CDBG GRANT ADMINISTRATION HANDBOOK

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Updated May 2026

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Chapter 1 – General Requirements

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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GENERAL REQUIREMENTS

INTRODUCTION

As a condition of receiving federal housing and community development grant funds, the State and each unit of general local government that accepts these funds from GOED must certify that it will comply with basic federal regulations including fair housing and equal opportunity requirements. Upon entering into a contract with GOED for CDBG funding (Grant Agreement), a Grantee has accepted responsibility for compliance with the numerous federal Acts, Laws, executive orders, and HUD regulations found in the CDBG Program Assurances and Certifications. These regulations do not just affect the Grantee when carrying out a CDBG activity but also may mandate some courses of action, the local governing body must adopt as part of their continuing governance. Among these are fair housing, equal opportunity in providing services and benefits, nondiscrimination, and citizen participation and comment.

INITIAL REQUIREMENTS

Prior to the drawdown of CDBG funds, the Units of General Local Government (UGLGs) must submit the following agreements, statements, and policies to the Governor's Office of Economic Development (GOED):

1. **Authorizing Governmental Resolution appointing a Project Authorized Official (*Submitted with the Application*)**

   Your UGLG must appoint an official to sign other documents pertaining to the grant. This Authorized Official should be a member of the unit of local government, preferably an elected official such as the Mayor, Chairman, etc. Other individuals, however, may be authorized if special conditions warrant such. This action will only be recognized if the UGLG passes a resolution authorizing the transfer of administrative responsibilities. Responsibility for use of the federal funds may not be passed to another individual or entity. A sample has also been provided by GOED as Attachment B in the CDBG Application document.

2. **Signed Applicant/Recipient Disclosure Report/Update (*Submitted with the application*)**

   HUD requires certain disclosures by applicants seeking assistance from HUD, from states and units of local government, and for other assistance used to carry out activities funded with the assistance. The disclosure includes the financial interests of persons involved in the activities, the sources of funds to be made available for the activities, and the proposed uses of the funds. A link to the document has been provided by GOED in the CDBG Application document.

   HUD Form 2880 is required for all recipients of HUD funding. Applicants to the GOED CDBG program should mark "No" in Part I, Question 1, and be signed by the Chief Elected Official of the municipality/applicant

3. **CDBG Program Assurances and Certifications (*Submitted with the application*)**

   As part of your application for HUD funding the Chief Elected Official of the local unit of government must provide the assurances and certifications as defined in Form 1-12: CDBG Program Assurances and Certifications as provided by GOED.

4. **Excessive Force Policy (*Included in the application*)**

   In accordance with Section 104(1) of the Housing and Community Development Act, as amended, Grantees must adopt an excessive force policy that prohibits the use of excessive force against nonviolent civil rights demonstrations. (See also the State's Certification Requirements at 24 CFR 91.325(b)(6)). When Grantees

sign the Grant Agreement they certify that they will pass and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations. A sample has also been provided by GOED in the CDBG Application document.

5. **Equal Employment Opportunity Policy (*Submitted with the Application*)**

   Your UGLG must adopt an Equal Employment Opportunity Policy within the past 5 years that assures that all its hiring practices are conducted in a manner that will not cause discrimination based on race, creed, color, national origin, religion, sex, handicap, or age. More detailed information can be found in the Economic Opportunity section below. A sample has also been provided by GOED in the CDBG Application document.

6. **Anti-Lobbying Certification (*Included in the application*)**

   As recipients of CDBG funds, your UGLG must adopt a certification within the past 5 years regarding Restrictions on Lobbying. This certifies that no federally appropriated funds have or will be paid to influence the making of this grant. A sample has also been provided by GOED in the CDBG Application document.

7. **Federal Funding Accountability and Transparency Act (FFATA) Certification (*Included in the Application*)**

   The Federal Funding Accountability and Transparency Act of 2006 (FFATA), ensures that the public can access information on all entities and organizations receiving Federal subawards, including CDBG. As a recipient of State CDBG dollars, Grantees are required to report the names and total compensation of the top five highly compensated executives if, in the preceding fiscal year, they received 80% or more of their annual gross revenues from federal contracts/awards and those revenues exceed $25 million annually.

8. **Environmental Certifying Officer Designation (*Submitted with the Application*)**

   Grantees must officially designate an Environmental Certifying Officer, typically a mayor, director, or high-ranking local official, who assumes legal responsibility for a project's environmental review under 24 CFR Part 58. The Certifying Officer signs the Request for Release of Funds and Certifications, acting as the "responsible Federal official" to ensure compliance with NEPA and related laws. This role must be filled by an employee of the local unit of government and cannot be designated to a consultant position. A sample has also been provided by GOED as Attachment C in the CDBG Application document.

9. **Resolution Assuring Fair Housing (*Submitted with Application*)**

   Your UGLG must adopt a Resolution Assuring Fair Housing within the past 5 years that affirms it shall be illegal to deny housing to any person because of race, creed, color, national origin, religion, sex, handicap, or age, and that it will do all within its power to eliminate prejudice, intolerance, disorder, and discrimination in housing. A sample has also been provided by GOED as Attachment D in the CDBG Application document.

10. **Code of Conduct Policy (*Submitted with Application*)**

    Your UGLG must adopt a Code of Conduct policy within the past 5 years that ensures the efficient, fair, and professional administration of federal funds, and that no officer, employee, or agent of your unit of government will participate in the selection, award, or administration of a contract supported by federal grant funds. It is recommended that this policy be adopted as an ordinance.

    A sample has also been provided by GOED as Attachment E in the CDBG Application document.

11. **Drug Free Workplace Policy (*Submitted with the application*)**

The Drug Free Workplace Act of 1988 requires that all recipients of federal funds maintain a Drug-Free Workplace Policy formally adopted by the Grantee. The policy should include procedures for providing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

Grantees should work with their legal counsel or a human resource professional to develop such a policy. Each local government is likely to have differing circumstances to consider in developing the procedures in its own local policy. The U.S. Department of Health and Human Services provides guidance and information to help develop and sustain a successful drug-free workplace in the SAMSHA Drug-Free Workplace Toolkit. A sample has also been provided by GOED as Attachment F in the CDBG Application document.

12. **Signed Grant Agreement**

This agreement contains the CDBG award amount, the project description that the Grantee is committed to carrying out, the percentage of local funds to be used for the project, a detailed budget, and CDBG grant terms and conditions. The agreement must be signed by the chief elected official. The Grantee retains one original signed grant agreement for its files and sends one signed original to the GOED.

13. **Local Match Statement**

The State of South Dakota encourages a “local match” in the CDBG program to promote local interest and effort in the project. The percentage of project costs that must be funded locally varies from grant to grant. CDBG funds cannot be made available until documentation on the match is received. This must be completed on official UGLG letterhead and signed by the appropriate official responsible for ensuring the completion of the project. A sample has also been provided by GOED as Form 1-1.

14. **Operation, Maintenance, and Repair Identification Statement**

The UGLG must establish the amount of reserve funds that will be required to provide ongoing operation, maintenance, and repair of the project. This fund should be sufficient to pay for all operation, maintenance, and replacement costs. The UGLG must provide the plan for capitalizing the reserve fund to GOED on official letterhead and signed by the appropriate official responsible for OMR upon completion of the project. A sample has also been provided by GOED as Form 1-2.

15. **Relocation, Displacement, and Acquisition Plan**

Your UGLG must adopt a Relocation, Displacement, and Acquisition Plan within the past 5 years even if it is not anticipated that displacement will occur. The plan must contain three components: 1. a requirement that it will minimize the displacement of persons from their homes, 2. It will provide relocation assistance to all persons displaced in connection with a CDBG funded activity, and 3. It will replace all low/moderate income dwelling units that are demolished or converted to a use other than low/moderate income housing as a direct result of the use of CDBG funds. A sample plan can be found as Form 1-3: Residential Anti-Displacement and Relocation Assistance Plan (RARAP). More information on the RARAP can be found in the Anti-Displacement and Relocation Assistance section below.

16. **GOED approval of bid specification books**

The bid packet containing all the project specifications must be submitted to GOED. This includes the specifications for general construction, supplies, and materials. The only exception to this requirement is for certain administrative, engineering, and architectural costs. The items that must be included in the packet are explained further in Chapter 3: Procurement. GOED will notify all parties once it has reviewed and approved the bid packet. **Do not include plans.**

17. **Contract Award Report (Form 1-4)**

A completed Contract Award Report must be sent to GOED **immediately after each bid has been awarded**.

NOTE FOR CDBG RECIPIENTS: To ensure the continual flow of CDBG funding to your project, you are REQUIRED to submit a completed **Form 1-4: Contract Award** report to GOED IMMEDIATELY after each bid is awarded. Failure to comply will result in delayed funding.

18. **SAM Registration/Unique Entity Identifier**

All direct recipients of CDBG from GOED are required to be registered on SAM.gov. This means all sub-recipients and all contractors and/or consultants under contract with the Grantee must be registered in SAM.gov. **This includes all Planning Districts.** Sub-contractors for prime contractors do not need to be fully registered in SAM.gov but must have a Unique Entity Identifier (UEI). Instructions on registering and receiving a UEI can be found in the SAM.gov Quick Start Guide for Grant Registrations. You may check the status of your SAM.gov registration here. GOED has provided Form 1-5: Understanding SAM.gov Debarment Requirements to understand the requirements.

19. **Section 504 Self-evaluation and Assessment**

This must be done on all Grantee owned property or where any activity will be carried out with CDBG funding. There is a Master Self-evaluation that is done once and updated as needed and Activity/Project Self-evaluation that is done with every new Grant Agreement. More information is provided below on completing a Section 504 Self-evaluation and Assessment, along with Form 1-6.

20. **Complaints and Appeals Process**

Several federal regulatory compliance requirements instruct Grantees to develop and implement grievance procedures to address complaints or disputes that arise in administering CDBG or federal funds in general. The types of complaints include:

- discrimination
- public participation/public input
- contract and procurement disputes
- other program requirements such as acquisition and relocation actions or labor standards
- decisions about eligibility and providing assistance

Grantees must develop grievance procedures to address these situations.

Form 1-7 contains Sample Complaints Procedures that local governments can adopt to cover any of these complaints. Each complaint and the resolution of the complaint should be well documented in the Grantee's files.

If the Grantee chooses to create its own procedures, the Grantee must provide beneficiaries with the name, address, and phone number of a contact person who can receive and respond to complaints. Complaints related to the scope and work of the project should be addressed by the Grantee. Where practical, the Grantee should respond to any complaints within 15 working days of its receipt. Complaints, appeals and all legal proceedings will be handled by the Grantee. GOED will forward any complaints it receives about a project to the Grantee. GOED will notify the person filing the complaint that it has been forwarded to the Grantee and will direct the complainant to follow up directly with the Grantee. It is the responsibility of the Grantee to address the complaints regardless of whether a subrecipient or consultant is managing the local project.

21. **DANR Letter approving Plans and Specifications (if applicable)**

The Department of Agriculture & Natural Resources must approve plans and specifications for projects of sanitary significance (water/wastewater projects). A copy of the approval letter must be forwarded to the CDBG project administrator.

22. **Executed Subrecipient Agreement (if applicable)** (Form 1-11: Sample Subrecipient Agreement)

Form 1-11: Sample Subrecipient Agreement provided by GOED is a **sample only**. It identifies the minimum content for consistency with the State CDBG Program requirements and the federal uniform administrative requirements of 2 CFR Part 200. Applicants are encouraged to incorporate any and all local project specific requirements into their legal agreement. ALL subrecipient agreements must be approved by GOED **before execution** with the intended Subrecipient.

CITIZEN PARTICIPATION REQUIREMENTS

Local governments must provide reasonable opportunities for citizen participation, hearings, and access to information with respect to local community development programs. Grantees must comply with certain citizen participation requirements prior to application submission while other requirements apply throughout the course of the project. Grantees are expected to take whatever actions are appropriate to encourage the participation of all its residents, including members of historically marginalized communities and persons with limited English proficiency, as well as persons with disabilities. Refer to the Grantee Citizen Participation Requirements on the GOED website for detailed information and resources for compliance with Citizen Participation requirements.

ADDITIONAL GRANTEE REQUIREMENTS

Affirmatively Furthering Fair Housing (AFFH) and Equal Opportunity (EO)

Fair Housing and Equal Opportunity (FHEO) requirements (24 CFR 570.487, 24 CFR 570.601, 24 CFR 570.602, and 24 CFR 5.106) are set apart from other federal requirements because of their basis in constitutional law. Civil rights related laws are an extension and interpretation of the equal protection and due process clauses of the United States Constitution.

Civil rights laws prohibit discrimination on several different grounds, including discrimination based on "classes" or population groups. These groups include racial and ethnic groups, (e.g. Whites, Blacks, Hispanics, Asians/Pacific Islanders, and Native Americans); gender groups; groups distinguished by age or religion; disabled persons, etc.

In addition, The South Dakota Human Relations Act of 1972 (SDCL 20 -13 and SDCL 20-12) also provides protections for these classes. Enforcement of the law covers employment practices, labor union membership and services, housing accommodations, education, public accommodations, public services and property rights.

As a condition of receiving CDBG funds, each Grantee that accepts these funds from the GOED must certify that it will comply with basic fair housing and equal opportunity requirements.

By completing required certifications to HUD, the GOED assumes a specific legislative mandate to enforce the provisions of the laws ranging from the Civil Rights Act of 1964, to the Fair Housing Act of 1968, and well beyond to "All Other Applicable Laws." Various legal authorities require that the GOED:

- Certify that its grant programs will be conducted in compliance with all applicable civil rights laws, regulations, executive orders and directives;
- Conduct its grant programs in a manner that will not cause discriminatory effects;
- Assure that all funded activities are carried out in a manner that will not cause discriminatory effects;
- Take affirmative action, where discrimination has been found in the past, to overcome the effects of past discrimination; and
- Provide for equal opportunity in employment and contracting opportunities connected with its grant programs.

Grantees make assurances that they will carry out these obligations in cooperation with the State. When the Grantee signs their Grant Agreement with the GOED, they are assuring compliance to the FHEO requirements through Form 1-12: CDBG Program Assurances and Certifications – included in the Application and Section B.10. Assurance Requirements of the Grant Agreement. The federal requirements that the Grantee must comply with and provide documentation of compliance include: Fair Housing, Section 504, Limited English Proficiency, and Nondiscrimination. There are numerous actions Grantees must take during the course of their Grant Agreement that may be directly related to the activities they carry out or may affect local codes and ordinances.

Grantees are required to carry-out at least one “Affirmatively Furthering Fair Housing” activity during the grant period. GOED has provided a list of potential activities as Form 1-8. Grantees are required to place the HUD Fair Housing Logo on all signage, brochures, pamphlets, notices, documents, e-mails, websites, and official correspondence, including that of the local government officials that deals with the CDBG grant.

Limited English Proficiency

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance. This includes ensuring meaningful access for individuals with limited English proficiency (LEP) by providing free language services, such as interpreter services and translation of vital documents, to avoid national origin discrimination. In certain situations, failure to ensure that persons who have limited English proficiency can effectively participate in, or benefit from, federally assisted programs may violate the federal prohibition against national origin discrimination.

GOED and the South Dakota Housing Authority have conducted a Statewide Four Factor Analysis for HUD funded programs and GOED has provided the Grantee Four Factor Analysis Guidance to assist with compliance.

The Four Factor Analysis is a voluntary process applicants/grantees may use to ensure compliance with Title VI of the Civil Rights Act of 1964.

Right to Report (Violence Against Women Act)

The Violence Against Women Act (VAWA) Reauthorization of 2022, effective October 1, 2022, includes a new requirement for U.S. Department of Housing and Urban Development (HUD) recipients to support an individual's right to seek law enforcement or emergency assistance. All CDBG grantees are required to report on the existence of laws or policies adopted that impose penalties based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a covered property.

Examples of Laws that violate VAWA are:

- Nuisance property ordinances that include fines for an "excessive" number of calls for emergency or ambulance services and/or incidents of domestic violence.
- Laws that lack exceptions for cases where the resident or tenant is a survivor of domestic violence or another crime, or for calls for emergency assistance by persons with disabilities.
- Laws that do not specify domestic violence as a nuisance but still penalize survivors due to having a broad definition of "nuisance activities" (e.g., disturbing the peace, excessive noise, disorderly conduct, or "excessive" calls to emergency services).
- Laws that require or encourage denial of an applicant with any criminal record, including arrests or misdemeanors.

ALL CDBG Grantees must review all ordinances, local regulations, and policies adopted by the local government and currently in effect and certify compliance with the Violence Against Women Reauthorization Act of 2022. (Form 1-9) If any policies are identified as non-compliant, they must be re-evaluated and addressed within the grant agreement period. A summary of efforts to evaluate alternative policies that do not impede the Right to Report Crime and Emergencies from One's Home and a timeline for action on one or more alternatives must be submitted.

The summary and timeline for implementation of alternative policies must be submitted to GOED with the application. GOED will review alternative policies and ordinances for compliance with VAWA at monitoring.

Economic Opportunity

When contracting for services, Grantees must ensure nondiscrimination in the solicitation and award of contracts generated from HUD funds, including:

- √ Nondiscriminatory advertising and distribution of solicitations;
- √ Nondiscriminatory bid specifications or evaluation criteria; and
- √ Nondiscriminatory award of contracts.

In addition, a Grantee is expected to take affirmative steps to provide opportunities in a manner similar to actions to affirmatively furthering fair housing no matter what the size of the contract.

Equal Employment Opportunity (EEO) Compliance

Local governments are required by Title VI of the Civil Rights Act of 1964 to prohibit discrimination on the basis of race, color, or national origin in all federal assisted programs. This law specifically prohibits discrimination in employment practices. When procuring goods, construction contractors, or professional services, Grantees should incorporate equal opportunity in employment clauses in solicitation (bidding) and contract documents.

Title VI requires Grantees, subrecipients, contractors, and subcontractors to prohibit discrimination based on the following:

- Race/Color
- Religion/ Creed
- Sex
- Sexual Orientation
- Gender Identity
- Ancestry/National Origin
- Age (≥62)
- Disability, mental and physical
- Genetic Information
- Military History

EEO Posters must be displayed at the Grantee and all job sites supported with CDBG funds. It is the responsibility of the grant administrator to provide the posters to the Grantee, as well as any subrecipient of CDBG funds, and to verify that the posters are displayed at the job site. See the Department of Labor website for required Equal Employment Opportunity Posters.

Section 3 Requirements

Section 3 of the Housing and Urban Development Act of 1968 imposes requirements pertaining to employment/training opportunities and contracting arising from CDBG assistance, or other HUD funds, expended for rehabilitation, physical improvements, and public construction projects, both residential and non-residential.

Congress established Section 3 to ensure that the employment and other economic opportunities generated by federal financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low and very-low-income persons, particularly those who are recipients of government assistance for housing.

The requirements of Section 3 are discussed in greater detail in Chapter 3: Procurement.

Accessibility

This section of the chapter reviews the requirements Grantees must follow to be in compliance with accessibility requirements of the Fair Housing Act, Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973 (Section 504). Collectively, the accessibility laws and implementing regulations prohibit discrimination based on disability and establish requirements for physical accessibility in connection with federally funded housing and non-housing activities. Section 504 provides that no otherwise qualified individual shall, solely by reason of their disability, be excluded from participation in (including employment), denied program benefits, or

subjected to discrimination under any program or activity receiving federal funding assistance. Specifically, Section 504 imposes requirements related to:

- Program accessibility;
- Communications;
- Accessible design and construction for certain housing and non-housing activities;
- Grantee self-evaluation of programs, services, and activities to ensure programmatic and physical accessibility to persons with disabilities; and
- Nondiscrimination in employment.

Program Accessibility

Existing housing and non-housing programs administered by the Grantee and its funded entities (e.g., subrecipients, developers) must be accessible to persons with disabilities. Program accessibility means that a program, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This means that persons with disabilities must:

1) have an equal opportunity to participate in and benefit from the program, and
2) be offered equitable choices and amenities as those offered to persons that do not have disabilities.

Grantees ensure that their programs and services are readily accessible to and usable by persons with disabilities to the maximum extent feasible. In other words, the Grantee must take steps to provide the necessary access to persons with disabilities, unless the actions would constitute an undue financial and administrative burden or require a fundamental alteration in the nature of the program.

Communication

Communication is an important component of program accessibility. Persons with impairments to hearing, vision, speech, mobility, or other disabilities may have special communication needs. To the maximum extent feasible, Grantees must provide program information in ways to ensure that persons with disabilities that impact communication are able to access and enjoy the benefits of any program or activity receiving CDBG funds.

The Grantee must ensure effective communication with persons with all types of disabilities in all activities, to the greatest extent feasible. Where the Grantee communicates with applicants and beneficiaries by phone, a TDD is required, or an equally equivalent system must be available. To be equally effective, aids, benefits, and services do not have to produce identical results, but must afford equal opportunity to obtain the same result in the most integrated setting appropriate (34 CFR §104.4(b)(2)).

The Communication Service for the Deaf in Sioux Falls has available the South Dakota relay service for hearing-impaired persons. This relay service is designed to enable a person using a TDD to communicate with another person who does not use a TDD.

The telephone numbers for the South Dakota Relay Service are:

1-800-877-1113 State Wide Toll-Free

1-605-339-6464 Sioux Falls area

1-605-339-6464 Outside of South Dakota

CDBG recipients must communicate in such a manner that people with disabilities may obtain the information they need regarding the recipient's programs. All public hearings must be held in locations accessible to people with disabilities. Recipients must provide a sign language interpreter or make reasonable accommodation for people with disabilities to participate in public hearings.

Grantees may require that persons with disabilities provide advance notice that they need a particular auxiliary aid or service. All communications must clearly outline the specific procedure, which must be followed if an individual with disabilities intends to request an auxiliary aid and/or service. If for some reason effective communication as requested by the individual cannot be provided, the recipient must notify the individual immediately of the specific reasons why their request cannot be granted, why the decision was made, and what alternative accommodation could be made.

Self-Evaluation and Transition Plan

HUD regulations require each recipient of CDBG funds to conduct a self-evaluation and transition plan, when applicable. If a Grantee has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to people with disabilities, they must conduct such evaluation and document all needs. Assistance with self-evaluation and the creation of a transition plan can be found in the Department of Justice ADA Guide for Small Towns. GOED has provided a sample plan as Form 1-6.

If a Grantee has already performed a self-evaluation, a new one is not required, unless facilities have been altered.

NOTE: Grantees (municipalities) with 15 or more staff are required by law to have an identified ADA/Section 504 Coordinator. This person may already exist within your jurisdiction.

Anti-Displacement and Relocation Policy

Under Section 104 (d) of the Housing and Community Development Act of 1974, as amended, each Grantee is required to adopt, make public and certify that it is following a plan providing:

- √ One for one replacement of units; and
- √ Relocation assistance.

All Grantees are required to adopt a Residential Anti-Displacement and Relocation Assistance Plan and Certification before any funds can be dispersed to that grantee. More detailed information on HUD's Anti-Displacement and Relocation Assistance requirements can be found at 24 CFR 42.325.

Project Signage

If the Grantee intends to have signage at the project site (typically listing the project sponsors, architect, etc.), the HUD Fair Housing Logo **must** be included on the signage. The HUD Fair Housing logo may not be any smaller than 50% of the size of the largest logo displayed.

Conflict of Interest

The Grantee must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of CDBG contracts.

Federal regulations at 2 CFR 200.319, 24 CFR §570.489(h), and 24 CFR §570.611 require that any conflicts of interest on CDBG projects must be avoided.

These requirements apply to:

- procurement of supplies, equipment, construction services and professional services,
- the acquisition or disposition of real property, and
- the provision of services or benefits.

Federal and state guidelines stipulate no employee, officer, agent, or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the CDBG award. A conflict of interest includes when the employee, officer, agent, or board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties listed above, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. An employee, officer, agent, and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors.

In certain circumstances, GOED may grant an exception to a conflict of interest, upon request, if specific criteria are met:

1. A disclosure of the nature of the conflict, including an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made.
2. A legal opinion (from local Counsel) is submitted stating that the potential for conflict of interest is minimal, and that the situation does not violate either local or state conflict statutes or rulings.
3. The person applying for the waiver meets other program requirements. For example, low/moderate income guidelines for housing rehabilitation.
4. The person applying for the waiver is not in a decision-making position in the CDBG Program, either with the local government or subrecipient.
5. The local government must certify the above and demonstrate that a system has been established to guarantee that no preferential treatment to the applicant has occurred. This might require a numbered and dated system for accepting and processing applications, for example.
6. Finally, the local government must submit a formal request to GOED seeking a waiver of conflict-of-interest requirements based on the above criteria. The waiver request should describe the circumstances for all five elements above. See Form 1-10: Request for Exception to Conflict of Interest .

After review of the supporting documentation, if GOED agrees that the potential for conflict of interest is minimal and if the applicant meets the above criteria for a waiver, GOED will issue an approval.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	8/21/24	• Initial Release	S Deyo
2.0	5/22/26	• Updated General Requirements section to match CDBG Application • Updated links throughout document • Updated Conflict of Interest per revised 2 CFR 200.318	S Deyo

CDBG GRANT ADMINISTRATION HANDBOOK

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Chapter 2 – Environmental Requirements

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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ENVIRONMENTAL REQUIREMENTS

INTRODUCTION

Every project undertaken with state administered CDBG funds and all activities related to that project are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA). In addition to the NEPA, there are other laws and regulations that contain environmental provisions with which CDBG Grantees must comply.

The purpose of this section is to provide the guidance necessary to prepare the Environmental Review Record (ERR) which is required by NEPA and related laws. In developing the ERR, all activities associated with the project will be assessed with respect to both their beneficial as well as adverse environmental impacts.

THE RESPONSIBLE ENTITY

Under Part 58, the term "Responsible Entity" Responsible Entity means the entity responsible for completing the environmental review. In the state CDBG Program, the local unit of government Grantee is the Responsible Entity. Therefore, these terms are used interchangeably with Grantee throughout this chapter and the appendices. The responsible entity must complete the environmental review process. Environmental review responsibilities have both legal and financial ramifications.

ENVIRONMENTAL CERTIFYING OFFICER

When a Grantee accepts CDBG funding, the Chief Elected Official, or formal designee, shall serve as the "Environmental Certifying Officer" and accepts full responsibility for the completeness and accuracy of the reviews. Consultants, staff, and/or state resources may provide technical assistance to support local efforts; but the Environmental Certifying Officer retains the legal responsibility for the environmental review. A sample Authorization for the Designation of Certifying Officer is attached as Form 2-1: Authorization for Designation of Certifying Officer Sample.

The Grantee's Environmental Certifying Officer has two principal responsibilities:

1. That of representing the Grantee for environmental matters and being subject to the jurisdiction of the Federal courts if the Grantee becomes involved in environmental litigation.
2. That of making sure that all environmental, procedural, and record requirements are fully and properly satisfied and signing all environmental documents.

GRANTEE RESPONSIBILITIES

There are five (5) basic environmental responsibilities for each CDBG Grantee. These responsibilities will be further explained in this and subsequent sections. The responsibilities include:

1. **Conducting an Environmental Review**. The Grantee must determine what type of environmental provisions pertain to its specific project activities. For those that are not EXEMPT or CATEGORICALLY EXCLUDED, the Grantee will be required to conduct an Environmental Assessment in order to assess what possible environmental impact may be involved.

2. **Maintaining Environmental Review Records**. Grantee must establish and maintain an Environmental Review Record (ERR). The ERR will contain all documentation related to determinations, findings, consultation and coordination, certifications, and approvals involved in the environmental review process.
3. **Providing Public Comment Opportunities**. Except for "exempt" activities, the Grantee must provide for a period of public comment related to the Grantee environmental finding and intent to request CDBG funding for affected activities.
4. **Complying with All Environmental Laws**. Grantees must comply with NEPA as well as other related federal law authorities. This compliance responsibility remains for the entire life of the project.
5. **Environmental Certification and Funding Requests**. The initial environmental review process is not completed until the Grantee has properly certified its environmental findings and records to the Governor's Office of Economic Development (GOED). This certification process also serves as a request for the release of CDBG activity funds.

The Environmental Review requirements of the NEPA can, at first glance, appear overwhelming; however, when taken step by step, the process can be completed with relative ease. Please keep in mind that, for the most part, activities and projects are unique in their effect on the environment; a project in one community may require a different or more in-depth review than a similar project in a different locality.

GOED RESPONSIBILITIES

The Governor's Office of Economic Development (GOED) has five (5) primary responsibilities related to the environmental review process.

1. Withholding all CDBG grant funds (not including general administration or planning funds) until the Grantee has fully and properly certified that all environmental review requirements have been satisfied.
2. Releasing CDBG funds to the Grantee once the proper environmental certification has been submitted to the GOED and the required comment period has transpired without negative comment or objection. It should be noted that the GOED release of activity funds does not constitute a GOED approval of the Grantee's findings, but only an acceptance that the certification requirements have been properly satisfied. The Grantee remains responsible and legally accountable for all environmental findings, even if later any findings are inaccurate or proper review procedures were not followed.
3. If later environmental findings result in a determination that the Grantee's certification or procedures were inadequate, the GOED is required to withhold further funding to the Grantee until these findings are resolved. This will require the Grantee to resubmit its environmental review along with a second public comment period, recertification to the GOED, and a revision to the Grantee's Environmental Review Record (ERR).
4. The GOED is required to monitor the Grantee during its project period, including an examination of the Grantee's environmental review process and ERR.
5. The GOED will provide, to the extent possible and as requested, both guidance and technical assistance to the Grantee for its environmental review process and ERR.

WHEN TO BEGIN THE ENVIRONMENTAL REVIEW

The Grantee should begin its environmental review as soon as possible. Since the environmental review processes may become lengthy and complex, it is vital that Grantees start the process as soon as possible to allow for applicable comment periods and citizen participation. The Grantee may have to do another environmental review if the project is amended or changed.

A completed environmental review is valid for 3 years from the date the review is completed and signed by the Certifying Officer. As such, a Grantee may not have to conduct a new environmental review for a subsequent application if not successful on the first attempt. However, there can be *no changes* to the project service area, or the scope of work as documented in the certified environmental review for it to remain valid.

PROJECT AGGREGATION

A Grantee must group together and evaluate as a single project all individual activities which are related either geographically or functionally. For example, several activities carried out in a distinct neighborhood, such as demolition, street paving, and construction of a water line could be grouped together as one project. Grouping activities allow the Grantee to consider the combined environmental effect of a project and will lessen the number of ERRs and the accompanying paperwork. The term "project" means an activity, or a group of integrally related activities designed to accomplish, in whole or in part, a specific goal.

LIMITATIONS PENDING CLEARANCE

According to the NEPA and 24 CFR 58.22, the Responsible Entity is required to ensure that environmental information is available **before** decisions are made and **before** actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the Grantee receives a release of funds from the state. This means that the Grantee may not spend either public or private funds (CDBG, other federal or non-federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved. In other words, Grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made, that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social, and economic environment). Until the Grantee has completed the environmental review process, these same restrictions apply to all subrecipients, as well.

For the purposes of the CDBG program, this includes:

- Advertising bids on activities that would be choice limiting (e.g., construction, demolition)
- Execution of a legally binding agreement, such as a property purchase or construction contract (this does not include option agreements and contingent agreements);
- Expenditure of CDBG funds (e.g., hiring an architect or engineer for design or engineering specifications);
- Use of any non-CDBG funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating); and
- Use of non-CDBG funds on actions that would be "choice limiting" (e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures).

It is acceptable for Grantees to execute legal agreements that do not financially bind the Grantee prior to completion of the environmental review process and receiving GOED approval. An option agreement for the acquisition of property is allowable when the following requirements are met:

- The option agreement is subject to a determination by the Grantee on the desirability of the property for the project as a result of the completion of the environmental review in accordance with Part 58; and
- The cost of the option is a nominal portion of the purchase price.

GOED considers once a project is publicly announced and federal funds will be sought (date the public hearing for the application is advertised), your project is subject to NEPA.

CLASSIFYING ACTIVITIES

To begin the environmental review process, the responsible entity must first determine the environmental classification of each activity in the project. A complete and accurate project description is needed, or the project may be noncompliant with Part 58 and related federal laws and authorities. A complete and accurate project description ensures that the responsible entity is performing the correct level of NEPA review. The project description must include all elements of the project whether funded with or without HUD funds. The description shall include a project budget as well as a narrative of how the project will impact the environment, neighborhood, and project residents.

The level of environmental review will be dictated by whichever project activity requires the higher level of review. For example, if one activity in a project requires an environmental assessment then the entire project must be assessed at this level of review.

In addition, all levels require compliance with 24 CFR 58.6. Regardless of whether the level of review is determined to be exempt, categorically excluded, or an environmental assessment, these "other requirements" must also be documented for compliance.

There are five environmental classifications recognized under the CDBG program:

- Exempt activities;
- Categorically excluded activities not subject to 24 CFR 58.5 and – related federal laws and authorities (**CENST**);
- Categorically excluded activities subject to 24 CFR 58.5 and – related federal laws and authorities (**CEST**);
- Activities requiring an environment assessment (**EA**); or
- Activities requiring an environmental impact statement (**EIS**).

Exempt Activities *(24 CFR 58.34)*

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which are considered exempt from NEPA.

1. **Environmental Studies.** The reasonable cost of environmental studies, including historic preservation clearances.

2. **Eligible Planning and Urban Environmental Design Costs.** The reasonable cost of comprehensive planning activities or the development of a comprehensive Community Plan or a policy-planning management capacity.
3. **Eligible Administrative Costs.** Payment of reasonable administrative costs and carrying charges related to the planning and execution of Community Development activities financed, in whole or in part, with funds provided under the CDBG program.
4. **Engineering and Design Costs.** If incurred for an activity eligible under the South Dakota CDBG program.
5. **Interim Assistance Activities.** Provided assistance is for imminent threats to health and safety, if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration.

Categorically Excluded Not Subject To 58.5 Activities *(24 CFR 58.35b)*

Though CENST and exempt activities fall under different levels of review and are described in separate sections, the compliance procedure and requirements are the same. Listed below are examples which are considered exempt from NEPA and are not subject to other related environmental laws and authorities.

1. **Supportive Services.** Supportive services including, but not limited to, health care, housing services, permanent housing placement, daycare, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.
2. **Operation/Maintenance.** Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs.
3. **Economic Development.** Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.

Requirements

A Grantee does not have to submit a Request for Release of Funds (RROF) and certification to the GOED. However, the Grantee must document in writing its determination that each activity or project is exempt or categorically excluded not subject to Part 58.5 and meets the conditions specified for such exemption under this section. Approval from the GOED will be needed by the Grantee for the drawdown of CDBG funds to carry out the activities and projects proposed in the approved application. Form 2-2: Environmental Review For Activities that are Exempt or Categorically Excluded, Not Subject To 58.5 must be used in documenting the exemption.

Procedures For Exempt and Categorically Excluded Not Subject To 58.5 Activities:

Once the activity is classified as EXEMPT or CATEGORICALLY EXCLUDED NOT SUBJECT TO 58.5, , the Grantee must follow the steps below:

1. Appoint an Environmental Certifying Officer and submit resolution to GOED. (Form 2-1)
2. Project determined to be exempt .
3. Complete Form 2-2: Environmental Review For Activities that are Exempt or Categorically Excluded, Not Subject To 58.5. Instructions for 24 CFR 58.5 and 24 CFR 58.6 compliance requirements can be found on Form 2-3: Instructions for Compliance with 58.5 and 58.6 Requirements.

4. Submit Form 2-2 with applicable source documentation to GOED.
5. GOED notifies the Grantee of concurrence via emailed letter. A sample has been provided as Form 2-13.
6. Additional compliance steps may be necessary to satisfy other CDBG requirements before the drawdown of grant funds.
7. Grantee begins the project and may draw down funds.

The Following Forms Must Be Submitted To GOED:

For those projects which were initially declared Exempt:

Form 2-1 - Environmental Certifying Officer Resolution.

Form 2-2 - Environmental Review for Activity/Project that is Exempt or Categorically Excluded, Not Subject To 58.5, including documentation.

For those projects that were initially declared Categorically Excluded, Subject To and then declared Exempt:

Form 2-1 - Environmental Certifying Officer Resolution.

Form 2-2 - Environmental Review for Activity/Project that is Exempt or Categorically Excluded, Not Subject To 58.5, including documentation.

Form 2-4 – Environmental Review for Activity/Project that is Categorically Excluded, Subject to 58.5, including documentation.

Categorically Excluded Subject To 58.5 Activities *(24 CFR 58.35a)*

Listed below are examples which are considered exempt from NEPA but subject to the related laws and authorities at 58.5.

1. Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements (other than buildings), when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
3. Rehabilitation of buildings and improvements when certain conditions are met.
4. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
5. Combination of the above activities.

Procedures for Categorically Excluded Subject to 58.5 Activities:

Once the Grantee has determined that its activity/project falls within one or more of the CATEGORICALLY EXCLUDED activities, the following steps will be followed:

1. Appoint an Environmental Certifying Officer and submit the resolution to GOED. (Form 2-1)
2. Project determined to be categorically excluded from NEPA environmental review.

3. Complete Form 2-4: Environmental Review for Activity/Project that is Categorically Excluded, Subject to 58.5.
4. Determine if the project is or will be located in a floodplain or a wetland. Publish Form 2-9: Floodplains and Wetlands Early Public Notice and Form 2-10: Floodplains and Wetlands Notice of Explanation, if applicable. See Projects Located in Floodplains and Wetlands (24 CFR Part 55) below for more information on publication of Flood Plain Notices.
5. All determinations made on the checklist must be explained. Instructions for 24 CFR 58.5 and 24 CFR 58.6 compliance requirements can be found on Form 2-3: Instructions for Compliance with 58.5 and 58.6 Requirements.
6. If activities do not impact related laws, the project may be declared exempt. (Refer to the process for Exempt Activities above.)
7. For all related laws impacted by the activity, contact the appropriate State or Federal agency for clearance. The Grantee must show consultation through documented letters or other forms of written communication. All letters and responses must become a part of the ERR.
8. If the Grantee has learned through the consultation process that it must comply with certain environmental provisions of other federal environmental laws or regulations, the Grantee must document in its ERR:
    A. Which activity(ies) of the project was so affected.
    B. The nature of compliance required.
    C. How the Grantee has or will meet such compliance requirements.
9. Grantee publishes "Notice of Intent to Request Release of Funds" (RROF) in their local newspaper and waits a period of seven days for comments on published RROF. A sample is included as Form 2-5: Notice of Intent to Request Release of Funds. If there is no newspaper, the notice must be prominently displayed at the local post office and also displayed in other public buildings. This notice must be distributed to the local news media, individuals and groups interested in the project, and appropriate local, state, and federal agencies which must include among them:
    A. State Historical Preservation Office.
    B. Regional Office of the U.S. Environmental Protection Agency.
10. After the seven-day comment period expires, the Grantee sends Form 2-6: Request for Release of Funds and Certification to the GOED.
11. After receiving these documents, GOED must allow for a fifteen (15) day public comment period before taking any further action. If no adverse public comments are received by the GOED during this period, the GOED will then send Form 2-14: Authority to Use Grant Funds to the Grantee indicating Environmental Clearance and Release of Funds. CDBG funds may not be drawn down until the Grantee has also satisfied the other basic grant payment conditions.
12. Additional compliance may be necessary to satisfy other CDBG requirements before the drawdown of grant funds.

The Following Forms Must Be Submitted To GOED:

Form 2-1 – Authorization of Environmental Certifying Officer.

Form 2-4 - Environmental Review for Activity/Project that is Categorically Excluded, Subject to 58.5, including documentation.

Form 2-5 – Notice of Intent to Request Release of Funds **(Full tear sheet or Affidavit of publication)**

Form 2-6 - Request for Release of Funds and Certification.

Environmental Assessment

If a Grantee's activity or project is neither EXEMPT nor CATEGORICALLY EXCLUDED from NEPA requirements, the Grantee will have to undertake an ENVIRONMENTAL ASSESSMENT for the activity or project. An Environmental Assessment (EA) enables the Grantee and others to determine the degree of significant impact that an activity (by itself or in combination with other activities) may have on the environment.

An Environmental Assessment will permit all interested public agencies, community groups, and individuals to examine the environmental data developed and to comment on the environmental impact findings and course of action determined by the Grantee.

There is, however, one important exception to the environmental assessment requirement. In some circumstances, the Grantee may want to forego the EA and proceed directly to the preparation of an ENVIRONMENTAL IMPACT STATEMENT (EIS). An EIS is required for activities/projects that will have a significant impact on the environment. When this determination can be made early, the Grantee should contact GOED and the EIS process will be explained.

If it is not clearly evident that an EIS is required, then the Grantee should proceed with the environmental assessment procedures explained in this section.

NOTE: If a Grantee has more than one project, a separate ER will have to be completed for each one.

REMEMBER: A project is defined as containing one or more integrally related activities designed to achieve, in whole or in part, a specific program goal.

Procedures for Environmental Assessment Activities:

1. Appoint an Environmental Certifying Officer and submit the resolution to GOED. (Form 2-1)
2. Project is determined to require a full environmental assessment.
3. Determine if the project is or will be located in a floodplain or a wetland. Publish Form 2-9: Floodplains and Wetlands Early Public Notice and Form 2-10: Floodplains and Wetlands Notice of Explanation, if applicable. See Projects Located in Floodplains and Wetlands (24 CFR Part 55) below for more information on publication of Flood Plain Notices.
4. Complete Form 2-7: Part 58 Environmental Assessment Form. Explanations must be provided for all determinations made. Instructions for compliance with 24 CFR 58.5 and 24 CFR 58.6 requirements can be found on Form 2-3: Instructions for Compliance with 58.5. and 58.6.
5. Grantees must conclude the Environmental Assessment by indicating the appropriate assessment finding, i.e.,
    a. **Finding of No Significant Impact** (FONSI), meaning that the project is in compliance with all applicable environmental laws/regulations and that an EIS is not required; or

b. **Finding of Significant Impact** (FOSI), meaning that the project may or will have a significant environmental impact, and will require an EIS.

6. Publication of Form 2-8: Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Funds. See Required Public Notices below for more information.
7. Publication of Form 2-9: Floodplains and Wetlands Early Public Notice and Form 2-10: Floodplains and Wetlands Notice of Explanation, if applicable. See Projects in a Floodplain/Wetlands below.
8. Grantee waits for 15 calendar days after publication for comments.
9. Grantee transmits to GOED Form 2-6: Request for Release of Funds and Certification, and other required documents.
10. After receiving the RROF and Certification, GOED must allow for a 15-day public comment period.
11. If no comments are received by the State, GOED notifies the Grantee of Environmental Clearance and Release of funds with Form 2-14: Authority to Use Grant Funds.
12. Additional compliance may be necessary to satisfy other CDBG requirements before drawdown of CDBG funds.

NOTE: If any of the procedures above are not followed, this will constitute the grounds for GOED to withhold CDBG funds from the grantee until all procedures are properly satisfied.

The Following Forms Must Be Submitted To GOED:

Form 2-1 – Authorization of Environmental Certifying Officer.

Form 2-5 – Notice of Intent to Request Release of Funds **(Full tear sheet or Affidavit of publication)**

Form 2-6: Request for Release of Funds (RROF) & Certification

Form 2-7: Part 58 Environmental Assessment Form

Form 2-8: Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Funds, if applicable (see below)

Form 2-9: Floodplains and Wetlands Early Public Notice, if applicable

Form 2-10: Floodplains and Wetlands Notice of Explanation, if applicable

Form 2-11: Notice of FONSI on the Environment, if applicable (see below)

If the Grantee's EA results in a FONSI determination, then the Grantee should proceed below. If a Finding of Significant Impact (FOSI) determination is made, the Grantee must prepare an EIS and should contact GOED for further information.

Considering Radon in the Environmental Review

HUD guidance (HUD CPD Notice CPD-23-103) and regulations (24 CFR 58.5(i)) dictate that all properties that are being proposed for use in HUD funded projects be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

As radon is a radioactive substance, the grantee must consider it as part of the site contamination analysis for projects that:

- Require an environmental review at the level of Categorically Excluded Subject to 58.5 ("CEST"), Environmental Assessment, or Environmental Impact Statement; and
- Involve structures that are occupied or are intended to be occupied at least four (4) hours a day.

Exemptions from having to consider radon in the contamination analysis:

- Buildings with no enclosed areas having ground contact.
    - Buildings containing crawlspaces, utility tunnels, or parking garages would not be exempt, however buildings built on piers would be exempt, provided that there is open air between the lowest floor of the building and the ground.
- Buildings that are not residential and will not be occupied for more than 4 hours per day.
- Buildings with existing radon mitigation systems - document radon levels are below 4 pCi/L with test results dated within two years of submitting the application to DOH and document the system includes an ongoing maintenance plan that includes periodic testing to ensure the system continues to meet the current EPA recommended levels.
- Buildings tested within five years of the submission of application to DOH: test results document indoor radon levels are below EPA's current recommended action levels of 4.0 pCi/L. For buildings with test data older than five years, any new environmental review must include consideration of radon using one of the methods below.

NOTE: HUD's contamination policy does not apply to projects that are Exempt or Categorically Excluded Not Subject to 58.5 ("CENST").

How to consider Radon in the Environmental Review

This section details how environmental review preparers may consider radon in the environmental review. This section provides a recommended "best practice" method; however, preparers may utilize one of the alternate options if they choose not to implement the best practice.

Recommended Best Practice

When considering radon in the contamination analysis, HUD strongly recommends using the American National Standards Institute/American Association of Radon Scientists and Technologists (ANSI/AARST) Radon Testing Standards for Multifamily, School, Commercial and Mixed-Use Buildings. The ANSI/AARST standards describe how to conduct testing, interpret test results, and draft a Radon Test Report to document the process for the building owner (and to use as documentation for the ERR). The ANSI/AARST standards can be viewed online for free and are intended to be implemented by licensed radon professionals.

- To find a licensed radon professional in your area contact the Department of Agriculture and Natural Resources (DANR) Radon Information Line 1-800-438-3367, the National Radon Proficiency Program (NRPP) at https://nrpp.info, or the National Radon Safety Board (NRSB) at https://nrsb.org.

Alternative Options

Using the ANSI/AARST radon testing standards is not the only option available for considering the risk that occupants may be exposed to high radon levels. If the environmental review preparer chooses not to conduct radon testing per the ANSI/AARST standards, one of the following alternative strategies must be used to consider radon in the contamination analysis.

1. Do-it-yourself (DIY) radon test kits may be used to measure radon levels in single-family dwelling units. In CDBG assisted single-family buildings with multiple units, one DIY test kit must be used for each dwelling unit. DIY radon test kits may be available for low or no cost through local health department offices and are available to purchase through the National Radon Program Services Test Kits website. When using a DIY test kit, there can be quality control issues that affect the quality of the test results. To ensure the DIY test results are as accurate as possible, it is important to read the entire test kit instructions before activating the test device and to follow them fully. The EPA's Citizen's Guide to Radon and the ANSI/AARST standard for testing single-family housing are excellent resources for detailed instructions about conducting the radon test, including where to place the test device(s), how to prepare the home (whether to close the windows, turn off fans, the length of time to test), how to document the test process, and interpret the results. HUD encourages that test devices be approved by either the NRPP or NRSB. Contact the DANR Radon Information Line 1-800-438-3367, the National Radon Program Services helpline at (800) 55-RADON or radon@ksu.edu, or your local health department for assistance.
2. In remote or other areas where there are no licensed/certified radon professionals and/or DIY test kits cannot be shipped to a lab in sufficient time, the local government, such as a local health department or environmental department, may decide to purchase radon monitoring equipment and train staff to use it. Monitoring equipment, such as continuous radon monitors, should be used in accordance with the manufacturer's instructions and intended use and staff should ensure proper quality control and quality assurance practices are adhered to.

Mitigating Radon

When radon testing determines indoor air radon levels are at or above 4 pCi/L, the Environmental Review Record (ERR) must include a mitigation plan. When the testing demonstrates that radon levels within the building are below 4 pCi/L, mitigation would not be required; environmental review preparers can simply document the test results in the ERR.

The mitigation plan must identify the radon level; consider the risk to occupants' health; describe the radon reduction system that will be installed; whenever possible, establish an ongoing maintenance plan to ensure the system is operating as intended; establish a reasonable timeframe for implementation; and require post-installation testing. Where feasible, post-installation testing should be conducted by a licensed radon professional. In an area where there are no licensed radon professionals, there may be other personnel, such as trained staff, other professionals (i.e., engineers, geologist, scientists, public health staff) who have experience conducting radon testing or have the relevant skills and knowledge to follow the device instructions or ANSI/AARST test protocols and mitigation standards. For assistance Contact the DANR Radon Information Line (800) 438-3367, the National Radon Program Services at https://sosradon.org, or refer to the applicable ANSI/AARST standard for guidance. If using the ANSI/AARST Radon Testing Standards to install the radon reduction system, follow the guidance in the standard to draft the mitigation and the operation, maintenance, and monitoring plans.

Documenting the Environmental Review Record

Under HUD's regulations, 24 CFR 58.38(a)(3) the Grantee is required to document the radon evaluation as part of the contamination analysis in the ERR. Radon documentation information should be included under "compliance determinations" in the Contamination and Toxic Substances section of the environmental format for CEST and EA projects.

In instances where radon testing will be conducted but cannot be conducted until after the environmental review record is certified (i.e., new construction or certain rehabilitation projects) then the initial documentation would not include a radon evaluation but must include a condition for post-construction radon testing followed by mitigation if needed. Environmental preparers should include a copy of the EPA Map of Radon Zones in the Environmental Review Record along with testing and mitigation plans at the time of application.

The environmental preparer must then update the environmental review record with the results of the radon evaluation and proof of any required mitigation when complete. Acceptable methods to document radon consideration in the ERR include:

- ANSI/AARST standard: Include a copy of the test report and mitigation plan (if applicable) as described in the standard in the ERR. For Office of Housing programs, follow program guidance requirements on timing and documentation.

- When all this is documented in the ERR, no further consideration of radon is needed and no further action with respect to radon is needed for the environmental review.

Resources for Implementation of Radon Compliance

Costs for radon testing and mitigation are considered eligible program costs in the CDBG program. As such, costs for radon testing and mitigation can be included in the total project costs funded by GOED. However, costs for ongoing operation and/or maintenance of installed mitigation systems are **not** eligible under the CDBG program.

Projects in Floodplains and Wetlands *(24 CFR Part 55)*

When a project meets one or more of the following criteria, the implementation of a specific decision-making process is required for compliance with Executive Orders 13690 and 11990 and 24 CFR Part 55:

- The project is in a Federal Flood Risk Management Standard floodplain;
- The project is a "critical action" (as defined in 24 CFR 55.2(b)(3)) in a 500-year floodplain, also known as the .2% Annual Chance Floodplain. A "critical action" is any activity where even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that;
    1) produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;
    2) provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., community stormwater management infrastructure, water treatment plants, data storage centers, principal utility lines, fire stations, and roads providing egress from flood prone areas; or

3) are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events (e.g., hospitals, nursing homes, etc. Housing for independent living for the elderly is not considered a critical action.); or

- The project proposes construction in a wetland.

There are two decision-making processes identified in Part 55 concerning floodplains and wetlands. They are the 8- step process (24 CFR 55.20) and the 5-step process (24 CFR 55.12). The 8-step process will apply unless a project falls under the allowed criteria for using the 5-step decision making process, which are:

- Disposition of multifamily and single family (1-4 unit) properties [55.14(a)].
- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.) [55.14.(c)]
    1) Number of units is not increased more than 20%;
    2) Does not involve conversion from non-residential to residential; and
    3) Does not meet definition of "substantial improvement" [55.2(b)(12)].
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties (i.e., public facilities, commercial/retail, and industrial) [55.14(d)]
    1) Does not meet the threshold of "substantial improvement" (i.e., the cost equals or exceeds 50% of the market value before damage occurred; and
    2) The structure footprint and paved area is not increased more than 10%.
- Repair, rehabilitation, modernization, weatherization, or improvement of a structure listed on the National Register of Historic Places of on a State Inventory of Historic Places. ["Substantial improvement" does not apply to historic properties, 55.2(b)(12)(ii)(B)].
- The grantee must document in writing which process is applicable and each step of the applicable process.

NOTE: When a project is located in a floodplain AND also proposes construction in a wetland, the HUD 8-Step Decision Making Process (Form 2-15) must be completed (24 CFR 55.20(a)(3)). Below is an overview of each of the steps in the 8-Step decision process. When the HUD 5-Step Decision Making Process (Form 2-16) is permissible for floodplains, only Steps 1, 4 through 6, and 8 are applicable. All steps must be documented in writing.

Step One: Floodplain Determination. Determine if the project is located in a Federal Flood Risk Management Standard (FFRMS) floodplain or a wetland.

The Final Rule published on April 23, 2024, establishes HUD's preference for a Climate Informed Science Approach (CISA) to determine the floodplain of concern for HUD funded projects.

- Check the following maps to determine if the project is located in the FFRMS floodplain or results in new construction that directly impacts an onsite wetland:
    1. Grantees may use the Federal Emergency Management Agency (FEMA) Flood Map Service Center: https://msc.fema.gov/portal/home.

2. If FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:
    - U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team;
    - Local Soil Conservation Service District;
    - Floodplain Information Reports;
    - USGS Flood-prone Area;
    - Topographic Quadrangle maps; or
    - State and local maps and records of flooding.
3. Determine if the project is in a wetland: https://www.fws.gov/program/national-wetlands-inventory/wetlands-mapper.
4. Use all available maps and data to make a determination if the project is located in a floodplain or wetland and document in the ERR. If the project activity does not occur in the FFRMS floodplain or include new construction directly impacting an onsite wetland, then no further compliance with this section is required.

Step Two: Early Public Review. Executive Order (E.O.) 11988 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting the floodplain. Involve the public in the decision- making process as follows:

- Publish Form 2-9: Floodplains and Wetlands Early Public Notice in a newspaper of general circulation or on an appropriate Government website that is accessible to individuals with disabilities and provides meaningful access for individuals with Limited English Proficiency.. Refer to 24 CFR 55.20(b) for the minimum information that must be given in the notice. The Floodplains and Wetlands Early Public Notice must be published (it cannot be posted).
- The notice must provide a complete description of the proposed action.
- The notice must allow at least a 15-day comment period for public comments.

Step Three: Identify and Evaluate Alternate Locations. Determine if there is a practical alternative. This determination requires the responsible entity to consider whether the base floodplain can be avoided:

- Through alternative siting;
- Through alternative action that performs the intended function but would minimize harm to/within the floodplain; or
- By taking no action.

Step Four: Identify Impacts of Proposed Project. Regardless of whether the site is located within a floodplain or outside a floodplain, both the direct and indirect potential impacts must be identified and reviewed.

If negative impacts are identified, methods must be developed to prevent potential harm as discussed in Step 5. The term harm, as used in this context, applies to lives, property, natural and beneficial floodplain values.

Step Five: Identify Methods to Restore and Preserve Potential Harm to Floodplains and Wetlands Area. If the proposed project has identifiable impacts (as identified in Step 4), the floodplains and wetlands must be restored and preserved.

- The concept of minimization applies to harm.
- The concept of restoration and preservation applies only in floodplain values.

Methods to be used to perform these actions are discussed in Step 6.

Step Six: Re-evaluate Alternatives. At this stage, the proposed project needs to be re-evaluated, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve floodplain values.

- If the proposed project is determined to be no longer feasible, you should consider limiting the project to make non-floodplain sites practicable.
- If the proposed project is outside the floodplain but has impacts that cannot be minimized, the recipient should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.
- If neither is acceptable, the alternative is no action.

The re-evaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain. The comparison should emphasize floodplain values and a site outside of the floodplain should not be chosen if the overall harm is significantly greater than that associated a site within the floodplain site.

Step Seven: Publish Form 2-10: Floodplains and Wetlands Notice of Explanation**.** If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain, the grantee must publish the Floodplains and Wetlands Notice of Explanation in a local newspaper of general circulation (Refer to 24 CFR 55.20(b) and 24 CFR 55.20(g) for the minimum information that must be given in the notice).

- The Floodplains and Wetlands Notice of Explanation (described previously) may ***not*** be posted.
- It should be noted that when a project triggers the E.O. 11988 "Eight Step Process," the Notice of Early Public Review should be published first and the minimum 15-day comment period elapsed ***before*** the grantee can publish the Floodplains and Wetlands Notice of Explanation.
- The Floodplains and Wetlands Notice of Explanation can be published simultaneously with the 24 CFR Part 58 required Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).
- Any written comments received in response to the above required notice must be addressed and filed in the ERR.
- File all documentation and responses relating to the above-described procedures in the ERR.

Step Eight: Implement the Proposed Project. Implement the project with appropriate mitigation.

NOTE: If directional boring or drilling beneath a wetland is anticipated, please consult with GOED prior to undertaking the Eight-Step Process. HUD issued guidance in 2011 that exempts directional boring/drilling beneath wetlands from the Eight-Step Process *provided that* certain conditions are met. As stated previously, when the 5-Step decision process is required, only Steps 1, 4 through 6, and 8 are applicable.

REQUIRED PUBLIC NOTICES

If the Grantee has concluded its assessment with a Finding of No Significant Impact (FONSI), then there are two ways to publish the required notices:

1. Publish The Finding of No Significant Impact Notice and the Notice of Intent to Request Release of Funds Separately.

    a. Finding of No Significant Impact Notice - This Notice must be released for public review and comment. An example of this Notice is contained in Form 2-11: Notice of FONSI on the Environment. Grantees should follow this public notice format. In addition, this Notice must:

        i. At a minimum, be distributed to the local news media, individuals and groups interested in the project, and appropriate local, state, and federal agencies which must include among them:

            * State Historical Preservation Officer
            * Regional Office of the U.S. Environmental Protection Agency.

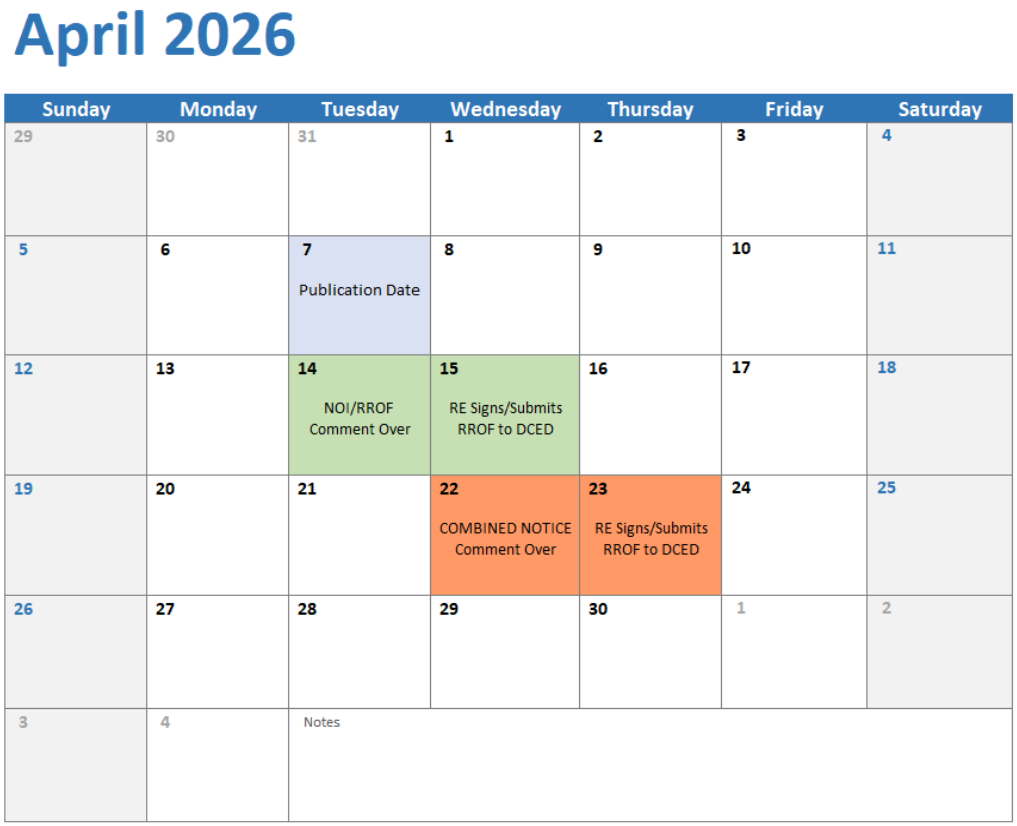
        ii. Be published at least once in a general circulation newspaper in the project area. If there is no newspaper, this notice must be prominently displayed at the local post office and also displayed in other public buildings.

        iii. Be distributed (as explained above) and open for public review/comment at least fifteen (15) days prior to the Grantee's proceeding to the certification process.

    b. Notice of Intent to Request a Release of Funds - This Notice is required to signify the Grantee's intent to request from the GOED release of its CDBG activity funds. A sample is provided as Form 2-5: Notice of Intent to Request Release of Funds. Grantees should follow this public notice format. The issuance of this notice should follow the same procedures as explained above (1). The minimum time required for a public review and comment on this Notice is only seven (7) days.

2. Combined Notice - Grantees are allowed to publish the above two required notices concurrently rather than separately. This is the simplest, fastest, and least costly method. Form 2-8: Combined Notice presents an example of this combined notice. The method for issuance of this combined notice is the same as explained above. The minimum time required for public review and comment on this combined notice is fifteen (15) days.

The public comment period begins the day after the notice appears in a newspaper of general circulation or is posted according to local public participation procedures. Below is a graphic example to assist Grantees in determining the appropriate public comment period.



April 2026

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
29	30	31	1	2	3	4
5	6	7 Publication Date	8	9	10	11
12	13	14 NOI/RROF Comment Over	15 RE Signs/Submits RROF to DCED	16	17	18
19	20	21	22 COMBINED NOTICE Comment Over	23 RE Signs/Submits RROF to DCED	24	25
26	27	28	29	30	1	2
3	4	Notes				

NOTE 1: **Grantees must consider all comments received based on the public notice process. These comments must be made a part of the ERR. If any comments require the grantee to revise its EA Checklist/FONSI, the grantee is responsible for all those revisions.**

NOTE 2: **Failure by the Grantee to follow all the public notice procedures above will cause GOED to withhold the release of CDBG funds until the notice has been re-published, and all procedures were properly satisfied.**

NEED FOR RE-ASSESSMENTS

There are several situations that will require the Grantee to re-evaluate and possibly amend or resubmit its Environmental Assessment. The purpose of a reassessment is to determine whether the Grantee's FONSI is still valid and to update or correct its ERR. The situations that will require reassessments are as follows:

1. The Grantee substantially changes its project in nature, magnitude, or extent, including new activities not anticipated in the original project scope and/or cost estimates.

2. There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered before or during project implementation.

3. The Grantee selects an alternative not considered in the original EA.

If one of these situations does arise, the Grantee will be required to do a reassessment following the procedures below.

A. If the Grantee has already certified its original EA with GOED, then the Grantee must inform the Department of the need for a reassessment. The Grantee should utilize Form 2-12: Re-evaluation of Environmental Review for the re-evaluation. GOED will be required to withhold the release of further CDBG activity funds until this reassessment is completed and recertified to the GOED.

B. If the Grantee's FONSI is found to be still valid after the reassessment but the data or conditions upon which it was based have changed, the Grantee must amend its original EA and update its ERR.

C. If the Grantee finds that its original FONSI is no longer valid, it will be necessary to prepare a new EA or EIS, whichever is appropriate.

D. Where an original FONSI is found to be valid or a new ERR is prepared which results in another FONSI, the Grantee must once again follow the procedures explained above for public notices, as well as those certification procedures to be explained below.

NOTE: The failure to properly comply with those steps above will constitute the grounds for GOED to withhold or recapture CDBG activity funds.

TIERED REVIEWS

Due to the nature of some rehabilitation programs, grantees will not know the specific structures to be reviewed until the program has been publicized and applications received. In such instances, grantees are allowed to complete an up-front programmatic Broad Level Tier Review for CEST Activities (Form 2-17) that identifies potential applicable compliance areas. For many rehabilitation programs, applicable Broad Level Review compliance will be limited to historic preservation, floodplain protection, and wetlands protection. Using this process, grantees can publish a public notice and receive a Release of Funds based on the programmatic information. The Release of Funds for such situations will be conditional on the grantee completing an individual review for each specific rehabilitation project.

This site-specific review for each individual rehabilitation project must then be completed prior to incurring hard costs for that project. More information about tiered reviews can be found on the HUD Tiered Environmental Reviews webpage.

COMMON PROBLEMS WITH ENVIRONMENTAL REVIEWS

The following are some common problems identified in the environmental review conducted by the Grantee:

1. Getting a late start with the environmental review;

2. Failure to consult all affected agencies;

3. Failure to complete and submit HUD Environmental Review Forms **(**Form 2-2, Form 2-4, or Form 2-7);
4. Incorrect date included in the newspaper notice;
5. Failure to submit a copy of the newspaper clipping of the Notice of Intent to Request Release of Funds (or Combined Notice) with Request for Release of Funds;
6. Statement of FONSI not sent to the Environmental Protection Agency or other agencies that were consulted;
7. Failure to address noise, prime agricultural land, or citing near hazardous operation in the review;
8. Failure to properly authorize an Environmental Certifying Officer (Form 2-1);
9. Failure to sign environmental documents such as RROF (Form 2-6), before submitting to GOED; or
10. Failure to make statement of categorical exclusion before declaring exempt status for projects that are categorically excluded and exempt.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	8/21/24	• Initial Release	S Deyo
2.0	5/22/26	• Added Form 2-17: Tiered Review Format • Updated "Projects in Floodplains" due to elimination of federal FFRMS tools/maps • Updated hyperlinks • Updated publication calendar graphic	S Deyo

CDBG GRANT ADMINISTRATION HANDBOOK

Updated May 2026

Chapter 3 – Procurement

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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PROCUREMENT COMPLIANCE

INTRODUCTION

All procurements funded in whole or in part with CDBG funds must comply with the applicable federal requirements found in 2 CFR 200.318-326. 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 grantees to complete CDBG projects include professional grant administrators, engineers, architects, and construction contractors.

Each grantee (and sub-recipient) shall adopt and abide by the CDBG Procurement requirements set forth in this chapter, which shall apply only to procurements funded with CDBG dollars, as authorized in 2 CFR 200.318. The CDBG Procurement requirements include:

A code of conduct to govern the performance of the grantee's officers, employees or agents in contracting with CDBG funds and to ensure adherence to the Conflict of Interest and disclosure requirements. A sample has been provided by GOED as Attachment G in the CDBG Application document; and

- A requirement that positive efforts be made to use small, minority, female, and Section 3 businesses; and
- A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area; and
- A requirement that cost reasonableness has been determined in advance of contract bidding, per 2 CFR 200.323(a).

GENERAL CDBG PROCUREMENT REQUIREMENTS

Environmental Review and Bidding

As stated in Chapter 2: Environmental Review, 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

Each business that receives CDBG assistance must have a Unique Entity Identifier (UEI) generated by SAM.gov.

On **April 4, 2022**, the unique entity identifier used across the federal government changed from the DUNS Number to the Unique Entity ID.

- 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.

Sub-recipients, Contractors and Sub-contractors

A sub-recipient, 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 Grantee as soon as possible.

A sub-recipient 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 and the video Get a Unique Entity ID to get more information on getting a UEI. **Sub-recipients 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

Grantees 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-assisted contract at any tier in the process. Documentation proving verification of contractor eligibility will be checked at monitoring.

- Prior to contract execution, the Grantee must check the organizations name against the federal System for Award Management (SAM).
- The Grantee 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.

The General Services Administration has released a YouTube video with detailed instructions on searching Exclusions on SAM.gov. GOED has provided Form 3-1: Certification Regarding Debarment and Suspension for Grantees use.

Minority/Women/Veteran-Owned Businesses (MBE/WBE/VBE)

Background

The regulations at 2 CFR Part 200.321 requires Grantees to take affirmative action to contract with small businesses, minority businesses, women's business enterprises, veteran-owned businesses. GOED does not require set asides or participation quotas, but Grantees are expected to make special efforts to award contracts to MBE and WBE firms.

Requirements

The Grantee must make good faith efforts to see that Minority/Women/Veteran OwnedBusiness Enterprises are provided opportunities as a result of Small Cities funding. Grantees are expected to solicit MBE/WBE/VBE businesses when utilizing CDBG funds whenever possible. Grantees can find guidance on what qualifies as "good faith effort" on the South Dakota Department of Transportation DBE Good Faith Effort website.

Goals For MBE/WBE/VBE Participation

Contractors on CDBG funded projects must comply with 2 CFR 200.321 and Executive Order 12138. The requirements for contractors under this regulation which concerns utilization of Minority/Women/Veteran OwnedBusiness Enterprises is explained below.

Suggested Outreach

It is the Grantee's job to ensure the MBE/WBE/VBE firms are notified of any contracts ready for bid. Other specific measures a Grantee may take to meet MBE/WBE/VBE goals include:

- Assuring that small businesses and MBE/WBE/VBEs are solicited whenever they are potential sources.
- Including MBE, WBE and VBE firms on solicitation lists and sending them an Invitation to Bid.
- When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBE/VBEs.
- Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBE/VBEs.
- Provide support mechanisms such as webinars and Q&A sessions.
- Require the prime contractor to take the above affirmative steps when procuring subcontracts.
- Setting aside a percentage of CDBG funds to be awarded to MBE/WBE/VBEs.
- Including MBE/WBE/VBE criteria with additional points in selection criteria for professional services procurement.

BUILD AMERICA, BUY AMERICA (BABA)

The Build America, Buy America Act (BABA) requires that all iron, steel, manufactured products, and construction materials used for federally funded infrastructure projects are produced in the United States, unless otherwise exempt or subject to an approved waiver. This requirement is known as the "Buy America Preference (BAP)" and the specific requirements are codified in 2 CFR § 184.

Products Covered Under The BABA Act

Iron and Steel: Items that consist completely or predominantly of iron, steel, or a combination of both. "Predominantly" means the cost of the iron and steel content exceeds 50% of the total cost of all the item's components. All manufacturing processes, starting from the initial melting stage and continuing through the application of coatings, must occur in the United States.

Construction Materials: Articles, materials, or supplies used for construction activities that consist of only one of the items described below. For the purposes of the HUD Phased Implementation Waiver timeline described below, construction materials are divided into two categories: specifically listed construction materials and not listed construction materials. Specifically Listed Construction Materials: Items include (1) non-ferrous metals; (2)

lumber; and (3) plastic- and polymer based composite building materials, pipe, and tube. Not Listed Construction Materials: Items include (1) all other plastic- and polymer-based materials (such as polymers used in fiber optic cables), (2) glass, (3) fiber optic cable, (4) optical fiber, (5) engineered wood, and (6) drywall. Construction Material Standards (2 CFR 184.6) All manufacturing processes for the construction material must occur in the United States.

Manufactured Products: Manufactured products include articles, materials, or supplies that have either been: 1. Processed into a specific form or shape, or 2. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. A manufactured product may include components that are construction materials or iron and steel products, unless the manufactured product also meets the definition of iron and steel or construction materials. In such instances, the product should be re-categorized in the appropriate category. Determining the Cost of Components for Manufactured Products (2 CFR 184.5) Manufactured products must meet two production requirements. First, the final product must be manufactured in the United States. Second, at least 55% of the cost of the components making up the manufactured product must be associated with components that were mined, produced, or manufactured in the United States.

BABA Applicability on CDBG Projects

The Buy America Preference references that all infrastructure projects are included, an infrastructure project is defined broadly as any project that includes Construction, Maintenance, Alteration, or Repair (applies even if the primary purpose is not infrastructure).

Examples of CPD-funded activities that may be subject to the BAP:

- Rehabilitation of buildings and real property
- Construction of public facilities and improvements, such as streets, sidewalks, neighborhood centers, and the conversion of buildings for eligible purposes
- Utility installation or improvements
- Water systems (drinking water and wastewater)
- Electrical transmission facilities and systems
- Broadband infrastructure
- Transportation infrastructure

Examples of CPD-funded activities that may NOT be subject to the BAP:

- Acquisition of real property
- Relocation and demolition
- Public services
- Shelter or public facility operating expenses
- Supportive services
- Short-term payments to prevent homelessness
- Special economic development activities
- Administrative activities
- Disaster and emergency response

General Waivers

HUD issued a public interest waiver for exigent circumstances, "Public Interest Waiver of Build America, Buy America Provisions for Exigent Circumstances as Applied to Certain Recipients of HUD Federal Financial Assistance". This waiver applies when there is an urgent need by a CPD grantee to immediately complete an infrastructure project because of a threat to life, safety, or property of residents and the community. (Effective until November 23, 2027, or such shorter time as HUD may announce via Notice.)

HUD also issued a public interest de minimis, small grants, and minor components waiver titled "Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Certain Recipients of HUD Federal Financial Assistance". This waives the BAP for all infrastructure projects whose total cost (from all funding sources) is equal to or less than the simplified acquisition threshold at 2 CFR 200.1 which is currently $250,000. This Notice also waives the application of the BAP for a de minimis portion of an infrastructure project, meaning a cumulative total of no more than five percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of $1 million. (Effective until November 23, 2027, or such shorter time as HUD may announce via Notice.)

To facilitate a smooth transition to the BAP requirements, HUD established the Phased Implementation Waiver (see Certifications below) for its programs based on the date when funds are obligated to the State. All CDBG Formula Grants and Recovery Housing Program Grants funded in FY 2024 that meet BABA requirements and involve the use of Iron and Steel and Construction materials listed (i.e.(1) non-ferrous metals; (2) lumber; and (3) plastic- and polymer based composite building materials, pipe, and tube). Starting in FY 2025, all projects that meet BABA requirements and involve construction materials not listed and manufactured products will be applicable to BAP.

If it is determined that any additional construction materials are needed that were not included on the itemized cost estimate during the bid submission, then the contractor is required to notify the Grantee.

A Guide to Help Grantees Determine if BABA Applies has been provided as Form 3-2

Certifications

The prime contractor and all subcontractors must comply with the requirements of the BABA Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, as applicable to the Community Development Block Grant (CDBG) and Recovery Housing Program (RHP) infrastructure projects. Pursuant to the U.S. Department of Housing and Urban Development's (HUD's) notice, "Public Interest Phased Implementation Waiver for FY2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (88 FR 17001), any funds obligated by HUD on or after the applicable listed effective dates, are subject to BABA requirements, unless excepted by a waiver.

- Language has been added to Form 3-3 CDBG Contract Provisions making compliance with BABA a required contract clause.
- **Form 3-4: Buy America Certification must be completed by the prime contractor and submitted with the bid package.**
- **Form 3-5: Materials Certification must be completed by the prime contractor and submitted with the bid package. If any change are made throughout the project, a change order must be submitted**.

NOTE: If it is determined that the project meets the requirements for a General Waiver, the Grantee must submit written notification to GOED that justifies the decision for the Department's review and approval.

HUD Project Specific Waivers

Project/product-specific waivers are available on a **limited, case-by-case basis,** after GOED and HUD's review, a public comment period, and final approval from the Office of Management and Budget's Made In America Office (MIAO). A waiver should be requested from GOED if an extenuating circumstance occurs that meets one of the following criteria: 1. Public interest: Adhering to the BAP would be inconsistent with the public interest. 2. Non-availability: Covered materials are not produced in the USA in sufficient and reasonably available quantities or of a satisfactory quality. 3. Unreasonable cost: Inclusion of domestically produced covered materials will increase the cost of the overall project by more than 25 percent. If more than one Federal agency is funding an infrastructure project, project-specific waivers will require coordination among those Federal agencies prior to a determination by the MIAO. **GOED will only approve waivers to be sent to HUD with substantial documentation meeting the above-listed criteria.**

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 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 $300,000 or more in CDBG, 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 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 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 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 will 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 Grantees, developers and contractors will be required, to the greatest extent feasible, 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.

More information on Section 3 can be found on the HUD Section 3 Program website.

Definitions

Section 3 Worker

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

- 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.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant

Income Limits are estabablished annually by HUD and can be found on the HUD CDBG Income Limits webpage. Instructions for finding the appropriate income limit is below.

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.

If a contractor will hire new employees for the CDBG funded project, Form 3-6 may be used for self-certification of Section 3 Worker/Targeted Worker status. See Responsibilities below for contractor certification of existing workforce.

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. Grantees are allowed discretion to determine 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. A sample for for certification of a Section 3 Business has been included as Form 3-7.

Responsibilities

A local government that receives CDBG funding has the responsibility to comply with Section 3 requirements. The Grantee 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 Grantee;

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. GOED has provided Form 3-8: Contractor Subcontract Section 3 Workforce Report to assist Grantees in documentation collection. Grantees must include Form 3-8 in all bid documents. The form should be collected at the pre-construction conference (but no later than contract execution) to document and track Section 3/Targeted Section 3 Workers on the project. Collect Form 3-9: Final Section 3 Hours and Qualitative Efforts from the prime contractor and each sub-contractor at project completion. Alternatively, the prime contractor can aggregate the hours and efforts of all contractors into one single report.

f. Document all qualitative efforts by the Grantee 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 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. A sample form has been provided as Form 3-6.

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. A sample form has been provided as Form 3-7.

3. **Employer wage record:** the contractor will complete Form 3-8 prior to project start documenting all current employees and their Section 3 Status. The employor will certify that they have payroll documentation as verification. The contractor will update Form 3-8 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 below the income limit for the workers county of residence when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis. The prime contractor will submit a Form 3-9 for each contractor or a single form with aggregated totals for every contractor on the project.

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.

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; and
- 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

Grantees with covered projects funded after November 30, 2020 are required to meet current HUD Section 3 Worker and Targeted Worker benchmarks prior to project closeout with GOED. Grantees who do not meet the benchmarks will be required to document all qualitative efforts undertaken, including those of their contractors, during the course of the CDBG project prior to closeout.

Although Grantees are only required to report qualitative efforts if Section 3 Benchmarks are not met, Grantees should begin documenting qualitative efforts at the beginning of a CDBG 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

More information and useful tools for implementing Section 3 requirements can be found in the CDBG Manual on the GOED website and HUD's Section 3 Program website.

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.

CONFLICTS OF INTEREST

Background

Nothing is more detrimental to a successful procurement operation than to have the relationship between the Grantee 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. Grantees will be required to submit a Form 1-10: Request for Exception to Conflict of Interest Form should there be an apparent or perceived conflict of interest on a CDBG funded project.

Chapter 1: General Requirements provides more detailed information on federal conflict of interest requirements.

METHODS OF PROCUREMENT

Grantees must select from one of five methods of procurement based on the type of products and/or services being procured and their cost. Grantees must ensure that they are following the stricter of the federal, state or local requirement. Many Grantees will be required to utilize a lower threshold for procurement types than the federal requirements at 2 CFR 200.1.

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 $15,000. 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/VBE firms when possible.

Small Purchase Procedures

Small purchase procedures entail a relatively simple and informal process that can be used when the cost of supplies or services, in the aggregate, do not exceed the current simplified acquisition threshold, currently defined as $350,000. Under this process, the Grantee 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/VBE firms when possible.

Competitive Sealed Bid

The Competitive Sealed Bid method is the required method for procuring CDBG-funded construction work. (See Chapter 5: Labor Standards for detailed information on preparing construction bid documents.) 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 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
- The IFB must also be distributed to MBE/WBE/VBE businesses (see MBE/WBE/VBE section above).
- The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- 2 CFR Part 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.
- Form 1-4 must be completed and sent to GOED immediately after each bid has been awarded. Failure to submit Form 1-4 may result in delayed funding.
- Preparation and signing of a contract formalizing a 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.

Competitive Negotiation

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. Grantees shall seek permission from GOED prior to using competitive negotiation 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.

Competitive negotiations are 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 Grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions.

The following requirements apply to the competitive negotiation 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 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 Grantee must maintain documentation for all services and reasons for selection.

- The Grantee must send an award letter to the selected contractor and document the file with it.

- The Grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.

- The Grantee should promptly notify unsuccessful bidders in writing and document the file with the rejection letters.

NOTE: Consultants must not assist the Grantee 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 Grantee 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.

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

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.

OTHER PROCUREMENT ISSUES

Independent Cost Estimates

2 CFR 200.323 requires Grantees to perform a cost or price analysis in connection with every procurement action more than the Small Purchase 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 Grantee must make independent estimates before receiving bids or proposals.

Documentation of a cost estimates and cost/price reasonableness will be checked at monitoring. More information on creating and documenting independent cost estimates can be found in Form 3-10.

Over Budget Bids

Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. Grantees 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 re-bid 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 Grantee's file with every change order must include:

- Documentation of Change Order Approval process as outlined in the Grantee's Procurement Policies and Procedures
- 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 Grantee 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 Grantee should compare such change orders to the CDBG construction budget prior to approval.

If a change order will result in a significant change in the scope of work, a new CDBG 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 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

Grantees 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 Grantee 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 Grantee 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 Grantee would then check to see if any of the adjusted bids are within budget. If so, the Grantee can award the bid to the bidder with the lowest adjusted bid. If not, the Grantee 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 Grantee'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

Costs incurred for engineering and other professional services may be allowed as eligible costs for reimbursement from the CDBG 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 grant recipient has followed the procurement procedures detailed in 2 CFR 200 as contained in this Administration Manual.

Costs incurred before the completion of the above items will be ineligible for local share and reimbursement with CDBG funds.

NOTE: GOED currently requires the cost of professional services to be used as leverage in CDBG funded projects.

If the grant recipients determine that waiting for the completion of the environmental review will delay planning studies or the design of the project, then the recipient may write an environmental exemption for the services needed to design the project. The exemption is explained in Chapter 2: Environmental Review of this manual under Exempt Activities. 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 Grantees comply with federal and state procurement requirements in the procurement of professional services.

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

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

Step 3: Publish RFP/RFQ The Grantee must advertise the RFP/RFQ by publishing in local newspaper of daily general circulation.

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 and veteran 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. See the section on Conflicts of Interest in this Chapter above and in Chapter 1: General Requirements for more information.

Step 7: Notify Successful and Unsuccessful Proposer(s) The Grantee 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 below for information.

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

PRE-BIDDING REQUIREMENTS

The first step in effective management of CDBG-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.

NOTE: The environmental review must be completed prior to publishing the bid advertisement. Please refer to Chapter 2: Environmental Review for more information.

Property Acquisition Issues

At this stage of the process, the Grantee 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 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 Grantee should contact its CDBG Program Representative very early and make sure the acquisition is done according to the provisions of the Uniform Act. See Chapter 6: Acquisition of Real Property for additional information.

PROCUREMENT OF CONSTRUCTION SERVICES

This section describes certain key steps that are required to help ensure Grantees 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 federal regulations at 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 Grantee 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 Grantee 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 Grantee will need to access https://sam.gov/content/wage-determinations to obtain the Davis-Bacon Wage Determination for the project. Instructions for downloading the appropriate wage determination can be found in Form 3-11: Obtaining a Wage Decision.

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

Step 2: Prepare Invitation for Bid (IFB)

The Grantee 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 Grantee to provide the bid specifications preparer with the required CDBG contract provisions (Form 3-3), 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. GOED has provided Form 3-12: Instructions for Bidders Checklist and Form 3-14: Info for Bidders Required Documents to assist Grantees in the development of documents.

Ensure that the following are included in your bidding documents:

- Current Wage Decision
- Form 3-3: CDBG Contract Provisions
- HUD Labor Standards Requirements (HUD Form 4010)
- MBE/WBE/VBE Goals

Grantees 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 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 Grantee'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: Solicit MBE/WBE/VBE Responses

Federal CDBG regulations require Grantees to include MBE/WBE/VBE contractors to the best of their ability. Grantees will be required to submit proof of solicitation and qualification for procurement type along with other procurement documents. Documentation can include postal service return receipts, email receipts, screenshots of certification lists, etc.

Step 6: Confirm Wage Rates

Ten (10) days before bid opening, the Grantee 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 Grantee must send it as an addendum to all contractors who received the original bid package.

Step 7: 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 8: Conduct Pre-Bid Meeting

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

Step 9: 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 10: 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 11: 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 Grantee or 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 Grantee'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 12: Award the Contract

After review of the bids, the Grantee or subrecipient must award the contract to the lowest responsible and responsive bidder if his/her bid is within the budgeted amount, preferably within 30 days of the opening.

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.

If the contract is awarded to a bidder other than the low bidder, the Grantee 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 Grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at https://sam.gov/content/exclusions). The Grantee will document that the contractors and subcontractors are not on this list.

Step 13: Submit Contract Award Report to GOED

A completed Form 1-4: Contract Award Report must be sent to GOED immediately after each bid has been awarded.

Step 14: Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the Grantee 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 Subgrantee's Permanent 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. Sub-contracts with MBE/WBE/VBE firms;
9. MBE assurance form and certification of non-segregated facilities;
10. Section 3 documentation (see the Econonic Opportunities (Section 3) section above; and
11. BABA documentation (see the Build America, Buy America (BABA) section above.

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.

The Construction Manager's fee shall not be increased unless it can be demonstrated that Grantee 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.

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 Grantee.

Guaranteed Maximum Price

The GMP, within the context of Federally Assisted construction, is defined as that 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 Grantee or 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.

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.

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

CONTRACT DEVELOPMENT

All work and services to be accomplished for the completion of a Community Development Block Grant (CDBG) 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 Grantee'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 200.323(d) **Costs Plus Percentage of Cost** contracts are specifically prohibited by CDBG regulations for any type of work or services to be performed on CDBG funded projects.

All contracts executed for performance of CDBG related activities must include a full and complete description of the federal and state requirements for contract compliance. Form 3-3: CDBG Contract Provisions must be physically attached to each contract.

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 Grantee 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 Grantee to recover their loss; or
- Payment of liquidated damages is required, arising from labor standards violations.

Construction contracts must include the following documents either physically or by reference to the project bid specifications and any addendums:

1. Bid Bond, Payment Bond and Performance Bond obtained by contractor and provided to Grantee to insure contract fulfillment. Grantees 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 Grantee. The Grantee is responsible for ensuring that the levels are adequate to cover the project.

Contract Requirements

All contracts executed for performance of CDBG related activities must include Form 3-3: CDBG Contract Provisions 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 Grantee 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.

1. 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

GOED has provided Form 3-13: Sample Procurement Checklist to assist Grantee's in compliance and documentation of all CDBG funded procurement actions.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	8/21/24	• Initial Release	S Deyo
2.0	5/22/26	• Revised Form 3-3: CDBG Contract Provisions (Word) and (PDF) • Added Form 3-14: Information for Bidders Docs • Added Form 1-4: Contract Award Report to the steps for Competitive Sealed Bid process. • Updated Micro Purchase threshold to $15,000 per 48 CFR 2.101 • Updated Small Purchase threshold to $350,000 per 48 CFR 2.101 • Updated Section 3 Project Threshold to $300,000 per FR-6085-N-05 • Removed requirement to check the HUD Limited Denial of Participation List (now all in SAM.gov) • Removed all requirements regarding “Language Access Plan” (now voluntary) • Updated MBE/WBE Participation section to include Veteran-Owned businesses (VBE) • Updated hyperlinks	S Deyo

CDBG GRANT ADMINISTRATION HANDBOOK

Updated May 2026

Chapter 4 – Financial Management

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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FINANCIAL MANAGEMENT

INTRODUCTION

Accurate financial record-keeping, including the timely deposit, disbursement and accounting of Community Development Block Grant (CDBG) funds is crucial to the successful management of a CDBG funded project. Grantees must take the following steps to prepare a financial management system to receive and utilize CDBG grant funds:

1. Appoint a person to be responsible for Financial Management,
2. Establish accounting records,
3. Set up bank accounts or separate ledger accounts, and establish receipting procedures, and
4. Establish procedures for approving invoices, submitting claims, and issuing payment to vendors.

Financial record-keeping is the primary responsibility of the Grantee's Chief Financial Officer, i.e. the Clerk-Treasurer or Auditor, or any other authorized individual as determined by the Grantee. The Grantee is responsible for the review and approval of all expenditures and claims of subrecipients. It is the responsibility of the Grant Administrator to advise, assist and counsel the Chief Financial Officer on administrative requirements in regard to the receipt, disbursement and accounting of federal funds and the records to be maintained. Failure to comply with financial management standards may result in monitoring and audit findings. Depending on the infraction, the Grantee may be required to pay back federal dollars. This chapter will focus on the records that must be maintained in order to receive and utilize CDBG funds.

APPLICABLE REQUIREMENTS

The CDBG regulations require grantees that are governmental entities or public agencies to adhere to certain administrative and financial management requirements. The CDBG regulations at 24 CFR 570.489 contain basic program administrative requirements.

All CDBG grants are required to comply with 2 CFR Part 200 (of the Code of Federal Regulations), the new 'Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.'

2 CFR Part 200 establishes principles and standards for determining allowable costs under federal grants. It also includes requirements for audits such as the type and level of audit required, reports issued by auditors, and audit review and resolution.

Finally, it includes requirements for financial management systems, reports, records, and grant closeouts for recipients of federal grant funding. Subjects covered include financial management standards, internal controls, budget controls, accounting controls, cash management, procurement, and contracting.

ESTABLISHING A FINANCIAL MANAGEMENT SYSTEM

The fundamental purpose of financial management is to ensure the appropriate, effective, and timely use of funds.

Specifically, grantees must ensure that:

- Internal controls are in place and adequate;

- Documentation is available to support all accounting records;
- Financial reports and statements are complete, current, reviewed periodically; and
- Audits are conducted in a timely manner and in accordance with applicable standards.

Requirements

In establishing a financial management system, grantees are to follow both 24 CFR Part 570, Subpart I and 2 CFR Part 200, which govern CDBG grantee financial management systems. GOED also imposes additional requirements that can be found throughout this chapter. Failure to appropriately document and account for all CDBG funds expended may result in monitoring findings from GOED or HUD, debarment from participation in GOED funded programs, and/or removal of good standing status by GOED.

A grantee's financial management system must provide for the following:

- Accurate, current, and complete disclosure of financial results;
- Records that identify adequately the source and application of grant funds;
- Comparison of actual outlays with amounts budgeted for the grant;
- Procedures to minimize the amount of time elapsed between the transfer of funds from the US Treasury and the disbursements by the grantee;
- Procedures for determining reasonableness and allowable costs;
- Accounting records that are supported by appropriate source documentation; and
- A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The three basic functions, which must be served by the financial management system, are:

1. The financial management system must have an identified procedure for recording all financial transactions.
2. All expenditures should be related to allowable activities in the standard agreement approved by GOED.
3. All expenditures of CDBG funds must be in compliance with applicable laws, rules, and regulations.

2 CFR Part 200 also requires that grantees take reasonable measures to safeguard personally identifiable information (e.g., social security or bank account numbers) and other information designated to be sensitive by HUD or the state, consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality. More information on PII can be found in Chapter 7: Reporting and Recordkeeping.

Internal Controls

Internal controls refer to the combination of policies, procedures, defined job responsibilities, personnel, and records that allow a grantee (or subrecipient) to maintain adequate oversight and control of its cash, property, and other assets.

The soundness of any grantee's financial management structure is determined by its system of internal controls.

Specifically, the main goals of internal controls are to:

- Ensure resources are protected against waste, mismanagement or loss.;

- Ensure that accounting information is accurate and reliable; and
- Ensure reasonable cybersecurity measures are in place to safeguard sensitive information, including personally identifiable information (PII); and
- Ensure resources are used for authorized purposes and in a manner consistent with applicable laws, regulations, and policies.

As part of an effective internal control system, one person will be designated (per the financial management responsibilities checklist) as the primary person at the grantee organization responsible for the overall financial management of a CDBG project. This person should be familiar with their organization's present accounting system. Refer to 2 CFR 200.303 for more information.

Accounting Records

Each grantee should determine the accounting procedures that will assist in providing accurate and complete financial information. Grantees are required to maintain accounting records that sufficiently identify the source and use of the CDBG funds provided to them. All records must be supported by source documentation.

The grantee may have CDBG accounting records fully integrated into an existing accounting system. Grantees may also have partially integrated records into an existing system; however, ledgers should be developed to provide the required accounting information for the CDBG grant. Separate records eliminate potential conflicts with the grantee's usual record keeping systems.

At a minimum, a grantee's accounting system, must:

- Clearly identify all receipt and expenditure transactions of the grant; and
- Provide for budgetary control by tracking expenditures and accrued obligations by approved activity.

GOED staff and the grantee's auditors should be able to readily trace all transactions through the accounting system at any time during the grant period of performance or after grant close-out.

Budget Controls

The grantee must be able to report expenditures for each approved activity. A record of the account balances must be maintained for each approved activity that accounts for expenses accrued as well as obligations that have been incurred but not yet been paid out.

Source Documentation

Accounting records must be supported by source documentation. Source documentation includes items such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents and other paperwork.

Source documentation should tell the story of the basis of the costs incurred and the actual dates of the expenditure. For example, source documentation on payments to contractors would include a request for payment, proof of inspection to verify work and materials, and, perhaps, cancelled checks. GOED encourages the use of purchase orders or payment vouchers when preparing expenditures for payment of any cost associated with the project. These documents are prepared in accordance with local policies and procedures as well as those required by federal regulations.

Allowable Costs

Any cost incurred must be allowable per 2 CFR 200.402 - 202.475. It is the grantee's responsibility to ensure that CDBG funds are spent only on those costs which are included in the Grant Agreement.

The grantee must establish policies and procedures for determining cost reasonableness, allowability, and allocability of costs.

ADMINISTRATIVE COSTS

There are two types of administrative costs: General Administration Costs (GACs) and Activity Delivery Costs (ADCs). GACs are those costs associated with implementation of the grant. These costs may include salaries for personnel who devote full or part time to the grant, supplies used for grant activities, and the cost of administrative services provided by other agencies. ADCs are those costs directly related to the implementation of grant activities.

General Administrative Costs (GACs)

GA costs may include, but are not limited to, the following categories:

- Salaries, wages, and related costs of the Grantee's staff engaged in activities associated with the general administration of the CDBG program, including general management, accounting, and auditing.
- Travel costs incurred in carrying out the general management of the program.
- Administrative services performed under third-party contracts, such as regional planning commissions, for general administration of the CDBG program.
- Costs for goods and services related to the general management of the program, including rental and maintenance of office space, insurance utilities, office supplies, and rental or purchase of office equipment.
- Costs incurred in providing information and resources to individuals, families, and households in the LMI group, and to citizen organizations participating in the planning, implementation, or assessment of the Grantee's program.
- Administrative funding can also be used for required fair housing activities.

If a cost cannot be associated with one of the above listed groups and cannot be associated with direct project costs, the GOED will, upon the Grantee's request, decide whether it is an administrative cost, an Activity Delivery cost, or an ineligible cost according to 24 CFR §570.489 and 24 CFR §570.482

In documenting general administrative costs, grantees should keep in mind:

- All general administration costs charged to the project must be documented through timesheets, purchase orders, or invoices.
    - Contracted grant consulting must be documented with the contract, including payment terms and all accompanying invoices.
    - Invoices for time and materials contracts must include timesheets.

Activity Delivery Costs (ADCs)

Activity Delivery Costs are any allowable costs incurred by the grantee for implementing and carrying out eligible CDBG activities.

All ADCs are allocable to a CDBG eligible activity that meets a national objective, including direct and indirect costs integral to the delivery of the final CDBG-assisted activity. ADCs are not Administration or funds used for the general operations of CDBG programs, but rather the costs incurred to achieve a specific eligible activity and meet a national objective.

Activity Delivery Costs may include, but are not limited to:

- Costs for completing a project specific environmental review and publication.
- Engineering/design/architectural services for a specific project.
- Marketing for a specific CDBG program.
- Development of program guidelines and application documents.
- Applicant intake/assistance, staff time to sit with applicants to fill out an application or collect income and application documentation.
- Costs of labor standards and section 3 requirements, such as weekly payroll review, employee interviews and documenting labor hours.

HUD does not establish a maximum ADC percentage as the level of effort and reasonable costs for ADCs will vary by program type, location, and scale. While GOED is not establishing an ADC cap, this section is designed to provide grantees with guidance to ensure program costs and ADCs are reasonable and necessary. Past HUD trainings have indicated that in general, ADC costs between 15-25% are reasonable for most CDBG programs. This range can be considered a safe harbor for reasonable ADCs. However, there may be times when significant investment in outreach, application assistance, complex environmental mitigation, etc. could significantly increase the ratio between ADCs and Activity Costs. If the ratio of ADC costs is outside of this safe harbor range, Grantees must ensure that in addition to CDBG required expenditure documentation, they have documentation in the program file demonstrating that higher ADC costs are reasonable and necessary.

NOTE: Activity Delivery costs other than A/E and environmental review are typically associated with the delivery of public services, housing rehab, and economic development programs.

NON-CDBG PROJECT FUNDS

Grant records should account for **all** funds committed to the project. The receipt and expenditure of the funds should be carefully documented. If leveraged funds are derived from a source outside the local government, project records should identify the source and amount.

ASSET MANAGEMENT

Grantees who maintain real or personal property paid in whole or in part with CDBG funds are required to properly manage these assets and to ensure that the assets continue to be used for their intended purposes in accordance with the CDBG regulations at 24 CFR 570.489(j) and (k) and 2 CFR 200.310-.316.

Grantees must maintain appropriate records of their assets, whether in their possession or in the possession of a subrecipient organization. Specifically:

- In the case of real property, meaning land and any improvements to structures on the land, grantees must maintain a current real property inventory, updated at least biannually. In cases where the grantee is maintaining land, grantees should also describe the intended reuse of the land and the timeframe for improving the land so that it meets a CDBG national objective.
- For personal property, grantees should maintain a fixed assets ledger that includes the following: a description of the property; any identifying information such as a serial number; the funding source (grant number); the acquisition date and cost; the federal share of the cost; and the location, use, and condition of the property; and disposition data. Grantees are required to conduct a physical inventory of personal property biannually to ensure that the property is being maintained in good condition and that there are procedures in place to prevent loss, damage, or theft of the property.

Change of Use

Grantees must maintain records that properly document the disposition of any CDBG-funded property. It should be noted that real property purchased or improved with CDBG funds in excess of the Small Purchase Threshold (currently $350,000) must continue to meet the CDBG national objective approved for the project for at least five years after close-out of the grant that funded the property purchase or improvement. Should the recipient choose to change the use of property, they must contact GOED to ensure that proper procedures are followed. Failure to do so can result in payback of the grant award. More information on Change of Use can be found in Chapter 8: Monitoring and Closeout**.**

REQUESTS FOR PAYMENT

Payments may be requested only after the Initial Requirements have been satisfied. (See Chapter 1: General Requirements)

Process for Requests for Payments

Instructions for completing the top and middle portion of the Form 4-1: Request for Payment

- Input the Grant ID number as assigned in the grant agreement.
- Input the drawdown request number.
- The subgrantee name and address must match the W-9 as submitted to the State.
- Pay request expenses itemized relative to the original budget request submitted.

Instructions for the “CERTIFICATION” section

1. Input the CDBG percentage portion of the project in the space provided (shown in the grant agreement under Section B, #4 “Basis for Subaward Amounts” on page 2).
2. Input the dollar amount requested in the space provided.
3. Input the percentage of physical completion of the project in the space provided.
4. Must have original signatures of authorized certifying official.

Required Documentation

- Includes the planning district's ledger tracking all project expenses.
- Submit source documentation for the requested funds. (Example, construction projects would include the AIA Document G702-1992 Application and Certificate for Payment.)

Submission

Draw requests may be submitted via regular mail or email. Emailed submissions may be either a digital signature format such as DocuSign or Adobe Signature, or a scanned PDF of the original ink signature. Draw requests must be submitted to the address shown below.

Governor's Office of Economic Development
711 East Wells Avenue
Pierre, South Dakota 5750l-3369
Stephanie.Deyo@state.sd.com

Additional Information

The amount requested on Form 4-1: Request for Payment **MUST** represent either eligible reimbursed expenses or the immediate cash requirements for the project. Only grant-eligible costs which have been incurred, or for which expenditures have been made as of the request date, can be claimed. Any amount, up to the total grant award, can be claimed if supporting invoices are submitted.

The amounts requested for each cost classification may not exceed the amount budgeted for CDBG in the grant agreement for that cost classification.

If the grantee is using CDBG funds to pay contractors (as opposed to requesting reimbursement for contractor pay requests), the funds must be disbursed within three banking days after the receipt from the State funding transaction. At no time should the money requested be more than what can be expended in this three-day limit. If it becomes apparent that a cash balance has been accumulated, its return will be required.

TIMELY EXPENDITURE

Grantees must minimize the time lapsing between the receipt of CDBG funds and their disbursement per 2 CFR 200.305, which states that grantees must adhere to Treasury Regulations at 31 CFR Part 205. To ensure that these requirements are met, all funds must be disbursed within 3 days of receipt. Failure to meet the timely distribution of funds will result in a finding at monitoring.

PROGRAM INCOME

Any proceeds generated from a CDBG activity, including repayment of funds, will fall into one of two categories: 1) program income, or 2) miscellaneous revenue. Different rules apply for each of these categories. This section defines each of these types of funds and the rules that will apply.

Under the CDBG Program, funds received by the Grantee as a result of a CDBG-funded activity are generally referred to as program income. Program income funds retain their federal identity **in perpetuity** and are ***subject to all federal requirements***.

What is Program Income (PI)?

Program income is defined as gross income of $35,000 or greater, received by a Grantee or a subrecipient of a Grantee that was generated from the use of CDBG funds regardless of whether or not the activity has been closed out. Examples of program income can be found at 24 CFR 570.489(e)(1).

Funds not considered program income will be identified as miscellaneous revenue (e.g. receipts totaling less than $35,000 in any given CDBG Program Year). These funds do not retain their federal identity, and federal requirements, such as environmental review, procurement, and labor standards, do not apply to the reuse of these funds. However, GOED requires grantees and subrecipients generating miscellaneous revenue track and report on all revenue generated by the CDBG activity.

Reporting Program Income

The grantee is required to report Program Income (PI) received to GOED. If a Grantee anticipates the receipt of CDBG Program Income they should notify GOED immediately for reporting instructions.

Use of Program Income

Program income must be used for eligible CDBG activities as listed in Section 105(a)(15) of the Housing and Community Development Act. Program income is subject to all of the rules and regulations governing CDBG funds including, but not limited to, compliance with: national objective, procurement, equal opportunity, environmental, labor standards, lead-based paint hazard treatment, etc.

CONTRACT REVISIONS AND AMENDMENTS

This section lists the type of grant amendments that may be requested, defines each type of amendment, determines whether an amendment is minor or substantial, describes the procedure for submitting a request, and includes the form on which to request an amendment. 2 CFR 200

Types of Amendments

1. Extension of Time

This type of amendment is determined as a MINOR amendment and must be requested when the subgrantee determines that all grant work cannot be completed prior to the grant expiration date.

2. Reduction in Effort

Per 2 CFR 200.308(f)(3) Grantees must request approval from GOED if the Grantee disengages from a project for more than three months or has a 25 percent reduction in time and effort devoted to the CDBG award over the course of the contract period. This is determined to be a MINOR amendment and must be requested if the Grantee (or Grant Administrator) is not able to show documented progress for 3 consecutive months.

3. Budget Revisions

This type of amendment must be requested when the subgrantee needs to make changes to either the CDBG grant funding or the total project budget.

MINOR amendments include:

- Change in total project costs of 20% or less.
- Adjusting the CDBG allocation percentage on the original grant agreement to correct the actual allocation on eligible expenses.

- Additional CDBG funding of 10% or less of the original award.

SUBSTANTIAL amendments: Any changes outside of the revisions under "minor" would require a substantial amendment further discussed on the next page.

4. Scope of Work

This type of amendment must be requested when expanding or reducing the approved scope of work to be performed.

MINOR amendments include:

Any change of scope that results in project changes of 20% or less. *(i.e.: a grant was approved for a 4,000 sq ft building, and the subgrantee decided to add an additional 700 sq ft room.)*

SUBSTANTIAL amendments include:

Any activity that results in a substantial change from the project that was originally applied for and approved in the grant agreement. *(i.e.: a grant was approved to construct 20 blocks of water and sewer mains, but the subgrantee is only going to construct 15 blocks of water and sewer mains, a substantial amendment must be submitted.)*

5. Special Conditions

This type of amendment must be submitted if a subgrantee wishes to seek approval to modify, eliminate, or extend a special condition on the grant award. Grantees should seek guidance from the CDBG Program Manager to discuss this request.

Procedures for Submitting and Acting on Request for Amendment

1. Minor amendments must be submitted at least 30 days prior to the grant expiration date.
2. Substantial Amendments require following the Citizen Participation Plan prior to submitting requests. A public hearing must be conducted to receive comments from interested parties on the proposed activities before an amendment may be submitted.
    a. Notice of the required public hearing should be given through an advertisement in a newspaper that is widely read by the persons who will be affected by the project. The notice should be published and posted in a public place 7 days prior to the public hearing. The notice must contain:
        i. The topic of discussion (the proposed project).
        ii. The date and time of the meeting.
        iii. The place of the meeting.
        iv. The amendment details proposed.
    b. Citizens must be given a 7-day comment period after the hearing before submitting Form 4-2: Request for Amendment.
3. All amendments must be submitted on Form 4-2: Request for Amendment and must be signed by the Chief Elected Official.
4. Approval of Amendments by GOED

a. Minor Amendments: if the request is approved by GOED, Form 4-2: Request for Amendment will be returned reflecting signed approval.

b. Substantial Amendments: if the request is approved by GOED, the approval will be transmitted on an updated Grant Agreement that must be signed.

All approved amendments will become a part of the original Grant Agreement and will be subject to all applicable conditions and assurances.

Notice is hereby given that (Grantee) will hold a public hearing on (date) at (time) at (location) to solicit public input on local community development and needs in relation to the Community Development Block Grant (CDBG) funding for a project in our community.

The (Grantee) is requesting to amend the Scope/Budget/Special Conditions for the CDBG grant to be used for the project in progress because _____.

Information related to this project will be available for review prior to the public hearing as of (date) at (Grantee address), between the hours of (9am-4pm Monday-Friday). Interested citizens are invited to provide comments regarding these issues either at the public hearing or by prior written statement. Written comments should be submitted to (contact name and address), no later than (date and time) to ensure placement of such comments in the official record of the public hearing proceedings. A plan to minimize displacement and provide assistance to those displaced has been prepared by the (Grantee) and is also available to the public. This project will/will not result in the displacement of any persons or businesses.

Persons with disabilities or non-English speaking persons who wish to attend the public hearing and need assistance should contact (local contact name) at (address and telephone) no later than 48 hours prior to the meeting date to allow for necessary arrangements. Every effort will be made to make reasonable accommodations for these persons.

For additional information or to submit written comments, send to (local contact name, title, address, telephone number). Comments should be postmarked by (date).

FINANCIAL STATEMENTS

Each grant sub-recipient is required to submit Form 4-3: Interim Financial Statement and Form 4-4: Final Financial Statement.

Form 4-3: Interim Financial Statements are due for every calendar year in which project expenditures were incurred. This includes both CDBG as well as all local expenditures.

The status of the project should include the accomplishments for the current calendar year being reported. It can include anticipated completion date, percentage of completion, reason for delay of the project, anticipated start date, etc.

The interim statements are required to be sent to the Governor's Office of Economic Development (GOED) no **later than January 31 of each year**.

Form 4-4: Final Financial Statement should be filed with GOED within **three months** of the project's completion.

AUDIT REQUIREMENTS

One of the primary financial management requirements implicit with the use of Federal funds is the single annual audit. 2 CFR Part 200 Subpart F provides requirements for audits of governmental entities and nonprofit organizations.

Grantee's or Subrecipients that have spent more than $1,000,000 in total federal funds within a fiscal year are required to have a Single Annual Audit conducted in accordance with 2 CFR Part 200 Subpart F except when they elect to have a program-specific audit conducted. ***For fiscal years beginning prior to October 1, 2025, the threshold is $750,000 per fiscal year.***

A program audit is an audit of one federal program (such as CDBG). A program-specific audit is allowed when the subgrantee expends federal awards under only one federal program. A single annual audit is an audit that includes both an entity's financial statements and its federal awards (from all applicable federal programs).

If a subgrantee expends less than $1,000,000 a year in federal awards ($750,000 prior to 2025), it is exempt from the audit requirements for that year; however, records must be available for review or audit by appropriate officials of the federal agency, the State, and the Government Accountability Office.

Subgrantees should contact the Department of Legislative Audit concerning audit requirements.

Department of Legislative Audit
427 S. Chapelle
Pierre, SD 57501
605-773-3595

Deadline and Submission

GOED receives copies of the single annual audit from the Department of Legislative Audit. Once GOED receives an audit, it will be reviewed for compliance. If an unresolved audit question occurs that involves a violation of applicable state or federal law, GOED may recall all, or any portion of, the affected CDBG monies, may request corrective action, or may declare the subgrantee to be ineligible for future grants or loans or future installments of an existing grant or loan. Any monies recalled or withheld would then be returned to the pertinent federal agency or redistributed by GOED as allowed.

After all the audits are completed and accepted, GOED will notify the subgrantee by letter that the Certificate of Completion has been approved and the CDBG grant is formally closed out. See Chapter 8: Monitoring and Closeout for more information and forms.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	8/23/24	• Initial Release	S Deyo
1.1	3/26/25	• Updated Single Annual Audit requirement from $750,000 to $1,000,000 for all fiscal years beginning after October 1, 2025 per 2 CFR 200.501.	S Deyo
2.0	5/22/26	• Revised Form 3-3: CDBG Contract Provisions (PDF) • Updated hyperlinks • Updated requirements on Internal Controls per 2 CFR 200.303 • Revised Form 4-1: Request for Payment to include the 2 CFR 200.415 Certification requirement. • Revised Form 4-2: Request for Amendment per 2 CFR 200.308 • Revised Form 4-3: Interim Financial Report to include the 2 CFR 200.415 Certification requirement. • Revised Form 4-4: Final Financial Report to include the 2 CFR 200.415 Certification requirement.	S Deyo

CDBG GRANT ADMINISTRATION HANDBOOK

Updated May2026

Chapter 5 – Labor Standards

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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LABOR STANDARDS AND COMPLIANCE

APPLICABILITY

Construction projects funded with CDBG require that certain procedures be followed in order to comply fully with applicable federal and state requirements. For example, federal and state labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment of workers on construction projects.

This section describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, compliance with labor standards, and inspection and approval procedures.

Essentially, the Labor Standards requirements consist of the following elements:

- Determining Applicability
- Including Federal Wage Decisions in Bid Documents and Construction Contracts
- Verifying Contractor Compliance
- Implementing Corrective Actions (if necessary)
- Recordkeeping & Reporting

FEDERAL REQUIREMENTS

Most construction projects including alteration, repair or demolition, funded in whole or in part with federal dollars, including CDBG, must comply with federal Labor Standards Provisions. Applicable laws include the following:

- The Davis-Bacon Act (40 USC Sections 3141-3148) requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction, alteration, or repair work of more than $2,000 that is financed in whole or in part with CDBG or other federal funds, regardless of the CDBG amount.

- The Copeland Anti-Kickback Act (40 USC Section 3145) requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.

- The Contract Work Hours and Safety Standards Act (40 USC Sections 3701-3707) requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all CDBG-assisted construction contracts of $100,000 or more. The Act also imposes a financial penalty for failure to pay such overtime wages and requires overtime for traditionally exempt salaried construction workers. (NOTE: Overtime is required for ALL workers via the Fair Labor Standards Act including projects without federal funds.)

HUD has two guides and a handbook that are available for downloading on labor standards requirements. These documents are "Davis Bacon Labor Standards: Agency/Contractor Guide" and the "Davis Bacon Labor Standards: Contractor Guide Addendum". HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements.

Exceptions

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- Construction contracts at or below $2,000. Note that arbitrarily separating a project into contracts below $2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation or construction of residential properties containing less than eight (8) units with CDBG funds.
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, procurement of modular (industrialized) and manufactured housing components, and certain pieces of equipment that would not become permanently affixed to the real property.
- Contracts solely for demolition, when no construction is anticipated on the site.
- Force account labor (construction carried out by municipal employees or, in certain instances, a sub-recipient's employees).
- Volunteers. However, volunteering for part of the project and working part of the project is prohibited.

GOED should be contacted in any situation where the applicability of Davis-Bacon is in question.

PRE-BIDDING REQUIREMENTS

The first step in effective management of CDBG-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. Please refer to Chapter 3: Procurement for more guidance on bidding.

Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer licensed in South Dakota. Water and sewer projects also require the approval of various state agencies. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage determinations (see Chapter 3: Procurement).

NOTE: The environmental review must be completed and, if applicable, release of funds received from GOED prior to publishing the bid advertisement. Please refer to Chapter 2: Environmental Review for more information.

BIDDING AND CONTRACT REQUIREMENTS

A Grantee must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in Chapter 3: Procurement). The Grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Once a construction project becomes subject to federal labor standards provisions, the following steps must be taken to ensure compliance. The Labor Standards Officer (LSO) typically takes responsibility for these steps. Typically, the LSO is the grant administrator, an employee of the local govnerment, or the architect/engineering firm. This role must be defined before the Notice to Proceed is issued for the construction project.

Step 1: Obtain Applicable Federal Wage Rate Decision

The Grantee should access the federal wage rate decisions through the Internet at https://sam.gov/content/wage-determinations. Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. When evaluating the type of wage determination to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

Residential projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

Building construction generally includes construction of sheltered enclosures with walk-in access for the purpose of housing persons (with the exception of activities that meet the definition above), machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Construction of mixed-use buildings (such as upper story housing and commercial on the lower level) would be subject to this classification. Also, the installation of heavy machinery and/or equipment that does not generally change the project's character as a building.

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

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

GOED staff should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary, including those instances where the Grantee is required to request “multiple” wage determinations from the Department of Labor. Multiple wage determinations may be required when the project contains separate and distinguishable components that fall into different categories of construction.

CAUTION: If the Grantee fails to include the correct wage rate determination(s), the Grantee will be responsible for paying any difference between the applicable wage rates and the wages paid by the contractor based upon the information provided in the bid package.

Step 2: Add CDBG Required Documents to the Bid Package

The applicable wage rate decision must be a part of the bid package. The bid package must also contain language explaining all labor standards requirements, which are designed to protect employee rights (in addition to other federal procurement provisions). Grantees may attach the Form 5-1: HUD Federal Contract Provisions to meet this requirement (also known as the HUD 4010 Form). Grantees may also use Form 3-14: Info For Bidders Required Documents to ensure that all necessary CDBG related documents are included in the bid package. GOED has provided Form 3-14 to assist grantees, but it is important to remember that the grantee is ultimately responsible for compliance with all state and federal requirements.

Step 3: Procurement Requirements

Once the bid document is prepared, the bid package must be submitted to GOED for review and approval prior to advertising for construction bids. Refer to Chapter 3: Procurement for specific instructions on how to proceed with the bidding process.

NOTE : Grantees should NOT be submitting the bid package to GOED until the RROF has been submitted.

Step 4: Wage Determination Lock-in and Contracting

Because the U.S. Department of Labor (DOL) continually monitors the economic conditions of the construction contracting profession, the wage rates are subject to change. It is essential that the grantee verify that the most current rates are being utilized. The Davis-Bacon Wage Determination effective date must be no more than 10 days prior to the bid opening. Therefore, the following actions must be taken:

1. Grantees must obtain the current wage decision no earlier than 10 days prior to the bid opening and provide it to the project architect or engineer to be included in the bid package and forwarded to all prospective bidders.
2. If there are any modifications, those shall be published in an addendum to the Bid Documents and sent to all prospective bidders.
3. Wage Determinations are only effective for 90 calendar days after the bid opening. On the 91st day, the previously issued determination expires. If the contract is not awarded within 90 calendar days of the bid opening, the wage decision that is in effect on the date that the construction contract is signed is the decision that will be utilized for the entire project. The Labor Standards Officer must obtain an updated wage determination and notify the contractor and engineer or architect of the new wage decision that is applicable to the project. The Labor Standards Officer must maintain record of the new lock-in decision, revising the Wage Determination Lock-In Notice if that procedure is used by the grantee.
4. The construction contract must contain the final ("locked in") wage decision, labor standards clauses required by HUD (Form 5-1: HUD Form 4010), and other federal contract provisions as described in Chapter 3: Procurement and Contracting.

PRECONSTRUCTION CONFERENCES

Before any work is performed by a contractor, GOED strongly recommends that the Grantee, the grant administrator, the engineer or architect, and any other technical advisors to the Grantee conduct a pre-construction conference with the contractor, and any identified subcontractors, to explain contractual requirements and performance schedules.

The Grantee should prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. Form 5-8: Preconstruction Conference Checklist has been provided as a sample.) A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. The grantee should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Items that should be covered at the pre-construction conference include, but are not limited to:

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
- Obtain the prime contractor's Federal Identification Number and Unique Entity Identifier (UEI) number that is registered in the System for Award Management (SAM). Explain all subcontractors must have a UEI as well.
- Explain that the contractor must submit weekly payrolls and statements of compliance on **Form 5-2: DOL WH347** or equivalent, signed by an officer of the company or person authorized by owner/officer, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors. Form 5-3: Instructions for WH347 Form has been included to assist contractors and/or grant administrators who are not familiar with the form.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contractors can request them using Form 5-4: Request for Authorization of Additional Classification and Rate (SF-1444). The Grantee must submit the form to the U.S. Department of Labor at whd_cbaconformance_incoming@dol.gov. Include the Contracting Officer's name, address, telephone, and email address. An automated confirmation response will be generated upon receipt of your submission. The DOL Branch of Construction Wage Decisions (BCWD) responds to most requests within 30 days. Form 5-5: Instructions for Request for Additional Classification has been provided by GOED to assist in completing this form.
- Explain that employee interviews will be conducted on-site during the project to ensure compliance with prevailing wage requirements.
- Emphasize that both a copy of the wage rate decision and the wage rate poster "Employee Rights under the Davis Bacon Act" must be posted in clear view of all employees at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is registered and approved by the U.S. Department of Labor.
- Foremen or supervisors that spend more than 20% of their time performing covered construction work must be paid at least the prevailing hourly rate for the time spent performing such work.
- If the contract is $100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, including otherwise exempt salaried construction workers. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law.

- Indicate that failure to pay workers at least time and a half whenever overtime occurs violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) and makes the contractor liable for not only restitution but also liquidated damages of $31 per day for every day each worker exceeded 40 hours a week without being paid time and a half. (The $31 penalty amount is applicable as of January 16, 2023 and adjusts annually. See CWHSS Liquidated Damages Penalty for current liquidated damages amount.)

- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kickback" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentration. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.

- Explain the possibility of federal debarment for violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.

- Provide contractor with posters for the site, including "Employee Rights under the Davis Bacon Act," as well as other worksite posters such as "Notice to All Employees Working on Federal or Federally Financed Construction Projects," "Safety and Health Protection on the Job," and "Equal Employment Opportunity is the Law." These posters are available via the DOL Workplace Posters website. The website also contains a feature called "FirstStep Poster Advisor" that will help employers determine all posters that they are required to display at their business. Posters, available in English and other languages, may be downloaded free of charge and printed directly from the DOL website. Grantees should encourage contractors to communicate information regarding employee rights in a language they understand, by translation or interpretation of required posted materials.

- If the project will receive more than $300,000 in CDBG and/or other HUD financial assistance, explain the contractors' requirements for Section 3 compliance. Detailed information on Section 3 can be found in Chapter 3: Procurement of this manual.

- Inform the contractor that it is their responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions.

- Provide handouts explaining everything covered and obtain the contractor's signature to document receipt in Form 5-8: Pre-Construction Conference Checklist.

- The Grantee should also describe the compliance review that will be conducted during the project and indicate that discrepancies and underpayments discovered as a result of compliance review must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

NOTE : If the project will consist of multiple bid packages, best practice dictates that the pre-construction conference includes contractors from all bids.

CERTIFIED PAYROLL REQUIREMENTS

Once construction is underway, the general contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations

Certified Payroll Reports

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance that include completed statements of how fringe benefits will be paid), and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. See Payroll Falsification Indicators from the HUD Guidebook, Making Davis Bacon Work, for guidance on detecting falsification through frequent payroll review and interview comparison. If contractor/subcontractors use an approved apprentice or training program, verify that the ratio between trade journeymen and apprentices complies with the approved apprenticeship program.

Certified Payroll Reports should be submitted by the contractor to the Grantee within fourteen working days of the end of the payroll period. A Payroll Form and Statement of Compliance (WH-347) (Form 5-2) provided by the DOL has been provided by GOED. . This form is also commonly called a Certified Payroll Report (CPR). Electronic submission and electronic signatures are allowed ONLY when they are submitted using a legitimate digital signature format such as DocuSign or Adobe Electronic Signature. A scanned copy sent via PDF is not an acceptable certified payroll report.

CAUTION: It is important for grantees to note that they must NOT accept the expired version of the WH-347 form from contractors after September 30, 2026

An employee's full social security number and address should not be included on these CPR's. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. A Statement of Compliance (Form 5-2, page 2) must accompany each payroll submission.

Payroll reports must be reviewed by the Grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers,
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination,
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay,
- Review of deductions for any non-permissible deductions, and

- The Statement of Compliance (Form 5-2, page 2) has been completed and signed by the owner or an officer of the firm.

As a reminder, HUD Handbook 1344.1 is a good resource for labor standards information.

Fringe Benefits

The wage decision lists a minimum basic hourly rate of pay for each work classification. Some wage decisions also include fringe benefits, which are usually listed as an hourly fringe rate. If the wage decision includes a fringe benefit rate for a classification, you will need to add the fringe benefit rate to the basic hourly rate unless the contractor is providing bona fide fringe benefits for employees. Fringe benefits can include health insurance premiums, retirement contributions, life insurance, vacation and other paid leave. The cash equivalent of the fringe benefits provided may be added to the amount of the base wage with the total amount due reflected in the hourly rate column on the Certified Payroll Report (CPR).

Paragraph (a) or (b) on the Statement of Compliance (Form 5-2, page 2) must be marked on every CPR to indicate the method by which fringe benefits will be paid. If the fringe benefits are being paid to a bona fide fringe benefit plan, the Grantee must obtain verification from the contractors or subcontractors of the calculation of benefits paid and proof of plan validity. Bona fide fringe benefit plans are identified at 29 CFR4.171.

Examples include but are not limited to:

1. **Health, life or other similar insurance premiums paid by the employer.** Documentation includes:
    a. Most recent insurance statement with a breakdown of each covered employee's premium, and
    b. A signed letter by an officer of the company that states how much of the premium they cover (percentage or dollar amount).
2. **Pension or retirement contributions recognized by the Internal Revenue Service (IRS) and contributed by the employer.** Documentation includes:
    a. Letter from Pension Provider stating which employees participate in the program,
    b. Signed letter by an officer of the company that states what percentage of contributions they match, or if it is automatically given to the employee even if they do not contribute, and
    c. Monthly statements throughout the project that show how much the employee contributed and how much the employer contributed.
3. **Holiday and/or vacation pay contributed by the employer.** Documentation includes:
    a. Copy of Employee Handbook that states the number of paid vacation and holidays provided to employees and
    b. Copy of employer's calculations for the amount of fringe benefit credit claimed for vacation and holiday pay listed by employee.
4. **Union Fringe Benefit Packages.** Documentation includes:
    a. Copy of the Union Benefits Breakdown provided by each specific Union to the contractor, and
    b. Monthly statement listing covered employees and verifying payment to the plan.

Fringe benefits do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or Workmen's Compensation. The Grantee must verify that the base rate plus fringe benefit amount paid to each employee is equal to or greater than the amount stated in the wage determination assigned to the project.

LABOR STANDARDS COMPLIANCE REQUIREMENTS

During construction, the Grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this chapter. This role for the Labor Standards Officer may be fulfilled by the architect/engineer or Grantee, and if so, should be included in the scope of services for that professional services contract.

Employee Interviews

Construction management requirements include conducting job site interviews with workers using Form 5-6: Record of Employee Interview (HUD Form 11). HUD's website provides links to many of HUD's Davis-Bacon Forms.

The Grantee should use on-site interviews as a proactive enforcement tool rather than as a means to meet a "representative sampling" quota. Instead of conducting interviews randomly for the sake of assembling a sample, the Labor Standards Officer is encouraged to target interviews to groups of workers where violations are suspected or alleged, being especially attentive to Payroll Falsification Indicators.

The targeting approach is a more efficient and effective means of utilizing on-site interview resources. The Labor Standards Officer must also ensure that a sufficient sampling of all trades included in the project are interviewed.

The Grantee should ensure the following actions are performed:

- Interviews are conducted periodically, following the protocols below, during each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage determination, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.

A Grantee will need to seek language assistance to interview non-English speaking workers or may seek to gather information using Form 5-7: Labor Standards Questionnaire (HUD Form 4730), either in person or requesting it back by mail. The results from the questionnaire must be transferred to Form 5-6: Record of Employee Interview (HUD Form 11). A fully completed and signed Form 5-6: Record of Employee Interview Form is maintained in the contract file.

Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including

wage restitution, must be reported on a Certified Payroll Report (CPR). Whenever an employer is found to have underpaid its employees by $1,000 or more or committed willful falsification, grantees should contact GOED staff for assistance.

Notification to the Prime Contractor

The Labor Standards Officer will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the Grantee may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the Labor Standards Officer for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing Wage Restitution

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

Correction Certified Payroll Reports

The employer will be required to report the restitution paid on a Correction Certified Payroll Report. A "Correction Certified Payroll Report" is completed using Form 5-2: Payroll Form and Statement of Compliance (WH-347). A correction payroll differs slightly from regular certified payroll report. For example, the Correction CPR should indicate the time period for adjustment (7/2/23 thru 8/26/23, or CPRs #1 thru #8). The Correction CPR will list:

- Each employee to whom restitution is due and their work classification,
- The total number of work hours,
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.

A properly signed Statement of Compliance (**Form 5-2**, page 2) must be attached to the Correction CPR.

Pay and Document Restitution of Wages

The employer must pay and document payment of restitution wages. **Note:** During basic enforcement and corrections, the employer need only submit a correction CPR to evidence wage restitution paid. Other documentation such as copies of checks, copies of cancelled checks, receipts signed by the employees, employee signatures on the correction CPR, etc., is not required.

Review of Correction Certified Payroll Report

The Labor Standards Officer (LSO) will review the Correction CPR to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental Correction CPR within 30 days.

Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise cannot be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. After reasonable efforts to locate the workers are exhausted, the Grantee must turn over the gross amount due to any unfound workers to HUD. Grantees should contact GOED for repayment instructions.

USE OF FORCE ACCOUNT WORK

Force Account Labor

Force Account Labor refers to the use of municipal employees, and in certain instances, a sub-recipients employees, on a CDBG construction project. In such cases, the local government does not have to pay the Davis-Bacon wage rates but, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the CDBG program.

It may be advantageous at times for a Grantee to use force account labor to save money, expedite construction, and/or eliminate the time and expense associated with advertising, bidding, and award of a construction contract. If so, the Grantee must justify why using force-account labor would serve the public interest. The use of force account labor must be approved by the CDBG program manager prior the submission of grant application. The written request must include:

- A description of the nature of the work;
- A detailed description of how the work is to be done;
- A cost breakdown for materials, equipment, labor and overhead; and
- An explanation of why doing the work by force account would be more cost-effective than competitive bidding.

Force Account Equipment

The cost of using municipally owned or rented equipment, including the cost of maintenance and operations, is allowed. Equipment may NOT be purchased with CDBG funds. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost as described in this chapter. Rented or leased equipment must be supported by a copy of the rental or lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA Schedule of Equipment Rates for the equipment. Such allocations of cost must be approved by the GOED, in advance.

The Grantee must maintain thorough documentation of all costs. All costs charged to the project must apply to a particular line item of the CDBG contract budget. This documentation must include, at a minimum, the following:

- Employee personnel policies that delineate paid leave, overtime, travel, etc.;
- Time sheets identifying construction or administrative personnel and work performed;
- All timesheets should correspond to the Grantee's regular employee time sheets;
- An equipment cost calculation form signed and approved by authorized personnel that determines the hourly cost for each piece of equipment;
- Documentation of the use of the equipment and operator.; and
- Invoices and canceled checks for all construction materials and other supplies.

ENFORCEMENT REPORTS

The U.S. Department of Labor regulations require all agencies administering labor standards to submit two reports. GOED coordinates the submission of those reports for CDBG grantees.

- **Section 5.7 Enforcement Report**: DOL requires a report regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of $1,000 or where there is reason to believe that the violations were willful. Grantees, generally the LSO, must prepare and submit such reports called Section 5.7 Enforcement Reports to GOED to then be forwarded to HUD. The Section 5.7 Enforcement Report should be submitted after completing an investigation and after final disposition is reached at the local level. HUD has provided guidance on completing the report in Letter Number LR 23-01 . A Sample has been included as Form 5-9: Sample Section 5.7 Enforcement Report.

  - Semi-Annual Labor Standards Enforcement Report: All enforcement activities, including any activities described in a Section 5.7 Enforcement Report AND enforcement activities that did not reach the threshold requiring a Section 5.7 Enforcement Report are listed and summarized in the semi-annual report. This report also lists all contracts that were issued during the six-month reporting period that are subject to Davis-Bacon wage decisions. Form 5-10: Semi-Annual Labor Standards Enforcement Report (HUD 4710) is sent to GOED by March 15th and September 15th each year that a CDBG grant agreement is open. Form 5-11: Instructions Semi-Annual Labor Standards Enforcement Report (HUD 4710i) provides helpful information for completing the form.

PAYMENTS TO CONTRACTORS

It is State policy that prompt progress payments shall be made by Grantees to prime contractors and by prime contractors to subcontractors and suppliers for eligible construction, material and equipment costs, including those of undelivered specifically manufactured equipment, incurred under a contract.

Conditions of Progress Payments

For purposes of this section, progress payments are defined as follows:

1. Payments for work in place.

2. Payments for materials or equipment which have been delivered to the construction site, or which are stockpiled in the vicinity of the construction site, in accordance with the terms of the contract, when conditional or final acceptance is made by or for the Grantee. It is the Grantee's responsibility to ensure that items for which progress payments have been made are adequately insured and are protected through appropriate security measures.
3. Payments for undelivered specifically manufactured items or equipment (excluding off-the-shelf or catalog items), as work thereon progresses. Such payments must be made if provisions therefore are included in the bid and contract documents. Such provisions may be included at the option of the Grantee only when all of the following conditions exist:
    a. The equipment is designated in the project specifications;
    b. The equipment to be specifically manufactured for the project could not be readily utilized on nor diverted to another job; and
    c. A fabrication period of more than six months is anticipated.

Protection of Progress Payments Made for Manufactured Equipment Specifically

The Grantee will assure protection of the State's interest in progress payments made for items or equipment referred to in this section. This protection must be acceptable to the Grantee and must take the form of securities negotiable without recourse, condition or restrictions; progress payment bond; or an irrevocable letter of credit provided to the Grantee through the prime contractor by the subcontractor or supplier.

Contract Provisions

Where applicable, appropriate provisions regarding progress payments must be included in each contract and subcontract. Grantees must use clauses acceptable to the State. See Chapter 3: Procurement for more information.

Implementation of Policy

The foregoing progress payments policy should be implemented in invitations for bids. If provision for progress payments is made subsequent to contract award, it must be for consideration which the Grantee deems adequate.

RETENTION OF PROGRESS PAYMENTS

The Grantee may retain a portion of the amount otherwise due the contractor. Except as state law otherwise provides, the amount retained by the Grantee shall be limited to the following:

1. Withholding of 10 percent of the payment claimed until the work is 50 percent complete;
2. When work is 50 percent complete, the 10 percent retainage that has been withheld will continue to be held, however, the subsequent withholding can be reduced to 5 percent of the dollar value of work remaining;
3. When the work is substantially complete (operation or beneficial occupancy), the withholding percentage for subsequent payments can be further reduced to below 5 percent and the contractor can be paid the full previous retainage minus the value of any work remaining at the time of substantial completion. The contractor may be paid all retainage amounts when the Grantee makes final payment on the project;

4. The Grantee may reinstate up to 10 percent withholding if the Grantee determines, at its discretion, that the contractor is not making satisfactory progress or there is other specific cause for such withholding; and

5. The Grantee may accept securities negotiable without recourse, condition or restrictions, a release of retainage bond, or an irrevocable letter of credit provided by the contractor in lieu of all or part of the cash retainage.

Appropriate provisions to ensure compliance with this policy must be included in the bid documents for such projects initially or by addendum prior to the bid submission date and as a special condition in the grant agreement or in a grant amendment. For all previous active projects, the policy may be implemented by the Grantee through contract amendment upon written request to the Grantee by the contractor upon consideration which the Grantee deems adequate.

Liquidated Damages

For each consecutive calendar day that any part of the work remains uncompleted after the expiration of the time allowed for completion of the work stipulated in the contract, the contractor will pay to the Grantee any expenses incurred by it on account of said contractor requiring such additional time, which expense shall include additional cost for Engineering, inspection and legal work caused by such delay. Such costs are not to be considered as penalties. A predetermined amount may be agreed upon prior to the signing of the contract.

The assessment of liquidated damages for failure to complete the work within the contract period shall not constitute a waiver of the contracting authority's right to collect any additional damages which the contracting authority may sustain by failure of the contractor to carry out the terms of the contract.

The damages stipulated above are to be deducted from any monies due the contractor as liquidated damages for the loss to the Grantee on account of the expense due to the employment of Engineers and their assistants and to any other expenses after the expiration of the completion time set forth by the Engineer.

CONSTRUCTION PROGRESS SCHEDULES

Schedule Requirements

Prior to the first partial payment estimate, the contractor shall submit to the Grantee, construction progress schedules showing the order in which it is proposed to carry on the work, including dates at which various parts of the work will start, estimated date of completion of each part, and, as applicable:

1. The dates at which special detail drawings will be required.

2. Respective dates for submission of shop drawings, the beginning of manufacture, the testing and the installation of materials, supplies, and equipment.

3. The contractor shall also submit a schedule of payments that it is anticipated will be earned during the course of the work. The payment schedule may be in conjunction with the progress chart or separately, if desired.

4. These schedules shall be updated on a monthly basis. The schedule shall be revised whenever actual progress varies by 10% or more and also when a time extension is granted.

REVISION HISTORY

Revision	Date	Description of changes	Approved By
1.0	4/27/24	• Initial Release	S Deyo
2.0	5/22/26	• Updated WH-347 language regarding expiring form • Replaced Form 5-3: Instructions for WH-347 Form • Added reference to Form 3-14: Info for Bidders Required Documents • Updated hyperlinks	S Deyo

CDBG GRANT ADMINISTRATION HANDBOOK

Updated May 2026

Chapter 6 – Acquisition and Relocation

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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ACQUISITION OF REAL PROPERTY

INTRODUCTION

This chapter describes the process required to acquire real property for any program-eligible activity funded wholly or partially with CDBG funds. ("Real property" includes land with or without structures on it.) Acquisition assisted with CDBG funds must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) at 49 CFR 24.101 and CDBG regulations at 24 CFR 570.606.

GENERAL ACQUISITION REQUIREMENTS

For the purposes of this manual, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way.

Temporary easements are also subject to all of the same rules as other forms of acquisition unless the temporary easement exclusively benefits the property owner.

Grantees should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA. If CDBG assistance is used in any part of a project, the URA governs the acquisition of real property related to that project and any resulting displacement, even if local funds were used to pay the acquisition costs. Private persons, corporations or businesses that acquire property or displace persons for a CDBG-assisted project are subject to the URA.

Timing of URA Coverage

It is important for grantees to know that the timing of an acquisition can trigger URA requirements. **Regardless of the source of funds, any acquisition of property made by a Grantee, on or after the date of the first public hearing for an activity using that property, is subject to the URA.**

Timing of Acquisition	Subject to URA	Not Subject to URA
Grantee acquires the property, including transfer of deed, before advertising the notice of the first Public Hearing (prior to application)		X
Grantee acquires the property after advertising the notice of the first Public Hearing (prior to application)	X	

Terminology of the URA

Grantees should not be confused by the terminology of acquisition for URA.

- Voluntary acquisition is not the same as just a willing seller. Voluntary acquisition must meet several regulatory requirements that are clarified in this section.

- Involuntary acquisition is not the same as eminent domain. Involuntary acquisition may occur with or without eminent domain. Also, involuntary acquisition may occur even if the buyer does not have eminent domain powers. Involuntary acquisition is defined, and the required procedures described later in this section.

Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 2: Environmental Review for detailed guidance

VOLUNTARY ACQUISITION PROCESS

The Voluntary Acquisition Process is an abbreviated process under the URA that can be used in limited circumstances. A common misconception is that "willing seller", or "amicable agreement" means a transaction is "voluntary." This is not true under URA. The applicable requirements of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary.

In order to utilize the voluntary acquisition process, the following conditions must be met:

1) The Grantee (or Subrecipient) will not use the power of eminent domain to acquire the property, and the following conditions are met:
    a. No later than the time of the offer the Grantee informs the owner of the property in writing of the following:
    b. The Grantee will not acquire the property if negotiations fail to result in an amicable agreement; and
    c. The Grantee's estimate of fair market value for the property to be acquired.
2) Where an agency wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly. *(*See Appendix A to this part, section 24.101(b)(1)(ii).)
3) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits.

Below are several examples of projects or situations and how they meet or do not meet the requirements for a voluntary acquisition. Those that do not meet all three requirements must utilize the Involuntary Acquisition Process.

- ***Voluntary Example****: Grantee plans to build a new community center but will seek an alternative site if negotiations fail to result in an amicable agreement.*
- ***Voluntary Example****: Grantee is acquiring 5 homes as part of a city-wide demolition program.*
- ***Involuntary Example:*** *Grantee plans to acquire 15 of 20 homes in a redevelopment plan area for rehabilitation and resale as part of a homeownership program.*
- ***Voluntary Example****: Grantee is acquiring a commercial property through a tax deed (SDCL 10-25) for demolition and clearance.*
- ***Involuntary Example:*** *Grantee is acquiring a property by eminent domain for a public infrastructure project.*

The steps of voluntary acquisitions and the URA requirements are generally described as follows:

Step 1: Determine what Properties will be Acquired

The Grantee, with its engineer or attorney, should review every proposed activity to determine property acquisition needs and identify the particular properties to be obtained. Activities such as street widening, water and sewer improvements, or sidewalk construction do not have an obvious property acquisition requirement, but there is often a need to acquire easements or rights-of-way.

Step 2. Determine Property and Ownership

The first step should include a review to determine property acquisition needs and identify any properties to be obtained. Activities such as street widening, water and sewer improvements, or sidewalk construction do not have an obvious property acquisition requirement but may necessitate acquiring easements. The Grantee must provide proof of ownership for the easement, land, or building by conducting a title search of properties and easements to be acquired for the project. The Grantee should obtain either an attorney title opinion letter, or purchase title insurance. Grantees should require owners to transfer the property with clear title.

Step 3. Notify Owner

As soon as feasible, the Grantee shall notify the owner in writing of the Grantee's interest in acquiring the real property or easement using federal funds. The Voluntary Acquisition Notice (VAN) must state that if a mutually satisfactory agreement cannot be reached, the Grantee will not buy or condemn the property for the same purpose. HUD has provided a sample Voluntary Acquisition Notice (VAN) letter for Grantees with the power of eminent domain. The sample letter includes a proposed sales price. This provision may be removed when providing early notice before the determination of value has occurred. The Grantee should indicate that owner-occupants are not eligible for relocation benefits in the VAN and an acknowledgement form should be attached to the purchase offer.

While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, any tenants in legal occupancy (including non-residential occupants) are protected by the URA and are eligible for relocation benefits under the URA.

If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of South Dakota.

Step 4. Determine the Value of the Property

A formal appraisal is not required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal. While an appraisal for voluntary transactions is not required, Grantees may still decide that an appraisal is necessary to support their determination of market value. Grantees must have some reasonable basis for their determination of market value.

Step 5. Make Offer

The Grantee shall make a written offer to the owner to acquire the property for the amount determined. There is nothing in the regulations to preclude negotiations resulting in agreements at, above, or even below the Grantee's estimate of market value after the property owner has been so informed. Grantees cannot take any coercive action in order to reach agreement on the price to be paid for the property. When making a written offer to the owner to acquire a property, the notice should include all the following:

- Notification that the Grantee will NOT use the power of eminent domain if an agreement cannot be reached.
- Amount offered which also must inform the property owner of what the Grantee believes to be the market value of the property. The offer amount may be different than fair market value based on negotiations.
- Description, location, and identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.).

The Grantee should discuss the offer to purchase with the property owner, including the basis for the fair market value and offer made.

Step 6. Complete Acquisition or Decide Not to Acquire

The owner should be given a reasonable opportunity to consider the offer and present material that the owner believes is relevant to determining the value of the property and/or to suggest modifications in the proposed terms and conditions of the purchase. Once the property owner has accepted the written offer, an option to purchase agreement may be signed. However, no binding purchase agreements may be signed until the Grantee has received Authority to Use Grant Funds from GOED. (See Chapter 2: Environmental Review) If the local government decides not to acquire a property at any time after the VAN has been sent to the property owner, written notification must be sent to the owner and any tenants occupying the property that the local government does not intend to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payment and assistance. This notice must be sent as soon as possible upon the decision not to acquire (no more than 10 days). The notice must be delivered in a way that verifies receipt (e.g., certified with proof of delivery, federal express, hand delivered with signed receipt).

INVOLUNTARY ACQUISITION PROCESS

For all acquisitions that do not meet the regulatory requirements for the Voluntary Acquisition Process, Grantees must utilize the full process under the URA, known as the Involuntary Acquisition Process.

Step 1: Determine what Properties will be Acquired

The Grantee, with its engineer or attorney, should review every proposed activity to determine property acquisition needs and identify the particular properties to be obtained. Activities such as street widening, water and sewer improvements, or sidewalk construction do not have an obvious property acquisition requirement, but there is often a need to acquire easements or rights-of-way.

Step 2: Determine Ownership of Properties to be Acquired

The Grantee must provide proof of ownership for the easement, land or building by conducting a title search of properties to be acquired for the project. This can be accomplished through a title search. If the owner has acquired the property through a means other than a warranty deed, then the Grantee must obtain either an attorney title opinion letter, or purchase title insurance through a title surety company. Permanent easement ownership may be determined by a search of records and accompanying attorney opinion letter stating the owner of record. In the case of public improvement activities, be sure to verify that the property to be improved is in the public domain. Sometimes rights-of-way are privately owned.

Step 3: Establish a File for Each Property or Easement to be Acquired

The Grantee must establish and maintain a file for each property or easement to be acquired and include copies of all acquisition documents. GOED has provided Form 6-1: Real Property Acquisition Checklist to assist Grantees.

NOTE: If the property to be acquired is tenant occupied, contact GOED prior to sending the Initial Notice to Property Owner to ensure that all HUD/URA Relocation Notices are provided as necessary.

Step 4: Notify Owner of Interest in Acquiring the Real Property or Easement

As soon as feasible, the Grantee shall notify the owner in writing of the Grantee's interest in acquiring the real property or easement and the basic protections provided to the owner by law. The Initial Notice to Property Owner (Form 6-2: Sample Notice to Owner), the HUD brochure, When a Public Agency Acquires Your Property and any applicable Housing and Urban Development (HUD) relocation notice should be delivered to the property owner with proof of delivery. If the forms are hand delivered, a receipt signed and dated by the property owner must be obtained. If the recipient does not read or understand English, the Grantee must provide translations and assistance. Documentation of the proof of delivery must be placed in the Grantee's acquisition file.

Step 5: Determine Value and Obtain Appraisal(s) and/or Market Estimates

Before the initiation of negotiations, the value of the real property or easement should be determined by the Grantee. If the estimate of property value is below $15,000 a market estimate can be obtained in lieu of an appraisal. The market estimate must be in writing and provided by a licensed real estate broker or appraiser. For properties under $15,000 in value, the market estimate is the basis of the offer. If the estimate of property value is above $15,000 the Grantee must have an appraisal and a review appraisal completed by individuals properly licensed by the South Dakota Real Estate Commission. The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The review appraisal should focus on determining the adequacy of the appraiser's supporting data, and the soundness of the appraiser's opinion of fair market value. For properties over $15,000 in value, the Review Appraisal is the basis of the offer. If an owner requests an appraisal of a property that the Grantee has determined to be less than $15,000 in value, an appraisal and review appraisal must be obtained. Regardless of the value of the property, the owner or the owner's designated representative, shall be given the opportunity to accompany the appraiser during the appraiser's inspection of the property. Before the appraisal is undertaken, the Grantee or the appraiser must formally invite the property owner to accompany the appraiser during the inspection of the property. Proof of delivery of the invitation must be obtained.

Step 6: Establish and Offer Just Compensation

Upon completion of Step 5, the Grantee shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation. A copy of the market estimate (for projects under $15,000) or a copy of the review appraisal (for projects over $15,000) should accompany the offer. The offer or appraisal should include the following:

- A statement of the amount offered as just compensation;
- A description and location identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.); and
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such an interest is not covered by this offer.

Step 7: Complete Acquisition or Decide not to Acquire

The owner shall be given a reasonable opportunity to consider the offer and present material that the owner believes is relevant to determining the value of the property and/or to suggest modifications in the proposed terms and conditions of the purchase. The time given can vary significantly depending on the circumstances, but property owners must be given a reasonable amount of time to consider the offer. Once the property owner has accepted the written offer, an option to purchase or option to acquire an easement must be signed. No purchase agreements may be signed until after the Grantee has received Authority to Use Grant Funds from GOED. Until the Grantee has an executed contract with GOED, any executed purchase will be at the Grantee's risk.

EASEMENTS

Temporary and permanent easements are subject to all the same rules as any other acquisition with one exception. The exception is a situation where the easement is for the exclusive benefit of the property owner. For example, if a grantee obtained a temporary easement for parking construction equipment in the yard of the home that is being rehabilitated with CDBG funds, the easement would exclusively benefit the owner and would not be subject to the URA.

Otherwise, the URA applies, **including the trigger date**. For example, if a grantee is installing a new water or sewer line and requires permanent easements from property owners along the path of the line to install the line and ensure access for maintenance and repairs over time, permanent easements will be required and subject to the URA. If a project involved building a water tower that would benefit a low- and moderate-income (LMI) area and a temporary right of way would be required for construction vehicles while it is being built, the purchase of the needed temporary easement would be covered by the URA.

As outlined above, a grantee must obtain an appraisal for any property, including easements, estimated to be worth more than $15,000. For easements worth less than $15,000, the grantee can use Form 6-3: Easement Valuation Form. This form summarizes the information that the grantee must have on file to document the estimated value of the property.

DONATIONS

Donations of property are permitted for most HUD funded projects. However, like all other acquisitions, the process is dictated by whether the acquisition meets the voluntary acquisition requirements at 49 CFR 24.101 (b) or the involuntary acquisition procedures outlined at 49 CFR 24.102. The grantee must first assess whether the acquisition would fit the definition of voluntary or involuntary if it was not a donation. The Grantee must follow the appropriate process with certain modifications listed below.

- Notice: The owner must be fully informed of his or her rights under the URA, including the VAN or Notice to Owner at the earliest possible point in the project. The owner also must be informed of the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the grantee, in writing, from its obligation to appraise the property. GOED has provided Form 6-4: Sample Voluntary Donation of Property a sample form that must "supplement" the required notices under the Voluntary or Involuntary process.
- Property Value: If owner requests either that fair market value be set or just compensation established as applicable, provide that information to the owner. Once informed of the value, the owner can donate the property without having the appropriate value offered. Even in a donation, the property owner has the right to have the value (just compensation or fair market value) established, and then to be offered that amount just so that they can know what they are not accepting.
- Complete Acquisition: If the owner decides to seek a part of the offer, or all of the offer and not a donation after all, that is the owner's choice. The owner must be fully informed and make his or her own decision. Proceed to closing once the owner has agreed to either donate, make a partial donation, or require payment for the property.

If the acquisition would normally be considered involuntary, grantees should follow the acquisition procedures, including the steps to determine just compensation. Adhering to those steps is particularly helpful in case the owner changes his/her mind to either not donate or only partially donate the property.

Also, grantees should avoid giving tax advice that the property amount donated can be used for tax purposes. Instead, if asked, refer the owner to an accountant or the IRS regarding whether a donation can be used for tax purposes

If donations are being made by elderly, very poor, functionally illiterate, or non-English-speaking persons, the local government should carefully document the efforts made to ensure the owner understands their rights in order to demonstrate the owner is not persuaded or coerced into donating their property.

ACQUISITION RECORDKEEPING

List Of Parcels

For each project, the Grantee's files shall include a list identifying all parcels to be acquired for the project. Such a list may be maintained in a computer-generated format that also indicates, for project management purposes, progress made in carrying out the acquisition program.

Acquisition Case File

Acquisition notices, letters and other documents that are mailed are required to be sent by registered or certified mail, return receipt requested. If hand delivered the delivery should be evidenced by signature and date. Form 6-5: Acquisition Composite List must be completed on each CDBG project having any acquisition. A Real Property Acquisition Checklist (Form 6-1) must be completed for each parcel acquired. For each parcel acquired the Grantee files shall include the following:

- ✓ Identification of property and property owner(s)
- ✓ Determination of ownership (fee simple title, tax deed, etc.)
- ✓ If applicable, evidence that owner received a Preliminary Acquisition Notice accompanied by the notice entitled "When a Public Agency Acquires Your Property" with proof of delivery
- ✓ A copy of the valuation for each parcel obtained whether by appraisal or market valuation
- ✓ If applicable, a Statement of the Basis for the Determination of Just Compensation
- ✓ If applicable, a copy of the written purchase offer and proof of delivery
- ✓ If applicable, as in the case of a donation, a Property Donation Waiver
- ✓ Copy of a Contract of Sale or Act of Donation
- ✓ Copy of a Statement of Settlement Costs and evidence (via a copy of a cancelled check) that the owner received net proceeds (if applicable) due from sale
- ✓ Copy of recordation
- ✓ If applicable, a copy of an appeal or complaint filed and agency response

APPEALS

Grantees must promptly review all appeals in accordance with the requirements of 49 CFR 24.10. Grantees must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations. Refer to Chapter 1: General Requirements for information on grievance procedures.

SECTION 104(D) ONE-FOR-ONE UNIT REPLACEMENT

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing.

24 CFR 42.375(a) states that: "All occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units in connection with an assisted activity must be replaced with comparable low income dwelling units."

Before a grantee executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low- and moderate-income dwellings units or the conversion of low- and moderate-income dwelling units to another use, the grantee must contact GOED for instructions and approval.

RELOCATION ASSISTANCE REQUIREMENTS

The relocation assistance provisions of the URA and Section 104(d) of the Housing and Community Development Act are applicable to homeowners, tenants, businesses and non-profits that must move as a result of an acquisition. Such homeowners and tenants are considered displaced persons. If the project involves displacement of the owner or tenant, please contact the CDBG Program Manager **immediately** before proceeding with the acquisition process. HUD Handbook 1378, Chapter 5, is a valuable resource for acquisition information regarding relocation requirements under the URA and 104(d) of the Housing and Community Development Act.

The handbook is available on HUD's website at:

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

The URA regulations can also be downloaded from the Electronic Code of Federal Regulations (ecf.gov) at: https://www.ecfr.gov/current/title-49/subtitle-A/part-24

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1.0	8/21/24	• Initial Release	S Deyo
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CDBG GRANT ADMINISTRATION HANDBOOK

Updated May 2026

Chapter 7 – Reporting and Recordkeeping

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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GRANTEE REPORTING

INTRODUCTION

It is important that the grantee fully documents compliance with all applicable regulations. This is accomplished through maintaining comprehensive records and submitting all necessary reports.

The filing system should be easy to use and provide a historic account of activities for examination and review by the State, auditors and local staff. All records must be available to the following entities upon request:

- U.S. Department of Housing and Urban Development,
- The U.S. Inspector General,
- The U.S. General Accounting Office,
- The Governor's Office of Economic Development, and
- The South Dakota State Auditor.

These entities must have access to any pertinent books, records, accounts, documents, papers, and other property that is relevant to the grant. Certain records must be available to the public as well. However, Grantees must keep files that contain sensitive and personally identifiable information, such as social security numbers, in a secure place. South Dakota statutes regarding public records and requests can be found on the South Dakota Legislative Research Council webpage, SDCL ch. 1-27.

SEMI-ANNUAL REPORTING

Form 7-1: Semi-Annual Report will be used to assess program progress, timeliness and compliance with federal regulations. These reports are vital because they provide the Governor's Office of Economic Development (GOED) with information that is required to be provided to the U.S. Department of Housing and Urban Development (HUD). Therefore, all reports must be submitted on time and accurately.

Reporting Period	Due Date
Jan 1 – June 30	July 15
July 1 – December 31	January 15

The twice-yearly reporting requirement begins with the first report deadline after the Grantee submits their first draw request and continues until the Grantee has submitted a Form 7-1: Semi-Annual Report marked "FINAL" along with closeout documents. GOED has provided a sample completed form as Form 7-1a: Semi-Annual Report Form (Sample) on the website.

Payment Requests will not be processed, and no additional funds will be awarded if Semi-Annual Reports are delinquent. Per the Technical Assistance and Program Administration Contract Planning Districts may be subject to financial penalties for failure to meet the submission deadline.

LABOR STANDARDS REPORTING

The Grantee is responsible for submitting all required Labor Standards reports as described in Chapter 5: Labor Standards of this manual and listed below:

- Form 5-9: Section 5.7 Enforcement Reports, if applicable
- Form 5-10: Semi-Annual Labor Standards Enforcement Report

Per the Technical Assistance and Program Administration Contract Planning Districts may be subject to financial penalties for failure to meet the submission deadline as described in Chapter 5.

FINANCIAL REPORTING

The Grantee is required to submit Form 4-3: Interim Financial Statements throughout the project and Form 4-4: Final Financial Statement at project completion.

Form 4-3: Interim Financial Statements are due for every calendar year in which project expenditures were incurred. This includes both CDBG as well as all local expenditures. The interim statements are required to be sent to the Governor's Office of Economic Development (GOED) no later than January 31 of each year.

Form 4-4: Final Financial Statement should be submitted to GOED within 30 days of the Grantee receiving the Monitoring Summary Letter.

Per the Technical Assistance and Program Administration Contract Planning Districts may be subject to financial penalties for failure to submit Interim Financial reports by January 31st.

GRANTEE RECORDKEEPING

MAINTAINING RECORDS

Grantees must establish a system for record keeping that assists GOED with the review of files for compliance. In other words, records should be kept in a manner that clearly tells the whole story of a Community Development Block Grant (CDBG) project from beginning to end. **The Grantee is responsible for maintaining all records pertinent to a grant, including supporting documentation, for three years from the date the State closes the program year from which the grant funds were awarded with HUD.**

Because this required record retention period could exceed ten years, GOED will notify Grantees when a program year has been closed with HUD and include the end date of the record retention period.

GOED suggests that the following procedural guidelines be considered when designing your filing system:

- Separate files should be maintained for each CDBG grant award.
- Files should be coded for each area of compliance to allow for easier access.
- Responsibility for file-keeping should be delegated to a specific individual to provide consistency.
- Files should be secured at all times.

Files should be maintained for each compliance area listed in bold font below. All applicable documentation should be located within that file.

This list is not all-inclusive; therefore, Grantees should refer to applicable laws and regulations as well as the other chapters of this manual for more information.

Application File

- Copy of application to GOED
- Copy of executed Grant Agreement
- Authorized Signature for Request for Payment form
- Approved Financial Plan and Budget (and revisions)

National Objectives

Grantees must maintain records that funded activities meet one of the national objectives. Depending on the objective, the files must contain the specific documentation below. This documentation can also be used in reporting performance measures information.

- Low/Mod Area Benefit
    - Boundaries of service area
    - Census data including total persons and percentage low/mod
    - Evidence area is primarily residential
    - Survey documentation, if applicable (see Conducting LMI Area Income Surveys V2)

- Low/Mod Limited Clientele
    - Applications/In-take documents for ALL applicants for benefits (including any rejections)
    - Income self-certification for all beneficiaries, if applicable
    - Documentation that the activity is restricted to one or more presumed group, if applicable
    - Documentation that the beneficiaries are at least 51% low- to moderate-income persons

- Low/Mod Housing
    - Owner Occupied Rehab
        - Income verification of households (using the Section 8 definition) including source documentation
        - Documentation that 100% of all households are low- to moderate-income (single family)
        - Work write-ups with Cost Estimates
        - Documentation of Contractors/Subcontractors bids/proposals
        - Contractor Contracts with Homeowners
        - Contractor Insurance documentation
        - SHPO letters per house (see Environmental Review Record file below)

        - Inspection Report per house
        - Hazardous Materials Inspections (radon, mold, asbestos, etc.)
        - Documentation of Lead Based Paint requirements (determination, testing, contracts, certifications, notices, etc.)
    - Single Family Rental Rehab
        - All documentation required above
        - Contracts with landlords defining affordable rent period, affordable rents
    - Multi-Family Rehab
        - Income verification of households (using the Section 8 definition) including source documentation
        - Documentation on Procurement (see Procurement file below)
        - Documentation that at least 51% of all households are low- to moderate-income (multi-family)

- Low/Mod Job Creation and Retention
    - Number of jobs prior to CDBG assistance (payroll documentation)
    - Total number of jobs created or retained (by job classification or title)
    - Self-certification of income for all persons benefiting from the jobs created or retained
    - Documentation that at least 51% of all persons benefitting from jobs created or retained are low- to moderate-income
- Slum and Blight
    - Area designation (e.g., boundaries, evidence area meets State slum/blight requirements)
    - Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans)
    - Documentation of official municipal designation of blighted area or property
    - If applicable, evidence that the property meets spot designation requirements (e.g., inspections)
- Urgent Need
    - Documented evidence of a threat to health and safety of the public
    - Documentation of recent origin (within previous 18 months)
    - Certification that other financing resources were unavailable and CDBG had to be used (including ability to borrow, etc.)

Citizen Participation File

- Affidavit of the Notices of Public Hearings
- Minutes from the public hearings
- Citizen outreach techniques, including evidence of marketing effort for direct benefit activities such as housing rehabilitation
- Citizen complaints and relevant correspondence, if applicable

Environmental Review Record (ERR)

- For all projects:
  - Scope of Work for Project/Activity
  - Copy of any environmental studies (e. g. archaeological surveys, etc.)
  - Copy of all maps and drawings
  - Photographs of the project site
  - HUD Worksheets for Compliance with 58.5 and 58.6, as applicable (see Form 2-3)
  - Form 2-12: Re-evaluation of Environmental Review, if applicable
- Exempt and CENST Activity Project Classification
  - HUD Worksheets for Compliance with 58.5 and 58.6, as applicable (see Form 2-3)
  - Form 2-2: Environmental Review For Activities that are Exempt or Categorically Excluded, Not Subject to 58.5
- Categorically Excluded Projects Subject To
  - HUD Worksheets for Compliance with 58.5 and 58.6, as applicable (see Form 2-3)
  - Photos of the project site
  - Form 2-4: Environmental Review for Activity/Project that is Categorically Excluded, Subject to 58.5
  - Copy of all Consultation letters and responses
  - Copy of the Notice of Intent to Request Release of Funds (NOI/RROF) advertisement (see Form 2-5)
  - Copy of Publishers Affidavit for NOI/RRO
  - Copies of any letters received in response to the NOI/RROF
  - Copy of Floodplain Process documentation (if applicable)
    - Form 2-9: Floodplains and Wetlands Early Public Notice
    - Form 2-10: Floodplains and Wetlands Notice of Explanation
    - Publishers Affidavit for Flood Notices
  - Form 2-6: Request for Release of Funds and Certification
  - Authority to Use Grant Funds from GOED (Form 2-14)

- Environmental Assessment
    - HUD Worksheets for Compliance with 58.5 and 58.6, as applicable (see Form 2-3)
    - Photographs of the project site
    - Form 2-7: Part 58 Environmental Assessment Form
    - Copy of all Agency/Interested Parties Consultation letters
    - Written determinations from relevant agencies (SHPO, DEP, Wetlands, etc.)
    - Copy of Floodplain Process documentation (if applicable)
        - Form 2-9: Floodplains and Wetlands Early Public Notice
        - Form 2-10: Floodplains and Wetlands Notice of Explanation
        - Publishers Affidavit for Flood Notices
    - Form 2-8: Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Funds
    - Copy of Publishers Affidavit for Combined Notice of FONSI and NOI/RROF
    - Form 2-6: Request for Release of Funds and Certification
    - Authority to Use Grant Funds from GOED (Form 2-14)

Civil Rights

- Documentation of completion of the required Fair Housing Action Steps
- Demographic statistics on all beneficiaries and denied applicants of site-specific activities (i.e., housing rehab)
- Documentation that contractors complied with the Civil Rights requirements as explained at the pre-construction conference
- Documentation of all other efforts to affirmatively further fair housing (refer to Form 1-8)
- Documentation of compliance with the requirements under Section 504 of the Rehabilitation Act of 1973, as amended

Financial

- Copies of all Vendor Invoices
- Copies of all Requests for Payment (Form 4-1)
- Copies of all Requests for Amendment, if applicable (Form 4-2)

- Copies of all Interim Financial Reports (Form 4-3)
- Copy of Final Financial Report (Form 4-4)
- General Ledger
- Bank Statements
- Personal Property Inventory Ledger, if applicable (Form 8-4)
- Real Property Inventory Ledger, if applicable (Form 8-5)

Procurement

- All Procurements utilizing CDBG funds:
    - Independent Cost Estimates for all procurements (refer to Form 3-10)
    - Micro/Small Purchase
    - Copy of Request for Quotation (RFQ) (email, telephone notes, etc.)
    - Documentation of all quotes received
    - Justification of selection
- RFP/RFQ
    - Copy of the Request for Proposal (RFP) or Request for Qualifications (RFQ)
    - Publishers Affidavit for the RFP/RFQ newspaper advertisement
    - List of companies who submitted Statements of Qualifications or Proposals
    - All RFP/RFQ evaluation and scoring documents
    - List of short-listed firms and documentation of interview process, if applicable
    - Short-listed firms evaluation and scoring documents, if applicable
- **Sealed Bid**
    - Copy of Invitation for Bid (IFB)
    - Publishers Affidavit for IFB newspaper advertisement
    - Documentation of good faith effort to utilize MBE/WBE firms
    - Minutes from the public bid opening

- Copy of the bid tabulation sheet, certified by the project architect/engineer
- Contractors/Subcontractor Section 3 Workforce Reports (Form 3-8)
- Section 3 Final Labor Hours Compliance Report (Form 3-9)
- BABA Certification forms from all contractors/subcontractors (Form 3-4)
- BABA Materials Certification Form (Form 3-5)
- Certification Regarding Debarment (Form 3-1)

Contract Development

- **Professional Services**
  - Copy of executed Contract(s) with the required federal contract provisions (Form 3-3)
- **Construction – Related Services**
  - Copy of Contract with the required federal contract provisions (Form 3-3)
  - Copy of the Bid Guarantee
  - Copy of the Performance Bond
  - Copy of the Payment Bond
  - Copy of contractor(s) insurance policy
  - Proof of the established Retainage Account (if applicable)
  - Documentation on all Change Orders

Audit File

- Copy of Audit Reports for all years CDBG funds were expended
- Responses to Audit Findings (if applicable)

Acquisition and Relocation Files

- **Acquisition -** A separate file must be maintained for each property acquired and must include:
  - Property owner name and address
  - Address of property to be acquired
  - Documentation of Title Seach

- Copy of market estimate on property valued under $15,000.00
- Preliminary Acquisition Notice to Owner Invitation to the owner to accompany appraiser Appraisal Reports
- Copy of Appraisal, when applicable
- Copy of Appraiser's identification Card (when applicable)
- Copy of Review Appraisal, when applicable
- Copy of written purchase offer
- Executed Purchase agreement
- Copy of donation/waiver forms (if applicable)
- Copy of filed deed

- **Relocation -** A separate file must be maintained for each household relocated and must include:
  - A household survey, which should include the names, ages and demographic information of the household to be relocated
  - A description of the nature of the advisory services offered, including the dates they were offered and any brochures or pamphlets explaining their rights
  - Evidence of correspondence concerning the rights and payments available to displaced persons
  - 90day advance Relocation Notice (and evidence of delivery)
  - 30day Displacement Notice (and evidence of delivery)
  - Evidence of at least three referrals to comparable units
  - Inspection report on referral units
  - Documentation on the type of payment made
  - Evidence that payment was made (canceled check or the like)

Labor Standards

- Copy of Appropriate Wage Determination
- Copy of Invitation for Bid
- Copy of Publishers Affidavit for IFB Advertisement
- Copy of construction plans and specifications with appropriate labor standards documentation attached

- Copy of Pre-Bid Conference Sign-in sheet (if applicable)
- Copy of the Notice of Contract Award
- Copy of the construction-related contract(s) with the HUD 4010 form and Federal Construction Contract Provisions referenced or attached (Form 3-3) (contracts may be filed with Contract as seen above)
- Copies of Form 5-4: Request for Additional Classifications, if applicable
- Copy of the Preconstruction Conference Checklist (Form 5-8)
- Copy of contractor(s) fringe benefit programs
- Copy of any apprenticeship certification programs, if applicable
- Copy of Contractor(s) Certification form
- Copy of Subcontractor(s) Certification forms, if applicable
- Copy of all weekly certified payroll reports for contractor(s)/subcontractor(s)
- Copy of all employee interviews (Form 5-6 and/or Form 5-7)
- Documentation of any wage deficiencies and copies of restitution payments (if applicable)
- Copy of the Final Inspection/Project Completion report

Reporting File

- Copies of all Semi-Annual Labor Reports (Form 5-10)
- Copy of Enforcement Reports, if applicable (Form 5-9)

Monitoring/Closeout File

- Form 8-2: Project Monitoring/Administrative Closeout
- GOED monitoring letters (Form 8-3)
- Evidence of corrective actions in relation to GOED findings (if applicable)
- Acceptance of Work, for construction Projects (Form 8-6)

REVISION HISTORY

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CDBG GRANT ADMINISTRATION HANDBOOK

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Chapter 8 – Monitoring and Closeout

South Dakota Community Development Block Grant Program

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

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GRANTEE MONITORING

INTRODUCTION

Grantees under the South Dakota Community Development Block Grant (CDBG) program are responsible for selecting, planning, and administering their CDBG projects and activities in accordance with the Federal and State statutory and regulatory requirements set forth in the grant contract executed between the State and the Grantee. The Governor's Office of Economic Development (GOED) has the responsibility to ensure that Grantees are carrying out their projects in accordance with these requirements.

GOED will provide maximum feasible delegation of responsibility and authority to Grantees under the CDBG program. To this end, GOED will help Grantees identify problems in project implementation and will assist in identifying possible causes and corrective measures. GOED monitoring of CDBG Grantees will be conducted in a positive, assistance-oriented manner. Whenever possible, deficiencies will be rectified through constructive discussion, negotiation, and assistance, and in a manner which preserves local discretion.

A project monitoring session will be conducted at the conclusion of the project after closeout documentation has been received at the GOED office.

PURPOSE OF MONITORING

The purpose of monitoring is to determine whether Grantees have:

- Carried out their CDBG project activities as described in their applications and/or contracts;
- Carried out their project activities in a timely manner, in accordance with adopted project schedules;
- Charged costs to the projects which are eligible under applicable regulations;
- Complied with the requirements and primary objectives of the CDBG program and other applicable laws, and with the terms of the contract;
- Conducted the program in a manner that minimizes the opportunity for fraud, waste and mismanagement; and
- Had a continued capacity to carry out community development activities in a timely manner.

Monitoring is also intended to assist Grantees in improving performance, developing self-reliance, and increasing management capacity.

TYPES OF MONITORING

This office may conduct up to two types of monitoring: desk monitoring, and project monitoring.

Desk Monitoring

Desk monitoring is an ongoing process in which the project administrator responsible for overseeing the Grantee's project uses all available information to review the Grantee's performance in carrying out the approved project. Among the sources of information available for desk review and analysis are:

- The grant contract and application.
- The Grantee's financial reports and drawdown requests.
- The Grantee's submissions related to the environmental clearance process.

- Audit reports and Grantee responsibilities.
- On-site monitoring reports and Grantee responses.
- Citizen complaints.
- Information supplied by other Federal and State agencies.

Analysis of this and other appropriate information may result in follow-up with the Grantee regarding any problem areas identified and/or may result in an on-site technical assistance visit or on-site monitoring visit in order to more thoroughly review identified problem areas.

Project Monitoring

Project monitoring is a structured review conducted by the project administrator regarding project activities that have been carried out and/or where project records are maintained. **GOED will utilize Form 8-1: CDBG Monitoring Checklist for project monitoring.**

Project monitoring may be conducted on-site or virtually via Zoom or Microsoft Teams. The documents as shown in the CDBG Monitoring Guide are required to be presented during the monitoring session. For virtual sessions: documents may either be shown in the camera, through screensharing, or via document sharing link from sites such as DropBox or SharePoint. For on-site sessions: please have the physical file available. The State will give reasonable notice prior to each upcoming monitoring session.

Please note: On-site visits by staff that do not involve use of these monitoring guides/checklists are technical assistance visits, not project monitoring visits.

FREQUENCY AND TIMING OF PROJECT MONITORING

Every grant will receive a Desk Monitoring and a Closeout Monitoring. Additional reviews may be triggered by indications of noncompliance found by office staff while conducting desk or other monitoring. Grantees may be selected for additional reviews in certain compliance areas based on the likelihood and consequences of noncompliance in carrying out their specific project activities.

In some cases, it may be necessary to conduct reviews in certain performance and compliance areas (e.g. Eligibility of Activities, National Objectives, Environmental Review, etc.) more than once during the course of a project. The following should be considered in determining whether more frequent reviews may be necessary:

- Known or potential problems, e.g., previous monitoring findings, audit findings, citizen complaints, and slowness in use of funds.
- The extent of the Grantee's previous experience with the CDBG program.
- The type, number, scale and complexity of project activities.
- The extent to which subcontractors are used in carrying out project activities.
- The extent to which program income, if any, is generated.

PROJECT MONITORING PROCEDURES

Triggering the Project Monitoring

Once the Grantee has completed all grant activities and expended all funds, they may initiate the closeout process. The project cannot be closed out until the activities undertaken with grant funds are completed and

beneficiaries are served. The Grantee will begin the closeout process by submitting Form 8-2: Project Monitoring/Administrative Closeout Certification to the CDBG Program Manager. The Grantee MUST submit this form to initiate closeout **within 60 DAYS of the final draw**. The monitoring visit will be scheduled for no later than 60 days after receipt of Form 8-2. GOED will make every effort to accommodate the Grantee's and Planning District's when scheduling the monitoring visit.

During the Project Monitoring Session

When conducting a project monitoring session, the project administrator is expected to:

- Discuss the purpose, scope, and schedule for the visit;
- Discuss the current status of CDBG project activities;
- Utilize Form 8-1: CDBG Project Monitoring Checklist and examine on a sample basis, the Planning District's records;
- Visit/inspect project site(s), when appropriate;
- Discuss any discrepancies among data and information from reports, files examined, interviews, inspections, and other sources; and
- Discuss the positive and negative findings of the monitoring session and advise them of post-monitoring procedures.

POST MONITORING PROCEDURES

The monitoring session will conclude the project file. Upon satisfactory compliance review of the project file, the CDBG program manager will sign and issue the Monitoring Summary Letter to the Grantee. If the project file is incomplete, the Grantee must submit all required documents to GOED **within 10 business days**. A sample monitoring letter has been provided as Form 8-3: Sample Monitoring Summary Letter. All documentation and correspondence related to the monitoring visit must be placed in the project file.

Monitoring Findings

If the project administrator finds the Grantee noncompliant with State and Federal regulations, the Grantee will be issued a letter requiring corrective action(s) along with a deadline for completion for document submission and additional information, as necessary.

Per Section A.5. of the Grant Agreement, the State has the authority to apply remedies, including but not limited to temporary withholding payments, disallowances, suspension or termination of the federal award, suspension of other federal awards received by Grantee, debarment, or other remedies including civil and/or criminal penalties as appropriate.

Follow-up Action

If the Grantee fails to meet a target date for any required corrective action:

- The Grantee will be contacted by telephone and reminded of the need for action;

- If there is no response within seven calendar days of the telephone reminder, a written reminder will be sent to the Grantee; and
- Upon notice to the Grantee, remedies such as repayment of the CDBG grant funds, suspension of other federal awards received by Grantee, debarment, or other remedies including civil and/or criminal penalties as appropriate.

The Grantee's proposed corrective action will be reviewed by the GOED. If the review indicates that the corrective action was less than satisfactory, a letter will be sent to the Grantee which specifies additional action which is needed and the due date.

A new due date may be established subject to good faith efforts by the Grantee to resolve the findings. A follow-up visit may be necessary to verify corrective action or to provide technical assistance in resolving or correcting the problem.

When all reviews of documentation indicate satisfactory Grantee corrective action, a final monitoring letter will be sent stating that the findings are resolved.

NOTE: Per the Technical Assistance and Program Administration Contract Planning Districts may be subject to financial penalties for non-compliance with CDBG grant administration requirements.

CLOSEOUT PROCESS

When the Grantee receives a final monitoring letter, with no unresolved findings, the letter will indicate that the Grantee may submit their "closeout documents ".

Step 1: Submit Closeout Documents

The following closeout documents must be submitted to GOED within 30 DAYS of receipt of a Monitoring Summary Letter, with no unresolved findings:

- Form 4-4: Final Financial Statement
- Form 7-1: Semi-Annual Report Form (marked Final)
- Personal Property Inventory Ledger, if applicable (Sample provided as Form 8-4)
- Real Property Inventory Ledger, if applicable (Sample provided as Form 8-5)
- Acceptance of Work, for construction Projects (Sample provided as Form 8-6)

Step 2: GOED Closeout Approval

After the closeout documentation has been reviewed and approved, GOED will send the Grantee a closeout letter.

Administrative Closeout

Notice of Administrative Closeout will be issued when all activities are complete, all funds are expended or returned, the National Objective was met, and any findings have been resolved – but GOED is awaiting receipt and approval of all audit(s) covering the grant expenditure period. See Chapter 4: Financial Management.

NOTE: The purpose of a conditional closeout is to have the Subgrantee acknowledge, by the signature of its authorized local official, that the grant is being closed out pending the submission of a Single Annual Audit, if required, and that it will comply with all audit requirements associated with receiving CDBG funds from the State.

Final Closeout (Certificate of Completion)

The **Certificate of Completion** will be sent when all activities are complete, all funds are expended or returned, the National Objective was met, and all audits covering the grant expenditure period have been received with no unresolved findings.

Step 3: Record Retention

Files must be maintained by the Grantee until notified by GOED that the program year, from which they received funds, has been closed with HUD. (24 CFR 570.490(d)). More detailed information can be found in Chapter 7: Reporting and Recordkeeping.

NOTE: The GOED reserves the right to re-open the grant and recover CDBG funds if the final audit identifies any findings not consistent with the Grant Agreement or shows any other discrepancies.

Change of Use Restrictions

The CDBG regulations contain provisions regarding changing the use of real property within the grantee's or subrecipients' control that was acquired or improved, in whole or in part, with CDBG funds. These provisions require that the property be maintained for the original eligible use and continue to meet a national objective for at least five years after the grantee has received a signed Notice of Administrative Closeout from GOED.

If the project involved acquisition or improvement of real property using CDBG funds in excess of $350,000 (the current Simplified Acquisition Threshold), during the five years following receipt of a signed Notice of Administrative Closeout:

- A grantee may not change the use or planned use of any such property from that for which the acquisition or improvement was made, unless GOED and grantee provide affected citizens with reasonable notice of and opportunity to comment on any proposed change.
- The grantee must have a security document that references the use restrictions (See Form 8-xx:Sample Use Restriction).
- The new use of the property must qualify as meeting one of the national objectives and is not a building for the general conduct of government.

However, if GOED and the grantee determine, after consultation with affected citizens, that the reuse of the property is deemed appropriate but is not a CDBG eligible activity and does not meet a national objective, it may retain or dispose of the property for the changed use. GOED will require reimbursement in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

Following the reimbursement to GOED for the CDBG program, the property no longer is subject to any CDBG requirements.

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Revision	Date	Description of changes	Approved By
1.0	8/21/24	• Initial Release	S Deyo
2.0	5/22/26	• Updated links throughout document • Updated Change of Use Threshold per revised 24 CFR 570.489(j) and 48 CFR 2.101 • Updated Form 8-2: Project Monitoring / Administrative Closeout with the required certification clause per 2 CFR 200.318	S Deyo