



2021

# CDBG-MIT Subrecipient Grant Manual

12/01/2021

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Of Resilience**

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## MANUAL REVISIONS

Date	Page #	Section	Change/Addition/Deletion
8.12.21	1	1.1 Purpose	Removed repeated text: <i>"Subrecipients approved as"</i>
8.12.21	5	1.6.2 Beneficiaries	Changed the examples of LMI Area benefit projects Removed the city-wide benefit project examples (not relevant to the program)
8.12.21	6	1.6.4 Ineligible Activities	Removed Infrastructure O&M example
8.12.21	7	1.7 Pre-Agreement Costs	Added: <i>"Obtaining all necessary Permits"</i> under incurring costs for project construction
8.12.21	19	3.3 Files to Maintain	Removed: <i>"Meeting Minutes for invoice payment approval"</i>
8.12.21	31	4.4.1 Initial "Start Up" Documentation	Removed: <i>"Environmental Compliance Exemption Form"</i>
8.12.21	38	5.3.2 Cost Analysis	Changed: <i>"Competitive Proposal Method"</i> to <i>"Qualifications Based Selection"</i>
8.12.21	46	5.9.1 Request for Proposals (RFPs)	Changed: <i>"Competitive Negotiation Method"</i> to <i>"Qualifications Based Selection"</i>
8.12.21	46	5.9.2 Request for Qualifications (RFQs)	Changed: <i>"Competitive Negotiation Method"</i> to <i>"Qualifications Based Selection"</i>
8.17.21	4	1.6.1 Duplication of Benefits	Added language to reflect compliance with the 2019 DOB Notice regarding subsidized loans
8.18.21	40	5.6 Methods of Procurement	Removed reference to Time and Materials
8.18.21	50	5.11.2 Required Contract Provisions	Changed Footnote 24:2 CFR 200 APPENDIX II (H)
8.18.21	56	5.11.4 Workers' Compensation Requirements	Changed referenced section of law regarding reporting requirements for building or construction projects for governmental entities to 42 SCC §19
8.24.21	56	5.11.4 Workers' Compensation Requirements	Changed referenced section to S.C. Code Ann. §42-1-10

## 1. CHAPTER 1 – INTRODUCTION

### 1.1 Purpose

The purpose of this manual is to provide guidance and training for Subrecipients of a CDBG-MIT grant allocation from the South Carolina Office of Resilience (SCOR). The Manual outlines the policies and procedures to ensure effective implementation of a CDBG-MIT program within the requirements for timely expenditure of funds.

It is the responsibility of each recipient of CDBG-MIT funds to understand the federal and state requirements that apply to these funds 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. Subrecipients must carry out proper and efficient grant administrative practices.

### 1.2 Background

The 2018 Congressional Supplemental Appropriations Act, Public Law 115-123 (February 9, 2018), was enacted to appropriate federal funds for mitigation. The Appropriations Act provides funds to States or Units of General Local Government (UGLGs) for mitigation efforts in various affected areas that were declared a major disaster by the President of the United States in 2015, 2016, and 2017. The federal government initially allocated \$157,590,000 to the State of South Carolina for the specific purpose of mitigation activities, with requirements and procedures as specified in the Federal Register Notice for this allocation. This allocation does not include CDBG-MIT funds separately allocated to the City of Columbia (\$18,585,000), Richland County (\$21,864,000), and Lexington County (\$15,185,000). The intention of these funds is to enable grantees to mitigate future disaster risks, while simultaneously allowing grantees the opportunity to transform state and local planning.

In January 2020, the Department of Housing and Urban Development (HUD) notified the State of South Carolina that it would receive \$4,598,000 in supplemental CDBG-MIT grant funds, bringing the total State of South Carolina CDBG-MIT allocation to \$162,188,000.

The rules and regulations attached to the funding is published into law via the Federal Register. The Federal Register requires designated grantees to draft and submit an Action Plan for approval by HUD, thus assuring the proposed programs and usage of funding are in compliance with all applicable federal law and the requirements presented in the Federal Register Notice(s). The Action Plan defines the scope of programs, activities and defines the method by which funds shall be appropriated to each of the programs described.

SCOR published its Action Plan on XXXXXXXX and has amended it XX times since. The latest version of the Action Plan can be found at XXXXXXXX.

### 1.3 South Carolina's CDBG-MIT Funded Program

Based on SCOR's CDBG-MIT Action Plan, the Mitigation Department, will conduct the following activities:

- Public Infrastructure Projects
- Home Buyouts
- Federal Fund Matching
- Plans & Studies

A concise summary of the program and these activities can be found in the CDBG-MIT Action Plan.

Based on SCOR's CDBG-MIT Action Plan, the Mitigation Department, will only conduct activities designed to reduce potential riverine and surface flooding impacts in the Pee Dee and Santee watersheds with no less than 50% of the funds benefitting Low to Moderate Income (LMI) citizens. The 17 counties that can be served by the CDBG-MIT program are:

HUD Most Impacted and Distressed Counties	SC Most Impacted and Distressed Counties
1. Charleston	10. Berkeley
2. Clarendon	11. Calhoun
3. Dorchester	12. Chesterfield
4. Florence	13. Darlington
5. Georgetown	14. Dillon
6. Horry	15. Lee
7. Marion	16. Marlboro
8. Sumter	17. Orangeburg
9. Williamsburg	

Applications for these activities must meet a Department of Housing and Urban Development (HUD) national objective (except Plans & Studies).

### 1.4 National Objectives

South Carolina has designed this CDBG-MIT program in compliance with HUD's national objectives and will ensure that assistance is prioritized toward the most disadvantaged populations. South Carolina will spend a minimum of 50% of program funds on activities that benefit the Low-to-Moderate Income (LMI) population. LMI status is determined by evaluating income as a percentage of the Area Median Income (AMI) in the county in which the applicant lives.

As stewards of federal CDBG-MIT funds, the State of South Carolina complies with HUD’s mission to develop viable communities by the provision of decent housing, a suitable living environment, and expanding economic opportunities, principally for LMI persons. To this end, all funded activities administered by the State of South Carolina will meet a HUD National Objective. SCOR will maintain records showing that funded activities meet one of the National Objectives. Depending on the National Objective, the files must contain, at a minimum, the following specific documentation for purposes of proving that the National Objective was met:

National Objective	Required Documentation
LMI Area Benefit (LMA)	<ul style="list-style-type: none"> <li>Boundaries of service area</li> <li>Census data including total persons and percentage LMI</li> <li>Evidence area is primarily residential</li> <li>Income survey documentation (if applicable)</li> </ul>
LMI Housing (LMH)	<ul style="list-style-type: none"> <li>Housing Income verification of households*</li> </ul>
LMI Buyout (LMB)	<ul style="list-style-type: none"> <li>Housing Income verification of households*</li> </ul>
LMI Housing Incentive (LMHI)	<ul style="list-style-type: none"> <li>Housing Income verification of households</li> </ul>
Urgent Need Mitigation (UNM)	<ul style="list-style-type: none"> <li>Description of impact being addressed by the activity in terms of type, scale, and location**</li> </ul>

\*Additional LMI criteria, allowed for most CDBG-MIT allocations, see relevant Action Plan.

\*\* If proposed activities respond to an impact but cannot meet another National Objective, the mitigation urgent need National Objective may be used. Subrecipients shall describe the impact in terms of type, scale, and location for each infrastructure or housing activity where the mitigation urgent National Objective is used.

## 1.5 Subrecipients

SCOR may choose to contractually obligate funds to subrecipients to implement activities or programs. Applicant eligibility is based on the specific activity being applied for.

Activity	Eligible Applicant(s)
Public Infrastructure Projects	Units of Local Government
Home Buyouts	Units of Local Government
Federal Fund Matching	Units of Local Government, State Agencies
Plans & Studies	Units of Local Government, State Agencies, Councils of Government

All Subrecipients must adhere to the program guidelines and policies set forth in this manual and the SCOR Mitigation Policy & Procedures Manual. Subrecipients will be notified by SCOR of all updates or changes to this manual, as well as changes to the Action Plan, policy & procedures manual or subrecipient agreement. Subrecipients will have 5 business days to read the update or change and acknowledge the notification in email to the Mitigation Program Manager.

Each Subrecipient will be assigned a SCOR Mitigation Grant Manager and given the Grant Manager's contact information. Grant Managers will conduct regular meetings, conduct on-site visits, and serve as the main point of contact for the Subrecipient. The SCOR Mitigation Grant Manager shall be available to answer any questions and receive all requests related to the administration of the grant. Subrecipients will also be given back-up contact information when their Grant Manager is unavailable. Subrecipients may request the name and contact information for their assigned Grant Manager by contacting SCOR by email at [DROMitigation@admin.sc.gov](mailto:DROMitigation@admin.sc.gov).

Please note that certain chapters and sections within the Manual may not apply to every activity or program. Subrecipients should contact their assigned SCOR Mitigation Program/Activity Grant Manager with questions regarding specific requirements.

## **1.6 Application & Project Eligibility**

Subrecipients are required to submit an application to SCOR for a request of CDBG-MIT funding prior to contract execution. Applicants may request technical assistance during the application phase to facilitate completion of a successful application. The application establishes and documents HUD National Objectives, project beneficiaries, duplication of benefits calculations, project budgets, and describes eligible project activities to implement upon application approval and contract execution. Application requirements vary depending on the Federal Register and Action Plan requirements. Specific application guidance will be available through an Application Guide issued for the respective activity.

### **1.6.1 Duplication of Benefits**

Many federal and state agencies are involved in responding to Presidentially declared disasters under the Stafford Act. Subrecipients should be aware that the Supplemental Appropriations Act authorizing CDBG-MIT funding may include restrictions on using those program funds to provide assistance when insurance providers or other federal or state agencies have already funded all or a portion of a disaster relief activity. Certain Supplemental Appropriations Acts also include restrictions against the use of those program funds as a matching requirement, share or contribution for any other federal program.

The Stafford Act contains eligibility requirements for recipients who have received prior disaster funding based upon whether or not they are in compliance with requirements associated with receipt of those funds. The Stafford Act prohibits the duplication of benefits to any person or entity for losses suffered in a major disaster with respect to any part of the loss for which the person or entity already received assistance from any other program or insurance. Where applicable, recipients must be in compliance with these restrictions or individual funding will be denied. If you have any questions on use, compliance, determining and/or calculating duplication of benefits, contact an SCOR Mitigation Grant Manager.

**Note:** In accordance with the 2019 DOB Notice, any subsidized loan declined by an applicant, and any subsidized loan accepted by an applicant and used for a disaster-related loss, is not a duplication of benefits. These types of assistance may be included in necessary and reasonable analysis but will not be considered a duplication of benefits. SCOR will apply this treatment of subsidized loans to all of its programs retroactively.

### 1.6.2 Beneficiaries

In order for LMI Area benefit projects to qualify for funding under the LMI National Objective, documentation must be maintained to verify that at least 51% of the project beneficiaries are low- and moderate-income persons.

An area-wide project benefit is achieved when the beneficiaries of an activity reside in the target area directly served by the activity. Some examples of typical LMI Area benefit projects include:

- New storm sewer installation
- Flood plain restoration; and
- Detention/Retention Ponds

A project with individual benefit includes LMI Buyout and LMI Housing Incentives. For an individual benefit project to qualify for funding under the LMI National Objective, documentation must be maintained to verify that individual income levels comply with HUD's regulations established in the Federal Register.

Some examples of individual LMI benefit projects include:

- Housing buyouts where an LMI person is awarded pre-disaster fair market value of their home; and
- Buyout incentives such as moving or down payment assistance

CDBG-MIT requires applicants to document and report the beneficiaries of each funded activity regardless of the national program objective met by the activity.

### 1.6.3 Eligible Activities

Each activity must: (1) be a CDBG-MIT-eligible activity (or be eligible under a waiver or alternative requirement in this notice); (2) meet a CDBG-MIT National Objective; and (3) located in a HUD or State identified MID County.

Eligible Activities are detailed in the approved Action Plan. Examples of eligible activities include buyouts, infrastructure, and planning. For more comprehensive information about eligible project types, refer to the program-specific CDBG-MIT application guides found on the SCOR DRD website.

The CDBG-MIT program provides flexibility in the activities eligible for funding, prioritizing the range of activities in the Action Plan that were determined to be the principal unmet needs.

All activities and projects must be located in a HUD or State identified MID County:

HUD MID	SC MID
Charleston	Berkeley
Clarendon	Calhoun
Dorchester	Chesterfield
Florence	Darlington
Georgetown	Dillon
Horry	Lee
Marion	Marlboro
Sumter	Orangeburg
Williamsburg	

#### 1.6.4 Ineligible Activities

Any activity not authorized under the Action Plan or CDBG-MIT statute and/or regulations, as noted in the applicable Federal Register Notices, is ineligible to be assisted with CDBG-MIT funds. In addition, the following activities are specifically deemed ineligible for CDBG-MIT funding assistance:

- Duplicative projects
- Projects that do not comply with local, state and/or federal regulations
- Buildings for the general conduct of government, except to create accessibility for the disabled population, and as waived by HUD (e.g., city hall, courthouse, Emergency Management Center)
- General government expenses
- The financing of political activities
- Faith-based organizations are eligible for CDBG-MIT funding but may not use CDBG-MIT funding to support inherently religious activities and must serve all eligible beneficiaries without regard to religion
- Purchase of equipment that is not fixed in place, including construction equipment



- 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 as direct payments to subsidize rent and/or utilities)
- Law enforcement
- Emergency Operation Centers (EOC)
- Duplication of Benefits with other loans, grants, or insurance proceeds (see 1.6.1)
- Operation and general maintenance (O&M) expenses of public facilities, improvements, and services
- Software is generally ineligible unless it is integral to the function of an improvement and not utilized for billing or other O&M purposes.

## 1.7 Pre-Agreement Costs

Pre-award costs are those incurred by a Subrecipient prior to the start date of the CDBG-MIT grant award contract, known as the Subrecipient Agreement. These costs may be deemed, in the sole discretion of SCOR DRD, as necessary to comply with the proposed delivery schedule or period of performance and may be considered allowable only to the extent that they would have been allowable if incurred after the start date of the CDBG-MIT Subrecipient Agreement (24 CFR 570.489(b)).

The SCOR DRD may allow a Subrecipient to incur costs for CDBG-MIT activities before the CDBG-MIT Subrecipient Agreement start date and to charge these pre-agreement costs to the grant only if those costs incurred reflect the following:

- The activities for which the funds were used are eligible costs
- The activities for which the funds were used meet a National Objectives of the program
- The activities for which the funds were used are authorized under applicable state and/or federal law; and
- Funds were utilized for procurement for grant expenditures specific to the CDBG-MIT funding and as supported by adequate documentation

The Subrecipient may not incur costs or expend any awarded funds for project construction prior to, at a minimum:

- Meeting the Environmental Review requirements in the CDBG-MIT Subrecipient Agreement

- Satisfactorily submitting all applicable start-up documentation to SCOR DRD; and
- Obtaining all necessary Permits

The best practice is to contact your SCOR DRD Grant Manager before incurring any costs intended to be reimbursed by CDBG-MIT.

## **1.8 Record Retention**

Project records should provide a historical account of the CDBG-MIT project and must be available for examination and review by local staff, SCOR, HUD, state and federal auditors, other state agencies, and any other interested parties. Each Subrecipient must maintain a complete set of files at the local office level.

All local records relating to a CDBG-MIT award must be maintained for three (3) years after close-out of HUD's grant to the State of South Carolina. SCOR will notify Subrecipients when a grant has closed by sending a letter that includes the specific date of the grant closeout and the retention period.

If a Subrecipient is notified by SCOR in writing, or if other applicable laws and regulations as described in 24 CFR 570.490 apply 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 fully resolved.

## **1.9 Complaint Procedures**

The SCOR has adopted a public complaint process to investigate and resolve issues arising from its administration of CDBG-MIT programs. Each Subrecipient must adopt a similar or equivalent provision that provides for the implementation of policies and procedures to address any and all complaints arising out of the administration of CDBG-MIT programs. The Subrecipient must retain records related to any complaint received and the resolution of the complaint.

## **1.10 Technical Assistance**

The SCOR is committed to providing training and resources to Subrecipients to ensure effective and efficient implementation of programs. This training shall be provided on an as-needed basis and upon request.

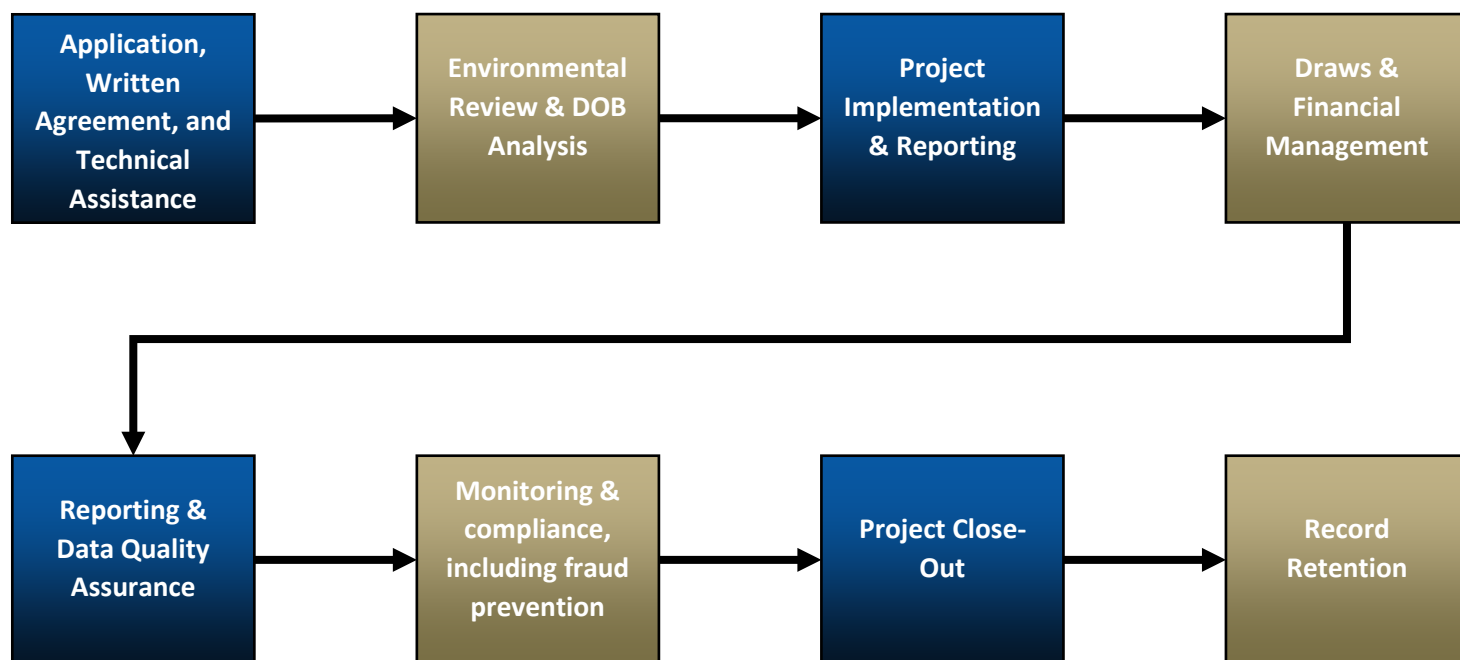
## CHAPTER 2 – ADMINISTRATION

This chapter introduces steps for implementing a successfully managed CDBG-MIT program. Prior to implementing a program, Subrecipients should put systems in place that will allow them to track and report on the activities required by their agreement with SCOR. While the Subrecipient is ultimately responsible for each project, they may choose to manage their program in-house or use an outside consultant. Ultimately, coordination is very important to ensure that all aspects of the Subrecipient Agreement remain compliant with all applicable regulations of the CDBG-MIT program.

CDBG-MIT grants differ from CDBG or CDBG-DR programs. The purpose of this section is to provide an overview of grant administration and reporting requirements to be used by CDBG-MIT Subrecipients.

The requirements for citizen participation, waivers, alternate requirements, and eligible activities are provided to the Subrecipient through the approved Action Plan and in the SCOR Mitigation Policy Manual, in accordance with the applicable program.

### Subrecipient Timeline



#### 2.1 SCOR DRD Responsibilities

SCOR is responsible for:

- Pre-Award Technical Assistance for Subrecipients
- Application for Funding Review
- Subrecipient Agreement development and execution
- Day-to-day program management
- Subrecipient monitoring
- Vendor/contractor management
- Disaster Recovery Grant Reporting (DRGR) reporting
- Beneficiary data documentation and accuracy
- Internal audit function
- Record keeping:
  - Document day-to-day management
  - Retain all records for three years after closeout of the grant
- Privacy Act related to submitted required documents
- Freedom of Information Act (FOIA) Requests
- Ongoing Technical Assistance and Training

HUD recommends the following guidance for successful program administration:

- Policy and procedures must be in writing and followed (or documented if not followed) in certain circumstances.
- Build performance milestones into contracts and include detailed scopes of work.
- Make the files/project records tell the story of the funds/projects.
- Build compliance into day-to-day management. Project completion can be undone by noncompliance.
- Have a designated signatory to sign off on work progression.
- Catch problems early and take action.
- Maintain open communication at all times.

SCOR and HUD will monitor Subrecipient 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 SCOR and Subrecipient. More information can be found in Monitoring (Chapter 13).

## 2.2 Action Plan

The Action Plan includes requirements for eligibility and how the use of these funds will address long-term mitigation throughout the state by housing buyout, infrastructure, planning, and match programs. The development criteria are defined under the Federal Register and will detail the proposed use of all funds. As the state receives additional funding, allocates funds, or changes activities, amendments to the Action Plan are submitted for public comment and HUD approval. Subrecipients must become familiar with the HUD approved Action Plan and all applicable amendments.

Action Plans consist of the following components:

- Mitigation Needs Assessment
- Eligible activities, applicants, and allocations
- Information regarding funding Method of Distribution (MOD)
- Public comments and responses

In addition, citizen participation and engagement requirements as outlined in the applicable Federal Register and action plan must be followed and complied with.

## 2.3 Methods of Distribution

SCOR will collaborate with UGLG(s) to account for many variables in the local mitigation process which may reflect how funds are distributed. There may be different methodologies for the distribution of those funds. For instance, the SCOR may distribute funding directly, may utilize a competitive process, may employ the assistance of Council of Governments or Counties to develop distribution models, or other means. Ultimately, the CDBG-DR Steering Committee will be responsible for approving all projects and determining how funds will be disbursed. Subrecipients must maintain familiarity with the method of distribution and all applicable amendments used to provide funding to their jurisdiction.

## 2.4 Contractors

Subrecipients may directly implement projects or procure and use the support of outside parties (vendors and contractors) to serve their needs.

Subrecipients are ultimately responsible for the implementation of programs and ensuring 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 federal and state provisions in executed contracts and work orders.

## 2.5 Application

Subrecipients are required to submit an application to SCOR DRD for CDBG-MIT funding prior to Subrecipient Agreement execution. SCOR DRD reviews the application for CDBG-MIT eligibility, national objective compliance, budget, and scope of work. As such, application requirements may be tailored to meet a specific need and the SCOR DRD Grant Manager may request additional information after application review. Subrecipients may request SCOR DRD assistance when preparing an application.

## 2.6 Subrecipient Agreement Execution

The Subrecipient must, at minimum, have an executed Subrecipient Agreement with SCOR DRD before funds can be drawn.

In addition to the contractual obligations between the SCOR DRD and the Subrecipient, the agreement may specify the following:

- Performance Statement - Outlines the scope of the work to be performed under this Subrecipient Agreement by activity
- The Budget – Specifies the Subrecipient Agreement budget 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 Subrecipient Agreement
- Project Implementation Schedule – Specifies a timetable for milestones in project implementation

The official designee for the Subrecipient and the SCOR DRD Program Management Director both must sign the Subrecipient Agreement before the Subrecipient Agreement is considered fully executed. The Subrecipient will have a total of thirty (30) business days to sign and return the Subrecipient Agreement to SCOR DRD. The thirty (30) day window includes: fifteen (15) business days to submit Subrecipient Agreement questions and comments to SCOR DRD and two (2) business days for SCOR DRD to respond to questions and comments. SCOR DRD reserves the right to amend the Subrecipient Agreement at the Program Management Director’s discretion. All amendments to the Subrecipient Agreement will be clearly outlined in an Official Decision Memorandum, sent from the SCOR DRD Program Management Director to the official designee for the Subrecipient.

## 2.7 Establish a Local Administrative Structure

Each Subrecipient must establish a local administrative structure to manage the activity. This administrative structure must be identified in the Application. The eligible activity and National Objective requirements are not met until the project(s) is/are complete, fully compliant, and there is sufficient documentation to ensure that the project has met the designated National Objective.

The Subrecipient must:

- Establish a record-keeping system to document compliance with all federal, state, local, and program requirements and identify said system on the Application
- Submit all necessary documents in the SCOR DRD system of record, if applicable. The SCOR DRD system of record is an electronic grant management system
  - Subrecipient Agreement files must be kept at city or county offices or buildings in which government records are maintained. These must be accessible to the public throughout the Subrecipient Agreement 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
- Establish whether day-to-day administration of the project will be conducted by local staff or by third-party grant administrator, and which party will conduct each activity and ensure compliance throughout the Subrecipient Agreement period

CDBG-MIT Subrecipients have the final legal responsibility for the locally managed and maintained Subrecipient Agreement files, the timely submission of reports, and compliance with program requirements.

**Best Practice:** SCOR DRD recommends that the Subrecipient review this Manual item-by-item and clearly identify the activities that will be performed by Subrecipient staff and those that will require outside assistance. Each staff member or vendor must fully understand their responsibilities in implementing the Subrecipient Agreement.

### 2.7.1 Documentation Required at Project Start Up

Prior to releasing any funds, the SCOR DRD must receive the following documentation at project start up as a part of the Application:

- Comprehensive Annual Financial Report/Independent Auditor's Report.

- Environmental Exemption Form for Professional Services.
- Proof of Coverage – Liability, Workers Compensation, Builders Risk, or Fidelity Bonding, if applicable.
- Direct Deposit Authorization.
- Financial Policies and Procedures, if different than SCOR DRD.
- 2 CFR 200 Procurement Regulations.
- Financial Interest Report for Engineering services, if applicable.
- Financial Interest Report for Project Delivery services, if applicable.
- Financial Interest Report for Environmental services, if applicable.
- Executed contract for Engineering services, if applicable.
- Executed contract for Project Delivery services, if applicable.
- Executed contract for Environmental services, if applicable.

## **2.8 Marketing & Outreach Plan**

For housing buyout programs, the Subrecipient will be required to provide outreach and marketing of the program for maximum participation. Subrecipients must plan on how they will offer activities to meet the types of needs experienced by the affected population and their demographics to maximize recovery efforts.

## **2.9 Policies & Procedures**

The SCOR DRD publishes Mitigation Policies and Procedures via the SCOR DRD Mitigation Policy Manual, which provides a blueprint for designing, implementing, and financial monitoring of a CDBG-MIT Program. For certain programs, Subrecipients may be required to develop their own local program guidelines and will be responsible for the implementation of their programs in their jurisdictions. Subrecipients are required to comply with this Subrecipient Manual and the SCOR DRD Mitigation Policy Manual.

## **2.10 Conflicts of Interest**

The State and Subrecipients of a CDBG-MIT program 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 Subrecipient Agreement or impact the integrity of the procurement process.

Every Subrecipient must maintain written procedures covering conflicts of interest and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-MIT assistance, or the management of Federally assisted or purchased property. The Subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489.



For the procurement of goods and services, no employee, officer, or agent of the Subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract.

For all other cases, other than the procurement of goods and services, non-procurement conflict of interest provisions is 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 Subrecipient Agreement might potentially receive benefits from CDBG-MIT awards.

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

- Exercises or have exercised any functions or responsibilities with respect to CDBG-MIT 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-MIT-assisted activity, or have a financial interest in any vendor contract, subcontract, or agreement with respect to a CDBG-MIT assisted activity, or with respect to the proceeds of the CDBG-MIT-assisted activity, either for themselves or those with whom they have family or business ties

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 examples of conflicts of interest:

- The same individual or firm has an interest in both a benefitting business identified in the Subrecipient Agreement Performance Statement 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 vendor 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

If there is any question regarding a potential conflict of interest the Subrecipient should contact the SCOR DRD Grant Manager.

## **2.11 Fraud Reporting & Investigation of Fraud Allegations**

Allegations of fraud must be reported to SCOR DRD or to the HUD Office of the Inspector General. All allegations of fraud involving any CDBG-MIT fund will be investigated immediately after being brought to the attention of SCOR DRD, through any source.

An investigation will be conducted if the allegations are made in connection with the services provided by a Subrecipient using CDBG-MIT funds. SCOR DRD will immediately:

- Notify the Subrecipient of the allegation and advise that SCOR DRD 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)?
  - When the allegations were made.
  - Time period involved.
  - Where the incident occurred; and
  - How the alleged incident occurred.

The South Carolina Office of Resilience Disaster Recovery Division (SCOR DRD) takes the detection, investigation and prosecution of fraud, waste, and abuse very seriously. SCOR DRD has a fraud, waste, and abuse reporting program that complies with South Carolina and federal laws.

If you suspect that an employee, program provider, or contractor has engaged in program related fraud, waste or abuse please contact us via:

- Phone: 1-844-506-5436
- Email: [fraudreporting@scdr.sc.gov](mailto:fraudreporting@scdr.sc.gov)
- Mail: ATTN: Fraud/Waste/Abuse  
632 Rosewood Dr.  
Columbia, SC 29201

The SCOR DRD 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 and/or the Subrecipient is directed to conclude the issue administratively.
- If it is determined that further investigation is warranted, SCOR DRD 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 SCOR DRD will:

- Prepare an Incident Report that includes all findings and any initial corrective action taken to date by SCOR DRD.
- 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.

## CHAPTER 3 – RECORDKEEPING & REPORTING

Accurate record keeping is crucial to the successful management of CDBG-MIT funded activities. Insufficient documentation could lead to monitoring findings and repayment of funds.

All required documentation associated with a project or activity should tell a complete story of project eligibility, from application to closeout. Subrecipients will report all required data into the SCOR DRD system of record as instructed. Subrecipients must also maintain a full and current set of all program related documents at their primary office location and available upon request.

CDBG-MIT Subrecipients are also required to submit a Monthly Status Report as detailed in the Subrecipient Agreement or by the request of the Grant Manager. Reports should be submitted to SCOR DRD in a timely manner as required by the Subrecipient Agreement.

### 3.1 Establish a Recordkeeping System

The Subrecipient is the Responsible Entity for all Subrecipient Agreement-related activities and must maintain all CDBG-MIT files on site at the Subrecipient's customary place of business (e.g., city hall, county courthouse, main office) and be available for review upon request by HUD, SCOR DRD staff, or other entities. Subrecipients must be familiar with and adhere to all regulations of the Freedom of Information Act (FOIA) as appropriate.

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-MIT funded activities. Subrecipients should not delegate record-keeping as retention requirements are specific to the Subrecipient. Consideration of physical records should include:

- Where are the items stored?
- Are the records at risk of destruction; and
- What identifies the records to be kept for the required record-keeping period.

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 specify person(s) responsible for records management and reporting. The person(s) responsible for these tasks must be properly trained for this responsibility; Subrecipient policies and procedures must include processes that ensure recordkeeping consistency and training. When using electronic record-keeping systems, the Subrecipient should consider a contingency plan for data as well as access to those records when there is a change in staff.

## 3.2 Recordkeeping Technical Assistance

SCOR DRD is available to provide technical assistance throughout the life of the Subrecipient Agreement to ensure compliance and eligibility. Technical assistance may include:

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

Documentation of any Technical Assistance provided must be included in the Subrecipient's program record-keeping files.

## 3.3 Files to Maintain

Although the specific documentation maintained may vary depending on the type of project or activity (infrastructure or buyouts), Subrecipients are required to maintain comprehensive, up to date project files. The files should cover all aspects of the project, beginning with application and eligibility and ending with program closure.

When assigning project responsibilities, each Subrecipient should carefully assess the duties identified in this guide to determine their staff's capacity to manage and inform for this Subrecipient Agreement.

If a Subrecipient choose to procure for activity administration services, the Subrecipient must follow all 2 CFR 200 procurement regulations (see Chapter 5) and clearly differentiate the tasks to be completed by the Subrecipient from those assigned to the vendor. Clear separation of duties is essential to establish expectations and avoid duplication of effort.

Accurate record-keeping is necessary to ensure that all documentation for each of the duties identified is compliant with federal, state, local, and program requirements. In brief, every file must fully tell the story of the Subrecipient Agreement/project from application to completion to ensure success in the inevitable audits that will come.

The following list outlines key topics and categories the Subrecipient should include when developing a project file structure: These categories below are not prescriptive or all inclusive. For additional assistance, please contact your SCOR DRD Grant Manager.

### Subrecipient Information

- Organizational chart.
- Final approved application for funding.
- Executed Subrecipient Agreement, amendments, revisions, and/or Technical Guidance Letters

**General Administrative Records**

- Personnel files, if applicable.
- SCOR DRD monitoring correspondence.

**Civil Rights, Fair Housing, EEO, Citizen Participation**

- Citizen participation compliance documentation.
- Complaint policies and procedures.

**Internal Financial Records**

- Financial policies and procedures.
- Budget.
- Accounting journals, ledgers & chart of accounts.
- Financial Source documentation (purchase orders, invoices, canceled checks).
- Real property & equipment inventory documentation.
- Draw requests and backup documentation.
- Financial reports.
- Audit reports and documentation.
- Relevant financial correspondence

**Environmental**

- Complete Environmental review records. Please see Chapter 6.

**Procurement and Draw Requests**

- 2 CFR 200 procurement regulations
- Procurement of professional services files (advertisements, proposals/qualifications, contracts, etc.).
- Procurement of construction files (advertisements, bids, scoring, contracts, etc.).
- Bid rejection documentation.
- Bank account.
- Draw requests.
- Original invoices.
- Copies of payments.
- Human Resources Employee Personnel Records.
- Timesheets.
- Benefit Rates for employees; and
- Payroll records and reports.

## **Reporting and Recordkeeping**

- Local policies and procedures.
- Project/activity status.
- Project/activity eligibility and national objective.
- Characteristics and location of the beneficiaries, including race and ethnicity of beneficiaries; and
- Compliance with special program requirements (e.g., environmental review records).

## **Documenting Duplication of Benefits**

- Verification of sources of assistance.
  - FEMA award letter.
  - Insurance letter.
  - SBA assistance/declined loans.
- Calculation of CDBG-MIT award; and
- Subrogation agreement (or similar agreement).

In addition to SCOR DRD resources, HUD has developed a number of record-keeping and reporting resources, including the 2016 CDBG-DR: Subrecipient Management and Recordkeeping Webinar and the CDBG-DR Toolkit.

## **Documenting National Objective**

All CDBG-MIT funded projects must meet at least one of two named HUD National Objectives: Low- and Moderate-Income Benefit, and Urgent Need Mitigation.

### **Low to Moderate Income (LMI)**

- Determining and documenting income.
- Calculate total cost of the activity,
- For infrastructure:
  - Documentation of direct or area benefit of LMI population served by the project.

### **Urgent Need Mitigation (UNM)**

Urgent Need Mitigation (UNM) requires activities funded with the CDBG-MIT grant to result in measurable and verifiable reductions in the risk of loss of life and property from future disasters and yield community development benefits. For UNM, a Subrecipient need not issue formal certification statements to qualify an activity as meeting the national objective. Instead, the Subrecipient must:

- Document how each program and/or activity funded under the UNM national objective will result in a reduction in loss of life or property from future disasters.

It is recommended that Subrecipients use the Low- and Moderate-Income Benefit national objective for all activities that qualify under the criteria for that national objective.

## **CHAPTER 4 – FINANCIAL MANAGEMENT**

Financial management touches on nearly all phases and aspects of a CDBG-MIT program. All costs charged by a Subrecipient must be necessary, reasonable, allowable, and allocable to the CDBG-MIT grant, as further described in this chapter. This chapter provides many of the guiding principles for ensuring costs are appropriate and eligible, but it is supplemented by financial management guidance throughout other chapters in the Manual, most notably including:

- Administrative requirements (Chapter 2) - Including duplication of benefits requirements, provisions related to charging pre-award costs, conflict of interest, reporting fraud, and distinction between agencies/government components, Subrecipients, contractors, developers, and beneficiaries.
- Procurement requirements (Chapter 5) - Including requirements related to bonding, insurance, suspension, and debarment.
- Contract conditions and Amendments (Chapter 11).
- Contract closeout (Chapter 12).
- Monitoring (Chapter 13) - Including requirements related to preventing fraud, waste, and abuse.
- Audit (Chapter 14) - Including Single Audit or program-specific audit requirements.

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

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

- 24 CFR § 570 Subpart I.
- 2 CFR § 200, including all of Subpart E Cost Principles.

It is a Subrecipient's responsibility to be knowledgeable and compliant with federal requirements to ensure the appropriate, effective, timely, and eligible use of all funds related to the CDBG-MIT project. Subrecipients are responsible for monitoring their vendors and projects and SCOR DRD is in turn responsible for monitoring the Subrecipient's compliance with applicable financial management standards, for processing CDBG-MIT payment requests for funds, and for audit review.



As used throughout this Chapter, a cost objective is a pool of related costs, which could be related based on Subrecipient agency, department, function, eligible activity, Subrecipient Agreement with SCOR DRD, or any other basis. The term is used to capture a variety of scenarios in which costs may be categorized for purposes of cost allocation or eligibility determinations.

## **4.1 Subrecipient Duties & Controls Prior to Receipt of CDBG-MIT Funds**

### **4.1.1 Establish Internal Controls**

The Subrecipient should establish and maintain internal controls and guidance documentation for responsible financial management of CDBG-MIT funds. These financial internal controls must be submitted as a part of the Application. Upon expiration of the agreement between SCOR DRD and the Subrecipient, any outstanding funds must be transferred to SCOR DRD in a timely manner. SCOR DRD defines timely manner as 60 days following the expiration of the agreement. Internal controls should meet the following criteria:

- All federal, state, and local conflict of interest provisions apply.
- The Subrecipient should have an established internal control system and documented segregation of duties. Examples of appropriate segregation of duties include:
  - 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 and the person who writes a payment check should not reconcile associated bank records.
  - Where feasible, monthly bank reconciliation and/or direct deposit monthly statements should be reviewed 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.
- The Subrecipient should have procedures for taking prompt action when an instance of noncompliance is identified internally or through audit findings.
- The Subrecipient should take reasonable measures to safeguard protected personally identifiable information (PII) and other information that HUD or SCOR DRD designates as sensitive or that the local government considers sensitive consistent with applicable Federal, state, and local laws regarding privacy and obligations of confidentiality.
- The Subrecipient should have policies and procedures governing their expenditures of CDBG-MIT funding, including procedures to ensure the timely expenditure of funds, subject to the Period of Performance within their Subrecipient Agreement. The SCOR DRD has procedures to ensure timely expenditures of funds and Subrecipients will be subject to monitoring under those procedures.

#### 4.1.2 Establish Budgets & Accounting Records

The Subrecipient is responsible for ensuring all CDBG-MIT expenditures are authorized in an approved, documented budget and do not exceed the total budget amount and do not exceed the amount in the Subrecipient Agreement.

Subrecipients generally have two general methods available to draw CDBG-MIT funds to pay for project and vendor costs: the reimbursement method and the cash advance method.

- The reimbursement method entails a transfer of CDBG-MIT funds to the Subrecipient based on actual expenditures already incurred by the Subrecipient before it requests a draw.
- The cash advance method entails the transfer of CDBG-MIT funds from SCOR DRD based upon the Subrecipient's received invoices before the actual cash disbursements have been made by the Subrecipient.

A Subrecipient's accounting system should, at a minimum, include:

- Distinct accounting information for separate eligible activities and Federal grants.
- Accurate records of encumbrances/obligations against these distinct line items when vendor contracts or purchase orders are issued.
- Accurate records on grant awards, unobligated balances, assets, liabilities, expenditures, program income, and applicable interest.

All of this information must be adequately supported by source documentation, including vendor contracts, invoices, and purchase orders.

Pursuant to 2 CFR § 200.302(a), the Subrecipient's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required to demonstrate compliance with general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Subrecipient agreement and CDBG-MIT grant.

Furthermore, Subrecipients should maintain accounting systems that provide for clear, real-time tracking of costs and targets related to the CDBG-MIT grant, including by national objective, by most impacted and distressed geographies, and by targets outlined in the Subrecipient Agreement. The only HUD identified HUD cost cap the Subrecipient will document in their systems is **project delivery**.

Subrecipients should have effective control over, and accountability for, all funds, property, and other assets in its possession. Subrecipients should make efforts to adequately safeguard all assets and assure that they are used solely for their intended purpose.

Financial Records must include, but are not limited to the following:

- Transaction registry documenting:
  - All invoices associated with each Request for Payment; and
  - Source of funds for each invoice (grant funds by activity, matching funds and/or other funds)
- 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 timesheets.
  - Equipment time record sheets, if applicable.
  - Property inventory, if applicable.
  - Purchase orders, invoices, and contractor requests for payments.
  - Electronic Transfer Form (EFT).
  - All original source documents.

#### **4.1.3 Establish Responsible Persons - Authorized Signatory Designation**

The program must fill out the *Depository/Authorized Signatories Form* to identify the persons responsible for both contractual documents (executed Subrecipient Agreement, associated amendments, and various program certifications) and financial documents (requests for payment, issuance of check):

- Signatures of the persons (at least 2 identified by job title) authorized by the local governing body to sign these documents for the Subrecipient must be submitted to SCOR DRD.
- If an authorized signatory of the Subrecipient changes (due to elections, illness, resignations, etc.), the form and/or resolution must be updated.

#### 4.1.4 Direct Deposit Authorization

The Subrecipient must authorize direct deposit to receive payments from a state agency posted directly to the local bank account. To do this, Subrecipients should complete the *Direct Deposit Authorization Form* and submit it to their Grant Manager. After the form is submitted and subject to a 30-day processing period, grant payments will be deposited using this method.

### 4.2 Subrecipient Capacity

Subrecipients must ensure that there exists staff and contractor capacity necessary to manage all CDBG-MIT grant funds under its control. Subrecipients may procure a Grant administrator to assist with management of grant compliance, subject to HUD procurement guidelines and requirements outlined in this Subrecipient Manual (see Chapter 2).

Subrecipients should consider a variety of factors when designing their systems for management of grant compliance and their staffing and contractor needs, including:

- Size and complexity of Subrecipient Agreement(s) and/or the management of multiple HUD grants.
- Grant management history and knowledge base.
- Results of past monitoring events and audits, including outstanding audit findings.
- Ability to comply with Federal rules & regulations.
- Turnover rate.
- Technical capacity (accounting, invoice processing, etc.) and knowledge of CDBG/CDBG-DR/CDBG-MIT and 2 CFR § 200 requirements.
- Management of similar programs/activities.
- Volume and response to past citizen complaints; and
- Systems in place to manage funding, both from a process perspective and Information Technology perspective.

### 4.3 Classifying Federal & CDBG-MIT Costs

#### 4.3.1 Eligible/Allowable Costs

All costs charged to the Subrecipient agreement must be eligible as described in this chapter and throughout this Manual. Eligible costs are those that conform to HUD CDBG-MIT requirements, including limitations and waivers described in applicable Federal Register Notices, comply with federal cost principles, and align with all associated cross-cutting federal requirements (Davis Bacon and Related Acts, Environmental requirements, etc.) and State and Local law.

Pursuant to 2 CFR § 200.403, costs must meet the following general criteria in order to be allowable as a charge against any Federal award:

- Costs must be necessary and reasonable for the performance of the Federal award and be allocable to that award and not to a different award.
- Costs must conform to any limitations or exclusions set forth in 2 CFR § 200 or in the Federal award as to types or amount of cost items.
- Costs must be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the Subrecipient.
- Costs must be accorded consistent treatment.
  - A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- Costs must be determined in accordance with generally accepted accounting principles (GAAP).
- Costs must be adequately documented.

#### **4.3.2 Necessary Costs**

Costs must be necessary expenditures of Federal funding in order to meet program objectives. Unnecessary costs are those that are not required to achieve the objectives of the Subrecipient Agreement or not related to the CDBG-MIT program being implemented.

#### **4.3.3 Reasonable Costs (2 CFR § 200.404)**

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

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, and other laws, and regulations; and terms and conditions of the Federal award.
- Market prices for comparable goods or services for the geographic area.

#### **4.3.4 Allocable Costs (2 CFR § 200.405 & § 200.406)**

A cost is allocable to a particular grant, Subrecipient Agreement, vendor contract, program, or other cost objective if the goods or services involved are chargeable or assignable to that cost objective in accordance with relative benefits received. This standard is met if the cost:

- Is incurred specifically for that cost objective.
- Benefits both that cost objective and other work of the Subrecipient and can be distributed in proportions that may be approximated using reasonable methods; and
- Is necessary to the overall operation of the Subrecipient and is assignable in part to the specified cost objective in accordance with 2 CFR § 200.

Any cost allocable to a particular cost objective may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the Subrecipient from shifting costs that are allowable under two or more cost objectives in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or transferred to benefitted projects on any reasonable documented basis.

Costs should only be charged net of all applicable credits. Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the cost objective. Examples include:

- Purchase discounts.
- Rebates or allowances.
- Recoveries or indemnities on losses.
- Insurance refunds or rebates; and
- Adjustments of overpayments or erroneous charges

To the extent that such credits accruing to or received by the Subrecipient relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate. These credits do not constitute program income.

### **4.3.5 Activity Delivery Costs**

Direct costs are those costs that can be identified specifically with a particular cost objective and directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs.

SCOR DRD will not reimburse the Subrecipient for indirect costs because all costs accrued by the Subrecipient are classified as Activity Delivery Costs. Any Subrecipients that receive funds will not be entitled to administrative costs given the design of the SCOR DRD mitigation programs, wherein all grant administration is executed by the SCOR DRD, and Subrecipients will implement programs based on the SCOR DRD program guidelines. Thus, all activities conducted by Subrecipients are considered activity delivery costs.

Activity Delivery Costs are the costs of carrying out a specific CDBG-MIT program and providing a program benefit. Activity Delivery Costs include staff and consultant costs necessary to implement and carry out a specific CDBG-MIT program or cost objective.

### **4.3.6 Program Income**

SCOR DRD does not intend to implement any programs that generate income as described in 24 CFR 570.489. If program income is generated, the State of South Carolina will utilize program income as follows: Income received prior to the grant closeout will be utilized as additional CDBG-MIT funds in the same manner as other CDBG-MIT funds referenced; any income received after the grant closeout, will be transferred to South Carolina's annual CDBG award.

### **4.3.7 Federal Requirements for Treatment of Special Types of Costs**

Federal requirements place limitations on specific items of costs, including prohibiting certain costs from being charged to a federal award (notable examples include expenditures for lobbying, alcohol, and payment on uncollectable debts). These requirements are specific and enumerated in 2 CFR § 200.420 – § 200.475. Subrecipients should reference these requirements and become familiar with them in order to carry out any Federal program.

Pursuant to 24 CFR § 570.489(p), all cost items described in 2 CFR § 200.420 – § 200.475 that specify the requirement for preapproval from HUD are allowable without prior approval of HUD or SCOR DRD, to the extent that they otherwise comply with the requirements of 2 CFR § 200 and are otherwise eligible, except for the following:

- Depreciation methods for fixed assets shall not be changed without the express approval of the cognizant Federal agency (2 CFR § 200.436).

- Fines, penalties, damages, and other settlements are unallowable costs to the program (2 CFR § 200.441).
- Housing cost (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR § 200.445).
- Organization costs (2 CFR § 200.455).

### **4.3.8 Ineligible Costs & Improper Payments**

The following list includes common items that will not be approved for grant funding. This list is not intended to be comprehensive and includes, by reference, all other ineligible costs referenced within this chapter and throughout this Manual, including costs determined to be unnecessary, unreasonable, or non-allocable to the CDBG-MIT grant:

- Individuals, homes, or projects not approved as beneficiaries or projects in the application.
- Billing software and related equipment not physically connected to the CDBG-MIT funded projects, including software that must be considered in relation to SCOR DRD System of Record.
- Cost of obtaining permits or other documentation that would be required regardless of the current projects.
- Commercial advertising and public relations costs such as the replacement or addition of a logo or other cosmetic painting on CDBG-MIT funded infrastructure.
- Projects that have not received environmental clearance Release of Fund (ROF).
- Funds to benefit political campaigns.
- Funds for costs associated with conduct of government (ex: city hall, courthouses, EOC); and
- Other similar costs.

Refer to 2 CFR § 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 SCOR DRD. (See 2 CFR § 200.407).

### **4.3.9 Collection of Unallowable Costs (2 CFR § 200.410)**

Payments made for costs determined to be unallowable by HUD, SCOR DRD, the State Auditor, or any other oversight entity, must be refunded (including interest) to SCOR DRD in accordance with instructions from the entity that determined the costs are unallowable.



Subrecipients should have adequate internal and quality controls to appropriately prevent the issuance of improper payments to contractors or beneficiaries. Subrecipients should also implement quality assurance procedures to check for such improper payments and take appropriate corrective actions upon identifying such payments.

## **4.4 Release of Funds**

### **4.4.1 Initial “Start Up” Documentation**

As part of the beginning “Start Up” the Subrecipient must submit the following documentation:

- Executed Subrecipient Agreement.
- Depository/Authorized Signatories Form and supporting resolution.
- Applicable Financial Interest Report(s) (See Chapter 5).
- Documentation of Compliance with Civil Rights and Fair Housing (See Chapter 10).
- Direct Deposit Authorization Form.
- Audit Certification Form (See Chapter 14).
- Other documents requested by the SCOR DRD Grant Manager, as required

SCOR DRD requires certain environmental documents to be submitted and approved prior to releasing funds, but not with “Start Up” documents. Additional Special Condition documentation may be required based on the specific funding or project description and will be listed in the Subrecipient Agreement.

### **4.4.2 Draw Procedures in the System of Record**

Subrecipients will submit all draws in SCOR DRD System of Record. While the System of Record is under development, Subrecipients will follow the instructions below.

### **4.4.3 Draw Procedures Outside the System of Record**

In the event that SCOR DRD’s System of Record is not available for submitting draws, SCOR DRD may direct Subrecipient’s to submit draws to SCOR DRD over email. Such direction will be relayed in the Subrecipient Agreement and/or via email communication. SCOR DRD will provide specific instructions to Subrecipients regarding the process and approval requirements for such draws in such communication.

Regardless of the instructions provided, every draw request submitted outside of SCOR DRD’s System of Record must include backup documentation justifying payment for each budget line item from which CDBG-MIT funds are requested. All costs must:

- Be supported by invoices or similar documentation, which includes price, quantity, materials stored, and service delivery dates.
- Be detailed in a completed Request for Payment Form with enough information to confirm all items are eligible under the Subrecipient Agreement.
- Be accompanied by approvals or signatures certifying the work billed has been completed and reviewed.

SCOR DRD staff, at their discretion, may request additional information regarding requests for payment even if support documentation has been provided. Refer to your Subrecipient Agreement for additional information.

#### **4.4.4 Minimizing the Time Between Draw & Disbursement**

Subrecipients may submit a draw request for eligible costs as often as is actually needed, subject to limitations in their Subrecipient Agreement and at least quarterly throughout the life of their Subrecipient Agreement. Subrecipients should submit costs to SCOR DRD for draw within 30 days of receipt of invoices to minimize the volume of individual draws that SCOR DRD must review and approve.

Subrecipients must submit final reimbursement requests to the SCOR DRD no later than 30 days after the Subrecipient Agreement expires or is terminated. SCOR DRD in its sole discretion may deny payment and de-obligate remaining funds from the Subrecipient Agreement 30 days after expiration.

Pursuant to 24 CFR § 570.489(c), 2 CFR § 200.305(b), and 31 CFR § 205, Subrecipients utilizing the cash advance method must minimize the time elapsing between the transfer of funds from SCOR DRD and the disbursement by the Subrecipient for eligible costs. This period must not exceed 3 business days from the date of receipt/deposit of funds, without specific, documented reasons for such a delay in very infrequent circumstances. Subrecipients must maintain written procedures for minimizing this time period.

Draw requests must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the Subrecipient in carrying out the approved CDBG-MIT activity.

All invoices submitted to SCOR DRD on a reimbursement basis must be paid within 30 days of receipt and should be time stamped upon receipt in order to verify that timely payment was made. SCOR DRD has up to 21 days to withdraw and/or reject any Subrecipient draw requests for incomplete or inadequate documentation.

In all cases, Subrecipients are responsible for ensuring that funding is drawn against their Subrecipient Agreement amount at a pace that ensures completion within their period of performance.

#### **4.4.5 Delays, Ineligible Costs & Denial of Payment**

SCOR DRD staff will review all requests for payment for completeness, accuracy, and eligibility. Subrecipients must ensure that all CDBG-MIT funding is spent only on eligible, necessary, reasonable, and allocable costs associated with project activities within their Subrecipient Agreement.

#### **4.5 Subrecipient Provided Leverage Funds**

Leverage funds are funds reflected in a Subrecipient's application to SCOR DRD and used to support the CDBG-MIT scope of work. Leverage funds can include Subrecipient funding, FEMA, SBA, insurance, and/or charitable donations.

Leveraged funds will only count when they are used for activities that are directly related to support the activities proposed for CDBG-MIT funding.

Leverage funds may be considered only if the Subrecipient has used an acceptable and reasonable method to document the value of the leverage. Except for cash leverage funding, the Subrecipient must submit an attachment/schedule which shows how the value of each type of leverage was determined. Please note that leverage can only be counted for expenditures that would not occur if the CDBG-MIT Subrecipient Agreement were not funded. Leverage funds will only be considered for expenses that meet the eligibility and with prior approval requirements of SCOR DRD. Expenditures of leverage funds must be reflected in the financial transaction register.

Each Subrecipient is required to expend the amount of leverage funds as submitted in the application and memorialized in the Subrecipient Agreement.

#### **4.6 CDBG-MIT Funding Used as Match (Non-Federal Share) for Other Federal Awards**

CDBG-MIT funding may be used as the non-federal share for Federal grants that include a cost sharing requirement. CDBG-MIT funding does not have a match or non-federal share requirement.

All projects funded in whole or in part through CDBG-MIT funds must comply with federal, state, and program requirements which are most stringent of those funding source requirements. Matching funds are generally subject to all CDBG-MIT program requirements. Except as otherwise indicated, the procedures and requirements of the CDBG-MIT program apply to all work described in the Subrecipient Agreement, including work performed by or funded in part through other funding sources.

If CDBG-MIT is to be used as the non-federal share for a FEMA grant, the Subrecipient must document those federal funds in its application. When a Subrecipient is proposing to utilize CDBG-MIT as non-federal share for any other federal source, especially FTA, FHWA, or US Army Corps funding, contact your SCOR DRD Grant Manager for additional requirements and limitations.

Within a Subrecipient's application, the Subrecipient must submit documentation of the following to SCOR DRD:

- The amount of funds granted and/or received from each source; and
- The scope of the project funded through sources other than CDBG-MIT (to confirm CDBG-MIT may act as non-federal share for the project).

If additional funding is obtained after the submission of the application, the Subrecipient should submit the funding award notification and/or other relevant documentation to SCOR DRD within 30 days of any change in the expected sources. Other sources include all potential federal, state, local, private, non-profit, utility, and insurance funding that may be available to the project in any amount.

## **CHAPTER 5 – PROCUREMENT**

This chapter establishes standards and guidelines for procurement of supplies, equipment, construction, engineering, activity administration, architectural, consulting, and other professional services for CDBG-MIT programs. Subrecipients must comply with the South Carolina Consolidated Procurement Code, S.C Code Ann. § 11-35-10, et. Seq. The SCOR DRD has also adopted 2 CFR 200.317 as it relates to the administration of CDBG-MIT programs, meaning CDBG-MIT Subrecipients are required to follow the Federal procurement requirements found in 2 CFR 200.318 through 200.326. The following standards and guidelines are being furnished to ensure Subrecipients of CDBG-DR funds procure 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 CDBG-MIT 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 SCOR DRD staff will relay the information contained herein to Subrecipients via the SCOR DRD website, [www.scdr.sc.gov](http://www.scdr.sc.gov), through trainings and checklists, and during onsite monitoring and reviews. Additional resources may be found on the HUD Exchange website including example procurement documents and checklists. These samples can be used to assist Subrecipients in complying with federal regulations; however, Subrecipients should review all procurement documents and procedures to ensure they also comply with local and state laws and regulations.

## 5.1 Local Procurement Policies

Prior to securing contract services, Subrecipients should determine whether their procurement policies and procedures are in compliance with all federal requirements contained in 2 CFR 200.318-326. If the policy does not contain all federal requirements (and the Subrecipient intends to use CDBG-MIT funds to pay for such services), the policy must be amended accordingly.

Each Subrecipient must have a written and adopted procurement policy that addresses the following:

1. Oversight.<sup>1</sup> Subrecipients 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.<sup>2</sup> Every Subrecipient must maintain written procedures covering conflicts of interest and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-MIT assistance, or the management of Federally assisted or purchased property. The Subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 and South Carolina Code of Laws 8-13-700.
  - For the procurement of goods and services, no employee, officer, or agent of the Subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g), 2 CFR 200.318(c)(1)).
  - The officers, employees, or agents of the Subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Subrecipient.
3. Avoidance of Unnecessary or Duplicative Items.<sup>3</sup> Subrecipient 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.

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<sup>1</sup> 2 CFR 200.318(b)

<sup>2</sup> 2 CFR 200.318(c)(1)

<sup>3</sup> 2 CFR 200.318(d)

4. Value Engineering Clauses.<sup>4</sup> Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. Awarding to Responsible Contractors.<sup>5</sup> Subrecipients must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
6. Record Keeping.<sup>6</sup> Subrecipients must maintain records sufficient to detail the history of procurement. These records shall include, but are not limited to, the following:
  - Rationale for the method of procurement.
  - Selection of contract type.
  - Contractor selection or rejection; and
  - The basis for the contract price.
7. Time and Materials Contracts.<sup>7</sup> Subrecipients may not use a time and materials contract for the purposes of this Mitigation Program.
8. Dispute Resolution.<sup>8</sup> Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve Subrecipients of any contractual responsibilities under its contracts.

## 5.2 Local Procurement Procedures

Subrecipients must have written procedures for procurement transactions that ensure all solicitations<sup>9</sup>:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- Identify all requirements which the offerors must fulfill.
- Identify all other factors to be used in evaluating bids or proposals; and

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<sup>4</sup> 2 CFR 200.318(g)

<sup>5</sup> 2 CFR 200.318(h)

<sup>6</sup> 2 CFR 200.318(h)(i)

<sup>7</sup> 2 CFR 200.318(j)

<sup>8</sup> 2 CFR 200.318(k)

<sup>9</sup> 2 CFR 200.319(c)

- Are conducted in a manner providing full and open competition;<sup>10</sup>
  - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or request for proposals must be excluded from competing for such procurements
  - Some situations considered to be restrictive of competition include, but are not limited to, the following:
    - Placing unreasonable requirements on firms in order for them to qualify to do business.
    - Requiring unnecessary experience and excessive bonding.
    - Noncompetitive pricing practices between firms or between affiliated companies.
    - Noncompetitive contracts to consultants that are on retainer contracts.
    - Organizational conflicts of interest.
    - Specifying only 'brand name' products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement; and
    - Any arbitrary action in the procurement process.

When using prequalified lists, Subrecipients must ensure that all lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Subrecipients must not preclude potential bidders from qualifying during the solicitation period<sup>11</sup>.

## 5.3 Cost & Price Analysis

For procurement actions in excess of the small purchase threshold, Subrecipients must perform a cost or price analysis. This requirement also applies to contract modifications and change orders.

### 5.3.1 Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services and should be documented in the procurement file. In conducting a proper price analysis, Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison.

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<sup>10</sup> 2 CFR 200.319(a)

<sup>11</sup> 2 CFR 200.319(d)

When comparing prices, Subrecipients should review for significant discrepancies to determine if the goods or services are comparable.

### **5.3.2 Cost Analysis**

Subrecipients will utilize this process to help determine if proposed costs are allowable, reasonable, and allocable as described in 2 CFR 200.403-405. Prior to receiving bids or proposals, Subrecipients should establish an independent estimate for the goods or services to be procured. When conducting a cost analysis, Subrecipients must review and evaluate the separate elements of cost and negotiate profit in a received proposal. A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

- The Qualifications Based Selection is used.
- The sole source procurement method is used.
- Only one bid is received during a sealed bid procurement: and
- A contract modification/change order is requested that changes the price or total estimated cost (either upwards or downwards).

### **5.3.3 Conducting a Price & Cost Analysis**

Subrecipients should include the following in their analysis:

- Check the accuracy of the prices submitted.
- Evaluate the necessity of the proposed cost items.
- Evaluate the separate elements of cost.
- Review proposal for potential cost overruns, taking into consideration the vendor's past performance.
- Compare proposed prices to Subrecipient's independent cost estimate; and
- Compare proposed prices to previous cost estimates or actual costs incurred for similar work.

### **5.3.4 Profit Negotiation**

Subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed<sup>12</sup>. Per HUD's "Quick Guide to Cost and Price Analysis" all of the following criteria must be considered when negotiating profit:

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<sup>12</sup> 2 CFR 200.323(b)



- Complexity of the work to be performed.
- Amount of risk the contractor may be exposed to (performance and/or cost).
- Contractor's investment and resources dedicated to performing the contract (labor, oversight, etc.).
- Use of subcontractors by the prime contractor and the nature of the work to be performed.
- Quality of the contractor's past performance for similar work; and
- Industry profit rates in the surrounding area for similar work.

Subrecipients are responsible for maintaining records and any documentation used to support the profit negotiation.

#### **5.4 Contracting with Historically Underutilized Businesses (HUB), Small & Minority Businesses, Women's Business Enterprises & Labor Surplus Firms**

Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible. Affirmative steps must include the following:

- Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above.

#### **5.5 Suspension & Debarment**

Subrecipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180.

These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities<sup>13</sup>.

Subrecipients must ensure, prior to award, that all contractors receiving CDBG-MIT funds have met all the eligibility requirements outlined in state and Federal law. At a minimum, the following steps must be taken to ensure contractor eligibility for all services procured.

- **Contractors:** All contractors, including professional consulting and engineering firms, must be cleared via a search of the Federal System of Award Management ('SAM') to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/SAM/pages/public/searchRecords/search.jsf>. A copy of the Sam search result must be kept in the Subrecipients file on that contractor.
- **Subcontractors:** Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, debarment, and state licensing requirements.

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

## 5.6 Methods of Procurement

The methods of procurement should follow the more stringent of local, state, or federal requirement. If it appears requirements contradict federal procurement standards, Subrecipients may request Technical Assistance to determine the best method of procurement. Below are the minimum requirements that Subrecipients must utilize:

### **Small Purchases**<sup>14</sup>

The small purchase method is used for the acquisition of supplies or services greater than the micro-purchase threshold and less than or equal to the small purchase threshold. Small purchase procedures are relatively simple and do not require a formal solicitation for securing services, supplies, or other property.

For local governments, the State small purchase threshold is \$10,000.

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<sup>13</sup> 2 CFR 200.318(h) and 2 CFR 200.213

<sup>14</sup> 2 CFR 200.320(b)

If small purchase procedures are used, price or rate quotations must be obtained from a minimum of three qualified sources. Documentation of the rate quotations must be maintained for record-keeping requirements.

**Sealed Bids (Formal Advertisement)<sup>15</sup>**

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

**Competitive Proposals<sup>16</sup>**

The procurement by competitive proposals technique is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. A Request for Proposal (RFP) is used when qualifications and price are used in evaluating proposals and is the preferred method for administrative services. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used in evaluating proposals and price is not used as a selection factor.

**Noncompetitive Proposals (Sole Source)<sup>17</sup>**

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

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- After solicitation of a number of sources, competition is determined inadequate

The following table outlines the four procurement methods used to procure materials, supplies, construction, and services.

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<sup>15</sup> 2 CFR 200.320(c)

<sup>16</sup> 2 CFR 200.320(d)

<sup>17</sup> 2 CFR 200.320(f)

Procurement Type	Cost Reasonableness	Contract Type	Solicitation Method	Applications
Small Purchase	Price Analysis	Purchase Order Fixed Price	Quotations  Submitted Bids	Supplies Produced items Single-task service
Sealed Bid (formal advertising)	Price Analysis Cost Analysis	Fixed Price	Submitted Bids	Construction items Produced or designed items
Competitive Proposals	Price Analysis Cost Analysis	Cost Reimbursement Fixed Price	Submitted Proposals	Professional services Multi-task services Designed items
Noncompetitive Proposals	Cost Analysis	Cost Reimbursement Fixed Price	Submitted Proposals	Produced items Single task service Professional services Multi-task services Designed Item

## 5.7 Small Purchase Procedures

Prior to utilizing the Small Purchase method of procurement, Subrecipients should consider the aggregate cost of the goods or services. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the small purchase threshold (see Section 5.6).

Subrecipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding the competitive bidding and competitive proposal requirements<sup>18</sup>.

When seeking quotes, Subrecipients must clearly explain to all vendors providing quotations that the information provided is being sought for informational purposes only and the request for quotation does not constitute a formal solicitation. Extra care must be given to avoid giving a vendor any competitive advantage in a future procurement initiative.

### **Step 1: Comply with Davis-Bacon Act requirements, if applicable:**

<sup>18</sup> Local Government Code, Sec. 262.023 (c) and Sec. 252.062

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction (see Chapter 9).

**Step 2: Contact a minimum of three (3) vendors:**

Subrecipients must use the Small Purchase Procurement Record to document quotes received. Quotations may be requested via telephone, fax, email, mail, or any other reasonable method.

Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see Section 5.4).

**Step 3: Award the contract:**

Subrecipients should conduct a price analysis and award to the lowest responsible bidder (see Section 5.3). If the Subrecipient does not award the contract to the lowest bidder, the reasoning must be documented and in compliance with federal, state, and local regulations.

Subrecipients must verify that the vendor is not debarred under the System for Award Management (see Section 5.5).

**Step 4: Execute the contract:**

Subrecipients must submit the Small Purchase Procurement Record and Financial Interest Report to SCOR DRD within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

## **5.8 Sealed Bid Procedures (Formal Advertisement)**

Procurements for materials, equipment, and construction services with a total cost over the small purchase threshold (see Section 5.7) must formally advertise for sealed bids. Procurement by sealed bids is the preferred method for procuring materials, equipment, and construction services if the following conditions apply:

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

**Step 1: Creation of Sealed Bid Packages**

Subrecipients must create a bid package, usually written by an architect or engineer and based off of prepared plans or working drawings, that provides a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project. This package must:

- Be sealed by an architect or engineer registered in The State of South Carolina and, if the project falls under the jurisdiction of another state agency, approval is required prior to construction.
- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility by the handicapped have been or will be satisfied must be executed and co-signed by a local jurisdictional official, filed in the contract documents file, and a copy must be sent to the State.
- Contain all properly obtained lands, rights-of-way, and easements necessary for carrying out the project.
- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project; and
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations

The base bid should include all components of the approved project and should not include any items which were not included in the approved applications or which have not received subsequent approval. SCOR DRD approval should be received prior to awarding a bid that includes items not listed in an approved performance statement.

Note: For fixed price contracts with unit cost pricing, the bid specifications should delineate some type of item, estimated quality, unit price, and total cost.

## **Step 2: Comply with Davis-Bacon Act Requirements**

Subrecipients must obtain prevailing wage rates as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction (see Chapter 9).

## **Step 3: Advertise for Bids**

The invitation for bids must be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see Section 5.3).

## **Step 4: Public Opening of Sealed Bid Packages**

All bids will be publicly opened at the time and place prescribed in the invitation for bids. All sealed bid packages must be opened in accordance with the following standards in addition to any requirements imposed by local, state, and federal law:

- All bids shall be opened and read aloud during the bid opening and the apparent low bidder should be determined during this time.
- Bids shall undergo a review for both technical and legal responsiveness.
- Bidders must be evaluated as having the capacity to furnish the products and/or services required; and
- Minutes of the bid opening along with a tabulation of bids shall be placed in the contract file

Subrecipients should take action within 45 days of the bid opening, or as otherwise specified in the bid documents, to either award a contract to the lowest responsible bidder or reject any and all bids for just cause. Any or all bids may be rejected if there is a sound documented reason.

If accepted, the Subrecipient and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. Any final contracts awarded must be done so in compliance with the most recent federal wage decision. Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

### **Step 5: Award the Contract**

A firm, fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually opportune.

Subrecipients must look under the System of Award Management to verify that the vendor is not debarred. Management prior to awarding a contract. If only one bid is received, the Subrecipient must receive approval from the SCOR DRD before awarding the applicable contract.

Procedures for Bids that Exceed Cost Estimates:

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the Subrecipient shall consult with SCOR DRD to determine the best course of action. Options include:

- Reject all bids received and re-advertise the project.
- Revise or reduce specifications and re-advertise the project, if approved by SCOR DRD.
- Reallocate funds to cover the overage.
- Seek other funding sources such as local funds to cover the overage; and

## **Step 6: Execute the Contract**

Subrecipients must submit the Financial Interest Report to SCOR DRD within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

## **5.9 Competitive Proposal Procedures**

Procurement by competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

### **5.9.1 Request for Proposals (RFPs)**

RFPs are used to procure professional services such as grant administrative services. This does not include architectural and engineering (“A/E”) professional services where the Qualifications Based Selection process shall be used.

### **5.9.2 Request for Qualifications (RFQs)**

RFQs shall be used to procure professional services for engineering or architectural firms (A/E). RFQs use a Qualifications Based Selection. The selection is made based upon the competitor’s qualifications, subject to negotiation of fair and reasonable compensation.

This method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. RFQs cannot be used to procure project management or construction management services.

All A/E contracting fees, even those provided for under either a fixed price contract or a cost reimbursement contract must be deemed reasonable and justifiable. If, after a project has been funded, there is a substantial change in the scope of the project, then SCOR DRD must review and approve these changes and determine whether or not any additional funds are allowable.

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

### **5.9.3 Conducting an RFP/RFQ**

#### **Step 1: Develop the Request for Proposals (RFP)/Request for Qualifications (RFQ) package**

The RFP/RFQ should include a clear and accurate description of the technical requirements for the material, product, or service to be procured. At a minimum, the RFP/RFQ package should include the following:



- Description of Subrecipient’s requirements and the scope of services. Subrecipients must utilize Scopes of Work provided by SCOR DRD in their contracts for grant administrators, engineers, and environmental service providers.
- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance.
- Detailed instructions on proposal requirements.
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.
  - A solicitation may authorize offerors to propose alternative terms and conditions.
  - When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

## **Step 2: Advertise the RFP/RFQ**

Requests for proposals/requests for qualifications must be publicized and identify all evaluation factors and their relative importance. Subrecipients should allow sufficient time between the solicitation date and proposal deadline. Any response to publicized requests for proposals must be considered to the maximum extent practical.

Proposals must be solicited from an adequate number of qualified sources. Subrecipients must take all necessary steps to affirmatively assure HUBs, small and minority businesses, women’s business enterprises, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible.

## **Step 3: Evaluate and rate the proposals**

Subrecipients must have a written method for conducting technical evaluations of the proposals received and for selecting respondents. Materials received in response to RFPs and/or RFQs are typically reviewed in accordance with one of the following processes:

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

For counties, municipalities, and other public entities the local governing body has the final authority to award contracts and may select another respondent if the minutes of the local governing body meeting include justification for the selection. Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

#### **Step 4: Award the contract**

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

Subrecipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract. If only one bid or proposal is received, the Subrecipient must receive approval from the SCOR DRD before awarding the applicable contract.

#### **Step 5: Execute the Contract**

Subrecipients submit the [Conflict-of-Interest Disclosure Form](#) to SCOR DRD within 30 days of executing the contract.

### **5.10 Noncompetitive Proposal Procedures (Sole Source)**

Subrecipients MUST obtain written approval from SCOR DRD prior to using this procurement method. All requests to utilize non-competitive procurement must be submitted in writing by the Subrecipient to SCOR DRD and include a justification as to why the contractor is the only known source to provide the goods or services under the contract. The justification and SCOR DRD approval must be maintained for record-keeping requirements.

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

- The item is available only from a single source.
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Subrecipient; or
- After solicitation of a number of sources, competition is determined inadequate.

- Subrecipients should conduct a cost analysis to determine if proposed costs are allowable, reasonable, and allocable. Subrecipients must also verify that the vendor is not debarred under the System for Award Management.

## 5.11 Contracting

### 5.11.1 Types of Contracts

#### **Purchase Orders:**

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 following:

- Agency name and address.
- Agency contract or Purchase Order number.
- Date of the order.
- Term of contract (delivery period after receipt of order or beginning and end dates).
- Contractor's name, payee/vendor identification number, and address, including zip code.
- NIGP class/item for each item.
- Purchase Code Category.
- List of contract documents and their order of precedence.
- List of awarded items with quantity, unit of measure, and unit price with extended totals.
- Signature of authorized/certified purchasing representative.

**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 and minimum administrative burden upon the contracting parties.

**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 establish a fixed contract price. These types of contracts establish an estimated total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at their own risk).

### 5.11.2 Required Contract Provisions

*CDBG-MIT Program Requirements.* All contracts executed between the Subrecipient and a contractor must include the following CDBG-MIT Program requirements:

- Performance requirements and penalties.
- Project schedule including the performance period and completion date.
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions.
- All Section 3 covered contracts shall include the Section 3 clause<sup>19</sup>; and

Other Federally Required Provisions. The Subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards<sup>20</sup>.

1. Remedies<sup>21</sup>. Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
2. Termination for cause and for convenience<sup>22</sup>. All contracts in excess of \$10,000 must address termination for cause and for convenience by the Subrecipient including the manner by which it will be affected and the basis for settlement.
3. Rights to Inventions Made Under a Contract or Agreement<sup>23</sup>. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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<sup>19</sup> 24 CFR 135.38

<sup>20</sup> 2 CFR 200.326

<sup>21</sup> 2 CFR 200 APPENDIX II (A)

<sup>22</sup> 2 CFR 200 APPENDIX II (B)

<sup>23</sup> 2 CFR 200 APPENDIX II (F)

4. Debarment and Suspension (Executive Orders 12549 and 12689)<sup>24</sup>. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
5. Records of non-Federal entities<sup>25</sup>. The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the South Carolina Office of Resilience Disaster Recovery Division (SCOR DRD), and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.
6. Record Retention<sup>30</sup>. Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a Subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
  - a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
  - b. When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
  - c. Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

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<sup>24</sup> 2 CFR 200 APPENDIX II (H)

<sup>25</sup> 2 CFR 200.336

<sup>30</sup> 2 CFR 200.333

- d. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
  - e. Records for program income transactions after the period of performance. In some cases, Subrecipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
  - f. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - g. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
  - h. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
7. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms<sup>26</sup>.
- a. The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
  - b. Affirmative steps must include:
    - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
    - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.

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<sup>26</sup> 2 CFR 200.321

- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises.
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
  - v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
8. Equal Employment Opportunity<sup>27</sup>. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
9. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)<sup>28</sup>. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination.

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<sup>27</sup> 2 CFR 200 APPENDIX II (C)

<sup>28</sup> 2 CFR 200 APPENDIX II (D)

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

10. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)<sup>29</sup>. Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
11. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended<sup>30</sup>. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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<sup>29</sup> 2 CFR 200 APPENDIX II (E)

<sup>30</sup> 2 CFR 200 APPENDIX II (G)



12. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)<sup>31</sup>. *Contractors* that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
13. Solid Waste Disposal Act<sup>32</sup>. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### 5.11.3 Bonding Requirements

Subrecipients are encouraged to accept the bonding policy and requirements of the SCOR DRD for construction and facility improvement contracts and subcontracts exceeding the simplified acquisition threshold. For contracts over \$150,000, Subrecipients should require a bid guarantee from each bidder equivalent to five percent of the bid price consisting of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified:

- For contracts over \$100,000, Subrecipients should require a performance bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

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<sup>31</sup> 2 CFR 200 APPENDIX II (I)

<sup>32</sup> 2 CFR 200 APPENDIX II (J)

- Subrecipients should require a payment bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
  - Municipalities: A payment bond is required if the contract exceeds \$50,000<sup>33</sup>
  - Counties: A payment bond is required if the contract exceeds \$25,000<sup>34</sup>

#### **5.11.4 Workers' Compensation Requirements**

Subrecipients that enter into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project. Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the Subrecipient. Subrecipients are responsible for compliance with all applicable statutory policies and provisions of South Carolina Workers' Compensation Law, S.C. Code Ann. §42-1-10 et. seq.

#### **5.11.5 Changes to an Executed Contract**

When changes to an executed contract are necessary which would result in a change to the Subrecipient Agreement, the Subrecipient should request an adjustment to both the Subrecipient Agreement and the Subrecipient contract.

When changes to an executed construction or contract are necessary, the Subrecipient must submit a Construction Change Order Form to SCOR DRD prior to executing the change order. The SCOR DRD must review all change orders to ensure costs are eligible and procured according to federal regulations as described in Sections 5.10-5.11. The SCOR DRD will notify the Subrecipient in writing upon review. The Change Order must meet the following requirements:

- Sufficient grant or local funds are available to meet any increased costs.
- The original contract price has not been increased by more than 25% or decreased (without the consent of the contractor) by more than 25%.
- All items listed on the Change Order were competitively procured through the original bid or the SCOR DRD has approved an exception; and
- All items listed on the Change Order are eligible and comply with the Subrecipient Agreement, including the Performance Statement, Implementation Schedule, Budget, and environmental review requirements.

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<sup>33</sup> Government Code 2253.021(a)(2)(B)

<sup>34</sup> Government Code 2253.021 (a)(2)(A)

## 5.12 Equipment Purchases

Equipment purchased with CDBG-MIT funds must be used by the Subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the CDBG-MIT award.

When no longer needed for the original program or project\*, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

- Activities under the CDBG-MIT award which funded the original program or project; then
- Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

\* Subrecipients must consult their SCOR DRD Grant Manager prior to utilizing the equipment for other purposes.

When acquiring replacement equipment, Subrecipients should use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property<sup>35</sup>.

*Equipment Records*<sup>36</sup>. Subrecipients must maintain a property record that includes the following information:

- Description of property.
- Serial or other identifying number.
- Federal Award Identification Number (FAIN)- funding source of property.
- Title holder.
- Acquisition date.
- Cost.
- Location.
- Use and condition of the property; and
- Disposition date and sales price, if applicable.

A physical inventory of the property must be taken, and the results reconciled with the property records at least once every two years.

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<sup>35</sup> 2 CFR 200.313(c)(4)

<sup>36</sup> 2 CFR 20.313(d)(1)

### 5.12.1 Equipment Disposition Requirements<sup>37</sup>

Prior to disposing of any equipment purchased with CDBG-MIT funds, Subrecipients must request disposition instructions from the SCOR DRD. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the SCOR DRD. Items of equipment with a current per unit fair market value above \$5,000 must be sold and the funds must be reimbursed to the SCOR DRD as a Cost Reduction Change Order.

### 5.13 Recordkeeping

For each different type of service, a separate file must be created for documentation records. Subrecipients must maintain and make available all documentation utilized during the procurement process, including but not limited to:

- Policies and procedures for procurement.
- Copies of all Invitation for Bids (“IFB”) and RFP/Qs published and mailed.
  - Proof of advertisement, if applicable.
  - Proof that an adequate number of firms/individuals were directly contacted for proposals (e.g., copies of sent emails, certified mail receipts, and/or fax confirmations).
- Copies of bidding and/or proposal packages.
- Bid and proposal responses.
- Records of bid and proposal evaluation evidencing method of selection used.
- Evidence of cost and price analysis, if applicable.
- Verification that the vendor is not on the SAM.gov debarred list.
- Other procurement correspondence.
- Minutes of award or hiring resolution.
- Executed contract including all required contract provisions.
- Record of equipment purchases, if applicable; and
- Disposition/sales procedures for equipment purchased with CDBG-MIT funds.

## CHAPTER 6 – ENVIRONMENTAL

The Subrecipient is responsible for compliance with federal environmental review requirements. This chapter provides a summary and basic understanding of the HUD Environmental regulation process (24 CFR Part 58).

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<sup>37</sup> 2 CFR 200.313(d)(e)

Periodic updates may be provided by HUD environmental compliance staff. CDBG-MIT 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 SCOR DRD Grant Manager to request technical assistance.

HUD regulations use the term Responsible Entity (RE) to refer to the unit of government responsible for meeting environmental review requirements, which includes the CDBG-MIT Subrecipient. This means 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, she/he certifies that not only has the project been found to have or not have significant impacts on the environment, but also the required process was completed in accordance with HUD environmental regulations to reach this conclusion. Environmental compliance certification must be provided to SCOR DRD prior to a Subrecipient undertaking a choice limiting action or an actual construction activity.

SCOR DRD will 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 the Subrecipient is unsure how to proceed, contact your SCOR DRD Grant Manager

## 6.1 Basis of Environmental Review

Basics of Environmental Review
<ol style="list-style-type: none"><li>1) What is there now?</li><li>2) What will be there when the project is complete?</li><li>3) How will this be accomplished?</li></ol>

A key factor in performing an environmental review is the process to consider the ultimate effect/end result of a proposed project. For example, if CDBG-MIT funds are being used to acquire a site for a new construction project, the ultimate effect/results of the project are 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-MIT-funded land acquisition and any new construction/additions of the project. The environmental review must address the impacts to the actual project site and the surrounding area.

## 6.2 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 to 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 committing funds to “choice limiting actions” physical activity, includes buyouts and infrastructure, as well as contracting for any of these actions.

Therefore, Responsible Entities (RE) are required to complete their environmental reviews, Requests for Release of Funds (RROFs) and clearance-related paperwork before:

- Any commitment of CDBG-MIT funds for activities; and
- Any commitment of non-CDBG-MIT 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-MIT application, the activity that was started is not required to be suspended. However, when a unit of local government applies for CDBG-MIT funding, it must cease further choice-limiting actions (including additional commitment of funds) on the project until the environmental review process is complete.

### **6.3 Option Contracts for Purchase of Property**

A contract to purchase property for a CDBG-MIT 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, an option contract is one action that may be taken beforehand that might conclude in buyout once the environmental review process is complete. An option contract is a useful tool for Subrecipients 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 residential for any proposed activity or reuse, including demolition and conversion of use, so long as it specifically is contingent of environmental clearance.

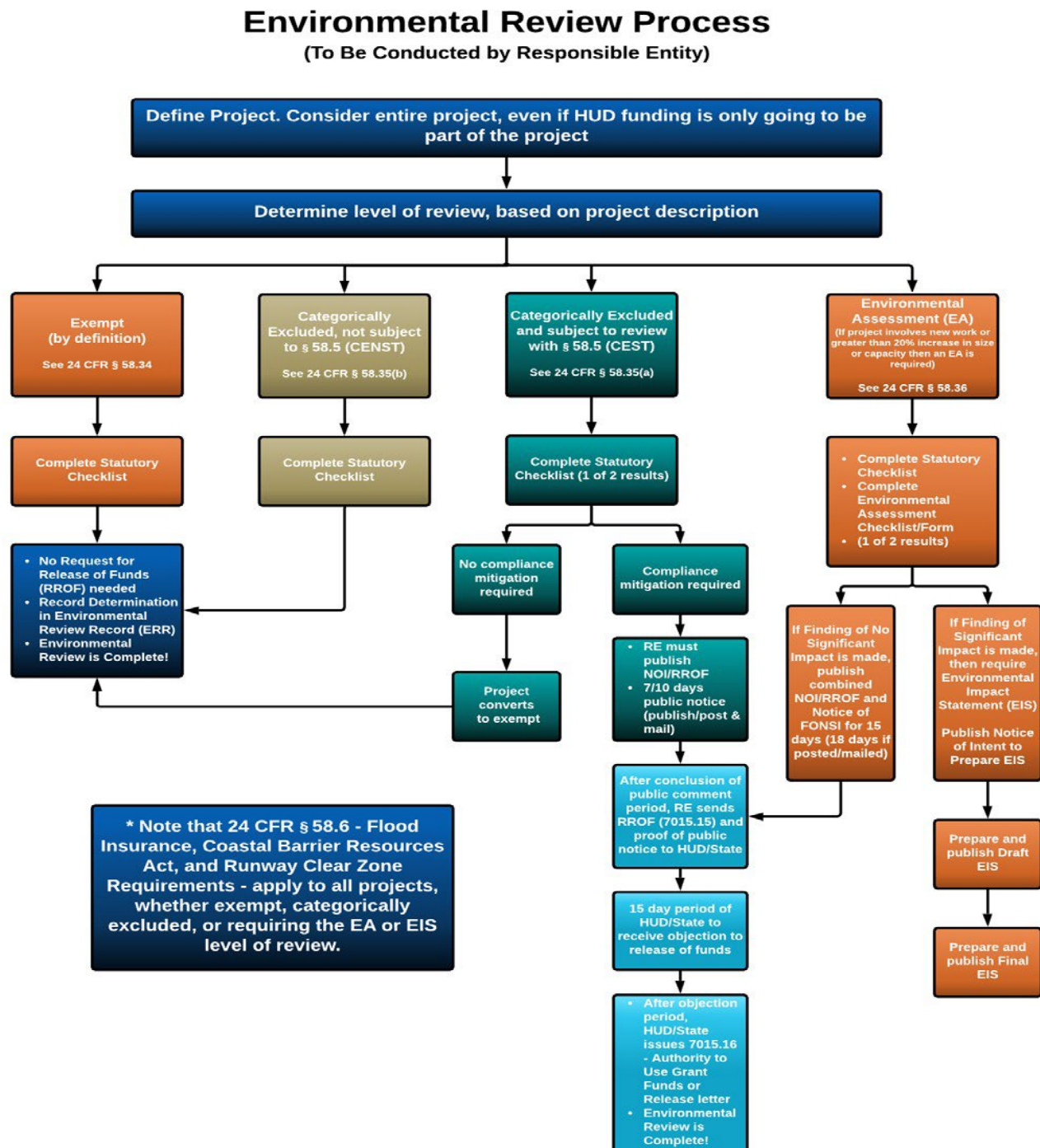
A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the potential buyer the exclusive right to buy the property at a specific price within a specific time period. The option 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.

## 6.4 Environmental Review Process

The following illustration provides a basic overview of the environmental review process:





The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work. Subrecipients should complete one environmental review for each project, including all functionally and geographically related activities and the associated administration and engineering work.

## 6.5 Environmental Assessment

Activities which are neither exempt nor categorically excluded (under each category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD, and with the environmental requirements of other applicable Federal laws. Accordingly, environmental review activities will be carried out for each funded Program activity.

### 6.5.1 Tiered Reviews

For projects with multiple, non-contiguous locations, with work sites that are scattered throughout a county, a tiered environmental review is appropriate. For the project as a whole, complete a Broad-Level Tiered Environmental Review using the format provided on the HUD website. Broad-Level Tiered Environmental Reviews must be completed for infrastructure projects. This review will identify which review requirements must be addressed site-by-site. For each specific site, document compliance with the review requirements identified in the Broad-Level Tiered Environmental Review. The Subrecipient must conduct an environmental analysis and prepare compliance documentation in support of Tier I and Tier II Site Specific environmental reviews in accordance with HUD's regulations.

**As a result of SCOR DRD's past CDBG-DR programs, a number of Tier I reviews were completed. The Subrecipient must contact their SCOR DRD Grant Manager before expending funds on a Tier I review, as this work should not be duplicated.**

The Subrecipient will review all environmental draft documents as outlined in the required documentation and sign all documents requiring Responsible Entity or agency official signatures.

- The Subrecipient may request a Release of Funds based on the Broad-Level review; however, the Site-Specific review must be completed prior to obligating funds for each site.

#### *Environmental Site Assessment (ESA) – Phase I and II*

Some projects may require an additional environmental review of the current and historical uses of a property when there is potential contamination to the soil or groundwater at the project site. Typically, these assessments are incorporated in the Environmental Review Record and may result in specific mitigation actions that must take place prior to the purchase of the property or the construction of an improvement. A Phase II ESA may be required depending on the findings of the Phase I report.



### *Environmental Impact Statement*

An Environmental Impact Statement (EIS) is required when the Subrecipient's Environmental Assessment results in a Finding of Significant Impact, indicating that its proposed project or activity will significantly impact the human environment. It is unlikely that a funded activity will trigger an EIS. In the event a Subrecipient finds itself involved with this level of review, the Subrecipient should contact their SCOR DRD Grant Manager immediately for further instructions.

## **6.5.2 HUD Checklists**

The [HUD Exchange](#) includes various checklists intended to help Subrecipients address all issues and regulations for HUD environmental review requirements. For each of these checklists, the Subrecipient must respond to each element with information from a verifiable source, including state and federal agency consultations, to be included in the Environmental Review Record.

## **6.6 Environmental Laws & Regulations**

The following provisions of law authorize state governments to assume HUD's environmental review responsibilities. SCOR DRD 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 Part 58.1(b).

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.

### **NEPA**

According to 42 USC § 4321, the purposes NEPA 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 & 11991**

Protection and Enhancement of Environmental Quality

Executive Order clarifying the role of the CEQ and identifying the role of Federal agencies in implementing and enforcing NEPA.

<https://www.archives.gov/federalregister/codification/executive-order/11514.html>

### **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 Tribal Consultation in Projects that are Reviewed under 24 CFR Part 58, SC Historical Preservation Office <https://scdah.sc.gov/historic-preservation>

### **24 CFR Part 51: Environmental Criteria and Standards**

Description: This regulation provides environmental standards for determining project acceptability and necessary measures to ensure 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 11988 related to development in floodplains. See HUD Exchange for more information and publication requirements. Completing the required 8-step process for projects located in a floodplain or wetlands will add a minimum of fifteen (15) days to the environmental review process.

Note that although Part 55 does not contain elevation requirements for non-critical actions, projects involving new construction and substantial improvements (as defined in 55.2(b)(10)) must be elevated or, for nonresidential structures, floodproofed to the base flood elevation of the floodplain in order to get flood insurance from FEMA.

If the project involves new construction or substantial improvement (as defined in 24 CFR 55.2(b)(10), NFIP regulations require that the affected structure(s) be elevated to the base flood elevation. State or local law or program policy may require additional elevation (or “freeboard”) beyond the minimum elevation requirements set by FEMA.

### **24 CFR Part 55.12(c): Regulatory Floodway and Coastal High Hazard Areas**

HUD specifically prohibits construction of CDBG funded projects in the regulatory floodway. The only exceptions are:

- the infrastructure is installed below the floodway using directional drilling below ground level (any potential erosion issues will be addressed in the 8-step process); or
- the infrastructure is elevated above the floodway and installed above the base flood level, such as pipelines mounted to existing bridges above the base flood mark.
- No housing or other structures “not functionally dependent” on the waterway will be funded if located within the floodway itself.

HUD prohibits certain construction of CDBG funded projects in Coastal High Hazard Areas or V Zones. These are areas along the coast subject to inundation by the 1% annual chance flood event with additional hazards associated with storm or tidal induced waves. Because of the increased risks associated with V Zones, Part 55 prohibits critical actions and new construction in these areas unless an exception in section 55.12(c) applies or the project is a functionally dependent use, and otherwise requires the action to be designed for location in a Coastal High Hazard Area.

#### **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.

### **CHAPTER 7 – ACQUISITION & RELOCATION**

CDBG-MIT 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 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 acquisition, rehabilitation, or demolition of real property for any phase of a Federal or federally funded project. The URA also establishes equitable land acquisition policies.

Acquisition is typically associated with another eligible activity where the end use of the acquired property meets a CDBG-MIT National Objective. Subrecipients will implement housing Buyout or Acquisition programs, which consist of two components: (1) the Buyout component (“Buyouts”), which includes the voluntary purchase of eligible properties within the floodway, floodplain or designated Disaster Risk Reduction Area (DRRA), that once acquired is converted in perpetuity to green space, wetland or flood plain management or (2) the Acquisition component (“Acquisitions”), includes the voluntary acquisition of eligible properties that sustained substantial damage that the end use of the acquired property satisfies a HUD national objective. A Buyout Program’s focus is to remove development from harm’s way. The Acquisition program allows for properties acquired to be redevelopment in a resilient manner. A Buyout program allows the use of two HUD national objectives, Low- and Moderate-Income Buyout (LMB) and Low- and Moderate-Income Housing Incentive (LMHI).

**Subrecipients managing a Buyout or Acquisition program must follow the South Carolina Office of Resilience Mitigation Policy Manual. This Manual provides specific guidelines as to how Buyout and Acquisition programs must be conducted.**

## **7.1 Uniform Relocation Assistance & Real Property Acquisition (URA)**

The purpose of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) is:

- To ensure 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.
- To ensure 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; and
- To ensure acquiring/condemning authorities implement these regulations in an efficient and cost-effective manner.

URA is triggered when real property acquisition related a CDBG-MIT project is contemplated, and persons are to be displaced as a direct result of acquisition. URA Regulations are found in 49 CFR Part 24.

### **General Requirements**

HUD Handbook 1378 provides thorough guidance on real property acquisition under URA. If there are questions whether any of the following applies to a specific situation, please consult your SCOR DRD Grant Manager.

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-MIT 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-MIT 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 is only a portion of a property but 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).

## **7.2 Methods of Acquisition**

All buyout and acquisition programs conducted by the Subrecipient must be voluntary programs.

### **Acquiring Entities with Eminent Domain Authority - Voluntary Acquisition**

Voluntary acquisitions are negotiated between the property owner and the Subrecipient without the threat of eminent domain or condemnation.

- No specific site is needed and any one of several properties could be acquired for project purposes.
- The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits.
- 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.
- The acquiring entity must inform the owner in writing of the property's pre-disaster fair market value using an appraiser (Housing Buyout or Acquisition Programs).

### **Acquiring Entities without Eminent Domain Authority - Public Land Acquisition**

Public Land Acquisition - Subrecipients 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 Subrecipient 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 fair market value of the property to be acquired before negotiating the sale, lease, or donation of the public land.

A Subrecipient may acquire real property after conducting voluntary acquisition or buyout through one of the following methods:

- **Donation:** A transaction may be considered a donation only 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 by a licensed appraiser. A real estate appraiser provides an objective and unbiased estimate or appraisal pre-disaster fair market value of a property. The Subrecipient notifies the owner in writing of the property's pre-disaster fair market value.
- **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. For a buyout or acquisition housing program, this may include incentives to resettle beneficiaries. Subrecipients must ensure that the intent of the housing incentive is satisfied at award.

### 7.3 Acquisition & Other Program Requirements

**Procurement:** Necessary surveyors, appraisers, title companies, URA vendors and other professionals whose services are required for acquisition and URA compliance must be procured under SCOR DRD rules for procurement of professional services.

**Environmental Review:** Environmental reviews must be completed prior to undertaking acquisition activities.

**Closing Costs (Buyouts or Acquisition of Real Property):** All costs of closing, recordation, including legal fees and costs associated with performing appraisals, surveys, and title reviews may be paid by the Program using CDBG-MIT funds.

Release of Funds:

- No CDBG-MIT construction funds will be released until property acquisition is complete (for infrastructure related projects). Environmental reviews must be completed prior to completion of all acquisition activities.
- 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 SCOR DRD Grant Manager for additional information.

## CHAPTER 8 – LABOR STANDARDS & DAVIS-BACON

This chapter offers a brief description of the laws and regulations associated with federal labor standards administration and enforcement, including CDBG-MIT Subrecipient Agreement requirements for Davis-Bacon labor standards compliance and documentation.

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

The Office of Davis-Bacon and Labor Standards (DBLS) is responsible for HUD’s overall compliance with the federal prevailing wage requirements applicable to HUD funded CDBG programs. Title I of the Housing and Community Development Act of 1974 requires the payment of local prevailing wage rates (which are determined by the U.S. Department of Labor) to all workers on CDBG-MIT 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-MIT 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.**

### 8.1 Objectives of Davis-Bacon

The following five (5) key labor standard objectives must be accomplished by the Subrecipient and/or SCOR DRD in order to manage and enforce Davis-Bacon requirements and protect workers’ rights. Davis-Bacon applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon also applies to residential construction which consists of projects involving the construction, alteration, or repair of with eight or more separate, contiguous single-family houses operated by a single entity as a single project or eight or more units in a single structure.

#### **Objectives for Davis-Bacon Labor Standards Compliance:**

- Apply Davis-Bacon requirements properly.
- Support Subrecipient compliance with labor standards through education and advice.

- Monitor Subrecipient performance.
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators, if necessary

By executing the CDBG-MIT Subrecipient Agreement, Subrecipients have agreed to manage and enforce all Davis-Bacon labor standards requirements and have accepted the responsibilities described in this chapter.

## 8.2 Labor Standards Compliance Steps

A construction project covered by federal labor standards, including infrastructure and housing, requires a series of ten (10) specific actions by labor standards personnel *prior to the actual start of construction*. The ten (10) actions to undertake are:

### 1. Designate a Labor Standards Officer (LSO) for the Project

The SCOR DRD Appointment of Labor Standards Officer Form is a required position for all Subrecipient Agreements with construction activities. The form must be submitted to SCOR DRD. The LSO may be an employee of a city or county or a private consulting firm and should understand HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD funded CDBG programs.

The LSO is responsible for the regulatory administration and enforcement of the federal labor standards provisions on all Subrecipient Agreements 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 construction contractor that is ineligible (i.e., debarred) for federally assisted work.
- Providing the proper Davis-Bacon prevailing wage rate and ensuring that wage rate and applicable provisions are incorporated into all construction contracts and subcontracts.
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing weekly payroll reports ensuring that the applicable Davis-Bacon wage rate and the Department of Labor's.
- "Notice to All Employees" federal posters are displayed at the job site; and
- Overseeing any enforcement actions that may be required.



## 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, fringe benefits and geographic location of the prevailing wage rate.
- 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 regularly to keep them current

The LSO must obtain the applicable wage rate for each specific construction contract where Davis-Bacon and Related Acts (DBRA) regulations apply that are greater than \$2,000. Wage Decisions can be pulled at <https://beta.sam.gov/>.

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

**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 residential, 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, 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 includes the construction, alteration, or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. Property is defined as one or more buildings on an undivided lot or on contiguous lots/parcels which are commonly owned and operated as one rental or project.

**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.

### **3. Include the Wage Decision in the Bid Documents**

If the construction work will be procured through sealed bid 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 most appropriate for the work to be done. The type of work and the locations where these decisions are applicable are listed in the first paragraph of the wage rate.

### **4. Ensure the Wage Rate is Current Before Bid Opening**

The LSO must confirm the wage decision in the bid specifications for construction contracts is still current for the bid opening date. The LSO must re-verify the wages rates and complete the SCOR DRD Ten Day Confirmation Form ten (10) calendar days or less before the bid opening.

A completed SCOR DRD 10 Day Confirmation Form, 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, and must be provided to SCOR DRD representatives upon request.

The date the wage rates were confirmed by the Labor Standards Officer must be recorded.

- For Housing: the “Bid Open Date” is the Notice to Proceed date.
- For Competitive Sealed Bid: the “Bid Open Date” is the date sealed bids are opened.

SCOR DRD 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)). The LSO is to retain copies of addenda issued notifying bidders of the new wage rates if applicable.

Modifications to wage decisions published by DOL less than 5 days before bid opening may be disregarded if found and there is not sufficient time to notify bidders. If this occurs, the LSO should report a written explanation to the Subrecipient Agreement file.

The Ten-Day Confirmation form does NOT “lock in” wage rates.

- For Housing: Wage decision “locks-in” at construction contract award or start of construction, whichever occurs first.
- For Infrastructure: Wage decision “locks-in” at bid opening provided construction contract is awarded within 90 days. The LSO must reconfirm the wage decision if the construction contract award is made beyond 90 days.

## **5. Confirm the Recommended Construction Contractor’s Eligibility Status**

The LSO must verify prior to awarding and executing any 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). Resource: <https://www.sam.gov/SAM/>

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

## **6. Award the Construction Contract**

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

The labor standards compliance 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.
- Enable the LSO to enforce the labor standards applicable to the project; and

- Best Practice: Incorporate HUD Labor Standards Form 4010 in the construction contract and provide to contractor with pre-construction 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 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:

- The work to be performed by the additional classification is not performed by a classification already on the applicable wage decision.
- The classification is used by the construction industry in the area of the project; and
- 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 an 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.

Requests for Equipment Operators must specify the type(s) of 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.

SCOR DRD will refer the request to the DOL for a final determination, and will provide the response to the requestor upon receipt from the DOL. It can take 6-8 weeks to receive DOL’s official response. SCOR DRD will forward the DOL response to the LSO upon receiving DOL’s response. The LSO is responsible for providing a copy to the construction contractor and asking the contractor to post a copy onsite.

If the DOL *does not* approve the request, the DOL’s response letter will include the conformance or approved wage rate that should be used for the work classification requested. It will also contain instructions about how to ask for DOL reconsideration if the Subrecipient would like to pursue the issue further.

If construction ends prior to receiving the DOL's formal response, it will not delay or prevent the LSO from submitting the Final Wage Compliance Report or Project Completion Report within the required timeframes. The CDBG-MIT Subrecipient Agreement does not need to be held open if DOL has not responded before the close of the CDBG-MIT Agreement.

## **7. Hold a Pre-Construction Conference to Explain Labor Standards**

A pre-construction conference should be held with the Subrecipient, developer/owner, engineer/architect, prime contractor, subcontractor(s), inspector(s), LSO, and all applicable utility companies prior to the start of construction. The Subrecipient and LSO must document and retain pre-construction conference minutes, including a list of attendees and an outline of the required federal/state labor requirements.

The pre-construction 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 requirements and penalties for failure to comply with requirements.
- Delivery of all bonds and certificates of insurance to the Subrecipient.
- 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.
- Delivery of Davis Bacon and Labor related Project Signage (found here: <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>); and
- Discussion of applicable special conditions identified in the Subrecipient Agreement and construction contract

In addition to any required temporary or permanent signage found in the construction contract, 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" at the job site in a place that is easily accessible to all the construction workers employed at the project. If the contractor requests additional classification(s) as described above, the contractor must also post a notice of the request and the associated wage decision on the job site.

## **8. Submit the Labor Standards Record**

The LSO must submit the SCOR DRD Labor Standards Record (LSR) form to the SCOR DRD Grant Manager or upload in the SCOR DRD system of record if available. The LSR is required for each construction contract over \$2,000 and must be submitted prior to the first Request for Payment for construction work.

A separate LSR must be submitted for each prime construction contractor and should reflect all subcontractors listed under that prime. Financial Interest Reports are also required for all construction contractors and subcontractors and must be submitted to the SCOR DRD Grant Manager. If subcontractors change during the construction period, the Supplemental LSR can be submitted to record the change in subcontractors.

The Labor Standards Record must be submitted after the preconstruction conference is held and before any construction dollars are reimbursed from the CDBG-MIT Subrecipient Agreement for the construction contract.

## **9. Review Project Payrolls During Construction**

The LSO or other designated inspector must conduct on-site visits to the project site and interview a proportion of the workers concerning their employment on the project. In addition, the LSO must review weekly payrolls and related submissions to ensure 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, SCOR DRD 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, the interviews are confidential, and the employee will be asked the type 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. 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 sending mailed questionnaires.

### **Project Payroll Reviews**

A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local Subrecipient Agreement 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 in a timely manner to ensure that:

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

The LSO should maintain evidence of payroll reviews such as initialing the weekly certified payroll reports and signing the employee interview forms as the payroll examiner.

#### **10. Submit Construction Completion Reports – SCOR DRD Certificate of Construction Completion (COCC) & SCOR DRD Final Wage Compliance Report (FWCR)**

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

A final inspection is required for each prime construction contract and document acceptance of the project must be signed 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 are required to be completed prior to the contractor's final payment.

### **8.3 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 and is responsible to the LSO for ensuring 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 SCOR DRD Grant Manager 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 SCOR DRD) in the amount of the liquidated damages should be forwarded to SCOR DRD 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. The violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer

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



- 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; and
- If Liquidated Damages are equal to or less than \$100.00, the employer is encouraged to seek a reduction or waiver of liquidated damages from the SCOR DRD.

### **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 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 SCOR DRD.

## **8.4 Labor Disputes**

### **Administrative Review on Labor Standards Disputes**

The labor standards clauses in the CDBG-MIT Subrecipient Agreement and DOL regulations provide for administrative review of issues by SCOR DRD 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.
- 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.

**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.**

### **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, SCOR DRD 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 the amount of wage restitution that is 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 DBLS will be ineligible (debarred) to participate in any DBLS 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.

## **8.5 Exemptions**

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-MIT 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.

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

- Prime Construction contracts of \$2,000 or less.
- Single Family, Owner Occupied Residences.
- Rehabilitation of residential properties designed for fewer than eight (8) families.
- Volunteer labor as long as nominal benefits cannot be tied to productivity, hours worked, or in any way be construed as wages.
- Convict labor is subject to DBRA, there are no exemptions for convict/prison inmate labor on DBRA covered contracts unless another exemption applies.
- Employees of the local Subrecipient (Force Account labor).
- Only private or local funds used for rehab or construction unrelated to the CDBG-MIT project.
- Holding/maintaining properties (land bank).
- Some Demolition Activities may be exempt. However, demolition, clearance, and debris removal are covered by DBRA when planned as part of the same construction contract or subsequent construction is contemplated as part of a future construction project under another DBRA eligible activity.

- Construction Contracts of \$100,000 or less are exempt from Contract Work Hours and Safety Standards Act (CWHSSA) only.
- Professional service activities such as acquisition, engineering, architectural, and administrative services are exempt and do not require an LSR.
- 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.

## 8.6 Laws & 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.

## CHAPTER 9 – CIVIL RIGHTS REQUIREMENTS

Subrecipients are required to comply with the Civil Rights requirements of Title I of the Housing and Community Development Act. This chapter presents summaries of the key regulations and requirements of civil rights, fair housing, Section 3, and equal opportunity laws applicable to the administration and implementation of CDBG-MIT funds. Additionally, HUD's website includes a CDBG-DR Toolkit Resources Summary that provides a snapshot of applicable regulations by program.

Subrecipients must demonstrate no person is being denied benefit, excluded, or subjected to discrimination under any program funded in whole or in part by federal funds. Program participation must not be based on:

- Race
- National Origin
- Religion
- Color
- Sex
- Age

- Disability (mental and physical); or
- Family Status

## 9.1 Strategies & Procedures

CDBG-MIT Subrecipients must assure all CDBG-MIT funded activities are conducted in a manner that ensures equal opportunity and access to all persons in accordance with civil rights, equal opportunity, and affirmative action laws, regulations, and requirements. Subrecipients must also have written policies in place to promote fair and equal access to housing and employment opportunities for Section 3 residents, minority, and female-owned businesses. Documentation must be available to ensure Historically Underutilized Businesses (HUBs) are informed of contract opportunities whenever they are a potential resource. This section presents strategies and procedures for documenting and complying with these regulations.

Below are required considerations, plans, or policies:

- Limited English Proficiency (LEP) Standards: establish a plan for determining if there is a need for LEP services and, if applicable, how appropriate language assistance will be given. Subrecipients must follow the SCOR DRD Language Assistance Plan, as published on the website
- Subrecipients must agree to conduct 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)
- Subrecipients must operate their CDBG-MIT program in compliance with Section 504 requirements (24 CFR 8.50(a)). Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs on the basis of disability and imposes requirements to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds. If the Subrecipient employs fifteen or more persons, a responsible employee of the Subrecipient must be designated to coordinate the Subrecipient's efforts to comply with Section 504

## 9.2 Section 3

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires Subrecipients to ensure that training, employment, and other economic opportunities generated by certain HUD financial assistance shall be directed, to the greatest extent feasible, and consistent with existing federal, state, and local laws and regulations, to low- and very low-income persons. Section 3 regulations do not mean Subrecipients, or contractors are required to hire Section 3 residents or award contracts to Section 3 businesses. Subrecipients must comply with statutory requirements on procurement and competitive bidding.

Section 3 compliance is applicable when CDBG-MIT assistance exceeds \$200,000 for projects that involve public construction, such as street repair, sewage line repair or installation, updates to building facades. If Section 3 is applicable to the Subrecipient, all contractors and subcontractors with contracts over \$100,000 must also comply.

Subrecipients and contractors may demonstrate compliance with Section 3 by meeting HUD's numerical goals for providing training, employment, and contracting opportunities to Section 3 Residents and Section 3 Business Concerns. If a Subrecipient fails to meet the Section 3 minimum numerical goals, they must be prepared to demonstrate efforts were made to meet the numerical goals. The SCOR DRD will then examine the Subrecipient's efforts and provide technical assistance as necessary.

### **9.2.1 Section 3 Employment Goals**

The Subrecipient must demonstrate compliance goals with Section 3 by providing employment opportunities and job training to lower income residents. Subrecipients must apply Section 3 goals "to the greatest extent feasible". This may mean going a step beyond the normal notification procedures for employment and contracting and developing strategies that will specifically target Section 3 residents and businesses.

The following steps may be implemented to demonstrate Section 3 compliance:

- Prepare and make available to the public Section 3 policies.
- Include the Subrecipient's Section 3 Policy and Procedures in all construction contracts.
- Set a goal of thirty percent (30%) of new hires be Section 3 residents: and
- Contractors and subcontractors must document efforts to comply with Subrecipient's Section 3 goals.

This requirement extends only to full-time jobs which may be permanent, temporary, or seasonal as well as contracts which are a direct result of the CDBG-MIT project.

## **9.3 Equal Opportunity & Non-Discrimination Provisions**

Subrecipients must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the CDBG-MIT project on the basis of race, color, religion, sex, national origin, age, or disability.

*Nondiscrimination, Equal Opportunity, and Affirmative Action in Employment.* Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Steps that can be taken to prevent discrimination in employment include the following:

- Maintain employment data that indicates staff composition by race, sex, disabled status, and national origin.
- Review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.
- Advertise locally as an equal opportunity employer.
- Publish an annual statement of nondiscrimination or include such statement in any CDBG-MIT program communications/publications.
- Develop a network of information points that serve minority, elderly, women, disabled and ethnic groups, in addition to newspapers or public service channels, to advertise employment opportunities.
- Develop and implement a Section 3 compliance plan.
- Display Equal Opportunity posters prominently at all job sites; and
- Take affirmative action to overcome the effect of past discrimination.

*Nondiscrimination, Equal Employment Opportunity, and Affirmative Action for Construction Contracts.* Subrecipients must take all necessary steps to notify minority businesses, women's business enterprises, labor surplus area firms, and Section 3 businesses of bidding opportunities. Contractors may not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Steps that can be taken to prevent discrimination and monitor for compliance include the following:

- Advertise as an equal opportunity employer in bid solicitations.
- Include minority businesses, women's business enterprises, labor surplus area firms, and Section 3 businesses in bid solicitations whenever possible.
- Document and maintain a list of locally owned businesses that were awarded contracts.
- Include Section 3 and Equal Employment Opportunity clauses as part of bid packets and all applicable contracts.
- Inform contractors of Section 3 and equal opportunity requirements at preconstruction conference or through other means of notification.
- Require contractors to submit monthly utilization reports; and
- Monitor contractor's compliance at work site.

*Nondiscrimination, Equal Opportunity, and Affirmative Action in Housing.* The Fair Housing Act prohibits discrimination against protected class members in the sale, rental, conditions, and financing of dwellings and in other housing-related transactions. Steps that can be taken to prevent discrimination in housing include the following:

- Develop and adopt a fair housing policy that includes of methods of enforcement.
- Disseminate information concerning housing services and activities through agencies and organizations which routinely provide services to protected groups.
- Review contract documents used by Subrecipients and lending institutions participating in local programs to eliminate any discriminatory intent or practice.
- Evaluate criteria for selecting recipients of housing assistance for any discriminatory effect.
- Offer assistance to persons experiencing discrimination in housing.
- Provide housing counseling services to minorities and women seeking housing outside areas of concentration.
- Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.
- Work with local banks to post "equal lending opportunity" advertisements.
- Use "equal housing opportunity" slogan and logo on Subrecipient correspondence.
- Sponsor fair housing seminars and campaigns.
- Work with minority and women leaders in the area to promote housing development and increase minority and female participation.
- Create a local housing authority.
- Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.

## **CHAPTER 10 – CONTRACT (SUBRECIPIENT AGREEMENT) AMENDMENTS & REVISIONS**

Subrecipient Agreements are awarded based on the information presented in the final application. While implementing a CDBG-MIT Subrecipient Agreement, situations may occur that require a change in the original terms of the Subrecipient Agreement. Changes to the executed Subrecipient Agreement may be made only by written agreement of the SCOR DRD and the Subrecipient, following the SCOR DRD's change request process. These changes may be identified by SCOR DRD as Subrecipient Agreement revisions or amendments dependent upon the type and magnitude of the change as it relates to the original scope, location, budget, or beneficiaries.

The SCOR DRD may, upon completion of the Subrecipient Agreement, de-obligate any remaining balances by means of a close-out letter. Other changes may be approved, at the SCOR DRD's discretion, for other adjustments that may be required during project performance by way of a Revision or Technical Guidance Letter.



Changes to decrease or increase the grant amount, add, or delete an activity, extend the term of the Subrecipient Agreement or other substantial changes will be reviewed and processed as amendments. SCOR DRD will consider the requested changes and determine the appropriate process. Documentation required from the Subrecipient will be the same regardless of the type of change requested. The SCOR DRD will determine how to identify the type of change and process accordingly. The request must include all required documents and be accurate before it is routed for processing.

Subrecipients should contact their Grant Manager immediately upon identifying the need to make changes to the executed Subrecipient Agreement for additional guidance. This includes changes to the Subrecipient Agreement term, Performance Statement, Budget, and Milestones.

### **10.1 Performance Statement & Budget Changes**

All Subrecipient Agreement change requests will be submitted to the assigned SCOR DRD Grant Manager for review and processing.

Specific changes including the performance statement and budget will be reviewed by the SCOR DRD Grant Manager and compared to the current performance statement to ensure federal, state, and programmatic requirements continue to be satisfied.

### **10.2 Subrecipient Agreement Extensions**

The Subrecipient is responsible for monitoring Subrecipient Agreement progress, including overall grant administration, environmental services, and construction to comply with the Subrecipient Agreement end date. CDBG-MIT Subrecipient Agreements allow a specific time period to complete the activities identified in the Performance Statement. If a Subrecipient is reasonably assured that project costs will be incurred beyond the Subrecipient Agreement end date and that incurring these costs is beyond the control of the Subrecipient, an amendment for a Subrecipient Agreement extension must be requested from SCOR DRD to extend the current Subrecipient Agreement end date.

To avoid interruptions to the Subrecipient Agreement or possible exclusion of reimbursement for project costs, Subrecipients should submit a request for a Subrecipient Agreement extension as soon as the need is identified. Subrecipient Agreement extension requests should be submitted approximately sixty (60) days prior to the termination date of the Subrecipient Agreement and include a revised project schedule showing when major milestones will be completed for each activity.

### **10.3 Documentation Required for Change Requests**

- Request from the Subrecipient by letter

- Revised Performance Statement and/or budget, “redlined” using “track changes” in Word format.
- Re-evaluation of environmental findings, if applicable.
- Revised project maps showing the locations of the original and amended project activities, if applicable.
- Beneficiary Changes, including census data, if applicable.
- Revised project schedule if requesting a Subrecipient Agreement term extension and justification to support meeting applicable milestones.
- Other documentation deemed necessary to justify the change, as requested by SCOR DRD

## 10.4 Considerations for Submitting Change Requests

Applications were approved for funding based on their proposed project need and are expected to implement the projects as proposed. Any changes to the scope of work will be reviewed to determine if the revised project is supported by the justification provided in the application and in accordance with the applicable review criteria. **An incomplete scope of work may result in repayment by the Subrecipient.**

The Subrecipient should evaluate the Performance Statement once a bid has been accepted and, if necessary, submit an amendment or revision to accurately reflect the project that will actually be awarded.

If work is added to or deleted from the Performance Statement, the work may be completed by various methods as allowed by federal, state, local procurement guidelines, and policies and procedures. Such methods may include:

- Alternate bid items.
- Change Orders.
- Bidding the additional work separately.

Changes to the Budget that require a change to the Performance Statement should be submitted in the same change request. If the change request is the result of a construction change order, include a copy of the change order form.

## CHAPTER 11 – CONTRACT (SUBRECIPIENT AGREEMENT) CLOSEOUT

The CDBG-MIT Contract closeout process is designed to ensure all CDBG-MIT activities are completed and funds are expended in accordance with the Subrecipient Agreement, program rules, and state and federal requirements.

This means any financial, administrative, and performance issues related to the CDBG-MIT Subrecipient Agreement and stipulated as part of the Subrecipient Agreement have been resolved to the satisfaction of SCOR DRD, HUD, and the Subrecipient. The closeout process also certifies that the persons benefiting from the activities described in the Subrecipient Agreement Attachment A Performance Statement (Performance Statement) are receiving services or a benefit from the use of the new or improved project, facilities and/or activities.

The closeout process begins when:

- All costs to be paid with CDBG-MIT 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 SCOR DRD.
- The work described in the currently approved Performance Statement has been completed.
- The Subrecipient other responsibilities under the agreement with SCOR DRD have been met.

Subrecipients with multiple programs in their state Subrecipient Agreement must notify SCOR DRD when they have completed all work under a specific program even if grant funds under that program have not been fully expended.

### **11.1 Closeout Process**

The program closeout process consists of a thorough review and final approval of a Grant Closeout Report (GCR) and the required supporting documentation identified. Other information may be required and requested by the SCOR DRD.

The GCR must be submitted within sixty (60) calendar days after the Subrecipient Agreement end date. If all construction activities are completed prior to the Subrecipient Agreement end date, then the GCR due date is sixty (60) calendar days after construction is completed.

### **11.2 Grant Closeout Report (GCR)**

The GCR consists of the sections identified below. Note that the GCR for housing and infrastructure programs will require varying documentation in accordance with the type of Subrecipient Agreement/project.

#### **Certificate of Expenditures (COE)**

This section of the GCR documents financial status of the completed Subrecipient Agreement, including both CDBG-MIT funds and any other funds used for the project. All budget activity is listed in the following columns:

- SCOR DRD Budget: Funds allotted to each budget activity according to the CDBG-MIT Subrecipient Agreement, Budget including all amendments and revisions.
- SCOR DRD Funds Expended (Including Final GA Draw): Funds received from CDBG-DR through approved Requests for Payment. Pending Requests for Payment are included in this amount.
- Final GA Draw: Amount of final GA Draw.
- Unutilized Funds: Total grant 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 de-obligated by SCOR DRD upon administrative completion of the Subrecipient Agreement and will be unavailable for reimbursement.
- Local Contribution: All funds or local contribution other than CDBG-MIT funds used to complete the project.

SCOR DRD will de-obligate all funds that are:

- Identified by the Subrecipient in the Unutilized Funds (De-Obligate) column.
- No requested for payment with appropriate documentation within sixty (60) days after the Subrecipient Agreement end date.
- Approved in writing for extended reserve.

Costs may be reserved under certain conditions for up to ninety (90) days under the following circumstances:

- Prior written approval by SCOR DRD.
- Must include a specific timeline/schedule for completion.
- CDBG-MIT Subrecipient Agreement is part of a project funded through multiple funding agencies and total project is not complete.
- CDBG-MIT Subrecipient Agreement is involved in litigation or dispute.

### **Certifications**

The Subrecipient must sign the GCR and certify:

- All activities undertaken with funds provided under the Subrecipient Agreement identified in this report have been carried out in accordance with the Subrecipient Agreement.
- The information contained in this GCR is accurate All records related to Subrecipient Agreement or activities are available for review.

- The persons to benefit from the activities described in the Performance Statement are receiving service(s) or a benefit(s) from the use of the new or improved facilities and activities.
- Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims the State of South Carolina is under no obligation to make any further payment to the recipient under the Subrecipient Agreement in excess of the amount identified in the Certificate of Expenditures table as "Final GA Draw."

### **Attachments**

- Project Map – If the project includes construction activities, the Subrecipient must attach a project map showing the location(s) of the project.
- All other documentation as required

## **11.3 Performance Report**

### **Actual Accomplishments**

The GCR reports all work completed by the activity. The work reported must correspond to the project described in the CDBG-MIT Subrecipient Agreement Performance Statement and be reported in the same quantitative terms as those used in the Subrecipient Agreement (if the Performance Statement describes a project without using linear feet, report the item as a linear foot metric).

If the current Performance Statement and actual accomplishments vary in quantities and/or number of beneficiaries served, report the differences and the reasons to the SCOR DRD. A SCOR DRD Grant Manager will provide technical assistance. The Subrecipient must confirm the work stated as part of the GCR 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 SCOR DRD prior to submitting the GCR.

**The SCOR DRD is not obligated to reimburse work that is not included in the Performance Statement of the CDBG-MIT Subrecipient Agreement.**

### **Beneficiary Detail Report**

Complete Beneficiary Detail Reports for all activities in the Performance Statement of the CDBG-MIT Subrecipient Agreement (excluding engineering, administration, and acquisition if incidental to the project). The total number of persons benefiting, and the number of households benefiting if applicable, must equal the total activity beneficiaries or households listed in the Performance Statement.

### **Complete Beneficiary Detail Reports**

If multiple projects/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.

Add as many Beneficiary Detail Reports as necessary to describe all activities included in the CDBG-MIT Subrecipient Agreement and Performance Statement.

- Beneficiary Detail Report – Activities on Public Property – report all beneficiaries for the group of activities according to gender, race, ethnicity, and income level.
- 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 “primary applicant” 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 submit a Subrecipient Agreement revision or amendment. The GCR will not be accepted until all change request documents are acceptable. SCOR DRD is not obligated to reimburse work that is not included in the Performance Statement of the CDBG-DR Subrecipient Agreement.

### **Required Documents**

A list of required documents that must be submitted to initiate closeout as it pertains to each individual activity (infrastructure, buyout, or acquisition) is included in the SCOR DRD Mitigation Policy Manual. The SCOR DRD Grant Manager can provide further assistance when compiling these documents.

## **11.4 Final Financial Interest Report**

The Subrecipient must report final procurement information for all contracts executed under the CDBG-MIT Subrecipient Agreement, Engineering services, construction contractors and sub-contractors, and material suppliers, with contracts of \$2,000 or more. The contract amount reported should include any change orders or amendments. Check the appropriate box to report subcontracts valued at \$2,000 or more under the prime contractor.

All contracts and subcontracts included in the GCR 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 with the GCR.

## **11.5 Acceptance of the Closeout Report**

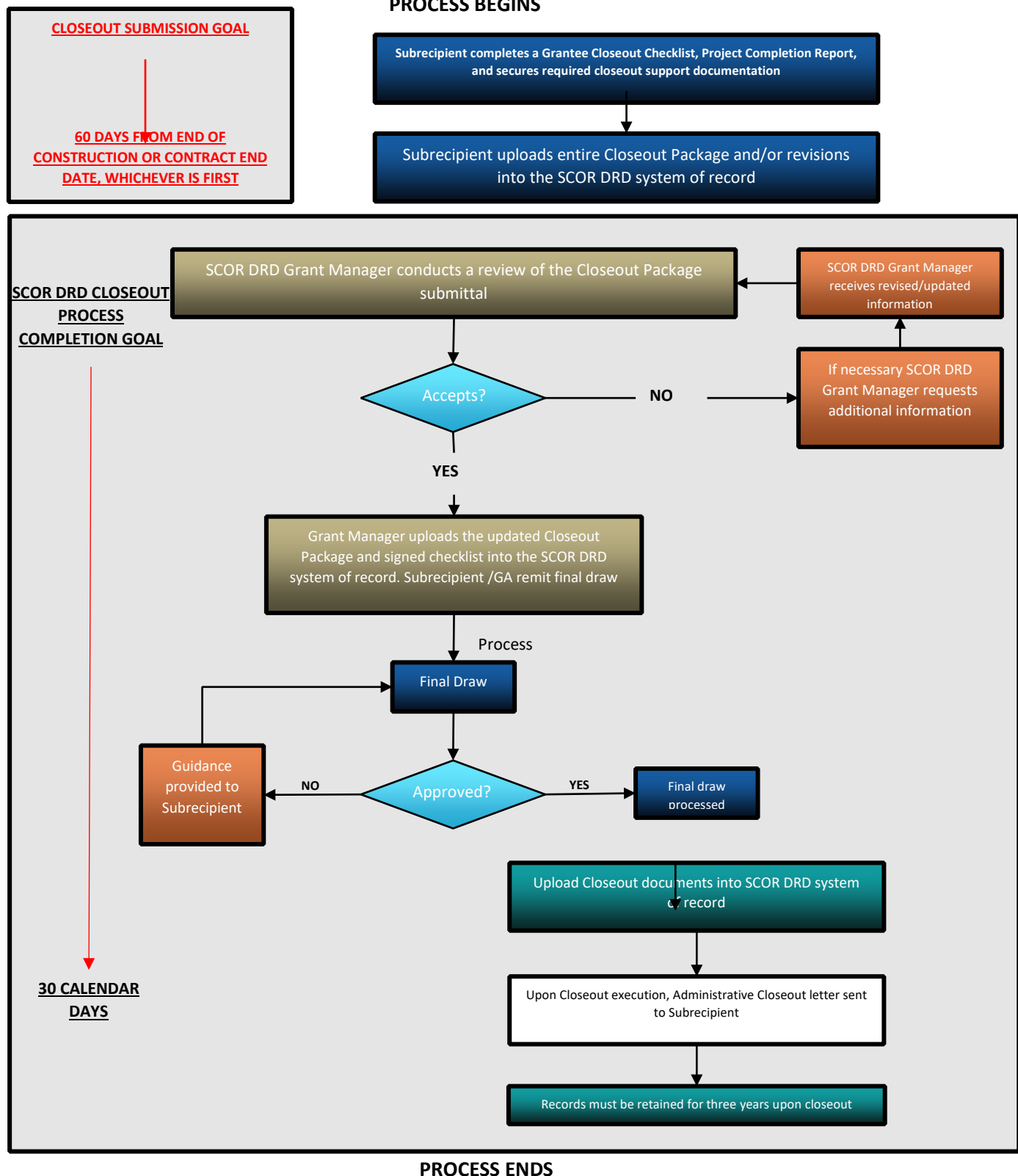
The Subrecipient Agreement will not be considered Administratively Complete until any pending issues are resolved with accurate documentation submitted to SCOR DRD, and the beneficiaries have been confirmed.

Once the GCR is submitted, SCOR DRD Grant Manager 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 by email of minor deficiencies and should correct such deficiencies within 10 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 have major 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 review and request of information continues until all deficiencies and documents have been submitted and accepted by the SCOR DRD.
- All approved closeout documents must be included in the SCOR DRD system of record

SCOR DRD will notify Subrecipients when a grant has closed by sending a letter that includes the specific date of the grant closeout and the retention period.

## 11.6 Closeout Process





## CHAPTER 12 – MONITORING

This chapter provides guidance on the monitoring review process conducted by the SCOR DRD Compliance and Monitoring (C&M) team. The SCOR DRD ensures program compliance based on a risk analysis. In addition to the day-to-day oversight activities and review of information submitted, SCOR DRD staff schedule topic-specific reviews both via desk review and in the field. The results of these reviews are documented in written reports detailing the specifics of that review and any corrective actions deemed necessary. SCOR DRD reserves the right to visit any Subrecipient or project at any time without notice.

Throughout the life of any CDBG-MIT grant, the C&M team will conduct monitoring efforts of Subrecipients and related contractors by reviewing internal processes to ensure compliance with federal regulations, to prevent fraud, waste, and abuse, and to identify places of improvement.

The primary focus of this chapter includes the quality assurance program, monitoring review types and methods, results of monitoring reviews, and non-compliance and administrative procedures.

Monitoring review activities are conducted to ensure compliance with the following objectives:

- **Review Subrecipient Agreement compliance.** A Subrecipient or contracted vendor will be monitored to ensure all funded activities are eligible; beneficiaries served are accountable; and funds have been expended in accordance with SCOR DRD, state and federal requirements, as outlined in the Subrecipient Agreement. Compliance area reviewed by C&M include financial management, advance payment, acquisition, infrastructure change orders, equipment, procurement, environmental approvals, and labor standards.
- **Procedures to detect fraud, waste, and abuse.** A Subrecipient or contracted vendor's processes or systems and other policies and procedures used to manage SCOR DRD CDBG-MIT funds will be monitored for adequate protections against fraud, waste, and abuse.
- **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. Repeated unsatisfactory performance and/or delays in submitting responses to monitoring reports may affect a Subrecipient or contracted vendors eligibility to apply for future CDBG-MIT funding or receive funds under current grants.

### 12.1 Monitor Review Types

The C&M team performs desk or on-site monitoring reviews.

### **12.1.1 Desk Review**

A desk review requires Subrecipients or contracted vendors to provide requested documentation so the C&M team can sufficiently review selected project(s) or activities and the related compliance area(s) via electronic means. A desk review is generally conducted in the following situations:

- The size, scope, or complexity of the review allows a desk review.
- An interim review or a complaint is received and warrants a desk review.
- The Subrecipient or contracted vendor requests a desk review, and this request is approved by SCOR DRD management.

### **12.1.2 On-site Review**

An on-site review requires Subrecipients or contracted vendors to provide previously requested documentation so the C&M team can sufficiently review selected project(s) or activities and the related compliance area(s) during a scheduled visit at the Subrecipient location. An on-site review is generally conducted in the following situations:

- The size, scope, or complexity of the review would benefit from an on-site review.
- An interim on-site review or a complaint is received that warrants an on-site review.
- The Subrecipient or contracted vendor requests an on-site review, and the request is approved by SCOR DRD management.

A minimum of two annual site reviews must be completed by the SCOR DRD C&M team.

## **12.2 General Monitoring Methodology**

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:

- Conducting an entrance conference with the appropriate representatives to explain the purpose of review.
- Applying the applicable requirements through documented work papers.
- Reviewing the applicable files.
- Interviewing members of staff, engineers, and/or consultants, as appropriate to discuss project related issues.

- Conducting an exit conference with the appropriate representatives to present the preliminary conclusions identified during the review.
- Issuing a formal written report summarizing the conclusions of the review
- SCOR DRD retains the right to modify the monitoring procedures and monitoring tools as deemed necessary.

## 12.3 Results of the Monitoring Review

### 12.3.1 Decision Categories

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

- The performance complied with the requirements of the SCOR DRD 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.
- 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.

### 12.3.2 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 SCOR DRD 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.

Depending on the severity of the issues identified in the report, corrective actions may include remedies for non-compliance that include:

- Temporary withholding of cash payments until correction of the deficiency.
- Disallowed cost recovery.
- Wholly or partly suspend the Subrecipient Agreement.
- Initiate suspension or debarment proceedings.
- Withhold further Subrecipient Agreements.
- Other legal remedies as available

### **12.3.3 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 Subrecipient Agreement requirements.

### **12.3.4 Training Resources**

In order to provide the information and resources both Subrecipients and SCOR DRD Grant Managers need to successfully implement and manage CDBG-MIT funded projects and programs, the SCOR DRD offers and participates in various training opportunities. SCOR DRD will notify Subrecipients of any training opportunities as they become available.

## **CHAPTER 13 – AUDIT REQUIREMENTS**

This chapter presents a summary of the SCOR DRD audit requirements as required by 2 CFR 200 Subpart F – Audit Requirements. SCOR DRD holds each Subrecipient responsible for all funds expended.

### **13.1 Audit Process**

One of the primary financial management requirements implicit with the use of federal funds pertains to audits. There are both federal and state requirements for audits. The Federal Code 2 CFR 200.500 provides federal requirements for audits of governmental entities and nonprofit organizations. Failure to comply with both federal and state audit requirements can jeopardize the Subrecipient's ability to draw grant funds and to receive future grants.

### **13.2 Audit Costs**

The only costs allowable under the CDBG-MIT Program for financial report preparation are single audit costs. If single audit costs are to be charged to the CDBG-MIT program, the Subrecipient must follow the Professional Services Procurement guidelines established under the Procurement chapter and 2 CFR 200.

Due to the importance of the audit process, Subrecipients are reminded that not all CPAs are qualified to perform audits of governmental entities and in particular, under the Single Audit Act. Care should be exercised to select an experienced, qualified firm, rather than simply selecting the firm offering to perform the audit at the lowest price.

The portion of the total single audit cost which can be charged to the CDBG-MIT program may be determined by multiplying the total single audit cost times a fraction, the numerator of which is the CDBG-MIT program expenditures for the period, and the denominator of which is the government entity's total expenditures for the period, including all CDBG program expenditures. A calculation of the allowable portion of the single audit cost should be included in the supporting documentation presented with the request for payment.

Under the latest revisions to 2 CFR 200.500, if appropriate documentation of the single audit costs provides a higher amount than the formula, the higher single audit costs may be charged to the program.

### **13.3 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.

#### **13.3.1 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. 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/>

#### **13.3.2 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.

### **13.4 Submissions**

#### **13.4.1 Audit Certification Form (ACF)**

It is the responsibility of each Subrecipient to complete an Audit Certification Form (ACF) within 60 days after the end of each fiscal year during which the Subrecipient has an open Subrecipient Agreement.

The submission of an ACF to SCOR DRD 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.

### **13.4.2 Delinquent Submissions**

SCOR DRD 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. Delinquent audit items can cause delays with draws, closeout and other requests at SCOR DRD's discretion.

### **13.4.3 Audit Tracking & Resolution**

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

SCOR DRD 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 SCOR DRD. These requirements to follow up on single-audit findings are given in 2 CFR 200.331(d)(2) and 200.521(a).

### **13.4.4 Management Decisions**

After the audit report is received through the FAC, the report will be reviewed by SCOR DRD. Based upon that review a written response will be provided to the Subrecipient that SCOR DRD considers the review closed, sustain findings, if applicable, or request for additional information.

### **13.4.5 Management Decision Response**

SCOR DRD reviews single audit reports and the Subrecipients corrective action plan in relation to each finding in making the determination to sustain a finding or close the review of the report. In general, findings that impact the SCOR DRD programs are considered sustained.

## **13.5 Requests for Additional Information**

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

