SOUTH DAKOTA
GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

CDBG-DR Addendum

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY

Version 1: August 2025

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Version Log

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Introduction

The U.S. Department of Housing and Urban Development (HUD) allocated South Dakota $15,375,000 in Community Development Block Grant-Disaster Recovery (CDBG-DR) funding to support long-term recovery efforts following the 2024 severe storms, straight-line winds, and flooding (DR-4807) experienced from June 16 to July 8, 2024 throughout South Dakota.

The Governor's Office of Economic Development (GOED) has been designated as the administrative entity for the CDBG-DR grant.

The following policies were submitted as part of GOED's Financial and Grant Certifications. The policies include:

- Procurement
- Duplication of Benefits
- Prevention of Fraud, Waste, and Abuse
- Website
- Timely Expenditure

The policies will be updated as necessary over the course of the CDBG-DR Grant. They will be used as guidance in the administration of the grant.

Procurement Policy

In accordance with Universal Notice Section II.A.1.b.(i), 24 CFR 570.489(g) and 2 CFR 200.317, the Governor's Office of Economic Development (GOED) has chosen to follow its own procurement policies and procedures for procurement of goods and services that are paid for in whole or in part with Community Development Block Grant – Disaster Recovery (CDBG-DR) funds. In addition to its own policies and procedures, GOED will also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327.

For subrecipients, the requirements and the standards established at 2 CFR 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and will be used when CDBG-DR funds are made part of a project or program (2 CFR Part 200.318-200.327).

Note that GOED's procurement policies and procedures implement the requirements of 24 CFR 570.489 (g) for its subrecipients including:

- Full and open competition
- Identification of Methods of Procurement and their applicability
- Prohibition of cost plus a percentage of cost and percentage of construction cost methods
- Assurance that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations
- Subrecipient and contractor determinations shall be made in accordance with the standards in 2 CFR 200.331.

Roles and responsibilities

Recipient: The recipient is the agency that receives a direct allocation of CDBG-DR funds from HUD and is responsible for administering the grant in compliance with federal requirements. For the purposes of this policy, GOED is the recipient. As a state entity, GOED must follow its own procurement policies and procedures consistent with 2 CFR 200.317. In addition to conducting its own compliant procurements, GOED is responsible for monitoring and supporting subrecipients to ensure their procurement activities align with federal requirements under 2 CFR 200.318–327.

Subrecipient: A subrecipient is a unit of local government or other eligible entity that receives CDBG-DR funds through a subaward from the GOED to carry out eligible activities on behalf of the recipient. Subrecipients must conduct all CDBG-DR-funded procurements in compliance with 2 CFR 200.318–327, including ensuring full and open competition,

maintaining written standards of conduct, and following proper solicitation and contract award procedures.

Code of Conduct

Background

Nothing is more detrimental to a successful procurement operation than to have the relationship between the recipient/subrecipient and the contractor questioned regarding real or apparent conflicts of interest. Conflict of interest issues deal with the relationship between the parties and financial gain. Those that could be judged to have conflicts include local officials, employees, consultants, family members, and business partners.

Requirements

South Dakota Codified Law 6-1-1 prohibits any officer of a county, municipality, township, or school district, who has been elected or appointed, to be interested, either by himself or agent, in any contract entered into by said county, municipality, township, or school district, either for labor or services.

Any possible conflict of interest issues must be brought to the attention of GOED immediately. The sooner a real or apparent conflict of interest is identified the better.

GOED's Ethics and Confidentiality Policy, adopted September 30, 2024 provides more detailed information on conflict of interest requirements. Additional information regarding conflicts of interest and the persons covered are addressed in the following:

- 24 CFR 570.489(h)
- 2 CFR 200.112
- 2 CFR 200.318(c)

All GOED staff are required to submit a signed acknowledgement of the GOED Ethics and Confidentiality Policy on an annual basis.

Alternative Procurement Requirements

In accordance with HUD's Universal Notice, the following alternative procurement requirements shall apply to all procurement actions funded in whole or in part with CDBG-DR funds:

CDBG-DR Required Contract Provisions

1. **Period of Performance:** All contracts executed under a CDBG-DR-funded activity must clearly state the period of performance or the required date of completion.
2. **Performance Requirements and Liquidated Damages:**

- All contracts must include specific performance requirements.
- Contracts must also incorporate provisions for liquidated damages, except in the case of contracts for general management consulting services. In such cases, liquidated damages are not required, but performance requirements remain mandatory.

3. **Prohibition on Delegation of Inherently Governmental Functions**:
   - Administrative support services may be procured in compliance with 2 CFR 200.459.
   - However, neither GOED nor its subrecipients may delegate or contract out inherently governmental responsibilities, including policy development and financial management related to oversight of the grant.

Procurement When Using CDBG-DR as Non-Federal Match

When CDBG-DR funds are used to meet the non-Federal match requirement of another Federal program (e.g., FEMA Public Assistance), the GOED may adopt the procurement policies and procedures that satisfy the other Federal agency's requirements to promote consistency and efficient coordination of funding sources. If GOED funds non-federal match procurements, it will:

1. Identify which procurement rules will apply to the project and document this decision in the project file.
2. Adopt FEMA procurement standards for any activities in which CDBG-DR funds are used as the non-Federal match to FEMA Public Assistance funding, unless otherwise documented.

Reimbursement of Pre-Award or Pre-Agreement Costs

In accordance with the alternative requirements outlined in HUD's Universal Notice (Section III.B.14.a), this policy establishes the circumstances under which pre-award and pre-agreement costs may be incurred and reimbursed under the CDBG-DR program.

Definitions

- **Pre-award costs** refer to eligible, otherwise allowable costs incurred prior to the execution of the CDBG-DR grant agreement between GOED and HUD.
- **Pre-agreement costs** refer to eligible, otherwise allowable costs incurred by a subrecipient prior to the execution of a formal subrecipient agreement between GOED and the subrecipient.

Eligibility and Requirements for Reimbursement:

GOED and its subrecipients may be reimbursed for pre-award and pre-agreement costs **only** under the following conditions:

1. **Costs must be incurred on or after the date of the qualifying disaster** as defined in the applicable Federal Register notice governing the disaster declaration.
2. **Environmental review requirements must be met in advance.** No activity (including construction or physical work) may begin prior to the completion of the required environmental review process and receipt of a Release of Funds (if applicable) under 24 CFR Part 58, or approval of the environmental review by GOED in accordance with applicable procedures.
3. **All other cross-cutting federal requirements must be met prior to incurring the cost.** This includes but is not limited to compliance with Davis-Bacon, Uniform Relocation Act (URA), Section 3, and procurement standards.
4. **The costs must be eligible and necessary for carrying out a CDBG-DR activity** consistent with the Action Plan and CDBG-DR requirements under the governing Federal Register notice.
5. **Pre-award and pre-agreement costs must be included in the approved Action Plan.** Any such activities or costs intended for reimbursement (including those funded with short-term subsidized or bridge loans) must be clearly identified in the Action Plan as eligible CDBG-DR activities.

Documentation

GOED and subrecipients must maintain clear and complete documentation demonstrating:

- The timing of the costs in relation to the disaster and relevant agreements;
- That the activity was included in the Action Plan;
- That all applicable federal requirements were satisfied prior to incurring the cost.

Reimbursement Limitation:
Costs incurred prior to the disaster declaration date or costs that fail to meet environmental or cross-cutting requirements are not eligible for reimbursement under the CDBG-DR program.

General Procurement Requirements

Overview

All procurements funded in whole or in part with CDBG-DR funds must comply with the applicable federal requirements found in the 2 CFR 200.318-327. The goal in using these

procurement procedures is to achieve maximum open and free competition. This section describes the policies and procedures that must be followed when entering into contractual agreements with other entities. Services often procured by recipients/subrecipients to complete CDBG-DR projects include professional grant administrators, engineers, architects, and construction contractors.

Each subrecipient shall adopt and abide by the CDBG-DR Procurement requirements set forth in this policy.

Environmental Review and Bidding

HUD requires that the environmental review process be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

SAM Unique Entity Identifier

Every entity that receives CDBG-DR assistance must have a Unique Entity Identifier (UEI) generated by SAM.gov.

- The Unique Entity ID is a 12-character alphanumeric ID assigned to an entity by SAM.gov.
- As part of this transition, the DUNS Number has been removed from SAM.gov.
- Entity registration, searching, and data entry in SAM.gov now require use of the new Unique Entity ID.
- Entities already registered in Sam.gov can find their Unique Entity ID by following the steps here.
- Entities who are not registered in Sam.gov can get a Unique Entity ID here.

Subrecipients, Contractors and Sub-contractors

A subrecipient, contractor or subcontractor who is registered in SAM.gov has a Unique Entity ID assigned already. No action is necessary to create a Unique Entity ID. The Unique Entity ID must be provided to the prime and subrecipient as soon as possible.

A subrecipient or subcontractor who is **not** a registered entity in SAM.gov, must request a Unique Entity ID as soon as possible. Even if the entity already have a DUNS Number, they will need to request a Unique Entity ID.

Refer to the Guide to Getting a Unique Entity ID to get a UEI. *Subrecipients and sub-contractors do not need to complete a full SAM.gov entity registration. If you only conduct certain types of transactions, such as reporting as a sub-awardee, you may not need to complete*

an entity registration. Your entity may only need a Unique Entity ID (UEI). No SAM.gov entity registration will be required for you to get an ID.

Excluded Parties

GOED and its subrecipients must not award any contract to any organization that is debarred or suspended or is otherwise excluded from or ineligible for participation in federally assisted programs. This applies to any CDBG-DR assisted contract at any tier in the process. Documentation proving verification of contractor eligibility will be checked at monitoring.

- Prior to contract execution, the subrecipient must check the organizations name against the federal System for Award Management (SAM).
- The subrecipient must document that the organization (including all subrecipients, contractors, and subcontractors) are not excluded from participating in federal contracts. For subrecipients , the checks must be completed prior to application to GOED. For other procured services, check must be completed prior to execution of a contract for services. Documentation includes:
    - Screenshots of Active status for SAM.gov registered entities.
    - Screenshots showing entities with SAM.gov issued Unique Entity Identifier (UEI) are not listed as debarred.

Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms

Background

The regulations at 2 CFR 200.321 requires that, when possible, GOED and its subrecipients should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's list) are considered.

Goals For Disadvantaged Business Participation

Contractors on CDBG-DR funded projects must comply with 2 CFR 200.321. To the greatest extent possible, the subrecipient and/or their contractors should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms are considered.

Suggested Outreach

GOED and its subrecipients should considered these firms, when possible, by ensuring the following:

- These business types are included on solicitation lists;
- These business types are solicited whenever they are deemed eligible as potential sources;
- Dividing procurement transactions into separate procurements to permit maximum participation by these business types;
- Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types;
- Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- Requiring a contractor under a Federal award to apply this section to subcontracts.

Domestic Preference for Procurements

In accordance with 2 CFR 200.322 to the greatest extent practicable and consistent with applicable law, the GOED and all subrecipients should provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

For the purposes of this section:

- **"Produced in the United States"** means, for iron and steel products, that all manufacturing processes—from the initial melting stage through the application of coatings—must occur in the United States.
- **"Manufactured products"** include items and construction materials composed in whole or in part of non-ferrous metals (such as aluminum), plastics and polymer-based products (such as PVC pipe), aggregates (such as concrete), glass (including optical fiber), and lumber.

This preference requirement must be included in all subawards, contracts, and purchase orders issued under a federal award.

Applicability to CDBG-DR:
The Build America, Buy America Act (BABA) requirements under 2 CFR Part 184 are currently waived for CDBG-DR grants. While the general preference for domestic products remains in place under 2 CFR 200.322, BABA-specific provisions do not apply to CDBG-DR-

funded infrastructure projects unless HUD issues updated guidance reinstating applicability.

Procurement of Recovered Materials

In accordance with 2 CFR 200.323, GOED or its subrecipient, to the greatest extent practicable and consistent with law, will purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products.

Independent Cost Estimates

The regulations at 2 CFR 200.324 requires subrecipients to perform a cost or price analysis in connection with every procurement action more than the simplified acquisition threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the procurement situation, but as a starting point, the subrecipient must make independent estimates before receiving bids or proposals.

Documentation of cost estimates and cost/price reasonableness will be checked at monitoring.

Federal Contract Provisions

In accordance with 2 CFR 200.327, GOED or subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200.

Economic Opportunities (Section 3)

Background

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low and very low-income persons. The priority of assistance should be to those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low and very low-income persons.

The Section 3 program was created to ensure that persons living in communities where HUD-assisted programs were being funded could economically benefit from the resources being spent. This would improve the overall socioeconomic condition of not only the community, but also the low and very low-income residents that reside within the neighborhoods.

The implementing regulation for Section 3 can be found at 24 CFR Part 75.

Applicability

Whenever any portion of CDBG-DR funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 may apply, based on the guidance provided below.

Section 3 applies to all projects that receive $200,000 or more in CDBG-DR, or other HUD assistance, including projects that are financed in conjunction with state, local or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met.

In particular:

- Section 3 applies to recipients of CDBG-DR funding, as well as its subrecipients, contractors and sub-contractors; and
- Professional service contract labor hours (construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and construction draw inspection and prevailing wage labor compliance) are not required to be reported. However, if professional services are completed by Section 3 workers their hours can be used to meet established benchmarks
- If a contract covers both professional services and other work and the recipient/subrecipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

The regulations should not be construed to mean that recipients or subrecipients are required to hire Section 3 Workers or award contracts to Section 3 Business Concerns other than what is needed to complete covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, reporting is still required.

Section 3 Benchmarks

HUD has established Section 3 benchmarks for Section 3 workers and Targeted Section 3 workers through a document published in the Federal Register. Current benchmarks for projects meeting the threshold are:

- 25% of all labor hours are performed by Section 3 Workers
- 5% of all labor hours are performed by Targeted Section 3 Workers

HUD may update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years.

GOED's subrecipients, developers and contractors will be required, to the greatest extent feasible, to meet the current benchmarks published by HUD at the time of contract with GOED.

Please ensure you are using the current benchmark when setting up a project.

Definitions

Section 3 Worker

HUD defines a Section 3 worker as a worker that meets one of the following requirements:

1. The worker's income is below the CDBG income limit for a household of 1 (no matter the worker's household size) established by HUD, based on the workers place of residence; or
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

Income Limits are established annually by HUD and can be found on the HUD CDBG Income Limits webpage.

To find the applicable income limit:

1. Go to the income limits webpage (https://www.hudexchange.info/resource/5334/cdbg-income-limits/)
2. Select the most recent posted set of CDBG Income Limits
3. Filter the Excel spreadsheet for South Dakota
4. Find the applicable County or MSA for the project
5. Scroll over to the 80% income limit for 1 person column (Lim80_24p1)

Targeted Section 3 Worker

A Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern; or a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

Section 3 Business

To be considered a Section 3 Business Concern a business must meet one of the following criteria:

- At least 51% or more owned by Section 3 Workers, or
- Over 75% of the labor hours performed by the business are performed by low- or very low-income persons, or
- It is a business at least 51% owned by current public housing residents or residents who currently live in Section 8-assisted housing.

Businesses seeking Section 3 preference shall certify or submit evidence verifying that they meet the definitions provided above. Subrecipients are allowed discretion in determining the required documentation to verify a Section 3 Business. At the time of monitoring, GOED will check that documentation has been received and is in the file, not for a specific type of documentation.

Responsibilities

A local government that receives CDBG-DR funding has the responsibility to comply with Section 3 requirements. The subrecipient is also required to "ensure compliance" of their contractors and sub-contractors.

This responsibility includes:

a. Notifying Section 3 Workers and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and job openings with the subrecipient;

b. Notify potential contractors of their responsibilities under Section 3;

c. Include Section 3 language in all bid documents and applicable contracts;

d. Require subrecipients, contractors, and subcontractors to meet the requirements of §75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

e. Collect information to document compliance with the HUD benchmarks listed above.

f. Document all qualitative efforts by the subrecipients and all contractors and subcontractors.

g. Respond to Section 3 complaints; and

h. Submit required Section 3 reporting as a component of the final close-out report.

Documentation

The Section 3 status of workers on the CDBG-DR project must be documented by one of the following methods:

1. **Worker income self-certification:** the certification form (or equivalent) may be completed for each new hire on the project who meets the definition of Section 3 at the time of hire based on prior income, to be kept in the grant record for reference when tracking and aggregating labor hours worked; or
2. **Worker is employed by a Section 3 Business Concern:** the contractor or subcontractor is able to provide documentation that it qualifies as a Section 3 Business Concern. All employees of a qualifying business will be considered Section 3 workers; or
3. **Employer wage record:** the contractor will complete a Section 3 Workforce Report prior to project start documenting all current employees and their Section 3 Status. The employer will certify that they have payroll documentation as verification. The contractor will update the report at the time of project completion with any additional employees. The employer must be able to provide certified documentation that the worker's income from that employer is at or below the income limit for the workers county of residence. When an employee does not work full-time, the employer must document the calculation of what the worker's wage rate would translate to if annualized on a full-time basis.
4. **Worker is a YouthBuild participant:** Verifiable documentation must be provided by the worker or the employer showing the worker is participating in a YouthBuild program; or
5. **Worker is a resident of Section 8 housing:** Verifiable documentation must be provided by the worker or the employer showing the worker is a legal resident of Section 8 housing.

Section 3 Best Practices

- Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
- Use of signage at the project site and flyers posted in the project area.
- Notification of potential training or employment opportunities to neighborhood and nonprofit groups, including Public Housing Authorities, servicing low- and very low-income persons.
- Communicate opportunities to employment agencies and career centers.

- Have contractors identify all current Section 3 worker and Targeted Section 3 workers anticipated to work on the project.
- Provide assistance to contractors in their search for potential qualified Section 3 workers and targeted Section 3 workers that can perform the duties required under the contract.
- Encourage the use of HUD's Opportunity Portal to search for Section 3 workers;
- Provide assistance to contractors in their search for potential Section 3 business concerns qualified for the contract.
- Review the benchmarks with contractors and subcontractors to ensure that requirements are understood. It is not intended for contractors and subcontractors to terminate existing employees but to the greatest extent feasible, provide opportunities to low- and very low-income individuals and businesses who qualify for the work necessary to be performed.

Qualitative Efforts

All CDBG-DR subrecipients are required to meet current HUD Section 3 Worker and Targeted Worker benchmarks prior to project closeout with GOED. Subrecipients who do not meet the benchmarks will be required to document all qualitative efforts undertaken during the implementation of the CDBG-DR project, including efforts of all contractors, prior to closeout.

Although subrecipients are only required to report qualitative efforts if Section 3 Benchmarks are not met, subrecipients should begin documenting qualitative efforts at the beginning of a CDBG-DR funded project. This will: 1) increase the likelihood of ensuring Section 3 benchmarks are met, and 2) reduce unnecessary delay at the time of closeout if benchmarks are not met. Such qualitative efforts may include, but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.

- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns. Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

CAUTION: Compliance with Section 3 does not supersede other applicable laws and regulations. Section 3 regulations specifically state that the requirements shall be consistent with federal, state, and local laws and regulations. Therefore, the federal procurement standards cannot be violated to comply with Section 3.

Subrecipient Methods Of Procurement

In accordance with 2 CFR 200.320, subrecipients must select from one of five methods of procurement based on the type of products and/or services being procured and their cost. Subrecipients must ensure that they are following the stricter of the federal, state or local requirement. Many subrecipients will be required to utilize a lower threshold for procurement types than the federal requirements.

Micro-Purchase Procedures

Procurement by micro-purchase is the acquisition of supplies and services, the aggregate dollar amount of which does not exceed the micro-purchase threshold, currently defined as $10,000. To the extent practicable, the municipality must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting

competitive quotations if the municipality considers the price to be reasonable. Micro-purchases require need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Simplified Acquisition Procedures

Simplified acquisition procedures entail a relatively simple and informal process that can be used when the cost of supplies or services, in the aggregate, are above the micro-purchase threshold, but do not exceed the current simplified acquisition threshold, currently defined as $250,000. Under this process, the subrecipient must:

- Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least two sources).
- Maintain documentation regarding the businesses contacted and the prices quoted.
- Make the award to the lowest responsive and responsible source.
- If applicable, prepare and sign a contract formalizing the scope of work and the terms of compensation.
- Maintain need and rationale documentation, cost reasonableness documentation, and documentation of best efforts to use MBE/WBE firms when possible.

Competitive Sealed Bid

The Competitive Sealed Bid method is the required method for procuring CDBG-DR-funded construction work. The following requirements apply to the competitive sealed bid procurement process:

- Competitive sealed bids are initiated by publishing an Invitation for Bid (IFB).
- The IFB must be advertised in the newspaper of daily general circulation at least one time not less than ten days before the date set for the opening of bids. The subrecipient may also be required to publish in non-English newspapers based on their Language Access Plan.
- The IFB must also be distributed to all trade publications (construction services).
- The IFB must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers are trade publications beyond the immediate locality of the work to be completed. The subrecipient may also be required to publish in non-English newspapers based on their Language Access Plan.

- The IFB must also be distributed to MBE/WBE businesses (see MBE/WBE section above) as well as ensure compliance with the Subrecipient's Language Access Plan.
- The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- 2 CFR 200.326 requires a bid guarantee from each bidder equal to 5% of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
    - Bid guarantees can be in the form of a Bond or Cashier's check that are returned to the unsuccessful bidders.
- All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- The bids must be tabulated and reviewed.
- The contract is awarded to the lowest, "responsible and responsive" bidder.
- Preparation and signing of a contract formalizing the scope of work and the terms of compensation is required.
    - The contract must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- If alternates (additives or deducts) will be taken, the bid documents must be clear as to the priority order in which those alternates will be applied.

Proposals

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning and administrative services fall under this category. Subrecipients shall seek permission from GOED prior to using proposals for contracts other than architectural, engineering, planning or administrative services. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

This method is initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (RFQ may ONLY be used for architectural or engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the subrecipient should provide or make available all materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions.

The following requirements apply to the proposal procurement process:

- The RFP or RFQ must be advertised at least twice with the 1st publication at least 10 days before the opening of bids or the deadline for submission of proposals (SDCL 5-18A-14). The first publication shall be in each official newspaper of the unit of local government, and the second publication may be in any legal newspaper of the state chosen by the local unit of government. If the unit of government has no official newspaper, the first publication shall be made in a legal newspaper with general circulation in the jurisdiction of the applicant.
- The subrecipient may also be required to publish in non-English newspapers based on their Language Access Plan.
- The RFP must be advertised in as wide a geographic area as is needed in order to ensure enough bids are received to be deemed a competitive process. For example, it may need to be posted in multiple newspapers and trade publications beyond the immediate locality of the work to be completed.
- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used: fixed price, or an hourly rate with a not to exceed figure.
- An RFP should also:
  - Specify that cost and pricing data is required to support the proposed cost;
  - State anticipated start and completion dates; and
  - List evaluation criteria that will be used in ranking proposals.
- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing.
- For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.
- For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.
- The subrecipient must maintain documentation for all services and reasons for selection.
- The subrecipient must send an award letter to the selected contractor and document the file with it.

- The subrecipient must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- The subrecipient should promptly notify unsuccessful bidders in writing and document the file with the rejection letters.

CAUTION: Consultants must not assist the subrecipient with procurement if they intend to respond to the solicitation for services.

Non-Competitive Negotiations

Non-competitive negotiation is procurement through solicitation of a proposal from one source and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation ***only*** when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

- There is some public emergency that will not permit delay resulting from competitive solicitation (the subrecipient must declare an emergency as authorized by law); or
- The results of the competitive negotiations are inadequate; or
- The product or service is available only from a single source.

The following requirements apply to the non-competitive negotiation procurement process:

- Negotiations must be conducted with the selected company regarding a scope of work and price; and
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

CAUTION: The use of the non-competitive negotiation procurement method must be authorized in advance by GOED. Additionally, subrecipients must have justification that meets federal standards for using the non-competitive negotiation process.

Other Procurement Issues

Over Budget Bids

Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. Subrecipients have a few options for dealing with such a situation.

Options

The following options are available for awarding a bid following an overage:

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public.

Low Bids and Change Orders

To maintain the integrity of the bidding process, the change order process must only be used when (1) the change order work fits within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded.

Change orders cannot be used for fundamental redesign of a project and cannot be used to "fix" problems in the project specifications if the municipality was aware of the problems before awarding the contract. (If your specifications have problems, it's better to issue an addendum—if the problems were discovered before bids are due—or to rebid the contract.) Change orders also cannot be used to take advantage of a good deal on a construction project—in other words, if you've awarded a contract for 500 linear feet of street paving work, you can't then use a change order to double the number of linear feet included in the contract just because the successful bidder gave you a really great price on the original contract.

Documentation in the Subrecipient's file with every change order must include:

- Documentation of Change Order Approval process
- Supporting justification which describes why the change is necessary;
- Itemized cost/unit price/quantities;
- A cost and price analysis (usually conducted by an engineer) that determines the costs are reasonable;
- Any revised plans and specifications; and
- Certification that no acquisition is necessary to complete the change order work.

The architect/engineer or project inspector usually prepares change orders; however, the subrecipient must approve and authorize change orders before they are executed. The proposed change should also be verified and/or recommended for approval by the project engineer, project manager, architect or other technical support personnel. The

subrecipient should compare such change orders to the CDBG-DR construction budget prior to approval.

If a change order will result in a significant change in the scope of work, a new CDBG-DR activity, or a change in location, beneficiaries, or how the project will be carried out, a contract amendment will be required.

If the change involves a new activity not previously included in the original bid and will result in a significant cost change, then the new scope may have to be re-bid. Please contact your CDBG-DR Program Manager for a determination. Factors to be considered include whether the change order will exceed the project budget, if the service area will change and affect national objective compliance, if the original intent of the project will be altered, the NEPA scope of work is changed, etc.

Bid Alternates

Subrecipients are encouraged to use add and deductible bid alternates for inclusion unless doing so is not practical or not feasible. When deductible alternates are requested, the bid document issued by the subrecipient must specify the method and order in which alternates will be applied in determining the low bid. Drawings must also clearly show the alternates.

For example, a project might involve the construction of a new community center that includes a portico and a small out-building to accommodate future expansion. The bidding instructions would indicate which items are to be bid as deductible alternates and the order of priority in which they are to be deducted. In this example, assume the portico and out-building are to be bid as deductible alternates, and the order of priority for deducting is first, the out-building, and second, the portico. The subrecipient would go back through each bid (not just the lowest one) and first subtract the amount each bidder estimated for the out-building from the total amount she/he bid for the project. The subrecipient would then check to see if any of the adjusted bids are within budget. If so, the subrecipient can award the bid to the bidder with the lowest adjusted bid. If not, the subrecipient would repeat the process, this time deducting the cost of the portico from the adjusted bid of each bidder. Depending on the number of deductible alternates specified, the process can be repeated until one of the adjusted bids is within budget.

It is imperative that the subrecipient's IFB explicitly state the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays.

Procurement of Professional Services

In general, costs incurred for engineering and other professional services may be allowed as eligible costs for reimbursement from the CDBG-DR funds if those costs are incurred after the following:

1. The grant agreement between the State and the applicant has been completed.
2. The environmental review for the project has been completed.
3. The subrecipient has followed the procurement procedures detailed in 2 CFR 200 as contained in this policy.

Certain exceptions for the reimbursement of pre-agreement costs are allowable and detailed in the Reimbursement of Pre-Award and Pre-Agreement Costs section of this policy.

If the subrecipients determine that waiting for the completion of the environmental review will delay planning studies or the design of the project, then the subrecipient may write an environmental exemption for the services needed to design the project. Contact GOED for information or assistance on this exemption.

Contracts for professional services **may not** include the percentage of construction agreements. The State reserves the right to review contracts in order to assure reasonable costs and appropriate work items are included in the contract.

This section below describes steps that are required to help ensure subrecipients comply with federal and state procurement requirements in the procurement of professional services.

Step 1: Prepare the RFP/RFQ The subrecipient must prepare an RFP or RFQ, as appropriate

Step 2: Solicit Responses In order to meet the goals of MBE/WBE participation; the subrecipient must use the South Dakota Department of Transportation DBE Directory to identify and solicit responses from MBE/WBE businesses providing related professional services.

Step 3: Publish RFP/RFQ The subrecipient must advertise the RFP/RFQ by publishing in local newspaper of daily general circulation. The subrecipient may also be required to publish in non-English newspapers based on their Language Access Plan.

The RFP/RFQ must clearly define the services requested and the factors to be used in the evaluation and selection process. Examples of evaluation criteria include:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts with the locality and other clients, including quality of work, timeliness, cost control, and citizen's complaint resolution in a timely manner.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.
- An evaluation consideration to small, local, minority or female owned firms. These firms may be awarded extra points in order to promote the employment of these firms.

The relative importance of each of these factors should be determined beforehand by assigning values to each (e.g., experience may be assigned 30 points out of a possible 100 points).

Step 4: Establish Evaluation Committee Appoint an evaluation team of knowledgeable members (subrecipient, town council, board of public works members, etc.) and develop an evaluation plan to rank respondents and provide guidance during the selection process. Typically, three to five people make up the Evaluation Committee. At least one of the committee members should be the Chief Elected Official (CEO) or designee.

Step 5: Open Responses Proposals must be received at the address stated in the legal advertisement, logged in and marked with the date and time received prior to being opened and submitted to the Evaluation Committee for review. Any proposal not received by the date and time stated in the legal advertisement must be returned, unopened to the submitter.

Step 6: Make Vendor Selection If interviews are conducted, each member of the Evaluation Committee must complete an Interview Evaluation and Score Sheet for each vendor short listed. Each scorer must use the same scoring and weighting criteria making their best effort to score each proposal fairly and without bias. These documents will be required at monitoring. Following the Evaluation Committee's review, the vendor whose proposal is determined to be the most advantageous to the project, based upon qualifications, price and other factors may be selected.

Caution: Be aware of potential conflicts of interest. Some firms have the capacity to administer projects and design buildings or public facilities systems. It is considered a conflict of interest for the firm in charge of administration to also be in the position to

oversee the engineering for a project. There can also be conflicts in the areas of rehab inspection, lead based paint testing, surveying, etc.

Step 7: Notify Successful and Unsuccessful Proposer(s) The subrecipient must notify all successful and unsuccessful vendors, in writing.

Step 8: Prepare a Contract: Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, it is time to start the preparation of a contract with the successful individual or firm. See the Contract Requirements section in this document on page 36.

Step 9: Execution of Contract(s) The subrecipient may execute contracts with the successful vendor after they have received Release of Funds from GOED.

Pre-Bidding Requirements

NOTE: The environmental review must be completed prior to publishing the bid advertisement.

The first step in effective management of CDBG-DR funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification – usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. The contract must be consistent with applicable building codes. Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in the State of South Dakota. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage decisions.

Property Acquisition Issues

At this stage of the process, the subrecipient must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. All property to be acquired for any activity, funded in whole or in part with CDBG-DR funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies for Federal and Federally Assisted Programs (42 U.S. Code Chapter 61), also referred to as the Uniform Act or URA. Included in the definition of property, among other things, are rights-of-way and easements.

If the construction project involves real property acquisition, the subrecipient should contact its CDBG-DR Program Representative very early and make sure the acquisition is done according to the provisions of the Uniform Act.

Procurement of Construction Services

This section describes certain key steps that are required to help ensure subrecipients comply with federal and state procurement requirements when procuring construction services. These include the South Dakota statutes on bidding procedures as well as the requirements set forth in HUD Regulations 2 CFR Part 200. A brief outline of the proper bidding procedure is provided below.

Step 1: Obtain the Appropriate Wage Decision

Federal regulations require that the Davis-Bacon Wage Determination in effect on the day of bid opening is the wage decision that must be used for all construction on federally funded projects. When a modification is published less than 10 days before the opening of bids, and the subrecipient finds that there is not a reasonable time available before bid opening to notify bidders of the modification, a report of the finding is inserted in the contract file and the wage determination in effect 10 days prior to bid opening may be used. In order to comply with federal requirements, GOED has assigned the responsibility of obtaining the appropriate wage decision(s) to the subrecipient or its designee. An initial wage decision should be obtained prior to issuing the IFB and provided to the Architect or Engineer to be included in the project bid specifications.

The subrecipient will need to access https://sam.gov/content/wage-determinations to obtain the Davis-Bacon Wage Determination for the project.

The printed copy of the effective wage decision will be required at monitoring.

Step 2: Prepare Invitation for Bid (IFB)

The subrecipient must develop an IFB that clearly identifies the services required including: all technical specifications required, any other requirements that apply to the contract, and instructions for preparing and submitting a bid. Bid specifications may not identify a specific name brand or provider except if required to identify a piece of equipment necessary for completion of the project. In this instance, the name brand or provider must be followed with the terminology, 'or approved equals.' It is the responsibility of the subrecipient to provide the bid specifications preparer with the required federal contract provisions, as specified in the Assistance Agreement, and the Davis Bacon Wage Decision applicable to the project. The bid specifications must include a statement that the Wage Decision is subject to change and the one that is in effect on the date of the bid opening will be applicable to the total project if the contract is awarded within 90 days of bid opening. If not, the applicable Wage Decision becomes the one that is in effect on the date that contracts are signed.

Ensure that the following are included in your bidding documents:

- Current Wage Decision
- Applicable Federal Contract Provisions
- **HUD Labor Standards Requirements (HUD Form 4010)**
- MBE/WBE Goals (MBE = 4% and WBE = 2%)

Subrecipients sponsoring projects of sanitary significance must comply with ARSD Chapter 74:53:04 and ARSD Chapter 74:53:05. A letter of approval from the Department of Agriculture and Natural Resources on the project plans and specifications will be necessary for these projects. Works of sanitary significance are defined as any activity that significantly impacts a public water supply, such as a wastewater conveyance, or a treatment facility. The term public is defined as "that which is available to the people at large or to any considerable number of members of the public indiscriminately".

Step 3: Submit a copy of all project specifications (bid document only, not a copy of the plans) to the GOED

GOED will respond with acknowledgment and acceptance of bid specifications (aka the "bids & specs letter").

Step 4: Publish Invitation for Bid (IFB)

The IFB must be advertised twice (at least 10 days prior to bid opening).

The first notice should be Advertised in the subrecipient's official newspaper. The IFB must state the date, time and location for submission of bids. The legal advertisement must provide information pertaining to where the project plans and specifications may be obtained or reviewed. In order to obtain the highest level of free and open competition, publishing the IFB in well-known trade journals and/or sending a copy of the IFB to the area's local contractors may increase the number of responses received.

Step 5: Confirm Wage Rates

Ten (10) days before bid opening, the subrecipient must check SAM.gov to determine if there have been any modifications or revisions to the Davis-Bacon wage determination. If it is determined that there has been a modification, the subrecipient must send it as an addendum to all contractors who received the original bid package.

Step 6: Issuing Addenda

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to 72 hours of bid opening. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files.

Step 7: Conduct Pre-Bid Meeting

GOED recommends subrecipients conduct a pre-bid meeting on all sealed bid procurements. The pre-bid meeting gives the subrecipient an opportunity to explain all state and federal requirements of a CDBG-DR funded project to prospective bidders.

Step 8: Receive Bids

As bid packets arrive, the time and date the bid was received from the vendor is written on the outside of the bid packet. Any bid received after the date and time due must be rejected and returned to submitter unopened.

Step 9: Open Bids

Bids must be opened and read aloud at a public meeting, at the date, time and location stated in the legal advertisement. The bidder's name and amount of bid must be read and recorded in the minutes of the bid opening meeting. No action should be taken at the bid opening meeting except by order of the authorized official to take the bids under advisement. Bid opening meeting minutes must be maintained for the project records.

Step 10: Make Vendor Selection

The Competitive Sealed Bid method of procurement requires that the construction contract be awarded to the lowest bidder, provided that the lowest bidder is found to be a responsive and responsible bidder. If the bids received are within the project budget, the Architect or Engineer will review all bid packages to determine if each one is responsive and responsible and verify that the bonding and certification requirements outlined in the bid specifications have been included. Upon completion of these reviews, the Architect or Engineer will prepare a bid tabulation sheet, and a written statement to the Subrecipient making a recommendation of the lowest responsive and responsible bidder. The bid tabulation must be certified (stamped) by the project Architect or Engineer. If the low bidder is found to be unresponsive or irresponsible and is not recommended by the project Architect or Engineer, the subrecipient's legal counsel must be consulted prior to making the determination to reject the lowest bid and consider the second lowest bidder. A written legal opinion must accompany all procurement documents where the low bidder was not selected in case of a formal bid protest or possible litigation.

Step 11: Award the Contract

CAUTION: Contracts are to be awarded within a 90-day period. If contracts are not awarded within 90 days of bid opening, any wage rate modifications that occurred within that 90-day period will apply to the contract.

After review of the bids, the subrecipient must award the contract to the lowest

responsible and responsive bidder if their bid is within the budgeted amount, preferably within 30 days of the opening.

If the contract is awarded to a bidder other than the low bidder, the subrecipient must prepare a written statement for the project file explaining why each lower bidder was deemed non-responsible or non-responsive.

- To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
    - The subrecipient must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at https://sam.gov/content/exclusions). The subrecipient will document that the contractors and subcontractors are not on this list.
    - The subrecipient must check the contractor and all subcontractors' names against the HUD Limited Denial of Participation List (available at https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp). The subrecipient will document that the contractor and subcontractors are not on this list.

Step 13: Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the subrecipient may execute the contract (provided they have received authority to use grant funds from GOED) and schedule the recommended Preconstruction Conference.

Following award of the contract, the contract documents and applicable bonding and insurance must be completed and executed. Contract documents include all the items contained in the bid package as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

The following items should be included in the Subrecipient's procurement file:

1. Affidavit of Publication (Bid Advertisement);
2. All project plans and specifications;
3. Engineer's/architect's estimate;
4. Certified bid tabs;
5. Resolution of intent to award contract;
6. A copy of the executed contract;

7. Bid, Performance, and Payment bonds;
8. Subcontracts with DBE/MBE/WBE firms;
9. MBE assurance form and certification of non-segregated facilities; and
10. Section 3 documentation See the Economic Opportunities (Section 3) section in this document on page 12. a

Construction Manager/Guaranteed Maximum Price Contracts

Construction Management Fees

The costs of Construction Management Services shall be specified in the Construction Management Agreement as fixed fees and categorized under two types:

- Fees for services during the Design Phase (PART A)
- Fees for services during the Construction Phase (PART B)

Construction Manager's fees are defined under HUD procedures as those costs which a project owner agrees to pay to the Construction Manager for the performance of specific construction management services. The Construction Manager's fee includes the following items:

1. Salaries, fringe benefits and expenses to the Construction Manager's employees at the principal offices and branch offices to the extent they are identified and assigned to the project;
2. Salaries, fringe benefits and expenses of the Construction Manager's home office staff assigned to provide field supervision, management, and administrative support in connection with performance of the work at the project site;
3. Properly allocable indirect costs applicable to the efforts discussed in (1) and (2) above; and
4. The Construction Manager's profit on the management of the project.

The fees are established and stated in fixed, lump-sum amounts. Fees shall not be established solely on the basis of a percentage of the construction costs.

CAUTION: The sharing of savings with the Construction Manager on a percentage basis or any other basis is not permitted, under a HUD funded Construction Manager Contractual Agreement. The Construction Manager is compensated through a fee for services and the CM's management obligations require that the CM generate the maximum savings possible for the subrecipient.

The Construction Manager's fee shall not be increased unless it can be demonstrated that subrecipient-directed change has caused an increase in the resources that the Construction Manager must provide on the project. Specifically, the Construction Manager shall not receive an increase in fee for change orders written to the separate trade contractors unless it can be established that the final completion date in the Construction Manager's contract must be extended thereby requiring additional resources in the part of the Construction Manager. In those cases where no additional time is authorized, any resource required to perform the work within contract completion date will be provided by the Construction Manager at no change in the fee. On the other hand, if the Construction Manager is able to reduce the overall cost of the project, the Construction Management fee should not be reduced.

Guaranteed Maximum Price

The GMP, within the context of Federally Assisted construction, is defined as the condition under which the project owner is guaranteed that payment for completion of the work, as set forth in the Construction Management Agreement, will not exceed a stipulated sum. The GMP should be furnished in two separate breakdowns:

- The normal breakdown of cost according to elements of the Construction such as concrete, masonry, structural steel, heating, ventilating and air-conditioning, electrical, etc.
- In addition, a breakdown showing the estimated cost of each bid package or line item as the Construction Manager proposes to award the separate trade contracts.

The two types of breakdown serve different purposes. The first provides cost information related to the usual costs of the construction elements. This breakdown will be prepared early in the schematic stages of the design development and updated at prescribed internals until a GMP is established. The second is developed at the time the GMP is given and is used by the project owner to determine if bids exceed the estimated costs of the individual bid packages.

The HUD procedures require that PART B of the CM Contract, containing an acceptable GMP, be executed by the project owner, the Subrecipient, and the Construction Manager prior to the award of contracts for the separate bid packages by the Construction Manager.

With proper scheduling of the design and early identification of the separate bid packages a GMP should be obtained at approximately 80% completion of the design documents. The first several bid packages should be ready for bidding immediately following the acceptance of the GMP.

The acceptance of the GMP is a critical activity in the CM/GMP contract process. All major decisions which may affect the scope or cost of the project should have been made prior to the GMP acceptance. Changes in the design after that point should be kept to an absolute minimum. The project owner, in consultation with the Architect/Engineer, must agree that major changes affecting the scope or costs will not be made in the design documents after acceptance of the GMP. If scope changes are made after that time the Construction Manager will be entitled to a change in the GMP. The GMP must be considered in the same manner as a lump-sum bid contract. When changes are made to design documents after award of a lump-sum bid contract they will, more than likely, cause an increase in the contract price.

When the GMP is offered by the Construction Manager, it is critical that all items of material and equipment be described with respect to quantity required and quality desired.

NOTE: Subrecipients must ensure they are in compliance with South Dakota Codified Law 5-18B

The GMP must always be established with regard to a specific date and identified with an approved set of design drawings and specifications. After acceptance by the project owner, the GMP should be reviewed at specific intervals to determine if the scope of the project has changed. It is recommended that the Construction Manager be required to certify on a monthly basis (or other agreed upon interval) that the cost of the work based on drawings and specifications as of the latest date is within the GMP. The validation of the GMP on a monthly basis should continue until all work in the Construction Management Agreement has been bid, placed under contract, and completed.

Contract Development

All work and services to be accomplished for the completion of a CDBG-DR funded project must be covered by a legally enforceable, fully executed contract, regardless of the source of funds to be used for payment of the contract amount.

Before any contract may be fully executed, it is the subrecipient's responsibility to ensure that the contract complies with applicable federal and state laws, provides complete and full provision of the project scope, and avoids any real or implied Conflict of Interest concerns.

Per 2 CFR 200.324(c) Costs Plus Percentage of Cost contracts are specifically prohibited for any type of work or services to be performed on CDBG-DR funded projects.

Per 2 CFR 200.318(j)(1) Time & Materials Contracts type contracts are only allowable after a determination that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk. If a subrecipient determines it is in the best interest of the jurisdiction to use the time and materials contract, the subrecipient must assert a high degree of oversight to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

All contracts executed for the performance of CDBG-DR related activities must include a full and complete description of the federal and state requirements for contract compliance.

Bonding Requirements

Bonds are negotiable instruments required by federal and state law from construction contractors as a form of insurance. The bonds are available to contractors from surety companies, which are then turned over to the subrecipient to protect against situations that may arise. Some of these situations include:

- Work not completed as specified and/or the contractor refuses to finish the work without a change order or price escalation;
- Laborers or subcontractors are not being paid for work and are suing the subrecipient to recover their loss; or
- Payment of liquidated damages is required, arising from labor standards violations.

Per 2 CFR 200.326, construction contracts must include the following documents either physically or by reference to the project bid specifications and any addendums:

- Bid Bond, Payment Bond and Performance Bond obtained by contractor and provided to subrecipient to insure contract fulfillment. Subrecipients must follow the stricter of the federal or local requirements when determining threshold amounts for bonding requirements.
    - The Bid Bond guarantees that the selected bidder will execute the required contract documents within the specified period of time. The Bid Bond must be equal to 5% of the bid price.
    - The Labor & Material Payment Bond is binding upon the contractor, subcontractors and their successors or assigns, for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must be for 100% of the contract price.

- The Performance Bond ensures that the contractor will fulfill all obligations under the contract within one year of substantial completion. The performance bond must be for 100% of the contract price

The bonding company issuing the bonds must hold a 'Certificate of Authority' as acceptable sureties.

Insurance Requirements

A copy of the Contractor's Certificate of Insurance should be provided to the subrecipient. The subrecipient is responsible for ensuring that the levels are adequate to cover the project.

Contract Requirements

All contracts executed for performance of CDBG-DR related activities must include federal contract provisions, as applicable, as required in 2 CFR 200.327, as well as the following:

1. Effective date of contract,
2. Detailed description of the work or services to be performed,
3. Specifications of materials or other services to be provided,
4. Time for performance and completion of contract services,
5. Method of Compensation,
6. Method of addressing Change Orders and Delays/Extensions of time,
7. Printed and signed names and titles of Signatories for all contract parties.
8. Applicable Federal Wage Decision (if applicable)

Retainage Requirements

A retainage account may be set up to ensure the project is satisfactorily completed, all suppliers have been paid in full, and all contractors, subcontractors and suppliers have submitted lien waivers. The amount of retainage withheld may not exceed 5% of the total contract amount.

A Retainage Agreement must be reached, and included in the contract, between the subrecipient and the prime contractor to establish a procedure for holding the retained funds until all parties agree that the retainage may be released to the contractor upon satisfactory completion of the project.

Retainage Account funds may be:

1. Deposited into a mutually agreed upon financial institution, in a separate account. If deposited to an interest-bearing account, any accrued interest belongs to the contractor.
2. Deducted from drawdown amounts for payments due to contractor. The State holds the retainage funds until they become due and payable to the contractor.

NOTE: If the contractor has provided Contractor's Affidavit of Release of Liens (AIA Form G706A) and lien waivers from all subcontractors and suppliers, the contractor may request the balance of retainage.

Procurement Recordkeeping

Subrecipients will maintain procurement records in accordance with requirements detailed in the subrecipient agreement and CDBG-DR recordkeeping policy.

Monitoring

GOED will also monitor its subrecipients to ensure compliance with grant requirements. Monitoring activities may include:

- Regular desk reviews of program documentation.
- Review of financial and program documentation prior to payments.
- On-site monitoring.
- Use of monitoring checklists to assess compliance.
- Monitoring projects at completion

Duplication of Benefits Review Policy

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121-5207) (Stafford Act) and applicable CDBG-DR appropriation acts require HUD and its grantees to coordinate with other federal agencies that provide disaster assistance to prevent the duplication of benefits (DOB). The Stafford Act's prohibition on DOB aims to ensure that federal assistance serves only to "supplement insurance and other forms of disaster assistance" (42 U.S.C. 5170).

CDBG-DR grantees must prevent DOB when carrying out eligible activities. A duplication occurs when a person, household, business, or other entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need. The amount of DOB is the amount received in excess of the total need for the same purpose. When total need for eligible activities is more than total assistance for the same purpose, the difference between these amounts is an "unmet need." Grantees must limit their assistance to unmet needs for eligible activities to prevent a DOB.

Definitions and Applicability of DOB Requirements

For the purposes of this Policy, the term "Grantee" refers to the Governor's Office of Economic Development (GOED) as the entity that received the CDBG-DR award from HUD.

A "subrecipient" is an entity, typically a local government or other eligible organization, that receives CDBG-DR funds from GOED to carry out eligible recovery activities. For the purposes of this policy, the term "subrecipient" also includes applicants for funding who have not yet entered into a formal subrecipient agreement with GOED, but whose proposed projects are under consideration for funding.

At this time, the State's Action Plan does not include any direct-to-beneficiary programs. Accordingly, all DOB compliance requirements outlined in this policy are designed to prevent and address duplication of benefits in subrecipient-managed projects only. GOED will work closely with subrecipients to ensure all other sources of funding are properly identified and accounted for prior to the commitment of CDBG-DR funds.

Order of Assistance

Duplicative assistance can come from many different sources, including governmental and private forms of assistance. Below is a list of common sources of assistance and their relative order of spending. While the Stafford Act does not explicitly establish a priority order, 44 CFR 206.191(d)(2) provides some guidance, and there is a common practice of expending funds in the order that follows. As the payer of last resort, CDBG-DR is designed to be the last funding to be awarded and should always be last in priority order.

The common forms of assistance are:

- Proceeds from an insurance claim, including National Flood Insurance Program
- Assistance from a state or unit of general local government
- FEMA individual assistance
- SBA disaster loan
- FEMA public assistance
- FEMA Hazard Mitigation Grant Program
- HUD CDBG-DR

CDBG-DR appropriations generally include a statutory order of assistance for federal agencies. Although the language may vary among appropriations, the statutory order of assistance typically provides that CDBG-DR funds may not be used for activities reimbursable by or for which funds are made available by FEMA or the U.S. Army Corps of Engineers (the Corps). This means that the Governor's Office of Economic Development (GOED) must and will verify whether FEMA or the Corps funds are available for an activity (i.e., the application period is open) or the costs are reimbursable by FEMA or the Corps (i.e., the grantee or subrecipient will receive FEMA or Corps assistance to reimburse the costs of the activity) before awarding CDBG-DR assistance for costs of carrying out the same activity.

If FEMA or the Corps accept applications for the activity, the grantee or subrecipient must seek assistance from those sources before receiving CDBG-DR assistance. If the grantee or subrecipient's costs for the activity will be reimbursed by FEMA or the Corps, GOED cannot and will not provide the CDBG-DR assistance for those costs. In the event that FEMA or Corps assistance is awarded after the CDBG-DR to pay the same costs, it is GOED's responsibility to notify the subrecipient and recapture any CDBG-DR assistance that duplicates assistance from FEMA or the Corps.

CDBG-DR funds cannot be used to supplant other federal, local, or state funding. If project funding has already been obligated by another source (via grant agreement or in an approved and capitalized city or county budget) CDBG-DR funds cannot be used to replace those funds. CDBG-DR funds can be used to supplement other funding as a way to fill in any funding gaps or providing matching funds.

Preventing DOB

Specific DOB policies and procedures will be developed for each CDBG-DR program. GOED commits to having procedures to prevent any duplication of benefits as defined by section 312 (42 U.S.C. 5155) of the Stafford Act (42 U.S.C. 5121 et seq.). To this end:

GOED's DOB policies and procedures include a uniform process that:

Determines all disaster assistance received by the subrecipient and all reasonably identifiable financial assistance available to the subrecipient, as applicable, before committing funds or awarding assistance;

Determines a subrecipient's unmet need(s) for CDBG-DR assistance before committing funds or awarding assistance; and

Requires subrecipients to enter into a signed agreement to repay any duplicative assistance, including if they later receive additional assistance for the same purpose for which the CDBG-DR award was provided. [Section III.A.1.a.(3)(a) – (c)]

The payment of duplicative assistance at or before the agreement signing is often called *escrow.*

The collection of future duplicative assistance after the benefit has been awarded is called *subrogation*.

GOED's DOB policies and procedures identify a method to monitor compliance with the agreement for a reasonable period (i.e., a time period commensurate with risk) and articulates this method in its policies and procedures, including the basis for the period during which the grantee or subrecipient will monitor compliance. This agreement must also include the following language: "Warning: Any person who knowingly makes a false claim or statement to HUD or causes another to do so may be subject to civil or criminal penalties under 18 U.S.C. 2, 287, 1001 and 31 U.S.C. 3729." [Section III.A.1.a.(3)(c)]

The policies and procedures provide that before the award of assistance, GOED will use the best, most recent available data from FEMA, SBA, insurers, and any other sources of local, state, and federal sources of funding to prevent the duplication of benefits. [Section III.A.1.a.(3)(c)]

The sections below lay out additional information for how GOED will comply with each of these requirements. In the event GOED funds subrecipients to administer CDBG-DR programs on behalf of the agency, then those subrecipients will be required to comply with the respective DOB policies and procedures, in line with the policy described below.

DOB Policies and Procedures Framework

GOED will follow — or will require its subrecipients to follow — the following process for avoiding a duplication of benefits for individuals, businesses, and any subrecipients receiving CDBG-DR assistance prior to committing funds or awarding assistance:

- Assess need
- Identify total assistance
- Exclude non-duplicative amounts

- Identify DOB amount and calculate CDBG-DR award
- GOED confirms the amount
- Monitor compliance and reassess unmet need when necessary

Assess Need

The need will be calculated based on assessment of need at the time of application. GOED may reimburse eligible pre-award costs on a case-by-case basis, but costs incurred prior to application will be considered for all applications when calculating the total recovery need for purposes of subtracting duplication of benefits.

Total Assistance

To calculate DOB, GOED will identify "total assistance." Total assistance includes all reasonably identifiable financial assistance available.

Total assistance includes resources such as cash recovery awards, insurance proceeds, grants, and loans received by or available, including awards under local, state, or federal programs, and from private or nonprofit charity organizations for the same purpose as the CDBG-DR assistance.

At a minimum, GOED's efforts to identify total assistance will include a review of the most current SBA and FEMA datasets to determine whether the applicant received FEMA or SBA assistance. GOED will also attempt to work directly with insurance providers and other funders to verify benefits from insurance and any other major forms of assistance (e.g., other state disaster assistance programs) generally available to applicants.

GOED will pursue methods to verify sources of assistance received, as applicable, prior to the award of CDBG-DR funds.

Available Assistance

Total assistance includes available assistance. Assistance is available if an applicant:

> Would have received it by acting in a reasonable manner, by taking the same practical steps toward funding recovery as would disaster survivors faced with the same situation but not eligible to receive CDBG-DR assistance; or
>
> Has received assistance and has legal control over it.

Available assistance includes reasonably anticipated assistance that has been awarded and accepted but has not yet been received. Applicants for CDBG-DR assistance are expected to seek insurance or other assistance to which they are legally entitled under existing policies and contracts and to behave reasonably when negotiating payments to which they may be entitled.

Private Loans

A private loan is a loan that is not provided by or guaranteed by a governmental entity, and that requires the CDBG-DR applicant (the borrower) to repay the full amount of the loan (principal and interest) under typical commercial lending terms (e.g., the loan is not forgivable). For DOB calculations, private loans are not considered financial assistance and are not required to
be considered in the DOB calculation, regardless of whether the borrower is a person or entity.

Subsidized Loans

By contrast, subsidized loans for the same purpose must be included in the DOB calculation unless an exception applies. HUD defines subsidized loans as loans other than private loans. Both SBA and FEMA provide subsidized loans for disaster recovery. Subsidized loans may also be available from other sources. Subsidized loans are assistance that must be included in the DOB analysis, unless an exception applies Exceptions for when subsidized loans are not counted as a DOB are when those loans are declined by the applicant or canceled.

The original CDBG-DR Action Plan does not include applicant entities that would be eligible for subsidized SBA loans; therefore, this policy does not go into detail about their effects on DOB. If direct assistance to individuals or other eligible entities is planned, then GOED will detail the DOB implications of SBA subsidized loans in the policy and procedures for those programs.

In 2018, Congress enacted the Disaster Recovery Reform Act, which temporarily exempted all subsidized loans from consideration as duplicative assistance. This statutory exemption sunset in October 2023. GOED is closely monitoring the actions of Congress, as the exemption of subsidized loans is included in two bills, H.R. 8294, Section 230 and S. 4670, Section 232.

Table 1: DOB Applicability to Various Forms of Assistance

Available Assistance Examples	DOB Applicable
Insurance Proceeds	Yes
National Flood Insurance Process	Yes
Private Loans	No
Checking, Savings, Other Investments	No
FEMA Individual Assistance	Yes
SBA Subsidized Disaster Loan Proceeds	Yes
SBA Subsidized Disaster Loan — Declined	No

SBA Subsidized Disaster Loan — Canceled	No (for the canceled portion)
State or Local Government Grant Funds	Yes
State or Local Government Loan Proceeds	Yes
State or Local Government Loan — Declined	No
State or Local Government Loan — Canceled	No (for the canceled portion)
Non-Profit Charitable Grant	Yes

Exclude Non-Duplicative Amounts

Once GOED has determined the total need and the total assistance, GOED will determine which sources it must exclude as non-duplicative for the DOB calculation. GOED will exclude amounts that are:

Provided for a different purpose; or

Provided for the same purpose (eligible activity), but for a different, allowable use (cost).

Funds for a Different Purpose

GOED will exclude any assistance from total assistance, provided for a different purpose than the CDBG-DR eligible activities, or a general, nonspecific purpose (e.g., disaster relief/recovery) and not used for the same purpose when calculating the amount of the DOB.

Misspent or Unspent Assistance Funds

In May 2024, HUD published the Revised Policy for Duplication of Benefits. The new policy clarifies that non-CDBG-DR assistance that is provided for a different purpose is not a DOB, even if the assistance was misspent or remains unspent. Further, CDBG-DR grantees are no longer required to determine how assistance for a different purpose was spent. GOED will implement the new HUD policy.

Funds for the Same Purpose, Different Allowable Use

Assistance provided for the same purpose as the CDBG-DR purpose must be excluded when calculating the amount of the DOB if the applicant can document that actual specific use of the assistance was an allowable use of that assistance and was different than the use of the CDBG-DR assistance.

Identify DOB Amount and Calculate CDBG-DR Award

The total DOB will be calculated by subtracting non-duplicative exclusions from total assistance. Therefore, to calculate the total maximum amount of the CDBG-DR award, GOED will follow these steps:

Identify total need.

Identify total assistance.

Subtract exclusions from total assistance to determine the amount of the DOB.

Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG-DR award.

Adjust award, if necessary to comply with program caps.

Refer to program guidelines for specific information regarding responsibilities.

Monitor Compliance and Reassess DOB When Necessary

GOED will reassess unmet need, when necessary. Although long-term recovery is a process, disaster recovery needs are calculated at points in time. As a result, a subsequent change in circumstances can affect remaining unmet need, meaning the need that was not met by CDBG-DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include:

A subsequent disaster that causes further damage

An increase in the cost of construction materials

Vandalism

Contractor fraud

Forced mortgage payoffs

Settlements from pursuing insurance claims

Theft of materials

Agreement to Repay

As required by the Stafford Act, GOED will ensure that subrecipients agree to repay all duplicative assistance to HUD or the applicable agency providing federal assistance through GOED. To address any potential DOB, GOED will require each applicant to enter into an agreement with GOED to repay any assistance later received for the same purpose for which CDBG-DR funds were provided.

GOED will document compliance with DOB requirements pre- and post- award, including any post-award monitoring. Policies and procedures for post-award monitoring of DOB will be specific for each program funded by GOED and will be commensurate with risk. For each set of program policies and procedures, GOED will establish a method to monitor each applicant's compliance with the subrogation agreement for a reasonable period after project completion.

Collecting a Duplication

If a potential DOB is discovered after CDBG-DR assistance has been provided, GOED will reassess the applicant's need at that time. If additional need is not demonstrated, CDBG-DR funds will be recaptured to the extent that they are in excess of the remaining need and duplicate other assistance received by the applicant for the same purpose.

Under the Stafford Act, a federal agency that provides duplicative assistance must collect that assistance. For CDBG-DR grants, GOED will collect duplicative assistance it provides.

The HUD secretary has determined that it is not in the best interest of the federal government to collect DOB in the following circumstances:

The duplicative federal assistance was received by low- and moderate-income beneficiaries after the receipt of the CDBG-DR assistance (subject to a cap set by the Secretary); or

The duplicative assistance was received by beneficiaries that, after the receipt of the CDBG-DR assistance, are:

Deceased;

Subject to a foreclosure action on a property rehabilitated, constructed, or reconstructed with CDBG-DR funds; or

A debtor in a bankruptcy proceeding or who recently exited a bankruptcy proceeding (or similar proceeding for insolvent debtors under state law, such as an assignment for the benefit of creditors).

Website Policy

In accordance with the Universal Notice, 90 FR 4759, II.A.1.c and III.B.8.a, the State of South Dakota will maintain a comprehensive accessible website regarding all disaster recovery activities that utilize Community Development Block Grant-Disaster Recovery (CDBG-DR) funds. This website will serve as a central source of information for applicants and the public to ensure ease of access to information and overall transparency.

Lead Agency

The lead agency to manage this website will be the Governor's Office of Economic Development (GOED), specifically the marketing department. CDBG-DR will have a separate, dedicated web page.

Accessibility

GOED will take all reasonable steps to ensure that the website is accessible to persons with disabilities and limited English proficiency (LEP) populations in accordance with GOED's Language Access Plan.

Updates

The website will be updated at a minimum on a quarterly basis.

Website Contents

Information that will be available on this website will include the following:

Admin Action Plan

Action Plan

Action Plan Amendments

Performance reports (as created using the DRGR system)

Citizen Participation Plan

Projection of expenditures and outcomes

Procurement Policies and Procedures

Program-specific policies and procedures

All executed contracts that will be paid with CDBG-DR funds that exceed the micro-purchase threshold and meet the requirements of 2 CFR 200.22 including a summary including the description and status of services or goods currently being procured by the grantee or the subrecipient

Fraudulent Activity Notices which will include possible fraudulent activity, how the fraud can be avoided, and which local or state agencies to contact to take action

Website Address

The website can be found at the following link:

https://sdgoed.com/partners/financing-incentives/community-development-block-grants-dr/

Prevention of Fraud, Waste, and Abuse Policy

The responsible management of Community Development Block Grant Disaster Recovery (CDBG-DR) funds is of utmost importance to the Governor's Office of Economic Development (GOED) and has therefore established these policies and procedures as part of their commitment to detect and prevent fraud, waste, and abuse. GOED encourages the reporting of suspected misconduct. The policies and procedures presented in this document are in accordance with 90 CFR 1754, and are designed to prevent fraud, waste, and abuse of funds.

Given the finite resources of the Community Development Block Grant Disaster Recovery (CDBG-DR) program to help individuals, households, and communities recover from the severe storms, straight-line winds, and flooding (DR-4807) that hit the state in 2024 identifying FWA is crucial for GOED.

FWA actions can deprive citizens of recovery benefits designed to support and assist them. By understanding FWA indicators, detection mechanisms, and how to foster a culture of accountability, subrecipients and subgrantees play a part in upholding program integrity. FWA can manifest in various forms, from financial mismanagement and unethical behavior to the misuse of assets and resources. It can also include fraudulent claims by program participants. FWA could be perpetrated by anyone, and the threat comes from inside or outside the organization.

Roles and Responsibilities

This policy applies to all GOED staff, subrecipients, contractors, vendors, applicants, and other partners or participants involved in CDBG-DR activities. GOED ensures oversight through monitoring, internal audits, and investigations. Subrecipients are responsible for day-to-day compliance and ethics. All parties must report suspected fraud, waste, or abuse.

The State of South Dakota has policies in place to combat fraud, waste, and abuse. The Department of Legislative Audit (DLA) accepts allegations of fraud, noncompliance, and abuse, which they will assess to determine if an audit or investigation is warranted. Penalties for violations, including civil penalties and potential felony charges, can be imposed.

Definitions

Fraud is the willful intent to mislead or misrepresent information for benefit or gain for themselves or some other person. Examples of fraud include, but are not limited to the following:

- Misrepresentation of information on applications such as income, household composition, financial assets, citizenship status, or residency

Forgery of signatures on various documents including applications, timesheets, checks, contracts, or purchase orders

Waste is the inefficient or careless expenditure of government funds, leading to a lack of value received by the taxpayer. It can be caused by poor decision-making, mismanagement of resources, or inadequate oversight. Examples of waste may include, but are not limited to the following:

Unnecessary use of supplies causing increased replacement

Failure to make prudent choices for purchases

Abuse involves actions or behaviors that deviate from what is considered reasonable and ethical in the context of government-funded activities. It can include improper use of resources, conflicts of interest, or actions that violate the terms of a contract or grant. Examples of abuse may include, but are not limited to the following:

Making purchasing decisions contrary to existing policies

Bribery

Receiving some form of benefit or favor for awarding a contract to a particular vendor

Creating unnecessary overtime

Kickbacks - meaning an illegal payment intended as compensation for preferential treatment

Requiring staff to perform personal errands

Conflict of Interest

Preventing FWA

GOED has adopted the following policies and procedures to prevent fraud, waste, and abuse.

Subrecipient Assessments

Subrecipient capacity and risk will be assessed to verify their capacity to adequately administer program funding and meet all grant requirements. To ensure effective and compliant implementation of CDBG-DR activities, GOED requires all applicants for funding to undergo a comprehensive assessment.

A Risk Assessment will be conducted for each subrecipient. This evaluation considers financial stability, staffing levels, internal controls, and grant management history. Results from the Risk Assessment will guide the level of technical assistance and frequency of monitoring provided by GOED. Subrecipients determined to be higher-risk will receive more intensive technical assistance and oversight to ensure compliance with all applicable federal and state regulations.

Monitoring

GOED will also monitor its subrecipients to ensure compliance with grant requirements. Monitoring activities may include:

- Regular desk reviews of program documentation.
- Review of financial and program documentation prior to payments.
- On-site monitoring.
- Use of monitoring checklists to assess compliance.

GOED does a final monitoring of all projects at the completion of a project.

Subrecipient Requirements

Subrecipients must have adequate policies and procedures to detect and prevent fraud, waste, and abuse. Subrecipients and subgrantees are required to:

- Monitor all funded programs for instances of FWA.
- Take steps to prevent and address FWA.
- Report any instances of FWA to the appropriate authorities.
- Remember to involve GOED early, at the first indication of fraud; maintain all original documents; and provide requested access to records. Indications of mismanagement; violations of laws, rules, or regulations; or theft or fraudulent claims for funds must be reported.

Requirements related to FWA will be incorporated into the grant agreement that the subrecipient signs with GOED.

Informative Materials

GOED and its subrecipients will provide their Fraud, Waste, and Abuse Policy to all staff working on CDBG-DR, partners, contractors, and vendors.

Contractor Monitoring

For contracts procured with CDBG-DR funds, contractor capacity and risk will be evaluated by the GOED for the contracts it directly procures and subrecipients will evaluate the contracts they procure. Contractor capacity and risk will be assessed through the competitive procurement process and regular monitoring during the period of performance. Due diligence will be conducted prior to awarding contracts, including verifying contractor qualifications and licenses, and completing federal and state debarment checks. Monitoring of contractors will include invoicing and payment reviews as well as an evaluation of the overall contractor performance to safeguard against fraud, waste, and abuse.

Reporting Fraud, Waste, and Abuse

Reporting fraud, waste, and abuse can be completed by anyone and can be reported to a variety of administrative entities:

GOED: The primary source for reporting suspected fraud, waste, and abuse on CDBG-DR projects by subrecipients or contractors involved in the administration or implementation of CDBG-DR funds. GOED will assess the nature of the allegations and determine whether it is in the public interest to conduct an audit or investigation related to the allegations. The report can be anonymous. You may submit an allegation to GOED the following ways: by email: stephanie.deyo@state.sd.us, by phone: 605-773-5196 or by mail: 711 E. Wells Ave, Pierre, SD 57501

Department of Legislative Audit (DLA): This state agency has the authority to audit any state officer, department, agency, board or commission and any political subdivision if the Auditor General deems it necessary and in the public interest. DLA will assess the nature of the allegations and determine whether it is in the public interest to conduct an audit or investigation related to the allegations. The report can be anonymous. DLA will not address matters that only involve disagreements with the conduct or policies of an individual or government entity. You may submit an allegation to DLA the following ways: Complete and submit a form online: Fraud Waste & Abuse Reporting Form, or by E-Mail: Kelly.mikkelsen@state.sd.us, or by Phone: (605) 773-3595, or by mail: Department of Legislative Audit, 500 E Capitol Ave, Pierre, SD 57501 or in person: Department of Legislative Audit, 427 S Chapelle, Pierre, SD 57501

HUD OIG: The federal agency responsible for investigating fraud, waste, and abuse by anyone related to the CDBG-DR funds. DLA and GOED will also report any fraud, waste, and abuse to HUD OIG. HUD OIG will not address matters that only involve disagreements with the conduct or policies of an individual or government entity. The report can be anonymous. You may submit an allegation to HUD OIG the following ways: Fraud Hotline (phone: 1-800-347-3735) or email (hotline@hudoig.gov).

State law (SDCL 4-11-21) allows the Auditor General to keep the identity of a person supplying information confidential if requested by the person and such confidentiality is determined to be appropriate by the Auditor General.

Other Irregularities

Allegations or complaints concerning fraud, waste, abuse, or mismanagement must be exclusively related to the improper use of CDBG-DR funds. Examples of situations that are not considered acts of fraud, waste, or abuse include, but are not limited to:

- Conflicts between employees and employers related to personnel actions, such as transfers, decreases, suspensions of employment and salary.
- Political-partisan issues.

Actions to collect money for services rendered and not paid.

Allegations of irregularities that are not related to fraud, waste, abuse, or mismanagement will be referred to the appropriate offices or authorities.

Confidentiality

All allegations or complaints will be treated with confidentiality. Complainants may choose to remain anonymous and will not be required to provide their contact information when reporting alleged acts or suspected fraud, waste, abuse, or mismanagement.

Beneficiary Fraud Prevention and Response

GOED's current CDBG-DR Action Plan does not include any programs that provide direct assistance to individual beneficiaries. As such, there is limited risk of fraud, waste, and abuse (FWA) among beneficiaries. However, GOED remains committed to the prevention and mitigation of FWA and will partner with subrecipients and local jurisdictions to identify, prevent, and respond to any suspected fraudulent activities. Should future program reallocations include direct assistance to individuals or households, GOED will implement fraud prevention and response measures in alignment with federal requirements, which will include providing clear information about the risks of fraud, including contractor scams, and how to avoid them, as well as assistance to beneficiaries that experience fraud.

Consequences of Committing Fraud

OIG is an independent office within HUD. Its role is to promote the economy, efficiency, and effectiveness of HUD's programs and operations. It prevents and responds to issues related to FWA, reporting to the HUD Secretary and Congress. The HUD OIG has a variety of enforcement options available, should evidence of fraud be confirmed, and penalties1 including:

Criminal Penalties: Conviction may result in a prison sentence, probation, and/or restitution.

Civil Penalties: These are monetary penalty amounts required by the Federal Civil Penalties Inflation Act of 2015, which further amended the Federal Civil Penalties Adjustment Act of 1990.

Administrative Penalties: Administrative penalties include debarment or suspension. These sanctions are government-wide regardless of the federal agency involved. They can be indefinite and are imposed with a fraud conviction, or criminal or civil judgment.

Conflict of Interest

To ensure there are no conflicts of interest, GOED must ensure no employee, agent, consultant, officer, or elected official or appointed official of the State, the unit of

government, or of any designated public agencies or subrecipients participate in the selection, award, or administration if a conflict of interest, real or perceived, is involved.

Conflicts may arise when those who exercise or have exercised any functions or responsibilities with respect to CDBG-DR activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-DR assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

Additional information regarding conflicts of interest and the persons covered are addressed in the following:

24 CFR 570.489(h)

2 CFR 200.112

2 CFR 200.318(c)

GOED Ethics and Confidentiality Policy

All GOED staff are required to submit a signed acknowledgement of the GOED Ethics and Confidentiality Policy on an annual basis.

Training

To ensure the proper management of CDBG-DR funds, grantee staff and subrecipients will be familiarized with this policy and educated on how to identify and report fraud, waste, and abuse. GOED staff, as well as subrecipients, will be required to attend fraud-related training provided by HUD OIG, when available, to assist in the proper management of CDBG–DR grant funds. When the training is offered by HUD OIG, GOED will coordinate with HUD staff to attend the training.

Additional Resources

HUD OIG's "What You Can Do" Guidance Page: hudoig.gov/fraud/what-you-can-do

Timely Expenditure Policy

In accordance with Universal Notice Section II.A.1.f., the Governor's Office of Economic Development (GOED) as the Grantee must expend 100 percent of its allocation of CDBG-DR funds within six years of HUD's execution of the grant agreement with GOED. This timely expenditure policy will demonstrate that GOED is committed to meeting this deadline and has established procedures to track and document project expenditures and program income and how it will reprogram unspent funds quickly.

Project Schedule and Milestones

For the State to meet its expenditure requirement, CDBG-DR staff will provide technical assistance to subrecipients regarding the requirement to meet all contract milestones. As part of any program application, subrecipient applicants will be required to submit a project schedule that details specific milestones and expenditure timelines. Each subrecipient will have specific milestones identified in the subrecipient agreement. This may include, but is not limited to, the following milestones with anticipated timeframes determined on a project specific basis:

- Completion of the Environmental Review and Release of Funds
- First draw of funds and additional expenditure deadlines
- Awarding professional contracts, if applicable
- Awarding a construction contract and additional construction milestones

Penalties for failure to meet milestones will be included in all subrecipient agreements. The GOED hired planning district will act as a grant administrator for the subrecipient and will assist subrecipients with complying with CDBG-DR regulations, determining and managing activity milestones, providing other technical assistance as needed and serving as a direct and constant communication avenue between the GOED and the subrecipient. GOED will also monitor the project schedule and milestones through the Subrecipient CDBG-DR Quarterly Report.

If a subrecipient fails to meet the required milestone deadlines, the grant is reviewed by the GOED Grants Manager and discussed with the GOED Finance Director to determine additional technical assistance, full or partial recapture of funds, or a reduction in award amounts. Any funds recaptured or reduced will be immediately reprogrammed.

Contract Management

To ensure that projects are completed within the required period of performance, GOED will impose an initial period of performance of 3 years for projects funded with CDBG-DR. On a quarterly basis, GOED will require subrecipients to provide a Subrecipient CDBG-

DR Quarterly Report summarizing the project expenditures, milestone achievement, percentage of work completed, updates to the project schedule and identifying any potential risks.

In the event an activity is stalled for longer than 6 months, or cannot be completed for any reason, (e.g., cannot be cleared environmentally or cannot acquire required property), the Grants Manager shall contact the subrecipient immediately. The GOED Grant Manager will ensure awareness of such delays through Subrecipient CDBG-DR Quarterly Report submissions and desk monitoring of subrecipients.

Projection of CDBG-DR Expenditures

As part of the initial Action Plan, GOED will outline CDBG-DR programs and projects, methods of distribution, and anticipated projections for the timely expenditure of funds to meet the six-year period of performance established in the Notice. These projections will be based on each quarter's expected performance beginning when the funds are available to the State and continuing each quarter until all funds are expended. The published action plan will be amended to accommodate any subsequent changes, updates, or revisions to project and activity budgets, as needed to ensure timely expenditure. GOED will submit its projections to HUD with the initial Action Plan via the Disaster Recovery Grant Reporting (DRGR) system. The projections will be posted on GOED's CDBG Disaster Recovery Website, enabling HUD and the public to track 'proposed versus actual' performance of each project.

Tracking Expenditures

Grantee and subrecipient expenditures will be tracked by using the state accounting system and HUD's Disaster Recovery Grant Reporting (DRGR) system. These systems will be reconciled periodically to ensure accuracy of the data.

The Subrecipient CDBG-DR Quarterly Report will be used to assess activity progress and timeliness expenditures. These reports are vital because they provide the Governor's Office of Economic Development (GOED) with obligation and expenditure data for the period. Subrecipients are required to submit the Subrecipient CDBG-DR Quarterly Report beginning with their first draw of funds.

Program Income

GOED does not anticipate the generation of any program income. However, any program income received by recipients must be used prior to requesting additional CDBG-DR funding from GOED.

Program income received by subrecipients from projects funded with CDBG-DR must comply with the program income requirements of 24 CFR 570.489(e) and 2 CFR 200.307 as described in Chapter 4: Financial Management of the CDBG Grants Manual. Subrecipients

will be required to expend any program income received prior to drawing additional funds from GOED.

Program income received directly by GOED will be expended before additional funds are requested from the Treasury.

Recapture of Funds

The review of program expenditures may identify a situation that would require the recapture of grant funds. Under the circumstances listed below, subrecipients may be required to repay all or a portion of the assistance received from CDBG-DR. The reasons for grant recapture include, but are not limited to:

A subrecipient is determined to have provided false or misleading information to the program.

A subrecipient withdraws from the program prior to completion of the project. (Withdrawal from the program must be in writing or via email.)

The project is not completed due to non-cooperation by the subrecipient.

The subrecipient did not comply with the approved scope of work in a manner that made the project eligible.

The subrecipient failed to report the receipt of any additional funds received after a DOB analysis was conducted. All subrecipients who have been identified for the recapture of program funding will not be able to close out of the program until all funds have been repaid to the program.

All recaptured funds will be reprogrammed in a timely manner to other projects. The GOED Grant Manager will work with the finance team to determine the amount of funds to be reprogrammed and if funded projects need additional funds or if a new application round is necessary.

Responsible Party

GOED is tasked with the responsibility of oversight, tracking, and reporting of CDBG-DR obligations and expenditures on a monthly and quarterly basis. GOED will be responsible for using the DRGR system to track progress, program income receipts, and disbursements. GOED will upload the DRGR Action Plan and Quarterly Performance Report (QPR) to the State's CDBG Disaster Recovery Website.