon_and_labor_standards	P
Appointment of Labor Standards Officer	http://recovery.texas.gov/files/resources/infrastructure/s5-appointment-of-labor-standards-officer.pdf	P
Wage Rate Issuance Notice	http://recovery.texas.gov/files/resources/infrastructure/s5-wage-rate-issuance-notice.pdf	P
Ten Day Confirmation Form	http://recovery.texas.gov/files/resources/infrastructure/s5-ten-day-confirmation.pdf	P
Pre-Construction Conference Report	http://recovery.texas.gov/files/resources/infrastructure/s5-pre-construction-conference-report.pdf	P
Request for Additional Classifications/Rates	http://recovery.texas.gov/files/resources/infrastructure/s5-request-for-additional-classification-and-rate.pdf	P
Labor Standards Record	http://recovery.texas.gov/files/resources/infrastructure/s5-labor-standards-record.pdf	P
Record of Employee Interview	http://recovery.texas.gov/files/resources/infrastructure/s5-record-of-employee-interview.pdf	P
Employee Interview Form	http://recovery.texas.gov/files/resources/infrastructure/s5-record-of-employee-interview.pdf	P

US DOL Wage and Hour Payroll Form WH-347	http://recovery.texas.gov/files/resources/infrastructure/s5-wh347.pdf	P
Final Wage Compliance Report	http://recovery.texas.gov/files/resources/infrastructure/s5-final-wage-compliance-report.pdf	P
Construction Contract Change Order	http://recovery.texas.gov/files/resources/infrastructure/s5-construction-contract-change-order-request.pdf	P
Certification of Construction Completion	http://recovery.texas.gov/files/resources/infrastructure/s5-certification-of-construction-completion.pdf	P
Financial Interest Report	http://recovery.texas.gov/files/resources/infrastructure/s5-financial-interest-report.pdf	P

* **Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 10 - **FORCE ACCOUNT LABOR**

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CHAPTER 10 - FORCE ACCOUNT LABOR

10.1 Introduction

In some instances, a subrecipient may perform construction work under what is generally known as “force account”. The subrecipient decides not to contract out the work but actually performs it “in-house” using its own employees. The use of force account must be approved by GLO, even if the subrecipient will not claim the costs as grant reimbursement or matching funds, to ensure that the subrecipient has the capacity to complete the project in-house.

Force account work is not subject to Davis-Bacon Act (D-B) wage requirements because governmental agencies and States or their political subdivisions are not considered “contractors” or “subcontractors” within the meaning of the D-B Act. However, any part of the work not done under force account but contracted out is subject to Davis-Bacon and Related Acts (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) as described in **Chapter 9 - Labor & Davis Bacon**.

In addition to force account construction work, subrecipients may utilize local staff to administer and/or engineer their CDBG-DR funded community development projects. This is also considered “force account” labor.

Definition of Force Account

Definition of Force Account: Professional services, construction, rehabilitation, repair or demolition that is performed by municipal or county employees.

Definition of Employee: Determining whether a worker is an employee vs. an independent contractor depends on many factors including the nature and degree of control by the principal/payer. (See IRS 20 Point Checklist for Independent Contractors).

Documenting Employee Status: Therefore, to qualify as force account, an employee must be documented on the employer’s payroll records as either regular or temporary employees. Status may also be documented through W-2 Wage and Tax Statements.

Force account applies to the following employees:

- Permanent employees of a subrecipient;
- Temporary employees of a subrecipient hired, not contracted, to specifically perform work on a federally funded or federally assisted construction project - the subrecipient must provide evidence that it adhered to its hiring and employment policies for temporary employees;
- Employees of a county who are carrying out public facilities improvements for a subrecipient through an intergovernmental agreement as prescribed by the Texas Government Code, Interlocal Cooperation Contract, Chapter 791; or
- Employees of a public utility district or utility company on a case-by-case basis.

When using local staff, the local governing body must assure the following:

- The subrecipient has written personnel and employment policies that include specifically prohibited discriminatory practices;
- Conflict of Interest provisions are in place and enforced;

- EEO guidelines are followed in advertising for new employees; and
- All provisions are in compliance with Fair Labor Standards.

Since the subrecipient is using its own employees, it is not required to pay the minimum prevailing wage of that region as prescribed by the Department of Labor (DOL). However, the subrecipient must continue to pay the employees their regular wages. [HUD Handbook 1344.1]

Request to Change from Contract Construction Work to Force Account

If a subrecipient did not include force account in its CDBG-DR application for funding but circumstances arise that could best be handled by force account, the subrecipient must receive approval to change construction methods from GLO by submitting a **Request to Use Force Account Labor**, with the following information:

- 1) Description of the construction activities to be completed by force account;
- 2) Justification for doing the work by force account;
- 3) Details of subrecipient's experience with projects of like or similar nature;
- 4) Information on workload as it may affect capacity to do the work within time frame or work schedule;
- 5) A complete estimated cost schedule (breakdown) showing:
 - a) The number of work hours and cost per hour for each category of labor, and
 - b) A list of non-salary costs such as materials, supplies, equipment owned by the subrecipient, equipment that must be rented, etc.;
- 6) Certification that personnel that will perform the work are employees of the subrecipient, a city/county, a public utility district, or a utility company - if temporary workers are hired, certification that the employer's policies for temporary employees will be followed; and
- 7) List of names and qualifications of personnel performing specialized work, such as inspection, testing, electrical work, etc. as applicable.

Advantages of Force Account

- Exempt from DBRA, CWHSSA, and the Copeland Acts;
- Cost effective if the activity is one that traditionally is done by city/county personnel;
- Jobs are kept in the community; and
- Greater local control over scheduling and costs.

Disadvantages of Force Account

- No warranty for work performed by the subrecipient;
- Construction may be slower and not meet contract time frame;
- Extensive record keeping is required;
- Skilled local workers and appropriate equipment may be insufficient;
- Additional documentation is required for each drawdown;
- Delayed payments due to required documentation review;
- Procurement requirements for necessary materials; and
- Ongoing inspections may not be readily available to ensure quality construction.

10.2 Allowable Force Account Costs

The Office of Management and Budget (OMB) regulations, found at 2 CFR Part 200, Subpart E, establish cost standards for federally funded or federally assisted projects. Only actual expenditures incurred by the subrecipient as a result of the CDBG-DR project are considered allowable costs. This applies whether these costs are being reimbursed with CDBG-DR funds or used as match. These costs can include labor, materials, equipment, and professional services.

The subrecipient must provide personnel and equipment support/cost calculation documents prior to the authorizing use of Force Account.

Wages

Reasonable wages, which are paid by the subrecipient for work performed on the CDBG-DR project, either as match or reimbursement, must be supported by adequate documentation. This documentation includes personnel cost calculation forms, time sheets, and payroll records. Compensation is considered reasonable when it is comparable to wages that are paid for similar work in other areas of that same government entity. When comparable work is not found within that entity, a salary survey should be conducted. Only time worked on the project may be claimed for grant reimbursement or matching funds.

A personnel cost calculation, must be completed for each employee to determine the allowable hourly rate charged on CDBG-DR force account projects or to document match. The form need only be submitted once for each employee, unless the employee's wages change during the course of the project.

Personnel and equipment ledgers provide a method of documenting personnel and equipment costs, also timesheet hours worked and equipment usage time.

Overtime Wages

Overtime costs incurred by the subrecipient for employees that work more than 40 total hours per week, including work on a CDBG-DR project, are eligible costs. The subrecipient must complete a second personnel cost calculation for each employee to determine an hourly rate for overtime in accordance with local employment policies and U.S. Department of Labor regulations. Health insurance and other fixed cost benefits should NOT be increased on the overtime calculation; however, any benefits paid by the employer based on wages may be adjusted for the overtime rate.

NOTE: Salaries and expenses of elected officials (mayor, county judge, city council, or county commissioners) of a political subdivision are considered a cost of local government and are NOT allowable grant costs.

Fringe Benefits

Allowable fringe benefits, if applicable, must be provided under a locally approved plan or policy and may be reimbursed in proportion to the amount of the employee's time spent on CDBG-DR activities. Allowable fringe benefits may include the following compensation or contributions made by the subrecipient: vacation, holidays, sick leave, social security, life/health insurance, unemployment insurance, worker's compensation, and retirement. These benefits are reflected in the personnel cost calculation.

Material Costs

All materials used in the construction of the project are eligible expenses. However, all materials must be procured according to the procedures described in **Chapter 5 - Procurement**.

If the subrecipient uses materials already on hand, rather than purchasing materials specifically for the project, reimbursement will be based on the actual cost of the material at the time of purchase. Competitive procurement requirements still apply to materials on hand.

If there is inventory of unused supplies greater than \$5,000 upon termination or completion of the project and the supplies are not needed for any other Federal award, the non-Federal entity must retain the

supplies for use on other activities or sell them and must compensate the Federal government for its share. (2 CFR 200.314)

Equipment Costs

Subrecipients may be compensated for the use of equipment on CDBG-DR projects, including construction equipment. An equipment cost calculation must be submitted for each piece of equipment for which the subrecipient requests grant reimbursement or matching costs.

All methods of charging for equipment usage must be based on an hourly rate.

- Only actual hours of construction time at the project site are eligible. “In use” means that the equipment is in actual operation performing eligible work.
- Standby equipment costs are not eligible.
- The hours charged for equipment use must agree with the corresponding hours documented for the equipment operator. If two pieces of equipment are used in tandem by a single operator, please include an explanation in the request for payment.

FEMA Equipment Rates

GLO will generally allow subrecipients to use FEMA equipment rates for documenting compensation for the use of equipment currently owned by the subrecipient.

Rates on the FEMA Schedule of Equipment Rates:

- Are for equipment in good mechanical condition, complete with all required attachments;
- Include all eligible costs of ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incident to operation [Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121] – fuel and maintenance costs are not eligible for separate reimbursement;
- Do not include the labor costs of the equipment operator – labor costs should be claimed separately;
- Are based on hours of use, except that vehicles used to transport people (work crew, engineer, or other city personnel authorized to document progress for drawdown requests) must be based on mileage using the FEMA rate per mile. If the subrecipient requests reimbursement for a passenger vehicle based on a FEMA hourly rate rather than the rate per mile, documentation must be provided that the vehicle was used for eligible purposes other than transporting people; and
- The current rates can be found at <https://www.fema.gov/schedule-equipment-rates> and are also referenced in **Resources**, below.

Rental Cost Reimbursement

GLO will pay for the time that rented equipment is in use on the CDBG-DR project using an hourly rate (Actual rental cost divided by a 40-hour work week) plus fuel costs.

Note: GLO will compare the hourly rental rate to the FEMA rate. If the rental costs are significantly higher than the FEMA rate, the subrecipient may be required to provide additional explanation or justification for the difference. The table below summarizes some key points on the different methods of charging equipment use.

	FEMA Rates	Rental Cost Reimbursement
Equipment	Owned or Lease to Purchase	Rented
Basis for Reimbursement	Hours of use & FEMA rates	Hours of use & weekly rental cost
Maximum Reimbursement	Actual number of hours worked, times FEMA rate	Actual rental cost, plus fuel
Separate Fuel & Maintenance Costs	NOT Eligible	Eligible
Separate Labor (Operator) Costs	Eligible	Eligible

10.3 Force Account Recordkeeping

The subrecipient must maintain thorough documentation of all costs. This applies whether these costs are being reimbursed with CDBG-DR funds or used to document all or part of the subrecipient's required match. All costs charged to the project must apply to a particular line item of the CDBG-DR contract budget. This documentation must include:

- Employee personnel policies that delineate paid leave, overtime, equal employment, travel, and terms of employment policies, compliance with the Fair Labor Standards Act, and Section 504. If temporary workers are hired to complete the project, the employee personnel policies must address temporary employees.
- A personnel cost calculation to determine the hourly cost for each employee. The form must be approved and signed by the employee's supervisor or other personnel authorized by the subrecipient.
- Time sheets documenting the workers and work performed.
- All timesheets should correspond to the subrecipient's regular employee time sheets to the extent that no one should be charged to the project if they are not in attendance. The subrecipient may be required to supplement certified timesheets with the corresponding subrecipient's payroll records.
- An equipment cost calculation to determine the hourly cost for each piece of equipment. The form must be approved and signed by personnel authorized by the subrecipient.
- Documentation of the use of the equipment and operator. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost as described in this chapter. Leased equipment must be supported by a copy of the lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA rate for the equipment.
- Invoices and canceled checks for all construction materials and other supplies.

10.4 Documentation required for each Request for Payment

All requests for payment that include force account costs must include:

- A map of the project area that clearly identifies the areas where work has been completed, the areas where work is included in the current request for payment, and the areas where work will be performed in the future; and
- Adequate back-up documentation (invoices, time sheets) to support the requested amount.

10.5 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
Personnel Cost Calculation Sheet	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-personnel-cost-calculation-form.pdf	I
Equipment Cost Calculation Sheet	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-equipment-cost-calculation-form.pdf	I
Force Account Construction Personnel Time Sheet	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-construction-personnel-time-sheet.pdf	I
Certificate of Construction Completion for Force Account	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-certificate-of-construction-completion.pdf	I
Force Account Internal Workforce Summary Page	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-internal-workforce-summary-page.pdf	I
Force Account Material Summary Page	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-material-summary-page.pdf	I
Force Account Certificate of Construction Completion	http://recovery.texas.gov/files/resources/infrastructure/s6-force-account-certificate-of-construction-completion.pdf	I

** Type of Form: P = Program, I = Infrastructure, H = Housing

CHAPTER 11 - **CIVIL RIGHTS**

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Last Updated October 31, 2018

CHAPTER 11

CIVIL RIGHTS REQUIREMENTS

11.1 Introduction

All recipients of Texas CDBG-DR funds are required to demonstrate compliance with all State and Federal requirements to ensure equal opportunity and access to all benefits derived from the CDBG-DR Program.

This section presents summaries of the key regulations and requirements of civil rights, fair housing, equal opportunity, and equal employment opportunity laws applicable to the administration of CDBG-DR funds.

The civil rights laws and related laws and regulations are designed to protect individuals from discrimination on the basis of:

- 1) Race
- 2) National Origin
- 3) Religion
- 4) Color
- 5) Sex
- 6) Age
- 7) Disability
- 8) Family Status

As they apply to the CDBG-DR program, these laws protect individuals from discrimination in:

- 1) Housing
- 2) Benefits created by CDBG-DR projects
- 3) Employment
- 4) Business Opportunities

The applicable laws and regulations provide for:

- 1) Nondiscrimination
- 2) Equal Opportunity
- 3) Affirmatively Furthering Fair Housing

11.2 Civil Rights Requirements - Laws and Statutes

Civil Rights laws applicable to CDBG-DR programs which subrecipients must adhere to are set forth in the statutes and Executive Orders below:

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of: <ol style="list-style-type: none"> 1. Race, 2. Color, or 3. National Origin
Section 3 of the Housing and Urban Development Act of 1968, as amended	To the greatest extent feasible, employment and other economic opportunities, should be directed to: <ol style="list-style-type: none"> 1. Low and very low-income persons, and 2. Business concerns which provide economic opportunities to low and very low-income persons.
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	Prohibits discrimination in housing on the basis of: <ol style="list-style-type: none"> 1. Race, 2. Color, 3. Religion, 4. Sex, or 5. National Origin.
Section 504 of the Rehabilitation Act of 1973, as amended and Section 508	No otherwise qualified individual shall, solely, by reason of his or her handicap, be: <ol style="list-style-type: none"> 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of: <ol style="list-style-type: none"> 1. Race, 2. Color, 3. National Origin, or 4. Sex. 5. Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing
The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin, be discriminated against in: <ol style="list-style-type: none"> 1. Housing (and related facilities) provided with federal assistance 2. Lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government.
Executive Order 11246, as amended	No person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of \$10,000.
Equal Access to HUD-assisted or Insured Housing - § 5.105 (a)(2)(i-ii)	Requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status. (new regulation effective 3/5/2012)
Americans with Disabilities Act (ADA)	Legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else.

11.3 Strategies and Procedures

11.3.1 Preparation of Plans and Policies regarding Civil Rights

A critical element of civil rights compliance is the preparation of plans and strategies for inclusion of all persons, followed by documentation that the subrecipient completed the actions described in the plans. Below are the required considerations, plans and/or policies:

- Equal Opportunity/Non-discrimination
- Section 3 Economic Opportunity policy
- Excessive force clause
- Participation by Minority, Small Business, and Women-owned Businesses
- Section 504 of the Rehabilitation Act of 1974
- Affirmatively Furthering Fair Housing
- Limited English Proficiency (LEP) Standards

This section presents strategies and procedures for complying with various civil rights, equal opportunity and affirmative action laws, regulations and requirements outlined above.

As a CDBG-DR grant recipient, subrecipients must assure that all CDBG-DR funded activities undertaken as part of a program are conducted in a manner which will not cause discrimination on the basis of race, creed, color, national origin, religion, sex, disability, or age.

The information that follows can be used in whole or in part to assure conformity with the required civil rights laws and regulations and assist in affirmative action policies.

If you require assistance with any of the Civil Rights compliance discussed herein, contact your GLO Grant Manager.

11.3.2 Designate a Civil Rights Officer (CRO)

- CRO serves as the subrecipient's Section 504 Coordinator, Equal Opportunity Officer, and Fair Housing Officer.
- Best Practice: *CRO should be a local staff member.*
- Designate a Civil Rights Officer (CRO) to GLO; include both name and title of designated officer.

11.3.3 Citizen Participation Requirements

An important requirement of the CDBG-DR Program is that subrecipients must provide for and encourage citizen participation – especially by low and moderately low-income persons who live in blighted or slum areas or areas served by the CDBG-DR grant. (See Section 104(a) (2) of the Housing and Community Development Act and 24 CFR 570.486). In order to participate in CDBG-DR funding, subrecipients must comply with the requirements set forth in 24 CFR 570.486 as waived.

Subrecipients must adopt an Outreach and Marketing and Citizen Participation Plan. As part of this plan, procedures must include methods for encouraging citizen participation and should provide citizens the email, address, phone number, and times for submitting complaints. The written complaint procedures shall also provide for a timely written response to complaints and grievances, within 15 working days where practicable.

Publication of Civil Rights Notices

With respect to Citizen Participation, Section 504, and AFFH, the subrecipient must publish notices in a newspaper of general circulation or by public posting regarding the rights and responsibilities associated with federal grant funding received. Newspaper notices would be considered valid if published within two years prior to the CDBG-DR contract start date. This means that published notices could be used for multiple CDBG-DR projects with contract periods that occur consecutively.

For public postings, the subrecipient must publicize in one of three ways either: in newspaper advertisement (tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit); at both the city hall/courthouse and at least one location within the target area, supported by affidavit; or 3.) in courthouse/city hall, supported by affidavit and on subrecipient's website during the term of the contract. Subrecipient with website posting should also provide screen shots of the posting.

For a detailed discussion of Citizen Participation Requirements, contact your GLO Grant Manger.

11.3.4 Nondiscrimination, Equal Opportunity and Affirmative Action in Employment

- 1) Maintain employment data that indicates staff composition by race, sex, disabled status and national origin.
- 2) Develop or review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.
- 3) Advertise as an equal opportunity employer.
- 4) Publish an annual statement of nondiscrimination and/or include such statement in any publicity on CDBG-DR program.
- 5) Develop a network of information points that serve minority, elderly, women, disabled and ethnic groups, in addition to newspaper/public service channels.
- 6) Utilize information points throughout the community to advertise employment opportunities.
- 7) Develop or implement an Affirmative Action Plan.
- 8) Develop a Section 3 of the HUD Act of 1968 compliance plan.
- 9) Display Equal Opportunity posters prominently.
- 10) Take affirmative action to overcome the effect of past discrimination.

11.3.5 Nondiscrimination, Equal Employment Opportunity and Affirmative Action in Contracting

- 1) Advertise as an equal opportunity employer in bid solicitations.
- 2) Solicit bids from minority, women and locally owned businesses.
- 3) Maintain a list of locally owned businesses that were awarded contracts.
- 4) Require a Section 3 of the HUD Act of 1968 clause in all contracts.
- 5) Inform contractors of equal opportunity requirements at pre-construction conference or through other means of notification.
- 6) Require contractors to submit monthly utilization reports.
- 7) Monitor contractor's compliance at work site.

11.3.6 Nondiscrimination, Equal Opportunity and Affirmative Action in Housing

- 1) Information concerning housing services and activities should be disseminated through agencies and organizations which routinely provide services to protected groups.
- 2) Contract documents used by subrecipients and lending institutions participating in local programs should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.
- 3) Criteria for selecting recipients of housing assistance should be evaluated for any discriminatory effect.
- 4) Acceptable Fair Housing Activities.
- 5) Publicize that the recipient will assist persons experiencing discrimination in housing.
- 6) Development and adoption of a fair housing policy with identification of methods of enforcement.
- 7) Provision of housing counseling services which assist minorities and women seeking housing outside areas of concentration.
- 8) Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.
- 9) Work with local banks to post "equal lending opportunity" advertisements.
- 10) Use "equal housing opportunity" slogan and logo on city letterhead.
- 11) Sponsor fair housing seminars and campaigns.
- 12) Work with minority and women leaders in the area to promote housing development and increase minority and female participation.
- 13) Assist local housing developers in developing outreach programs to attract minorities and females.
- 14) Review zoning ordinances and comprehensive plans to insure they promote special de- concentration of assisted housing units.
- 15) Create a local housing authority.
- 16) Publicly advertise the city as a "fair housing city."
- 17) Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.

11.3.7 Complaints

A complaint may not always refer to a violation of a particular civil rights law or laws. A complaint should be reviewed as a civil rights complaint when the complaint:

- 1) Indicates the belief that he or she has been denied opportunities, treated differently, etc.
- 2) States his or her race, ethnicity, gender, status as a handicapped person, or age.

Any person, or any specific class of persons, who believes that he or she has been subject to discrimination may file a complaint. A complaint may be filed by the complainant or a representative.

With the exception of complaints filed under Executive Order 11246, civil rights complaints must be referred directly to the Department of HUD, Office of Fair Housing and Equal Opportunity (FHEO) (1-800-669-9777). Section 3 of the HUD Act of 1968 complaints are required to be filed at the appropriate HUD Regional Office in which the violation occurred within 180 days from the date of the action or omission upon which the complaint is based. Complaints filed under

Executive Order 11246 must be referred to the regional Office of Contract Compliance Programs, Department of Labor. Confidentiality is mandatory. The name(s) of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than the Department of HUD. The GLO-CDR should, however, be notified that a compliant has been registered.

NOTE: Complaints of employment discrimination should be referred to:
Texas Workforce Commission, Civil Rights Division (see **Resources** below for link)
Equal Employment Opportunity Commission <http://www.EEOC.gov/>

11.4 Developing and Implementing a Fair Housing Program

As a recipient of Disaster Recovery funds, subrecipients must agree to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5)); (E.O.12259(1-202));(24 CFR 570.601). This basically takes the form of promoting and publicizing Fair Housing laws as explained below. Subrecipients must also agree to develop and maintain records of the efforts taken to assure fair housing.

In addition, each subrecipient must conduct at least one Fair Housing activity each year of the grant period and maintain documentation of that activity that was or will be conducted. **This documentation must be available when the GLO conducts monitoring.** The documentation must identify the type of Fair Housing activity that was or will be conducted (community seminar, brochure distribution, etc.), the target audience (the general public, real estate brokers etc.), and the category of Fair Housing information provided.

Best practice: pass an ordinance/resolution/proclamation and conduct one fair housing activity. All subrecipients are required to complete at least one fair housing activity in addition to an ordinance/resolution/proclamation during the contract term.

The Fair Housing Act provides for the protection of the following federally-protected classes:

- Race and color;
- Religion;
- Sex;
- Disability;
- National origin; and
- Familial status.

Suggested Ideas for Meeting the Fair Housing Activities Requirement

- Conduct a community-wide housing analysis to determine impediments to fair housing and implement actions to eliminate these impediments.
- If the subrecipient is a city, pass a fair housing ordinance. If possible, include a penalty clause in the ordinance. Also, publicize the existence of such an ordinance (e.g., newspaper advertisement, or fliers enclosed in utility bills). Subrecipients should consult with their county/city attorney or contact the applicable trade association (Texas Municipal League) for a sample fair housing ordinance.
- If the subrecipient is a county, adopt written fair housing policies and procedures that are equivalent to a fair housing ordinance and publicize the existence of the policies/procedures (e.g., newspaper advertisement). Subrecipients should consult with

their county/city attorney or contact the applicable trade association (Texas Association of Counties) for a sample fair housing policy.

- Sponsor or fund fair housing counseling/referral services for owners and renters.
- Have a written local complaint and monitoring process and notify the public of its existence through newspaper advertisements, or through notices in utility statements.
- Promote housing opportunities outside historically minority and/or low and moderate-income neighborhoods.
- Designate April or any other month as "Fair Housing Month" by Proclamation or Resolution along with another sponsoring activity. (Another fair housing activity must take place if this activity is chosen. See Note below.)
- Utilize local businesses and banking institutions to promote fair housing by displaying fair housing posters.
- Announce the subrecipient's support of fair housing by means of newspaper advertisements, marquis displays, or public service announcements.
- Conduct free training workshops on fair housing laws to homebuyers, rental property owners, and tenant organizations.
- Sponsor a poster contest or essay writing contest at local schools to educate and promote fair housing.
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, fair housing choice.
- Find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Fair Housing Act.

NOTE: National Fair Housing Month is April of each year. However, subrecipients may designate any month as Fair Housing Month at the local level. Designating April as "Fair Housing Month" by proclamation must be accompanied by sponsoring another activity such as the ones listed above to support fair housing.

Fair Housing Activities Resource

HUD's Fair Housing Website (see **Resources**, below for link) contains a wealth of information and tools for subrecipients to use in conducting fair housing activities. Resources on the website include:

- A fair housing planning guide;
- Fair Housing Brochures and logos;
- Fair Housing Best Practices;
- Contact information for fair housing advocacy organizations; and
- Accessibility guidelines for housing units.

11.5 Section 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754) requires that subrecipients shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps.

Section 504 provides that "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits

of, or be subjected to discrimination under any program or activity receiving Federal financial assistance”. The local subrecipient is responsible for compliance with Section 504.

Minimum Requirements for all subrecipients

In order to comply with Section 504, the following actions must be initiated:

- 1) Each subrecipient shall operate its CDBG-DR Program in compliance with Section 504 requirements (24 CFR 8.50(a)).
- 2) Each subrecipient shall have completed current policies and practices with respect to communications, employment, and program/physical accessibility to meet the requirements of being accessible to individuals with disabilities.
- 3) Each subrecipient shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Because compliance with 504 does not necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps, or require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens, a recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)).
- 4) Each subrecipient must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.
- 5) Each subrecipient must maintain data for the GLO showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs.

Other Section 504 Requirements, as Applicable

If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a subrecipient shall develop a transition plan with the assistance of interested persons, including handicapped individuals or organizations representing handicapped individuals, for those areas which cannot be made accessible administratively (24 CFR 8.21 (4)). The transition plan must be made available for public inspection, and, at a minimum, it shall:

- 1) Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities;
- 2) Describe in detail the method to be used in making the facility accessible;
- 3) Set forth a schedule for completion of the modifications. If the schedule exceeds one (1) year, then you must identify the actions to be taken during each year of the transition period;
- 4) Identify the individual responsible for implementation of the plan; and
- 5) Identify the persons or groups with whose assistance the plan was prepared.

NOTE: Unless the subrecipient has recently acquired a facility that was constructed prior to 1988, that will house programs and services available to the public, and intends to make physical alterations to this facility, the three-year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

NOTE: New non-housing facilities (designed, constructed or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps (24 CFR 8.32).

If the subrecipient employs fifteen or more persons:

- 1) A responsible employee must be designated to coordinate the community's efforts to comply with Section 504;
- 2) The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.
- 3) The subrecipient shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the subrecipient that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the subrecipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above.
- 4) A subrecipient shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with the GLO. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.
- 5) The subrecipient must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

The regulation requires that you must have available a TDD or equally effective method for communicating with hearing impaired persons. The subrecipient must have a policy indicating the use of the relay system by the subrecipient and publish the telephone numbers in the newspaper and on the subrecipients website (see GLO Grant Manager if assistance is required).

11.6 Section 3 of the HUD Act of 1968 Compliance

Section 3 compliance requirements are triggered when CDBG-DR assistance of \$200,000 or more is utilized for projects/activities involving housing construction, rehabilitation, or other public construction. If Section 3 of the HUD Act of 1968 is triggered for the subrecipient, then contractors/subcontractors whose contracts exceed \$100,000 must also comply.

The standards and procedures contained herein are to ensure that the objectives of Section 3 of the HUD Act of 1968 are met.

Employment Requirement Goals

The subrecipient may demonstrate compliance goals with Section 3 by committing to employ Section 3 residents as 30 percent of the aggregate number of new hires for the project, for a one-year period.

Contractors/subcontractors may demonstrate compliance goals with Section 3 by committing to employ Section 3 residents as 30 percent of the aggregate number of new hires for the project, for a one-year period.

This requirement extends ONLY to full-time jobs which may be permanent, temporary or seasonal and contracts which are a direct result of this project. It does include any hiring by the local government or contractor for employees hired to work on the project.

Employment Guidelines

The following examples can be used in an effort to ensure that the employment objectives of Section 3 are met. These examples of efforts which can be undertaken to assist in reaching Section 3 residents and businesses for employment opportunities should not be considered all inclusive.

- 1) Post advertisements of the employment opportunities, identifying the positions, qualification requirements, and where to obtain additional information about the application process, in housing developments and transitional housing in the neighborhood or service area of the Section 3 covered project.
- 2) Contact community organizations and resident organizations and request assistance in notifying residents of the employment positions to be filled.
- 3) Sponsor a job informational meeting in the service area of the project.
- 4) Arrange assistance in conducting job interviews and completing job applications for residents of the service area where the project is located.
- 5) Arrange for a location in the service area of the project where job applications may be collected by the subrecipient or contractor representative.
- 6) Consult with State and local agencies administering Job Training Partnership Act (JTPA), probation and parole agencies, unemployment compensation programs, etc., to assist with recruiting Section 3 residents for employment.
- 7) Advertise the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio.
- 8) Employ a job coordinator, or contract with a business concern that will undertake the efforts to match eligible and qualified Section 3 residents with the employment positions to be filled.
- 9) Where there are more qualified Section 3 residents than there are positions to be filled, maintain a file of eligible qualified Section 3 residents for future employment positions.
- 10) Undertake job counseling, education and related programs in association with local educational institutions.
- 11) After selection of bidders, but prior to execution of contracts, incorporate into the contract a negotiated provision for a specific number of Section 3 residents to be trained or employed on the Section 3 project.

Contracting Requirements

The subrecipient and contractor may demonstrate compliance with Section 3 by committing to award to Section 3 business concerns at least 10 percent of the total dollar amount of all Section 3 covered contracts for construction.

The subrecipient must also commit to award at least 3 percent of all other contracts to Section 3 business concerns; i.e., administration, engineering, etc.

A subrecipient or contractor/sub-contractor who has not met the goals set forth has the burden of demonstrating why it was not feasible to meet these goals. Documentation must be maintained what was done to why those goals were deemed unattainable.

The following are examples of efforts which can be utilized in reaching the specified goals in employment and contracting (efforts must be documented):

Contracting Guidelines

The following examples can be used to ensure that the contracting objectives of Section 3 are met. These examples of efforts which can be undertaken to assist in reaching Section 3 residents and businesses for contracting opportunities should not be considered all inclusive.

- 1) The use of small purchase procedures (contract may not exceed \$100,000) such as soliciting quotations from a minimum of 3 qualified sources. At the time of solicitation, inform the parties of the Section 3 covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain 3 quotes from qualified sources must be made and documented.
- 2) In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract.
- 3) Utilize minority contractor's associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
- 4) Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
- 5) Providing written notice to all known Section 3 business concerns of the contracting opportunities.
- 6) Follow up with Section 3 business concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information.
- 7) Coordinating pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities.
- 8) Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.
- 9) Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- 10) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- 11) Where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns.

- 12) Contacting agencies administering HUD Youth build programs and notifying these agencies of the contracting opportunities.
- 13) Advertising the contracting opportunities through trade association papers, local media, such as television, newspapers and radio.
- 14) Developing a list of eligible Section 3 business concerns.
- 15) Establishing numerical goals (dollar amounts, and number of awards) for contracts to Section 3 business concerns.

Other Employment and Business Related Economic Opportunities

Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of “upward mobility”, “bridge” and trainee positions to fill vacancies, and hiring Section 3 residents in part-time positions. A subrecipient or contractor may provide other economic opportunities to establish, stabilize, or expand Section 3 business concerns.

These “other” opportunities, if provided, may be viewed by HUD as a defense as to why it was not feasible to meet the numerical goals should a challenge be issued by a Section 3 resident or business concern that either the subrecipient or contractor is not following Section 3 requirements.

General Information

Section 3 does not require the creation of economic opportunities for anyone, nor does the extension of employment opportunities to Section 3 residents preclude the necessity for that individual to be qualified for the job.

Section 3 does not mandate certification or evidence of a person's Section 3 status; however, the subrecipient or the contractor, have the express right to request documentation which will support their claim to Section 3 preference. An example of evidence is the receipt of public assistance, or evidence of participation in a public assistance program, i.e., residency in a public housing development or evidence of a Section 8 certificate or voucher assistance, or participation in JTPA, or receipt of welfare assistance. It does not have to be proof of income. Remember, low and moderate income is determined by total household income.

11.7 Excessive Force Policy

In accordance with Section 104(1) of the Housing and Community Development Act, as amended, subrecipients receiving CDBG-DR funding must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations. (See also State’s Certification Requirements at 24 CFR 91.325(b)(6))

When subrecipients sign their contracts, they certify that they will pass and enforce the following policies:

- A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and/or
- A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction

11.8 Record Keeping

- All subrecipients are required to maintain equal opportunity records. The content of these records should include the following information:
- Population Data: This includes population data by census tract or smaller geographic areas which includes prevailing population characteristics relating to race, ethnic groups, sex, age, head of household and handicapped.
- Employment Data: (For communities with 10 or more employees) EEO form 4; Personnel Policies; Affirmative Action and/or Section 3 plans (if applicable); copies of any advertisements for employment; documentation of special efforts to identify, train, involve and/or hire minority and lower-income residents.
- Minority Business Participation: Documentation of efforts to solicit minority and women-owned businesses and maintain data concerning the number and dollar amount of contracts awarded to minority businesses.
- Section 3 Business Participation: Documentation of efforts to solicit locally owned businesses; maintain data concerning the number and dollar amount of contract awarded to locally owned businesses.
- Fair Housing: Document efforts to affirmatively further fair housing; copy of fair housing policy.
- Contractor Compliance: Records of any monitoring trips to project site and any findings; copies of contractors' monthly utilization report.
- Project Beneficiaries: Record of applicants, and direct and indirect beneficiaries by race, color, sex, national origin, age and handicap.
- Displacement and/or Relocation: Data on race, head of household, age and income of persons affected.

Section 3 Reporting and Recordkeeping

The subrecipient will have to maintain documentation and report to the GLO information on Section 3 new hires and contracts awarded to Section 3 business concerns.

The following items are required to be reported to show Section 3 Compliance:

Employment and Training	Construction	Non-Construction
<ol style="list-style-type: none"> 1) Job Category 2) Number of new hires 3) Number of New Hires that are Section 3 Residents 4) Percentage of Aggregate number of staff hours of New Hires that are Section 3 Residents 5) Percentage of Total Staff Hours for Section 3 Employees and Trainees, Number of Section 3 Trainees. 	<ol style="list-style-type: none"> 1) Total CDBG-DR dollar amount of all contracts awarded on the project 2) Total CDBG-DR dollar amount of contracts awarded to Section 3 businesses 3) Percentage of the total dollar amount that was awarded to Section 3 businesses 4) Total number of Section 3 businesses receiving contracts. 	<ol style="list-style-type: none"> 1) Total CDBG-DR dollar amount of all non-construction contracts awarded on the project, 2) Total CDBG-DR dollar amount of non- construction contracts awarded to Section 3 businesses 3) Percentage of the total dollar amount that was awarded to Section 3 businesses 4) Total number of Section 3 businesses receiving non-construction contracts.

11.9 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
Texas Workforce Commission Civil Rights and Discrimination	https://twc.texas.gov/partners/civil-rights-discrimination	P
HUD Fair Housing and Equal Opportunity	https://www.hud.gov/program_offices/fair_housing_equal_opp	P
Equal Employment Opportunity Commission (EEOC)	https://www.eeoc.gov/	P
Section 504 Self-Evaluation Form	http://recovery.texas.gov/files/resources/infrastructure/s7-section-504-self-evaluation-form.pdf	P
Appointment of Civil Rights Officer	http://recovery.texas.gov/files/resources/infrastructure/s7-appointment-of-civil-rights-officer.pdf	P
Appointment of Section 3 Coordinator	http://recovery.texas.gov/files/resources/infrastructure/s7-appointment-of-section-3-coordinator.pdf	P
Section 3 Quarterly Report	http://recovery.texas.gov/files/resources/infrastructure/s7-section-3-quarterly-report.pdf	P
Section 3 Annual Report	http://recovery.texas.gov/files/resources/infrastructure/s7-section-3-annual-summary-report.pdf	P
Affidavit of Public Notice Posting	http://recovery.texas.gov/files/resources/infrastructure/s7-affidavit-of-public-notice-posting.pdf	P

** Type of Form: P = Program, I = Infrastructure, H = Housing

CHAPTER 12 – **CONTRACT AMENDMENTS**

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CHAPTER 12 – CONTRACT AMENDMENTS

While administering a CDBG-DR contract, situations may occur that require a change in the original terms of the contract. These changes are referred to as contract modifications or amendments. The type and scope of change as it relates to the scope, location, or beneficiaries of the project determine whether a simple modification is acceptable or whether a more extensive amendment is necessary. All changes must be related to the project.

Submit all contract change requests to the subrecipient's assigned GLO Grant Manager.

12.1 Performance Statement Changes

Contracts are awarded based on the information presented in the original application. GLO will review any change to the Performance Statement (the section of the CDBG-DR contract which specifies the scope of the work to be performed) that is requested to ensure that federal, state, and programmatic requirements continue to be satisfied.

Limits on Performance Statement change requests

Subrecipients were selected for funding based on their proposed project and are expected to carry it out as proposed. Any requested changes in the scope of work will be reviewed to determine if the revised project is supported by the original application. A change in the construction method used to complete a project may be approved if the resulting benefit is the same need identified in the application.

The revised project will also be re-evaluated according to the criteria used at the time the original application was submitted. If the proposed amendment alters the original application to the degree that the project would not have been recommended for funding based on that criteria, the amendment request will not be approved. Major reductions in the scope of the proposed work can result in grant reduction.

Any projects not completed can result in repayment by the subrecipient.

Documentation for Performance Statement change requests

The following items are required for all Performance Statement changes:

- *Contract Change Request Form*;
- Revised Performance Statement, using “track changes”, deleted, or changed text (submit electronic copy in Word Format);
- Re-evaluation of environmental findings; and
- Revised project maps showing the locations of the original and amended project activities if any change in the project location or target area is proposed;
- Beneficiary Changes (if applicable)
- Table 2

Note: GLO staff can provide an electronic copy of the current Performance Statement to use as a starting point for tracking changes to the Performance Statement.

The subrecipient is required to re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether any previous clearance still applies to the revised project. It is critical that subrecipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary in order for the revised project to be an eligible CDBG-DR project.

The subrecipient should evaluate the Performance Statement once a bid has been accepted and submit an amendment or modification as appropriate to accurately reflect the project that will be awarded. A copy of the bid tabulation or project plan sheets should be submitted with this request.

Once work has been added to the Performance Statement, the work may be completed by various methods, including:

- Bid alternate item;
- Change Order;
- Bid the additional work separately; or
- Force account labor, material, and/or equipment. Subrecipients are reminded that extensive documentation is required in order to use force account resources.

Note: While changing from force account labor to bid/contract labor ordinarily does not trigger a Performance Statement Amendment, the subrecipient must request and receive prevailing wage rates before advertising for bids.

If the changes to the Performance Statement will also require a change to the CDBG-DR contract Budget, or a change order to the construction contract, these items should be submitted with the Performance Statement request.

There are two levels of Performance Statement changes:

- Performance Statement Revision– changes the scale of the original project, including changes that increase or decrease beneficiaries in the same target area or decrease beneficiaries up to 25%. Also documents minor changes or corrections to the project description.
- Performance Statement Amendment– changes the grant total budget and/or adds or subtracts an activity.

12.2 Performance Statement Modification

Increases in project scale and minor adjustments to the contract Performance Statement to reflect the amount of work actually completed can be made as a Performance Statement Modification. The box below provides guidance for determining whether a change may be completed as a Modification or requires a Contract Amendment.

Each request for a Performance Statement Modification will be reviewed by GLO to ensure that the proposed changes do not require an amendment, do not change the scope of the project, and continue to meet a National Objective.

12.3 Performance Statement Amendment

In addition to the documents required for Performance Statement change requests, (see pg. 1-2), the following items are also required for a contract amendment:

- Confirmation that the project will meet milestones (Project Implementation Schedule) by the required dates OR a revised schedule proposing a new timeline for completion;
- A resolution or letter from the local governing body (i.e., city council or commissioner's court) that indicates support for the proposed changes; and

12.4 Budget Changes

A subrecipient may request to transfer CDBG-DR funds between budget categories in order to reflect the actual costs of the project. Upon approval, **subrecipients should confirm that revised budget figures are reflected.**

If the changes to the Budget will also require a change to the CDBG-DR Performance Statement, or a change order to the construction contract, these items should be submitted with the Budget change request.

Limits on Budget change requests

Requests to move CDBG-DR funds from construction and/or acquisition activities to Engineering or General Administration activities must be submitted to CDBG-DR prior to the date of the final inspection documented on the Certificate of Construction Completion (COCC). The request must include a description of the additional tasks required for these activities. Changes must be justified within the change request.

Documentation for Budget change requests

The following documentation is **required for all Budget changes**:

- Contract change request; and
- Revised Contract Budget using “track changes” or similar format to indicate all added, deleted, or changed text (submit electronic copy in Word Format, no balloons);

12.5 Budget Modification

A subrecipient may request to transfer funds between budget categories identified in the Budget without triggering an amendment to the original contract if:

- The transfer of budgeted funds will not change the scope or objective of the project(s) funded through the CDBG-DR contract.

12.6 Contract Period Extensions

CDBG-DR contracts allow a specific time period to complete the activities identified in the Performance Statement. Rarely, extreme extenuating circumstances beyond the control of the subrecipient may prevent the completion of contract activities within the prescribed contract period. If a subrecipient is reasonably assured that project costs will be incurred beyond the contract end date and that incurring these costs is beyond the control of the subrecipient, an amendment for a contract extension must be requested from GLO to extend the original contract end date. In addition, the subrecipient may request a short extension to complete additional work if the original project has been completed. When considering a contract extension amendment that is not for additional work, GLO will only consider circumstances clearly beyond the control of the subrecipient

Contract extensions always require a Contract Amendment.

To avoid interruptions to the contract or possible exclusion of reimbursement for project costs, subrecipients should submit a request for a contract extension as soon as a delay is foreseen. Contract extension requests should be submitted approximately **sixty (60) days prior to the expiration date** of the contract and include a revised implementation schedule showing when major milestones will be completed for each activity.

The following documentation shall be submitted for a contract extension:

- A revised timeline showing how the subrecipient plans to complete the project within the proposed period – the timeline should reflect milestones described in the CDBG-DR contract as well as any other key dates specific to the project; and
Contract change request
-

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12.7 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 13 - **CONTRACT CLOSEOUT**

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CHAPTER 13 - **CONTRACT CLOSEOUT**

13.1 Introduction

The CDBG-DR contract closeout process is designed to ensure that all CDBG-DR activities are completed, and funds are expended in accordance with the contract, program rules, and state and federal requirements. This means that any financial, administrative, and performance issues related to the activities undertaken by the subrecipient have been resolved to the satisfaction of GLO and the subrecipient. The closeout process also certifies that the persons to benefit from the activities described in the contract Performance Statement are receiving service or a benefit from the use of the new or improved facilities and activities.

The closeout process should begin when:

- All costs to be paid with CDBG-DR funds have been expended and payment requests submitted, with the exception of closeout costs (final administrative and audit costs), and other costs approved in writing by GLO;
- The work described in the most recently approved Performance Statement has been completed; and
- The subrecipient's other responsibilities under its agreement with GLO have been met.

13.2 Closeout Submittal

The closeout submittal consists of the Grant (or Project) Completion Report (GCR/PCR) and other supporting documentation. This information can be found on the Grant Closeout Submittal Checklist (Checklist). In addition, other information may be required and will be requested from the Subrecipient by the GLO Grant Manager.

The closeout information must be submitted either within 60 calendar days after the grant contract end date or within 60 calendar days after all construction activities are completed, whichever comes first. Subrecipients/Grant Administrators must submit the closeout package to the Grant Manager via e-mail or by uploading the closeout package into the GLO system of record.

See **Resources** at the end of this chapter for a list of documents which may be required as part of the closeout submittal. See your Grant Manager for additional information.

The Grant Completion Report (GCR) must be submitted **within sixty (60) calendar days after the contract end date** (i.e., the GCR due date). If all construction activities are completed prior to the contract end date, then the GCR due date is sixty (60) calendar days after construction is completed.

See your GLO Grant Manager for details on how to submit your GCR.

The GCR consists of the parts described below.

13.3 General Report information

Total Persons Benefitting:

Report the total number of beneficiaries and the number of low to moderate income beneficiaries for the contract.

Certificate of Expenditures (COE)

This section of the GCR documents financial status of the completed project, including both CDBG-DR funds and any other funds used for the project, listed by budget activity in the following columns:

- **CDBG-DR Budget:** Funds allotted to each budget activity according to the CDBG-DR Contract, Budget, including all amendments and modifications.
- **CDBG-DR Funds Drawn to Date:** Funds received from CDBG-DR through approved Requests for Payment. Pending Requests for Payment are NOT included in this amount.
- **Unutilized Funds (Deob):** Funds that will NOT be requested by the subrecipient, including all funds not Drawn to Date or requested for Reserve. All funds included in this column will be deobligated by GLO upon administrative completion of the contract and will be unavailable for reimbursement.
- **Local Contribution:** All funds or local contribution other than CDBG-DR funds used to complete the project.

GLO will deobligate all funds that are:

- Identified by the subrecipient in the Unutilized Funds (Deob) column; or
- **Not** requested for payment (i.e. no drawdown submitted to GLO) with appropriate documentation within sixty (60) days after the contract end date or approved for extended reserve (see table below).

NOTE: Funds may be moved within the Methods of Distribution

Certifications

The chief elected official must sign the GCR, certifying that:

- a. All activities undertaken with funds provided under the contract identified in this report, have, to the best of my knowledge, been carried out in accordance with the contract agreement;
- b. The information contained in this Grant Completion Report is accurate to the best of my knowledge;
- c. All records related to contractor activities are available for review;
- d. CDBG-DR funds were not used to reduce the level of local financial support for housing and community development activities;
- e. No attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless (a) such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, contractor certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (a);

- f. The persons to benefit from the activities described in the Performance Statement, of this contract are receiving service or a benefit from the use of the new or improved facilities and activities;
- g. Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims and the State of Texas is under no obligation to make any further payment to the recipient under the contract agreement in excess of the amount identified in the Certificate of Expenditures table as "CDBG-DR Reserved Funds"; and
- h. The expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Civil Rights & Citizen Participation

This section of the GCR requires the subrecipient to certify by checking the appropriate boxes that the following federal requirements, included in the CDBG-DR contract, were satisfied under this contract:

- Equal Employment Opportunity Requirements;
- Citizen Participation Requirements;
- Section 3 Requirements;
- Promotion of MBE, SBE, and WBE Participation requirements;
- Excessive Force Policy requirements;
- Section 504 Requirements;
- Fair Housing Requirements and activities; and
- Limited English Proficiency activities.

The subrecipient must also provide the following additional Information:

Fair Housing Activity – describe briefly the activity/activities completed during the contract period to affirmatively further fair housing.

Attachments

For each attachment, indicate whether the document is attached or not required.

- **Project Map** – If the project includes construction activities, the subrecipient must attach a project map showing the project as actually built.
- **Section 3 Annual Report** – the report based on the federal fiscal year must include all employment, contracting, and training opportunities since the previous submittal.

13.4 Performance Report **Actual Accomplishments**

This section of the GCR reports all work completed, organized by the activity. The work reported must correspond to the project described in the CDBG-DR contract Performance Statement and be described in quantitative terms. (If the Performance Statement describes a project item without using quantities, report the item as lump sum with a quantity of one.)

If the current Performance Statement and actual accomplishments vary in quantities and/or number of beneficiaries served, please contact the GLO Grant Manager for technical assistance. If the completed project is significantly different from the Performance Statement, the GCR must include an updated Performance Statement. **GLO is not obligated to reimburse work that is not included in the Performance Statement of the CDBG-DR contract.**

The subrecipient must confirm that the work was performed in the location(s) described in the most recently approved or updated Performance Statement. If work was performed in a different location, the subrecipient must resolve this issue with GLO prior to submitting the GCR.

Housing activities

Summary:

The CDR Single Family Housing team has developed a list of required documents to be submitted by the subrecipient to initiate closeout of a contract. The grant manager can provide further assistance when compiling these documents.

Performance measures and beneficiary information are reported for acquisition activities only if CDBG-DR funds are used to acquire the property rather than to improve the property.

Required Documentation:

The following items are required at the completion of a Single-Family Housing contract:

- An official letter requesting closeout of the contract. This letter must also state that all draw requests have been submitted;
- A final list of refunds, subrogation, and program income (if applicable) received;
- A list of any items purchased with Community Development Block Grant disaster recovery (CDBG-DR) funds (cabinets, copiers, etc.) and their depreciation schedule. If the item(s) is not fully depreciated, it may be donated to another CDBG-funded program;
- A list of all homeowner service calls and/or letters and their resolution(s);
- Documentation showing the procedures in place for retaining records;
- A list of all projects (activities) with the assigned builder(s) for the constructed homes;
- A list of all monitoring activities that have been conducted and a list of any defaults. If a homeowner does not maintain flood insurance (event of default) and their home is affected by another event, we cannot assist them; and
- Final (actual) expenditures for the contract.

This section of the GCR reports additional performance measures related to housing activities and is required form only for select Housing activities (other than water/sewer connections, see GLO Grant Coordinator for additional information on how to complete the GCR).

Indicate the number and location of **housing units** completed.

13.5 Beneficiary Report

Create Beneficiary Detail Reports

If multiple activities benefit exactly the same group of persons, the detailed beneficiary information may be reported once for the group of activities in order to minimize the length of the report. Indicate all activities to which the report applies at the top of the report.

Note: If a subset of the beneficiaries of one activity also benefit from a different activity, the subset is separate group that must be reported separately.

Add as many Beneficiary Detail Reports as necessary to describe all activities included in the CDBG-DR Contract, Performance Statement (excluding engineering, administration, and acquisition if incidental to the project).

Beneficiary Detail Report

Complete Beneficiary Detail Reports for all activities in the Performance Statement of the CDBG-DR Contract (excluding engineering, administration, and acquisition if incidental to the project). The total

number of persons benefitting, and the number of households benefitting if applicable, must equal the total beneficiaries or households for the activity in the Performance Statement.

(a) Beneficiary Detail Report – Activities on *Public* Property – report all beneficiaries for the group of activities according to gender, race, ethnicity, and income level.

(b) Beneficiary Detail Report – Activities on *Private* Property – report all information required for persons benefitting, as well as similar information for each household receiving a benefit.

- Gender, race, and ethnicity and gender information must be reported for the person designated as the “head of household” for each residence.
- Household income level is reported separately for owner-occupied and renter-occupied households; if information is not available, the household is presumed to be owner-occupied.

If the number of beneficiaries or homes actually served varies from the number of beneficiaries required by the most recently approved Performance Statement, the subrecipient must contact the GLO Grant Manager for technical assistance regarding a Performance Statement amendment.

13.6 Final Financial Interest Report

The subrecipient must report final procurement information for all contracts executed under the CDBG-DR contract, including professional services/**administration services** providers, construction contractors and sub-contractors, and suppliers, with contracts of \$2,000 or more. The contract amount reported should include any change orders. Check the appropriate box to report subcontracts valued at \$2,000 or more under the prime contractor.

Financial interests below \$2,000 (Micro-purchases) should be disclosed through invoices for grant/match funding – no separate disclosure required.

All contracts and subcontracts included in this report should previously have been reported on a Financial Interest Report. If the information previously reported was incomplete or if information other than the contract amount has been modified, the subrecipient must submit revised reports prior to submitting the GCR.

13.7 Acceptance of the Closeout Report

The contract will not be considered Administratively Complete until the pending issues are resolved with documentation submitted to GLO, and the benefit is confirmed.

Once the GCR is submitted, GLO will review the report for accuracy and completeness.

- Incomplete reports will not be accepted and will be returned to the subrecipient.
- Subrecipients will be notified of minor deficiencies and should correct such deficiencies within fifteen days of that notice.
- If any information is missing, inaccurate or incomplete, the Grant Manager will request the information, via e-mail, from the subrecipient.
- GCRs that include serious deficiencies or information that does not reflect the Performance Statement and/or Budget will not be accepted and will be returned to the subrecipient.
- The cycle of review and request of information continues until the submittal is accepted by the GLO and the entire closeout has been uploaded into the GLO system of record and updates to

**All fields of the GCR are required!
Incomplete reports will not be
accepted.**

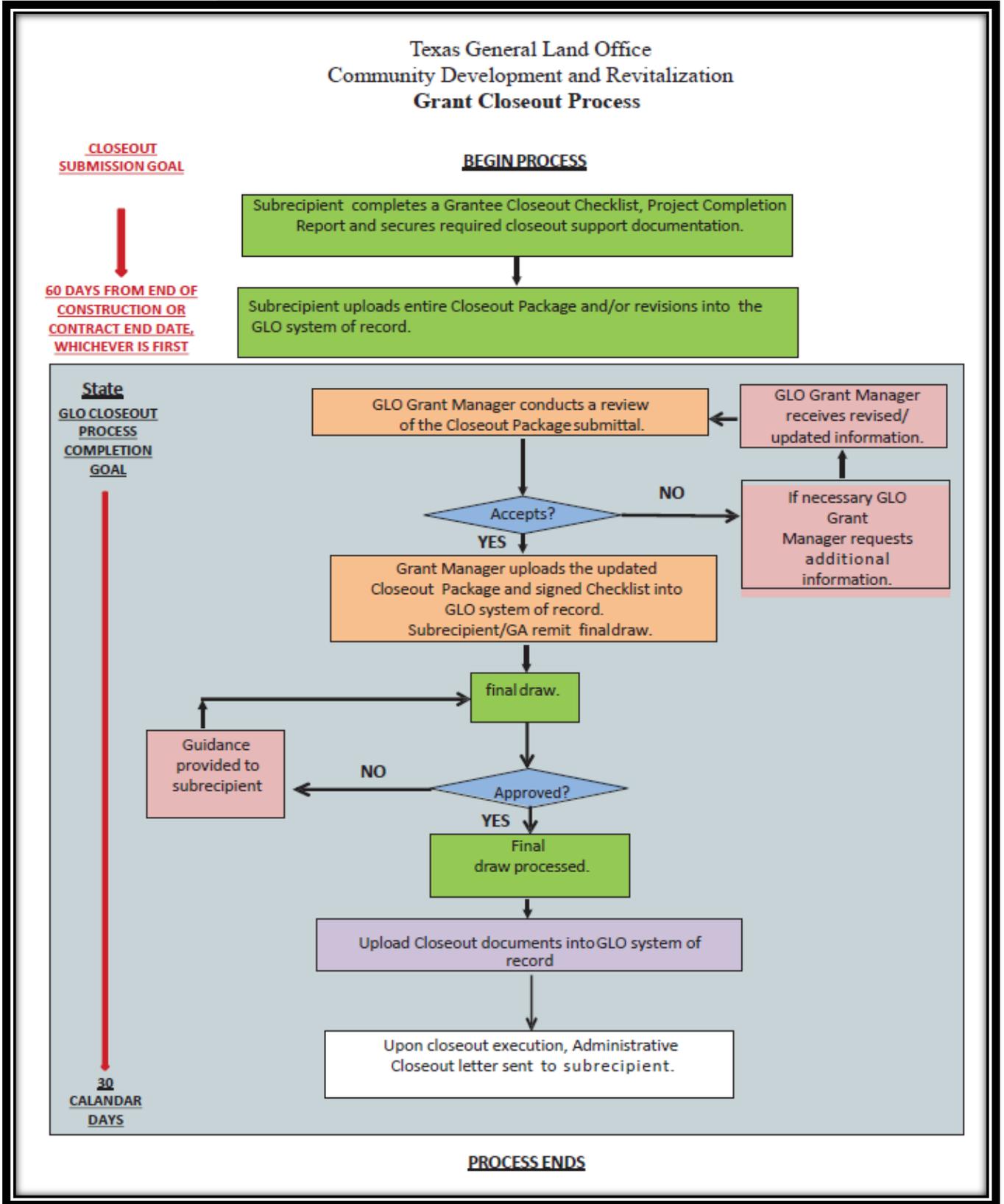
the remarks field in the Master Closeout Status Report have been completed by the GLO Grant Manger.

See your GLO Grant Manager for the current method of submittal.

Note: Contract closeout does not begin the record retention period for the contract.

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13.8 Closeout Process



13.9 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

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Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
Grant Completion Report		
Grant Closeout Submittal & Review Checklist		
Certificate of Construction Completion	http://recovery.texas.gov/files/resources/infrastructure/s5-	
Final Wage Compliance Report	http://recovery.texas.gov/files/resources/infrastructure/s5-final-	
Excessive Force Policy		
Administrative Closeout Letter		

**** Type of Form: P = Program, I = Infrastructure, H = Housing**

CHAPTER 14 - **MONITORING & QUALITY ASSURANCE**

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CHAPTER 14 - MONITORING AND QUALITY ASSURANCE

14.1 Introduction

Monitoring and Quality Assurance Review

This chapter will discuss monitoring reviews as conducted by the Texas General Land Office (GLO) Community Development and Revitalization (CDR) division. The primary topics of this chapter include the quality assurance program, monitoring review types and methods, results of monitoring reviews, and non-compliance and administrative procedures.

GLO Monitoring and Quality Assurance

GLO strives to ensure that disaster recovery efforts have met federal, state, and other legal requirements.

Monitoring review activities are conducted to meet the following objectives:

- Review contract compliance. A subrecipient or contracted vendor will be monitored to ensure that activities are eligible, beneficiaries served and that funds have been expended in accordance with GLO requirements, as outlined in the contract and other applicable state and federal rules, regulations, policies, and related statutes.
- Procedures to detect fraud, waste and abuse. A subrecipient's or contracted vendor's processes or systems and other policies and procedures used to administer GLO funds will be monitored for adequate protections against fraud, waste and abuse of funds.
- Identify any necessary corrective actions. A review could result in prescribed corrective measures to be carried out by the subrecipient or contracted vendors up to and including repayment.
- Identify technical assistance needs. A review may reveal a need for additional technical assistance.

Recurrent unsatisfactory performance and delays in submitting responses to monitoring review reports may affect a subrecipient's or contracted vendor's eligibility to apply for future CDBG-DR funding and receive funds under current grants.

14.2 Monitor Review Types

GLO generally performs the following subrecipient monitoring reviews: desk or on-site.

14.3 Desk Review

A desk review requires subrecipients or contracted vendors to provide adequate documentation to sufficiently review selected project(s) or activities and the related compliance area(s) via electronic means. GLO generally conducts a desk review in the following situations:

- Where the size, scope, or complexity of the review allows a desk review to be performed;
- An interim review or a complaint is received that warrants a desk review; or
- The subrecipient or contracted vendor requests a desk review and the request is approved by GLO management.

14.4 On-site Review

An on-site review requires subrecipients or contracted vendors to provide adequate documentation to sufficiently review selected project(s) or activities and the related compliance area(s) during a scheduled

visit at the subrecipient's location of operation. GLO generally conducts an on-site review in the following situations:

- Where the size, scope, or complexity of the review would benefit from an on-site review to be performed;
- An interim on-site review or a complaint is received that warrants a visit; or
- The subrecipient or contracted vendor requests an on-site review and the request is approved by GLO management.

14.5 General Monitoring Methodology

At least two weeks prior to a monitoring review, written notification will be provided to the subrecipient or the contracted vendor of the type of review that will be conducted. Selected compliance areas, projects or activities, and duration of the visit are examples of information that will be provided in the notification letter.

The following steps are integral to conducting a monitoring review:

- Conduct an entrance conference with the appropriate representatives to explain the purpose of review;
- Apply the applicable requirements through documented workpapers;
- Review the applicable files;
- Interview members of staff, engineers, and/or consultants, as appropriate to discuss project related issues;
- Conduct an exit conference with the appropriate representatives to present the preliminary conclusions identified during the review; and
- Issue a formal written report summarizing the conclusions of the review.

GLO retains the right to modify the monitoring procedures and monitoring tools as deemed necessary.

14.6 Results of the Monitoring Review

14.6.1 Decision Categories

One or more conclusions may result from a monitoring review that indicate the following:

- The performance complied with the requirements of the GLO program;
- Findings that require corrective actions by the subrecipient;
- Concerns about the performance of the projects or activities;
- Observations for efficiencies or items of note; and/or
- Technical assistance is necessary.

The terms above are defined by HUD as:

- A “**finding**” is an issue of statutory or regulatory noncompliance that must be addressed immediately.
- A “**concern**” is an issue that is not an instance of statutory or regulatory noncompliance but may result in noncompliance if they are not addressed.
- An “**observation**” is a comment about an area where the funded entity can improve program performance or recognize exceptional success and best practices.

14.6.2 Non-Compliance Procedures

The results of the monitoring review may require corrective action by the subrecipient or contracted vendor. A monitoring report will be issued which outlines the findings, concerns, and/or observations and identifies corrective actions to be carried out to remedy identified deficiencies.

If corrective actions are identified, the subrecipient or contracted vendor must respond to GLO by the date indicated on the report. Issues identified in the report must be resolved prior to the close-out of the subrecipient or vendor contract. A clearance monitoring letter will be issued to the subrecipient or contracted vendor stating that corrective actions address the issues noted within the monitoring report.

14.6.3 Compliance Procedures

The results of the monitoring review may indicate reasonable assurance that the scope under review complied with the terms and conditions of the program and contract requirements.

14.6.4 Pass-through Requirements

Subrecipients that utilize third-party vendors for either the administration of their CDBG funds, or pass-through funds, remain accountable for the administration and monitoring of those funds. There is no provision in the law or the regulations governing the CDBG program that would permit subrecipient to give up this responsibility. Therefore, mechanisms should be in place to reasonably assure compliance by the subrecipient with all program requirements.

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14.7 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

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National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
HUD CPD Monitoring Handbook, Chapter 2 Management of Monitoring Activities guide	https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2	

** Type of Form: P = Program, I = Infrastructure, H = Housing

CHAPTER 15 - **AUDIT REQUIREMENTS**

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CHAPTER 15 - AUDIT REQUIREMENTS

This chapter presents a summary of the GLO audit requirements as required by 2 CFR 200 Subpart F – Audit Requirements. GLO holds each subrecipient responsible for all funds expended. Links to fillable forms for this chapter are found in **Resources**, below and available at www.recovery.texas.gov.

15.1 Audit Types

The type of audit required is based on the total federal financial assistance expended by an organization in any given fiscal year and/or number of federal or state programs involved.

15.1.1 Single Audit

As defined in 2 CFR 200 Subpart F any non-federal entity expending \$750,000 or more in Federal Awards must have a single audit conducted in accordance with 2 CFR 200.514 unless it elects to have a program-specific audit.

Note: A subrecipient expending less than \$750,000 a year in federal awards is exempt from the Single Audit requirements for that year. However, records must be available for review or audit by appropriate officials of the Federal agency, and the pass-through entity.

15.1.2 Program-specific Audit Election

Applicable to subrecipients when Federal awards are expended under only one Federal program, and a financial statement audit is not required by the program's statutes, regulations, or terms or conditions of the Federal award.

15.1.3 For-Profit Subrecipient Audits

For-profit subrecipient audits should incorporate the program specific compliance guidance issued by the U.S. Department of Housing and Urban Development into their annual audits.

15.2 Submissions

15.2.1 Audit Certification Form (ACF)

It is the responsibility of each subrecipient to complete an Audit Certification Form (ACF) within sixty days after the end of each fiscal year during which the subrecipient has an open contract. The submission of an ACF to GLO is required of all subrecipients regardless of funding received during a fiscal year. After submitting the ACF, if a Single Audit is required, the subrecipient must arrange for the audit.

15.2.2 Single Audit

It is the responsibility of each subrecipient to ensure that a Single Audit or Program Specific Audit, if required, is uploaded to the Federal Audit Clearinghouse (FAC) database as detailed in 2 CFR 200.512. The FAC is operated on behalf of the Office of Management and Budget and can be accessed through the following website: <https://harvester.census.gov/facweb/>

15.2.3 Delinquent Submissions

GLO reserves the right to take action and impose remedies for noncompliance related to delinquent submissions as allowed in 2 CFR 200.388 Remedies for noncompliance.

Audit Certification Form

Subrecipients that have not submitted an Audit Certification Form (ACF) to GLO within sixty days after the end of each fiscal year during which the subrecipient has an open contract will be considered delinquent.

Audit Reports

Subrecipients that have not submitted a Single Audit report to the FAC the earlier of 30 calendar days after receipt of the report(s), or 9 months after their fiscal year end will be considered delinquent. An incomplete Single Audit Report Package is also considered delinquent.

15.3 Audit Tracking and Resolution

GLO is required by 2 CFR 200.331(d)(3), 200.521(a) & (c) to issue a management decision for all findings in a subrecipient's single-audit report that involve federal grants awarded by GLO. The management decision states whether the agency sustains or closes each single-audit finding and the reason for doing so.

GLO is also required to follow up with subrecipients to ensure they complete corrective actions that address the findings. Some corrective actions may include an enforcement action that requires the subrecipient to return federal funds to GLO. GLO's requirements to follow up on single-audit findings are given in 2 CFR 200.331(d)(2) and 200.521(a).

15.4 Management Decisions

After the audit report is received through the Federal Audit Clearinghouse the report will be reviewed by GLO. Based upon that review a written response will be provided to the subrecipient to either close the review, issue one of two management responses, or request for additional information.

Request for Additional Information

If additional clarification is needed by the subrecipient for GLO to determine its management decision a written request may be sent to the subrecipient and its representatives requesting additional information.

Management Decision

GLO reviews single audit reports and the subrecipient's corrective action plan in relation to each finding in making the determination to sustain or close the finding. In general findings are considered sustained unless it is determined that at least one of the following is true:

- The independent auditor misinterpreted federal statute.
- There is new federal guidance that was not available to the auditor when the single-audit was conducted.

15.5 Resources

The GLO has created a comprehensive website which houses all the necessary forms; checklists; detailed guidance documents; and additional resources to supplement this Implementation Manual. Please see <http://recovery.texas.gov/> for more information.

Please direct all questions regarding your specific program to your assigned GLO Grant Manager.

The resources below will be updated as new forms and documents are developed and come online.

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Topic/Form	Location	**Type
HUD Exchange: CDBG-DR Resources and Information	https://www.hudexchange.info/programs/cdbg-dr/	P
Definitions	Appendix 1 Attachment A	P
Acronyms	Appendix 1 Attachment B	P
National Objectives	Appendix 1 Attachment C	P
Texas Integrated Grant Reporting (TIGR) System	https://cdrportalprd.dynamics365portals.us/	P
OMB Grants.gov Grant Policies	https://www.ecfr.gov/cgi-bin/text-	
Audit Forms		
2 CFR 200 Subpart F Audit Requirements	https://www.ecfr.gov/cgi-bin/text-idx?SID=c92a1180439e91c819db8c5f87cf1f1f&node=2:1.1.2.2.1.6&rgn=div6	
Federal Audit Clearinghouse	https://harvester.census.gov/facweb/	
HUD CPD Monitoring Handbook	https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2	

** Type of Form: P = Program, I = Infrastructure, H = Housing

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