



# Implementation Manual

**Version #19**

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**TEXAS GENERAL LAND OFFICE**  
**Community Development and**  
**Revitalization Department**

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# RECORD OF CHANGES

This section describes changes made to this document.

Version	Date	Description
1	04/12/2019	Initial Draft
2	06/30/2020	Updated content in Chapters: <ul style="list-style-type: none"><li>• 1—Introduction</li><li>• 5—Procurement</li><li>• 15—Audit Requirements</li></ul>
3	3/17/2021	Refreshed content throughout manual and resources and included CDBG-MIT information
4	8/17/2021	Updated content in Chapter 9—Labor Standards and Davis-Bacon
5	10/1/2021	Updated content in Chapters: <ul style="list-style-type: none"><li>• 5—Procurement</li><li>• 6—Environmental</li><li>• 14—Contract Closeout</li><li>• 15—Audit Requirements</li><li>• 17—Housing Guidelines</li><li>• 18—Planning, Economic Development &amp; Public Services</li></ul>
6	11/1/2021	Updated links throughout manual due to GLO-CDR website migration
7	1/31/2022	Updated content in Chapter 6—Environmental due to December 2021 policy changes; placeholder with resources added
8	2/2/2022	Updated content in Chapter 5—Procurement
9	2/16/2022	Updated content in Chapter 18—Planning, Economic Development, & Public Services due to AFFH requirements

<b>10</b>	5/16/2022	<p>Updated content in Chapters:</p> <ul style="list-style-type: none"> <li>• 8—Acquisition, Buyouts, &amp; Relocation</li> <li>• 9—Labor Standards &amp; Davis Bacon</li> <li>• 10—Force Account Labor</li> <li>• 14—Monitoring and Quality Assurance</li> <li>• 15—Audit Requirements</li> <li>• 17—Housing Guidelines</li> <li>• 18—Planning, Economic Development &amp; Public Services</li> <li>• Appendix A—Definitions</li> <li>• Appendix B—Acronyms</li> </ul>
<b>11</b>	11/15/2022	<p>All chapters: Refreshed resources, links, and updated new branding requirements.</p> <p>Updated content in Chapters:</p> <ul style="list-style-type: none"> <li>• 1—Introduction</li> <li>• 4—Financial Management</li> <li>• 5—Procurement</li> <li>• 6—Environmental</li> <li>• 7—Contract Special Conditions</li> </ul>
<b>12</b>	6/1/2023	Updated content in Chapter 10—Force Account Labor
<b>13</b>	8/22/2023	Updated content in Chapter 9—Labor Standards & Davis Bacon (DOL overtime penalty change and updated LSR form)
<b>14</b>	2/27/2024	Updated content in Chapter 8—Acquisition, Buyouts, & Relocation
<b>15</b>	7/12/2024	Updated content in Chapter 9—Labor Standards & Davis Bacon
<b>16</b>	02/24/2025	Updated branding and links in Chapters 1, 9, 11, 15
<b>17</b>	03/15/2025	<p>Updated branding and links in all Chapters due to the new GLO website and changes to federal websites</p> <ul style="list-style-type: none"> <li>• 9—Labor Standards &amp; Davis Bacon (clarification added regarding liquidated damages / DOL overtime penalty rates)</li> <li>• 14—CDR Compliance (Chapter name changed from Monitoring and Quality Assurance to reflect GLO organization changes)</li> </ul>

<b>18</b>	06/30/2025	Updated content in Chapters: <ul style="list-style-type: none"><li>• 5—Procurement (Clarification to Noncompetitive Procurement Procedures)</li><li>• 15—Audit Requirements (Updates to Single Audit; Audit Certification Form)</li></ul>
<b>19</b>	04/16/2026	Updated content throughout Chapter 5—Procurement

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## LIST OF CHAPTERS

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Chapter 9	<a href="#"><u>Labor Standards and Davis-Bacon</u></a>
Chapter 10	<a href="#"><u>Force Account Labor</u></a>
Chapter 11	<a href="#"><u>Civil Rights</u></a>
Chapter 12	<a href="#"><u>Contract Amendments &amp; Revisions</u></a>
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Appendix A	<a href="#"><u>Definitions</u></a>
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The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 1—INTRODUCTION

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## CHAPTER 1—INTRODUCTION

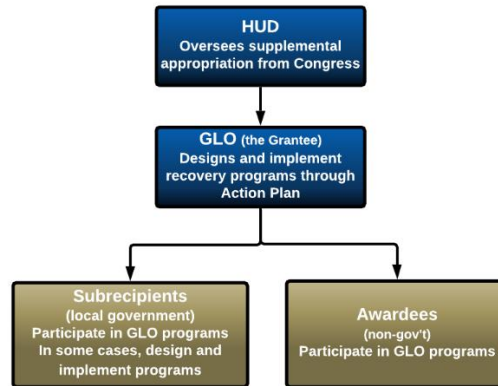
The Community Development Block Grant-Disaster Recovery (“CDBG-DR”) Program is authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), as amended and, in the event of a Presidentially declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S. 5121 *et seq.*), provides the vehicle through which Congress may appropriate funding to aid disaster impacted areas in the recovery process. The U.S. Department of Housing and Urban Development (“HUD”) is the federal authoritative agency for these Congressionally allocated CDBG-DR funds and promulgates the specific rules to govern each of those allocations.

In 2011, the Governor of Texas designated the Texas General Land Office (“GLO”) as the lead state agency to provide the administration of CDBG-DR grant programs. The Community Development and Revitalization department of the Texas General Land Office (“GLO-CDR”) oversees the administration of CDBG-DR funds allocated to Texas by HUD following a disaster.

To distribute CDBG funds and ensure the intent of Congress is met, HUD may divide the funds among states, territories and individual communities and issues specific regulations that ensure their equitable usage and provides management rules to safeguard the taxpayer’s money. HUD does this through a Federal Register Notice. Once this notice is published, the local entity, in this case the GLO, drafts an Action Plan which further breaks down the fund allocation into specific programs, and possible subrecipients, translates the federal register rules, and describes how the funds are to be spent in a manner that is applicable to the needs of the communities in Texas. The Action Plan must be made available for public comment, all comments considered, edited to account for all changes made during the public comment period and then submitted to HUD for final approval. Once HUD has approved the Action Plan, they will initiate a grant agreement with the GLO to begin funding grant programs. This Implementation Manual is the tool GLO-CDR uses to implement the nuts and bolts of administering CDBG-DR programs identified in the Action Plan.

Should conditions require it, the Action Plans can be changed through an amendment process. This process is similar to Action Plan development process and requires public comment, addressing all public comments, and HUD approval. The graphic below portrays the overall process.

## Basic Steps of the CDBG Process



In a new twist to the CDBG-DR program, Congress has decided to devote significant resources to mitigating the effects of disasters before they happen by funding the implementation of structural and non-structural programs and partnerships throughout the State of Texas. Congress is accomplishing this by appropriating funds in a new program, Community Development Block Grant-Mitigation (“CDBG-MIT”). The GLO is the state’s lead agent in administering the CDBG-MIT program in Texas. On August 30<sup>th</sup>, 2019, HUD announced via a Federal Register notice the allocation of \$4,297,289,000 dollars to the State of Texas as part of the Supplemental Appropriations for Disaster Relief Requirements Act, 2019 Public Law 115-123 in response to 2015, 2016, and 2017 disasters. CDBG-MIT is organized similarly to the CDBG-DR programs, to include the Action Plan process. There are significant program differences, however. For details on each program please refer to the individual Action Plans found at [Action Plans | Texas General Land Office](#) (see [Resources](#)—**Resource 1.1** at the end of the chapter).

According to the Federal Register Notice (84 FR 45838, August 30, 2019) The CDBG-MIT program seeks to: 1) support data-informed investments in high-impact areas; 2) build the capacity of states and local governments to evaluate disaster risks; 3) support the implementation of policies that reflect local and regional priorities that will have long-lasting effects on community risk reduction; and 4) maximize the impact of available funds from other sources.

In each section and chapter of this implementation manual, any CDBG-MIT specific guidance will be addressed at the beginning of each chapter. This is done to make it easier for our partners to find the MIT specific information.

### 1.1 Purpose

This Implementation Manual is intended to provide guidance and training for entities identified as subrecipients (local entities that receive a CDBG-MIT or CDBG-DR grant through or overseen by the GLO) of CDBG-DR and/or CDBG-MIT grant allocations. The Manual outlines the policies and procedures to ensure effective implementation of a CDBG-DR and/or CDBG-MIT program within the requirements for timely expenditure of funds.

It is the responsibility of each recipient of CDBG-DR and/or CDBG-MIT funds to understand the federal and state requirements that apply to these funds and to adhere to them. It is important to thoroughly read this manual and the referenced regulations, Federal Registers, Action Plans, and guidance documents prior to implementing a program. Subrecipients must carry out proper and efficient grant administrative practices. Each federal register notice has its own unique set of rules; therefore, it is imperative to ensure that each recipient and subrecipient adhere to the Action Plan for each specific allocation.

## 1.2 Manual Structure

Each chapter describes the tasks to accomplish CDBG-DR and/or CDBG-MIT activities. Throughout each chapter supporting materials (forms, documents, letters, checklists) may be referenced or provided to assist with implementation. These will be listed at the end of each chapter in [Resources](#). It should be noted that supporting materials are periodically updated and GLO-CDR staff should be consulted to verify the most recent version.

This manual shall remain available on the GLO-CDR website so interested parties may easily search for terms, rules, procedures, and forms needed to implement activities. It will be periodically updated, and no print versions will be available. The online version is the definitive copy.

During the grant lifecycle each subrecipient, those who have applied for and received funding for a project, will be assigned a GLO-CDR Grant Manager, a GLO specialist in managing CDBG programs, and given the Grant Manager's contact information. Grant Managers will conduct regular meetings and on-site visits, if safety allows. They serve as the main point of contact for the subrecipients. The GLO-CDR Grant Manager shall be available to answer any questions and receive all requests related to the administration of the grant. Subrecipients will also be given back-up contact information when their Grant Manager is unavailable.

Subrecipients may request the name and contact information for their assigned Grant Manager by contacting GLO-CDR by phone at 1-844-893-8937 or by email at [CDR@recovery.texas.gov](mailto:CDR@recovery.texas.gov).

Please note that certain chapters and sections within the Manual and the supporting documents provided in [Resources](#) may not apply to every activity or program. Subrecipients should contact their assigned GLO-CDR Grant Manager with questions regarding specific requirements.

## 1.3 Application and Project Eligibility

Subrecipients are required to submit an application for funding to the GLO for their allocated CDBG-DR or CDBG-MIT funding prior to the execution of a grant agreement. Additionally, the GLO may administer some programs directly and, as a result, solicit for certain services via the state procurement process. Subrecipients may receive funds via an application process, through methods of distribution via the Councils of Governments, or through a competition. The process for funding will be available on the GLO-CDR website, as well as, through the monthly calls with local officials and other GLO-CDR publications. Applicants may request technical assistance during the application phase to facilitate successful completion of an application. The application

establishes and documents, among other items, meeting National Objectives (which can be found in the relevant Action Plan and in the Housing and Community Development (“HCD”) Act of 1974 (12 U.S.C. 1706e), project beneficiaries, tie-back to the disaster event, Duplication of Benefits calculations, project budgets, and describes eligible project activities to implement upon application approval and contract execution. Application requirements vary depending on the Federal Register and Action Plan requirements for that disaster. Specific application guidance will be available through an Application Guide developed by the grant managers and issued for the respective event. Application Guides can be found at [Disaster Recovery | Texas General Land Office](#) (see [Resources](#)—**Resource 1.2**).

### 1.3.1 National Objectives

Disaster recovery projects using CDBG-DR funds must meet one of the following HUD-designated National Objectives and must document how they will meet the National Objectives specified in their application (see [Resources](#)—**Resource 1.3**). The National Objective is not considered met until project funds have been expended and final monitoring documentation has been completed. Additional information is available within the Federal Registers (see [Resources](#)—**Resource 1.4**).

Every grant must meet one of the National Objectives below:

- Principally benefit low- and moderate-income (“LMI”) persons;
- Eliminate or prevent slums and blight; or
- Address an urgent need.

The Housing and Community Development (HCD) Act of 1974 as amended created the CDBG program and drives many of its objectives. The primary objective of the HCD Act is the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income” (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that not less than 70 percent of the aggregate of CDBG program funds be used to support activities benefitting low- and moderate-income persons. Subrecipients are required, absent a waiver from HUD, to meet this goal in carrying out their own activities.

Subrecipients must maintain records showing that funded activities meet one of the National Objectives. Depending on the objective, the files must contain, at a minimum, the following specific documentation for the purposes of proving that a National Objective was met:

*Benefit to Low- and Moderate-Income (LMI) Persons or Households*

<b>National Objective</b>	<b>Required Documentation</b>
LMI Area Benefit (LMA)	Boundaries of service area
	Census data including total persons and percentage low/mod
	Evidence area is primarily residential
	Income survey documentation (if applicable)
LMI Limited Clientele (LMC)	Documentation beneficiaries are low/mod or presumed to be low/mod (by category)
LMI Housing (LMH)	Housing Income verification of households (using the Section 8 definition) including source*
LMI Buyout (LMB)	Housing Income verification of households (using the Section 8 definition) including source*
LMI Housing Incentives (LMHI)	Housing Income verification of households (using the Section 8 definition) including source
LMI Job Creation or Retention (LMJ)	Number of jobs created or retained
	Type and title of jobs created or retained
	Income of persons benefiting from the jobs created or retained

*Elimination of Slum and Blight*

Area designation (e.g., boundaries, evidence area meets slum/blight requirements)
Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans)
If applicable, evidence that the property meets spot designation requirements (e.g., inspections)

*Urgent Need*

Description of disaster-related impact being addressed by the activity in terms of type, scale, and location**
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\*Additional LMI criteria, allowed for most CDBG-DR and/or CDBG-MIT allocations, see relevant Action Plan

\*\*Certification requirements waived for most CDBG-DR and/or CDBG-MIT allocations, see relevant Action Plan

Most housing activities provide an individual benefit, where the occupants of specific housing units receive a benefit from the proposed activity. Public facilities activities generally qualify under the low- to moderate-income area benefit. A link to HUD’s LMI Summary Data (“LMISD”) for use in determining whether projects meet the LMI Area Benefit National Objective can be found in [Resources—Resource 1.5](#) at the end of this chapter. Public facilities and improvements that aid in the prevention or elimination of slums or blight in a designated slum/blight area may qualify under the slum/blight area basis.

If proposed activities respond to a disaster-related impact but cannot meet another National Objective, the urgent need National Objective may be used. Subrecipients shall describe the disaster-related impact in terms of type, scale, and location for each infrastructure or housing activity where the urgent National Objective is used. While urgent need and slum and blight are allowable National Objectives for CDBG-DR, the overall benefit requirement of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) remains in place. This means that subrecipients must use no less than 70 percent of their CDBG program funds to support activities benefitting LMI persons.

### 1.3.2 Duplication of Benefits (“DOB”)

Federal funds cannot be used to pay an expense that has been paid by another source, such as insurance proceeds or other federal programs. This situation is known as “Duplication of Benefits (“DOB”)” (see [Resources—Resource 1.6](#)). Many federal and state agencies are involved in responding to Presidentially declared disasters under the Stafford Act. Subrecipients and the GLO must be aware of DOB prohibitions contained in the CDBG appropriations acts, the Stafford Act, Federal Register Notice 84, 28836 and 2 CFR 200 Subpart E. DOB will be tested in the application process and in subsequent monitoring reviews conducted by the GLO and audits conducted by state and federal agencies. Failure to comply with DOB rules can result in repayment of the federal funds, and removal from the program. However, some CDBG appropriations are eligible to pay the local match for other federal programs in some circumstances. The applicable Federal Register notice and Action Plan will provide details if that is the case.

The Stafford Act contains eligibility requirements for recipients who have received prior disaster funding based upon whether they are in compliance with requirements associated with receipt of those funds. For example, recipients may be required to maintain Federal Flood Insurance to be eligible for further federal assistance. As these requirements can vary between grants, applicants and recipients should check with their GLO-CDR Grant Manager or refer to the guidance in [Resources—Resource 1.7](#). Failure to do so could result in denial of funding.

### 1.3.3 Beneficiaries

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

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

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

A city-wide benefit project occurs when an activity will benefit the entire incorporated city or town. Some typical examples of city-wide benefit projects where the infrastructure may serve an entire community include:

- Water/sewer plant improvements,
- Water storage tank, and
- Water wells.

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

Some examples of individual LMI benefit projects include:

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

CDBG-DR requires applicants to document and report the beneficiaries of each funded activity regardless of the national program objective met by the activity. See the CDBG-DR guidance provided in the Housing Guidelines in [Resources—Resource 1.8](#) at the end of this chapter.

### 1.3.4 Eligible Activities

Categories of eligible activities are first presented in the Federal Register governing each specific allocation. The GLO then designs programs to carry out those eligible activities and are permitted to do so if the Action Plan is approved. Examples of eligible activities may include, but are not limited to, acquisition, buyouts, infrastructure, new housing construction, rehabilitation, reconstruction, or public facilities. For details, please see the specific Action Plan. They can be found at [Disaster Recovery | Texas General Land Office](#).

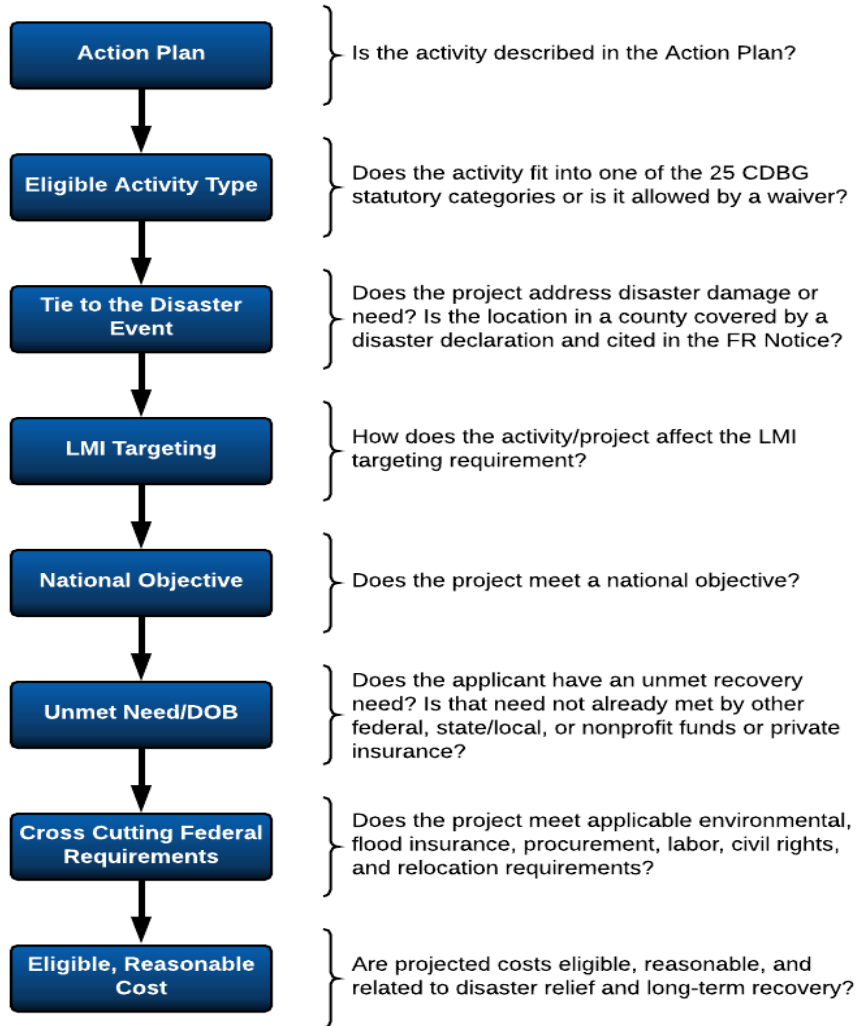
Public facilities include water facilities, sewer facilities, solid waste disposal facilities, other publicly owned utilities, public systems, fire stations, fire protection equipment, and community or senior citizen centers. Street improvements and drainage/flood control improvements are examples of potentially eligible public facility activities. In general, public facilities that are part of the normal operation of Government such as jails, police stations, and court houses are not

eligible. For more comprehensive information about eligible project types refer to the program-specific CDBG-DR and/or CDBG-MIT application guides found on the GLO-CDR website.

All activities and projects must address an impact from the disaster event, referred to as “tie back.” For physical losses, damage assessments or insurance estimates may be used. For economic or other non-physical losses, post-disaster assessments and analyses documenting the relationship between the loss and the disaster may be used. Funds may be used to address an unmet need that arose from a previous disaster, which was exacerbated by the disaster cited in the applicable Federal Register notice. Simply being located within a declared county is not sufficient to document impact from the disaster event.

*Determination of Eligibility*

When assessing an activity and project for an application all the below questions must be answered in the affirmative and documented before a funding award is made:



### 1.3.5 Ineligible Activities

Any activity not authorized under the Action Plan, CDBG-DR, or CDBG-MIT statute and/or regulations, as noted in the applicable Federal Register Notices, is ineligible to be assisted with CDBG-DR and/or CDBG-MIT funds. In addition, the following activities, as referenced in 24 CFR 570.207, are specifically deemed ineligible for CDBG-DR funding assistance:

- Duplicative projects;
- Projects that do not comply with local, state, and/or federal regulations;
- Buildings for the general conduct of government, except to create accessibility for the disabled population, and as waived by HUD (e.g., city hall, courthouse, Emergency Management Center);
- General government expenses;
- The financing of political activities;
- Faith-based organizations are eligible for CDBG-DR funding but may not use CDBG-DR funding to support inherently religious activities and must serve all eligible beneficiaries without regard to religion;
- Purchase of equipment that is not fixed in place, including construction equipment;
- Purchase of equipment or furnishings for a property except under certain conditions, including authorization as a special economic development activity or activities carried out by a special nonprofit;
- Income payments, except under certain conditions (income payments are defined as direct payments to subsidize rent and/or utilities);
- Law enforcement;
- Emergency Operation Centers (“EOC”);
- Duplication of Benefits with other loans, grants, or insurance proceeds (see Section 1.3.2 Duplication of Benefits (“DOB”) above);
- Operation and general maintenance (O&M) expenses of public facilities, improvements and services; and
  - Infrastructure O&M example: Smoke testing, line televising, and line cleaning (vacuuming, jetting, etc.) and other methods used to identify specific sections of wastewater line that require maintenance to reduce or eliminate the amount of inflow or infiltration routed to treatment facilities are considered maintenance activities. The process of identifying target areas for wastewater line replacement must be completed prior to the submission of an application for the scope of the project to be fully identified and to expedite construction completion. Similar methods may also be used as a part of construction and inspection of the new lines. Use of line televising, and similar methods, is

considered acceptable only for:

- Pre-construction testing on a specific reach of line (manhole to manhole); and/or
- Inspection of newly constructed lines to verify proper installation.
- Software is generally ineligible unless it is integral to the function of an improvement and not utilized for billing or other O&M purposes. For example, software required for the operation of a SCADA system is eligible. If software is used for both functional and O&M (billing) purposes, up to 50 percent of the software costs may be considered eligible.

## 1.4 Pre-Agreement Costs

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

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

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

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

- Meeting the Environmental Review requirements in the CDBG-DR Subrecipient Agreement, and receipt of an Authority to Use Grant Funds (AUGF) from the GLO.
- Satisfactorily submitting all applicable start-up documentation to the GLO.

Best practice is to contact your GLO-CDR Grant Manager before incurring any pre-agreement costs intended to be reimbursed by CDBG-DR and/or CDBG-MIT funds.

## 1.5 Record Retention

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

All local records relating to a CDBG-DR and/or CDBG-MIT award must be maintained for three (3) years after close-out of HUD's grant to the State of Texas. The GLO will notify subrecipients when a grant has closed by sending notice via mail, or email, that includes the specific date of the grant closeout and the retention period.

If subrecipients are notified by the GLO in writing, or if other applicable laws and regulations as described in 24 CFR 570.490 apply to a project, the record retention period may be extended. If any litigation, public information request, claim, or audit is started before the expiration of the record retention period, the records must be kept until the action has been fully resolved.

## 1.6 Complaint Procedures

The GLO has adopted a public complaint process to investigate and resolve issues arising from its administration of CDBG-DR and/or CDBG-MIT programs. Subrecipients should adopt similar or equivalent policies and procedures to address all complaints arising out of the administration of CDBG-DR and/or CDBG-MIT programs. Subrecipients must retain records related to any complaint received and the resolution of the complaint (see [Resources—Resource 1.9](#) for additional information).

## 1.7 Changes, Waivers, and/or Conflicts

Waivers to the requirements in this manual can only be approved by the GLO and must be provided in writing. The waiver request must demonstrate why the manual is not practicable for HUD Direct Allocations- City of Houston/Harris County or if applicable specific subrecipients.

## 1.8 Training

The GLO is committed to providing training and resources to subrecipients to ensure effective and efficient implementation of programs. This training shall be provided on an as-needed basis and upon request. A link to the GLO-CDR Training Plan and other training resources can be found in [Resources—Resource 1.10](#).

## 1.9 CDBG-DR Toolkit

HUD's CDBG-DR Toolkit (<https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch>) provides additional information to assist subrecipients in creating and implementing an effective CDBG-DR program. It includes guidance on program rules, lessons learned from previous CDBG-DR grantees, and sample tools to assist in program design and implementation.

The Program Launch section accessible via the link above provides critical information on program rules and offers tips and tools for establishing the systems, procedures, and capacity needed to implement CDBG-DR funded programs.

The Program Implementation section describes important design considerations and provides implementation tools for common CDBG-DR activities including homebuyer, homeowner rehabilitation, rental rehabilitation, buyouts, economic development activities, and others.

Because no two grantees are identical and every disaster presents new challenges, the tools should be adapted to meet your local circumstances and recovery needs. A link to the CDBG-DR Toolkit can be found in [Resources](#)— **Resource 1.11**.

## 1.10 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 1.1</b>	GLO-CDR Action Plans	<a href="https://www.glo.texas.gov/disaster-recovery/action-plans">https://www.glo.texas.gov/disaster-recovery/action-plans</a>	N/A
<b>Resource 1.2</b>	Program Application Guides:		
	Resilient Communities Program (RCP) Application Guide	<a href="https://www.glo.texas.gov/disaster-recovery/mitigation/resilient-communities-program">https://www.glo.texas.gov/disaster-recovery/mitigation/resilient-communities-program</a>	Application
	Local Hazard Mitigation Plans Program (LHMPP) Application Guide	<a href="https://www.glo.texas.gov/disaster-recovery/mitigation/local-hazard-mitigation-plans">https://www.glo.texas.gov/disaster-recovery/mitigation/local-hazard-mitigation-plans</a>	How Can I Apply for the Local Hazard Mitigation Plans Program (LHMPP)?
	Harvey Housing Guidelines	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines</a>	GLO Housing Guidelines
	Homeowner Reimbursement Program (HRP) Homeowner Application Guidance	<a href="https://www.glo.texas.gov/disaster-recovery/hurricane-harvey/homeowner-reimbursement">https://www.glo.texas.gov/disaster-recovery/hurricane-harvey/homeowner-reimbursement</a>	N/A

	GLO Harvey Infrastructure Application Guidebook	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	GLO Reference Forms and Resources
	Local Buyout or Acquisition Subrecipient Application Guidance	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions">https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions</a>	GLO Resources
	2015/2016 Floods Housing Guidelines	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines</a>	GLO Housing Guidelines
	2016 Floods HUD MID Application Guidebook	<a href="https://www.glo.texas.gov/disaster-recovery/2016-floods-and-storms/2016-grants-awarded">https://www.glo.texas.gov/disaster-recovery/2016-floods-and-storms/2016-grants-awarded</a>	2016 Application
	Hurricane Ike and Dolly Round 2 Housing Guidelines	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines</a>	GLO Housing Guidelines
	2018 South Texas and 2019 Disasters Housing Guidelines	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines</a>	GLO Housing Guidelines
<b>Resource 1.3</b>	HUD Exchange: National Objectives and Eligible Activities Guide	<a href="https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/">https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/</a>	N/A
<b>Resource 1.4</b>	Federal Register Notices for CDBG-DR and CDBG-MIT Allocations	<a href="https://www.govinfo.gov/app/collection/fr">https://www.govinfo.gov/app/collection/fr</a>	N/A
<b>Resource 1.5</b>	HUD Exchange: LMI Summary Data (LMISD)	<a href="https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-block-groups-places/">https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-block-groups-places/</a>	N/A

<b>Resource 1.6</b>	Duplication of Benefits	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	N/A
<b>Resource 1.7</b>	FEMA: Robert T. Stafford Disaster Relief and Emergency Assistance Act	<a href="https://www.fema.gov/disaster/stafford-act">https://www.fema.gov/disaster/stafford-act</a>	N/A
<b>Resource 1.8</b>	Housing Guidelines for Texas CDBG-DR Allocations	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/grant-admin/housing-guidelines</a>	GLO Housing Guidelines
<b>Resource 1.9</b>	Complaint Procedures (GLO)	<a href="https://www.glo.texas.gov/disaster-recovery/filing-complaint-or-appeal">https://www.glo.texas.gov/disaster-recovery/filing-complaint-or-appeal</a>	Complaint Process
<b>Resource 1.10</b>	GLO-CDR Training Plan and Training Resources	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/technical-assistance-training">https://www.glo.texas.gov/disaster-recovery/grant-administration/technical-assistance-training</a>	N/A
<b>Resource 1.11</b>	HUD Exchange: CDBG-DR Toolkit (HUD)	<a href="https://www.hudexchange.info/programs/CDBG-DR/toolkits/">https://www.hudexchange.info/programs/CDBG-DR/toolkits/</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 2—ADMINISTRATION

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# CHAPTER 2—ADMINISTRATION

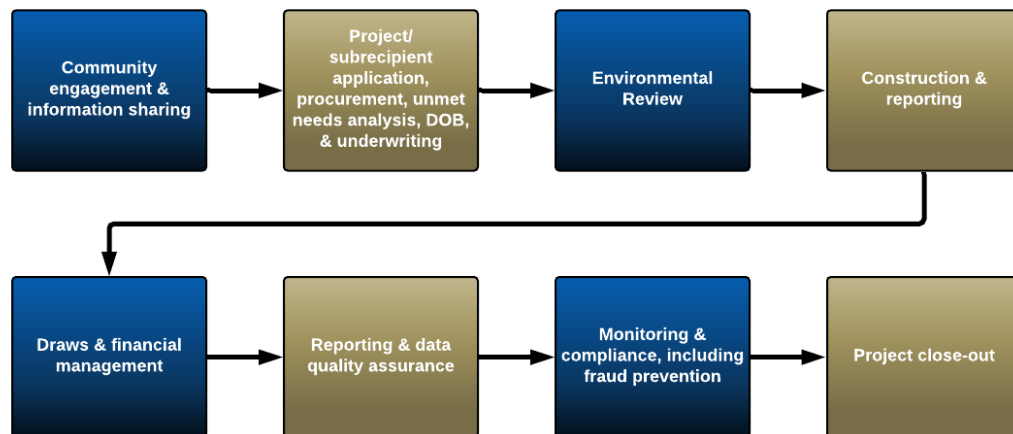
## 2.1 Introduction

This chapter introduces steps for implementing successfully managed CDBG-DR and/or CDBG-MIT programs. Prior to implementing a program, subrecipients should put systems in place that will allow them to track and report on the activities required within their contract with the GLO. While the subrecipients are ultimately responsible for each project, they may choose to administer their program in-house or use an external vendor. Ultimately, coordination is very important to ensure that all aspects of the Subrecipient Agreement remain compliant with all applicable regulations of the CDBG-DR and CDBG-MIT programs.

CDBG-DR and CDBG-MIT grants differ from Entitlement and Colonia Set Aside CDBG programs. The purpose of this section is to provide an overview of grant administration and reporting requirements to be used by CDBG-DR and CDBG-MIT subrecipients. These requirements may vary from those applied to local governments, the state, or other state agencies also involved in administering CDBG programs.

The requirements for citizen participation, waivers, alternate requirements, and eligible activities are provided to subrecipients through the applicable Federal Register publication, the approved Action Plan, and program Application Guide, in accordance with the applicable program. Further guidance is available through the assigned GLO Grant Manager for your program.

### Subrecipient Timeline



## 2.2 GLO Responsibilities

The GLO is responsible for, at a minimum, the following tasks related to the administration of CDBG-DR funds:

- Pre-Award Technical Assistance for subrecipients;
- Application for Funding Review;

- Subrecipient Agreement development and execution;
- Day-to-day program management;
- Subrecipient monitoring;
- Vendor/contractor management;
- Disaster Recovery Grant Reporting (DRGR) reporting;
- Beneficiary data documentation and accuracy;
- GLO's internal audit function;
- Record keeping:
- Document day-to-day management;
- Retain all records for three years after closeout of the State's Disaster Recovery grant by HUD;
- Privacy Act related to submitted required documents;
- Freedom of Information Act (FOIA) Requests;
- Public Information Act (PIA) Requests; and
- Ongoing Technical Assistance and Training.
- HUD recommends, and the Federal Register may require, the following actions be taken to ensure successful program administration:
- Policy and procedures must be in writing and followed (any deviation from the procedures must be documented);
- Build performance milestones into contracts and include detailed scopes of work;
- Make the files/project records tell the story of the funds/projects;
- Build compliance into day-to-day management. Project completion can be undone by noncompliance;
- Have a designated signatory to sign off on work progression;
- Catch problems early and take action; and
- Maintain open communication at all times.

The GLO and HUD will monitor subrecipient program activities for compliance with program requirements, approved Action Plans, approved Action Plan Amendments, and applicable statutes and regulations. Implementing the HUD guidance above will ensure efficient program operation and less disruptive monitoring sessions for the GLO and subrecipients. More information about the GLO's responsibilities can be found in the link to the CDBG-DR Toolkit Program Launch guide (see [Resources—Resource 2.1](#)). Tools and information related to subrecipients responsibilities can be found in the CDBG-DR Toolkit Program Implementation guide in [Resources—Resource 2.2](#) at the end of the chapter.

### 2.3 Action Plans

The Action Plan includes requirements for eligibility and how the use of these funds will address long-term recovery and restoration of housing, infrastructure, planning, and possibly other activities such as economic development in areas affected by the disaster. The development criteria are defined under the Federal Register and will detail the proposed use of all funds. As the state receives additional funding, allocates funds, or changes activities, amendments to the Action Plan

are submitted for public comment and HUD approval. Subrecipients must become familiar with the HUD approved Action Plan and all applicable amendments.

Action Plans consist of, at a minimum, the following components:

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

In addition, citizen participation requirements as outlined in the applicable Federal Register and action plan(s) must be followed for approval of long-term disaster recovery plans.

## 2.4 Methods of Distribution

The GLO will collaborate with local governments to account for many variables in the local recovery process which will be reflected in the distribution models. There may be different methodologies for the distribution of those funds. For instance, the GLO may distribute funding directly, may utilize a competitive process, may employ the assistance of Council of Governments or Counties to develop distribution models, or use other means. The approved Action Plan will detail how the GLO will allocate funds to carry out projects. Subrecipients must maintain familiarity with the method of distribution and all applicable amendments used to provide funding to their jurisdiction. The approved Action Plan, with any amendments, will detail how the GLO will allocate funds.

## 2.5 Grant Administrators

Subrecipients may directly administer projects or procure and use the support of external parties (vendors and grant administrators) to serve their needs.

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

## 2.6 Application

Subrecipients are required to submit an application to GLO-CDR for CDBG-DR and/or CDBG-MIT funding prior to Subrecipient Agreement execution. Application forms may be found on the GLO-CDR website and in [Resources—Resource 2.3](#) at the end of the chapter. GLO-CDR reviews the application to ensure CDBG-DR and/or CDBG-MIT eligibility, that it meets a national objective, the budget is cost reasonable, and the scope of work encompasses eligible activities. Please note that applications are specific to the disaster event and associated activities. As such, application requirements may be tailored to meet a specific need, and the GLO-CDR Grant Manager may request additional information after application review. Subrecipients may request GLO assistance when preparing an application.

## 2.7 Subrecipient Agreement Execution

The subrecipients must, at minimum, have an executed Subrecipient Agreement with the GLO before funds can be drawn.

In addition to the contractual obligations between the GLO and the subrecipients, the agreement may, depending on the contract structure, specify the following:

- **A—the Performance Statement**—Outlines the scope of the work to be performed under the Subrecipient Agreement by activity including total beneficiaries and percentage of LMI;
- **B—the Budget**—Specifies the Subrecipient Agreement budget by line item, which is used in the drawdown process. This Exhibit also includes all “Other” funds involved that are necessary to complete the Performance Statement specifics of this Subrecipient Agreement;
- **C—Project Implementation Schedule**—Specifies a timetable for milestones in project implementation and completion.
- **Special Conditions**—Conditional requirements that may apply to a project or activity listed in the subrecipient agreement.

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

Please contact your GLO-CDR Grant Manager for signature procedures.

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

GLO strongly suggests all subrecipients, grant administrators, vendors, and contractors read and become familiar with HUD’s resources which may be found at the link included within [Resources](#)—**Resource 2.4** below.

## 2.8 Establish a Local Administrative Structure

Subrecipients must establish a local administrative structure to administer the grant. The eligible activity and National Objective requirements are not met until the project(s) is/are complete, fully compliant, and there is sufficient documentation to ensure that the project has met the designated National Objective.

Subrecipients must, at a minimum, ensure the performance of the following tasks:

- Establish or update and adopt local charters, resolutions, ordinances, procedures, and policies that may be relevant to the project;
- Establish a record-keeping system to document compliance with all federal, state,

- local, and program requirements;
- Submit all necessary documents in the GLO system of record, if applicable. The GLO system of record may be an electronic file keeping system or software system such as TrecS or TIGR;
  - Subrecipient Agreement files must be kept at city or county offices or buildings in which government records are maintained. These must be accessible to the public throughout the Subrecipient Agreement period.
  - Records shall be retained for the greater of three years from closeout of the grant between the state and HUD, or the period required by other applicable federal and state laws and regulations. The GLO will notify the subrecipient via U.S. mail when file records can be destroyed.
- Establish whether day-to-day administration of the project will be conducted by local staff or by third-party grant administrator, and which party will conduct each administrative activity and ensure compliance throughout the Subrecipient Agreement period.

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

**Best Practice:** GLO-CDR recommends that subrecipients review this Manual item-by-item and clearly identify the activities that will be performed by subrecipient’s staff and those that will require outside assistance. Each staff member or vendor must fully understand their responsibilities in implementing the Subrecipient Agreement. Training and information are available on the HUD and GLO websites regarding CDBG-DR and CDBG-MIT program requirements.

### 2.8.1 Documentation Required at Project Start Up

Prior to releasing any funds, the GLO must receive, at a minimum, the following documentation at project start up:

- Comprehensive Annual Financial Report/Independent Auditor’s Report;
- Environmental Exemption Form for Professional Services;
- Depository/Authorized Signatories Designation Form;
- Local resolution authorizing signatories;
- Proof of Coverage – Fidelity Bonding, if applicable;
- Direct Deposit Authorization Form;
- Application for Texas Identification Number (TIN), if needed;
- Locally adopted Financial Policies and Procedures;
- Locally adopted Procurement Policies and Procedures;
- Financial Interest Report for Engineering Services, if applicable;
- Financial Interest Report for Project Delivery Services, if applicable;
- Financial Interest Report for Environmental Services, if applicable;
- Executed Contract for Engineering Services, if applicable;

- Executed Contract for Project Delivery Services, if applicable;
- Executed Contract for Environmental Services, if applicable;
- Initial Real Property Acquisition Report;
- Appointment of Labor Standards Officer Form;
- Appointment of Civil Rights Officer Form (EEO/FH/Section 504);
- Appointment of Section 3 Coordinator Form;
- Local Citizen Participation Plan including complaint and grievance procedures;
- Local Nondiscrimination/Equal Employment Opportunity Policy;
- Local Policy and notice of nondiscrimination on basis of handicapped status. Subrecipients may combine this policy with their Nondiscrimination/Equal Employment Opportunity policy;
- Local Excessive Force Policy;
- Local Section 3 Policy;
- Section 504 Self-Evaluation Review;
- Local Section 504 Grievance Procedures;
- Local Civil Rights Resolution regarding Citizen Participation, Section 3, Excessive Force, Section 504 Policy and Grievance Procedures, and Fair Housing Policy;
- Public Notices regarding Civil Rights (see [Chapter 11, Section 11.3.4](#) of this Manual); and
- Fair Housing activity documentation – Ideally there will be at least two (2) fair housing activities adopted by the entity. The most common are adoption of a Fair Housing Month by Proclamation signed and dated by entity official and adoption of a Fair Housing Policy signed and dated by entity official.

Forms may be found on the GLO-CDR website or in Resources at the bottom of each chapter (see [Resources](#)—Resource 2.5).

## 2.9 Needs Assessment

Subrecipients may be required to determine the unmet needs of the disaster-affected population prior to implementation of the program. The Subrecipient’s Needs Assessment (NA) will be described more fully in the Housing Guidelines section (see [Chapter 17, Section 17.6.3](#) of this Manual). The needs assessment will inform subrecipients on how they are to offer activities to meet the types of needs experienced by the affected population and their demographics in order to maximize recovery efforts.

Housing and infrastructure projects Needs Assessments vary:

### *Housing*

The Subrecipient’s Needs Assessment will be described more fully in the Housing Guidelines section (see [Chapter 11, Section 11.3.4](#)). Regional or area NA will be conducted and followed to ensure project eligibility. The NA will be retained in the subrecipients files and GLO’s system of record.

## *Infrastructure*

The unmet needs assessment of the project or service area is required as part of the project application.

### 2.10 Marketing and Outreach Plan

For housing programs, subrecipients will be required to provide outreach and marketing of the program for maximum participation. The Subrecipient's Marketing and Outreach Plan development is in addition to the Program Guidelines. Samples of marketing and outreach plan documents advise subrecipients on how they are to offer activities to meet the types of needs experienced by the affected population and their demographics to maximize recovery efforts. HUD Affirmative Fair Housing Marketing Plan (AFHMP) forms can be found on the HUD website at [Affirmatively Furthering Fair Housing | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/affirmative-fair-housing-marketing-plan).

### 2.11 Program Guidelines

The GLO publishes Program Guidelines which provide a blueprint for designing, implementing, and final monitoring of CDBG-DR and/or CDBG-MIT programs. For certain programs, subrecipients may be required to develop their own local program guidelines and will be responsible for the implementation of their programs in their jurisdictions. General guidelines are found in Chapters 16-18 of this Manual, and a link to the GLO Housing Program Guidelines may be found in [Resources—Resource 2.6](#) at the end of the chapter.

### 2.12 Conflicts of Interest

The state and subrecipients of CDBG-DR and/or CDBG-MIT programs must avoid, neutralize, or mitigate actual or potential conflicts of interest to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the Subrecipient Agreement or impact the integrity of the procurement process.

Subrecipients must maintain written procedures covering conflicts of interest and governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award and administration of vendor contracts, the award of CDBG-DR and/or CDBG-MIT assistance, or the management of federally-assisted or purchased property. Subrecipients must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 and Texas Local Government Code Chapter 171.

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

contract. (24 CFR 570.489(g), Uniform Grant Management Standards (UGMS) of the Texas Comptroller, 2 CFR 200.318(c)(1)).

For all other cases, other than the procurement of goods and services, non-procurement conflict of interest provisions are applicable to any person or entity including any benefitting business, utility provider, or other third party entity that is receiving assistance, directly or indirectly, under a Subrecipient Agreement that might potentially receive benefits from CDBG-DR and/or CDBG-MIT awards.

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

- Exercise or have exercised any functions or responsibilities with respect to CDBG-DR and/or CDBG-MIT activities;
- Are in a position to participate in a decision-making process; or
- Are in a position to gain inside information with regard to such activities may obtain a financial interest or benefit from a CDBG-DR and/or CDBG-MIT-assisted activity, or have a financial interest in any vendor contract, subcontract, or agreement with respect to a CDBG-DR and/or CDBG-MIT-assisted activity, or with respect to the proceeds of the CDBG-DR and/or CDBG-MIT-assisted activity, either for themselves or those with whom they have family or business ties.

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

The GLO will evaluate persons in similar roles from benefiting organizations, such as utilities providing service through the project or businesses creating jobs as a result of the project, in determining a conflict of interest.

In addition, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements (see 2 CFR 200.319). For example, an administrative consulting firm that participates in developing or distributing the request for proposals (RFP) may not then submit a proposal in response to that RFP. Some examples of conflicts of interest:

- The same individual or firm has an interest in both a benefitting business identified in the Subrecipient Agreement Performance Statement and any consultant or construction contracts required to complete the project;
- Elected officials voting on awarding of funds to organizations where a family member is on the staff or where the elected official is on the subrecipient's board;
- Local officials entering into vendor contracts with companies they are affiliated with through employment of, or ownership by, themselves or their relatives;

- Subrecipient’s officials or staff who have relatives who may benefit from a subrecipient’s programmatic activities.

*Questions regarding Conflicts of Interest:* If there is any question regarding a potential conflict of interest, the subrecipient should contact the GLO-CDR Grant Manager.

## 2.13 Fraud Reporting and Investigation of Fraud Allegations

Allegations of fraud may be reported to the GLO or to the HUD Office of the Inspector General. All allegations of fraud involving any CDBG-DR and/or CDBG-MIT fund will be investigated immediately after being brought to the attention of the GLO.

An investigation will be conducted if the allegations are made in connection with the services provided by subrecipients using CDBG-DR and/or CDBG-MIT funds. The GLO will immediately:

- Notify the subrecipient of the allegation and advise that the GLO will conduct an investigation; or
- Advise the subrecipient that it must conduct a preliminary investigation and submit a written report within seven (7) working days from the date of notification. The report must include:
  - Nature of the allegation, dollar amount involved, whether a fidelity bond exists and its dollar coverage;
  - Who is involved (e.g., individual(s) accused of fraud), subrecipient's name, names of the subrecipient's council/commission, and the subrecipient's chief elected officer;
  - When the allegations were made;
  - Time period involved;
  - Where the incident occurred; and
  - How the alleged incident occurred.

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

HUD Inspector General Hotline (GFI)

451 Seventh Street, SW

Washington, D.C. 20410

HUD-OIG Hotline Toll-Free 1-800-347-3735

FAX: 202-708-4829

EMAIL: [hotline@hudoig.gov](mailto:hotline@hudoig.gov)

State Auditor's Office (SAO) investigates allegations of fraud, waste, or abuse relating to state funds associated with state agencies and institutions of higher education. The SAO will review all reports submitted. <https://sao.fraud.texas.gov/ReportFraud/>

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

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

Upon completion of the investigation the GLO will, at a minimum, complete the following tasks:

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

If allegations arise in connection with statements provided by an applicant homeowner using CDBG-DR and/or CDBG-MIT funds, the GLO will immediately place the individual application on “hold” until an investigation is completed.

## 2.14 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 2.1</b>	CDBG-DR Toolkit Program Launch Guide (HUD)	<a href="https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/">https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-launch/</a>	N/A
<b>Resource 2.2</b>	CDBG-DR Toolkit Program Implementation Guide (HUD)	<a href="https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/">https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/</a>	N/A
<b>Resource 2.3</b>	Active Program Grant Application Forms	<a href="https://www.glo.texas.gov/disaster-recovery/disasters/grant-applications">https://www.glo.texas.gov/disaster-recovery/disasters/grant-applications</a>	N/A
<b>Resource 2.4</b>	HUD Exchange Resources	<a href="https://www.hudexchange.info/">https://www.hudexchange.info/</a>	N/A
<b>Resource 2.5</b>	GLO-CDR Program Forms:	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/grant-implementation">https://www.glo.texas.gov/disaster-recovery/grant-administration/grant-implementation</a>	Housing Guidelines, State Program Housing Forms, 2015-2016 Subrecipient Forms and Resources
	2015-2016 Subrecipient Forms	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients">https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients</a>	Eligibility, Pre-Construction Setup, Financial Draws, Program Inspection Forms and Construction Standards, Closeout and Affordability Period Monitoring, Environmental

	State Program Housing Forms	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/state-program-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/state-program-forms</a>	Eligibility, Pre-Construction Setup, Financial Draws, Program Inspection Forms and Construction Standard, Closeout and Affordability Period Monitoring
	Infrastructure Forms	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Acquisition, Davis Bacon Labor Standards, Force Account Labor, Civil Rights Requirements, GLO Reference Forms and Resources,
	Affordable Rental Program Forms	<a href="https://www.glo.texas.gov/disaster-recovery/hurricane-harvey/resources-affordable-rental-programs">https://www.glo.texas.gov/disaster-recovery/hurricane-harvey/resources-affordable-rental-programs</a>	N/A
	Buyouts & Acquisitions Forms	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions">https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions</a>	Required Documents, Left Side Checklist, Right Side Checklist
<b>Resource 2.6</b>	GLO Housing Program Guidelines	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/grant-implementation/housing">https://www.glo.texas.gov/disaster-recovery/grant-administration/grant-implementation/housing</a>	Housing Guidelines

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at

<https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 3—RECORDKEEPING & REPORTING

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# CHAPTER 3—RECORDKEEPING & REPORTING

## 3.1 Reporting

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

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

CDBG-DR and CDBG-MIT subrecipients are also required to submit a Monthly Status Report as detailed in the Subrecipient Agreement or by the request of the Grant Manager. Reports should be submitted to GLO-CDR in a timely manner as requested by the GLO or by the requirements established in the Subrecipient's Agreement.

## 3.2 Establish a Record-Keeping System

Subrecipients are the Responsible Entity for all Subrecipient Agreement-related activities and must maintain all CDBG-DR and CDBG-MIT files on-site at the subrecipient's customary place of business (e.g., city hall, county courthouse, main office) and be available for review upon request by HUD, GLO staff, or other entities. Subrecipients must be familiar with and adhere to all regulations of the Public Information Act as appropriate. (<https://comptroller.texas.gov/about/policies/open-records/public-information-act.php>)

Subrecipients must establish a record-keeping system to document compliance with all federal, state, local, and program requirements. Subrecipients must document and clearly define all processes for acquiring, organizing, storing, retrieving, and reporting information about CDBG-DR and CDBG-MIT funded activities. This documentation could be incorporated into Standard Operating Procedures (SOPs), policy manuals, or other guidance documents. Subrecipients should not delegate recordkeeping as retention requirements are specific to the subrecipient. Consideration to physical records should include:

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

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

### 3.3 Recordkeeping—Technical Assistance

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

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

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

### 3.4 Files to Maintain

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

When assigning project responsibilities, each subrecipient should carefully assess the duties identified in this guide to determine their staff's capacity to administer and report for this Subrecipient Agreement (e.g., Force Account labor). Should the subrecipient determine that they need assistance to complete the tasks, grant administration service fees are an eligible activity. In either case, grant administration funds are often subject to caps that will be defined in the associated governing documents.

If the subrecipient chooses to procure for grant administration services, the subrecipient must follow all 2 CFR 200 procurement regulations (see [Chapter 5](#) of this Manual) and clearly differentiate the tasks to be completed by the subrecipient from those assigned to the vendor. Clear separation of duties is essential to establish expectations and avoid duplication of effort.

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

For reference purposes, a sample Infrastructure File Review Checklist is provided at the end of this chapter (see [Section 3.6](#) below). The Infrastructure File Review Checklist provides the basic outline of the documentation subrecipients must maintain on-site. The order of the documentation can be at the subrecipient's discretion, as long as it is arranged in a manner where the files can be efficiently audited. To facilitate audits, it is highly recommended that subrecipients include a Table of Contents for their CDBG-DR and CDBG-MIT files that identifies where documents can be found (e.g., "Box 1", "Filing Cabinet A, Drawer 2") and/or a clear explanation of the electronic filing system and how to access that data. Whether or not using the optional guide, each listed item must be addressed in the local filing system, even if to indicate the task is not appropriate/applicable to the situation.

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

### Subrecipient Information

- Organizational chart;
- Final approved application for funding;
- Complete and signed Request for Federal Funding SF-424;
- Executed Subrecipient Agreement, amendments, revisions, and/or Technical and Guidance Letters.

### General Administrative Records

- Personnel files, if applicable;
- GLO monitoring correspondence;
- Pass-through entity agreements; and
- Pass-through entity monitoring.

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

- Citizen participation compliance documentation;
- Complaint policies and procedures;
- Fair Housing and Equal Opportunity records;
- Documentation of compliance with crosscutting requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint);
- Limited English Proficiency documentation;
- Outreach performed to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible; and
- Job Creation/Retention reports.

### Internal Financial Records

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

### Environmental

- Complete Environmental review records to include:
  - Public notices/publisher's affidavit;
  - Coordination letters for/from other agencies;
  - Public comments;

- Request for Release of Funds and Certification form;
- Authority to Use Grant Funds form;
- Documentation of compliance with other applicable laws/authorities;
- Flood plain maps as necessary;
- Texas Historical Commission notification and response letters as appropriate; and
- Other documentation identified by HUD or GLO Environmental staff.
- Environmental re-evaluations (if necessary).
- If applicable; Environmental exemption form titled “Exemption Determination for Activities Listed at 24 CFR 58.34” along with required 58.6 Compliance Checklist.

### Procurement and Draw Requests

- Procurement policies and procedures;
- Procurement of professional services files (advertisements, proposals/qualifications, contracts, etc.);
- Procurement of construction files (advertisements, bids, scoring, notice of award, contracts, etc.);
- Bid rejection documentation;
- Bank account records (including program income records, if applicable);
- Draw requests;
- Original invoices;
- Meeting Minutes for invoice payment approval;
- Copies of payments;
- Human Resources Employee Personnel Records;
- Timesheets;
- Benefit Rates for employees; and
- Payroll records and reports.

### Reporting and Recordkeeping

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

### Documenting Relationship to the Disaster

- Damage or building estimates for physical losses;
- Post-disaster analyses or assessments for economic or non-physical losses;
- Insurance claims; and
- FEMA data.

### Documenting Duplication of Benefits

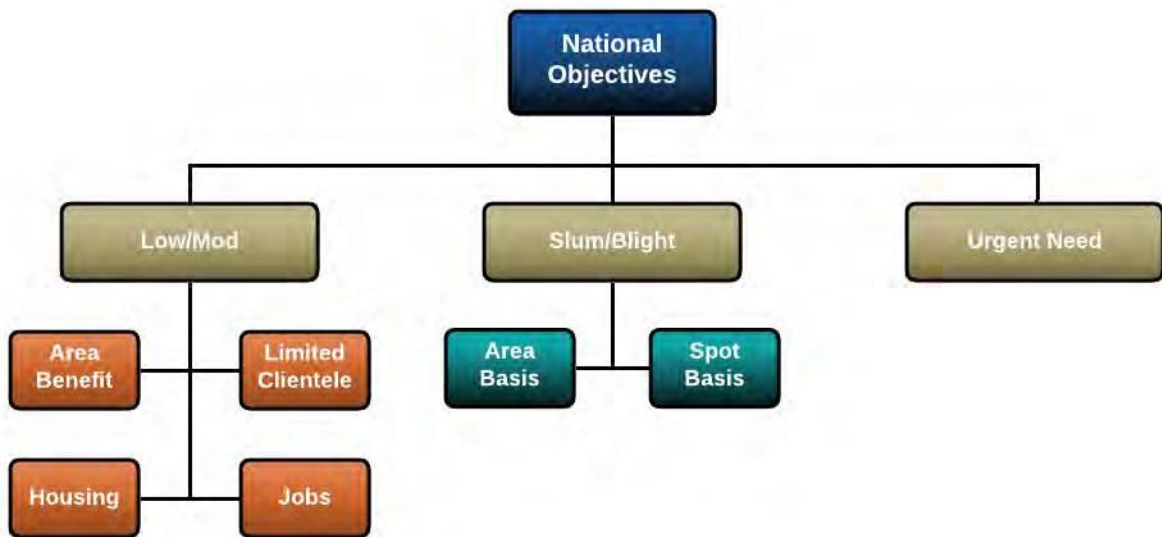
- Verification of sources of assistance;
  - FEMA award letter;

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

In addition to GLO resources, HUD has developed a number of record-keeping and reporting resources, including the [2016 CDBG-DR: Subrecipient Management and Recordkeeping Webinar](#) and the CDBG-DR Toolkit. See [Resources](#)—Resource 3.1 at the end of the chapter for additional information.

Documenting National Objective

All CDBG-DR funded projects must meet at least one of three HUD National Objectives: low- and moderate-income benefit, slum, and blight (rarely used for CDBG-DR), and urgent need.



Low to Moderate Income (LMI)

- Determining and documenting income;
- Calculate total cost of the activity, including both CDBG and non-CDBG funds;
- Calculate size, annual income, and FHEO characteristics of households occupying CDBG-assisted and designated LMI units;
- For Multifamily projects only:
  - a copy of the written agreement indicating the total number of dwelling units and the number of LMI units;
- For rental housing only:
  - Rent charged (or to be charged for each assisted unit and
  - Documentation showing the affordability of units occupied (or to be occupied) by LMI Pro-rata option.
- For infrastructure:

- Documentation of direct or area benefit of LMI population served by the project.

### Slums and Blight

- Boundaries of the project area;
- Description of conditions demonstrating how the area met qualifying criteria (e.g., the area meets a definition of a slum, blighted, or deteriorated/ing area under state or local law); and
- Project description includes steps to eliminate or address one or more of the conditions contributing to the deterioration of the area.

### Urgent Need

Urgent need (UN) is used to address emergency situations, including disaster recovery. For CDBG-DR urgent need, a subrecipient need not issue formal certification statements to qualify an activity as meeting the UN national objective. Instead, the subrecipient must:

- Document how each program and/or activity funded under the UN national objective responds to a disaster-related impact and
- Reference (if applicable) in its action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing over the course of the applicable deadline for the expenditure of obligated grant funds. The GLO provides guidance to assist subrecipients document urgent need, including the Urgent Need National Objective Form, included in [Resources](#)—Resource 2.2 at the end of the chapter.

It is recommended that subrecipients use the low- and moderate-income benefit national objective for all activities that qualify under the criteria for that national objective. At least 70 percent of the entire CDBG-DR grant must be used for activities that benefit low- and moderate-income persons.

Contact your assigned GLO-CDR Grant Manager for further information about documenting National Objective.

## 3.5 Records Retention

Project records should provide a detailed, chronological, and historical account of the CDBG-DR and CDBG-MIT project for examination and review by local staff, the GLO, HUD, state and federal auditors, other state agencies, and any other interested persons. The subrecipient must maintain one complete set of files at the city or county offices. The record retention period for CDBG-DR and CDBG-MIT Subrecipient Agreements is three (3) years after the GLO closes the contract with HUD. The record retention period for Subrecipient Agreements does NOT begin when the Subrecipient Agreement between the subrecipient and the state is closed.

GLO-CDR will notify subrecipients when a grant has closed by sending a letter that includes the specific date of the grant closeout and the retention period.

If a subrecipient is notified by the GLO in writing, or if other applicable laws and regulations as described in 24 CFR 570.490 apply to a project, the record retention period may be extended. If any litigation, public information request, claim, or audit is started before the expiration of the record retention period, the records must be kept until the action has been resolved.

All CDBG-DR and CDBG-MIT Subrecipient Agreement records must be available for review by HUD until the retention period is satisfied.

### 3.6 Sample File Review Checklist

<b>RECORDS MANAGEMENT</b>				
<b>Subrecipient:</b>				
<b>SUBRECIPIENT AGREEMENT / CONTRACT NUMBER:</b>				
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>APPLICATION</b>	Recipient’s Complete Application (Approved Application Maintained in Austin) to include: Survey Tabulation/Census/ Other Beneficiary Data (If Census data was used, a note stating so is in the file); Public Hearing Information (if conducted; requirement was waived)			
	Records demonstrating each activity meets one of the National Objectives	Application		
	Surveys to support Tabulation and Other Beneficiary Data	Subrecipient		
	Organizational chart: Identify staff that is directly involved with the DR grant.	Subrecipient		
	Responses to GLO Request for Information (RFI)			

Category	Files to Maintain	Location of Files	Present Y/N?	File Review Comments
<b>SUBRECIPIENT AGREEMENT</b>	Executed Subrecipient Agreement (State Contract)			
	Executed Subrecipient Agreement with Performance Statement and Budget for each activity	Agreement		
	Subrecipient Agreement Amendments and/or Revisions, flagged and filed in numerical order  NOTE: this includes all forms and documentation related to requests or approvals for Subrecipient Agreement amendments, revisions, or modifications.			
Category	Files to Maintain	Location of Files	Present Y/N?	File Review Comments
<b>FINANCIAL</b>	Designated Depository/Authorized Signatory Form and Resolution			
	Direct Deposit Authorization form NOTE: if direct deposit is not used, include a note in the file stating this.			
	Application for TIN (if needed)	Subrecipient		
	Copy of transaction register/general ledger for DR funds			
	Financial Policy and procedure manual used to submit payments to the GLO	Subrecipient		

	Fidelity bonding coverage, current NOTE: proof of coverage must indicate the expiration date, and the insureds must include the designated signatories.	Subrecipient		
	Request for Payment packages (draws) in numeric order	Subrecipient		
	Source Documentation to support the receipt and disbursement of DR Funds (e.g., cancelled checks, deposit slips, monthly bank statements, bank account reconciliation records, etc.)			
	Documentation of commitment of local funds, if applicable (e.g., general ledger entry or cancelled check showing what the community paid)			
	Code of Ethics Policy on Fraud, Waste and Abuse			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>ENVIRONMENTAL</b>  (If all required data is included in the Environmental Review Record, separate folders are not necessary. Any needed Re-Evaluations,	Environmental Review Record/Assessment (ERR)			
	Environmental Checklist			
	The following documents should be included in the ERR and flagged for easy identification:			
	Floodplain Notices/8-step documentation, if applicable			

however, must be included)

	Project Boundary Map			
	Public Notices/Publisher's Affidavit			
	Coordinating Letters to/from other agencies			
	Public Comments			
	Request for Release of Funds and Certification form			
	Authority to Use Grant Funds form (AUGF)			
	Documentation of compliance with other applicable laws/authorities			
	Flood plain maps/E.O. 11988 compliance, if applicable			
	Texas Historical Commission notification and response letters			
	Re-evaluation Letters, as applicable			
	Special Permitting—example USACE			
	Certification of Exemption for HUD funded Projects (Administration, Engineering and Planning)			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>LEAD-BASED PAINT</b> , if	Documentation tenants were provided Lead Hazards or EPA equivalent information			

applicable; required for Housing	Lead-based paint Disclosure form was included in lease agreement and signed by tenant prior to executed lease agreement			
	Documentation lead-based paint evaluation/assessment performed on housing/buildings built pre-1978			
	Documentation of remediation work			
	See Environmental Review Files for details on LBP			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>PROCUREMENT</b>	Local Procurement Policy			
	Environmental Exemption Form for Professional Services	Application		
	This section should be duplicated for each contract (construction and/or professional services) procured:			
	Rationale for the method of procurement Rationales include (see Project Implementation Manual for descriptions):	Subrecipient		
	Evidence of Affirmative Steps Taken to Assure Participation by Small/Minority Businesses			
	Minutes/Resolution Awarding			

Contract(s)/Amendment(s)			
Executed Contract	Subrecipient		
Executed Contract, Amendments, Work Orders and/or Change Orders in numerical order, if any	Subrecipient		
Insurance Coverage			
Bonding Information, if applicable			
COMPETITIVE PROPOSALS (Request for Proposal/Qualification, Professional Services Only)	Subrecipient		
1. RFP's and/or RFQ sent to professional service providers, if applicable	Subrecipient		
2. Advertisement	Subrecipient		
3. All responses (offers) to advertisement, RFP/RFQ received	Subrecipient		
4. Written review and evaluation of offers received	Subrecipient		
5. Written negotiations with firm and final officer, if applicable			
<b>SMALL PURCHASE PROCUREMENT</b>			
1. Price or rate quotes received			

	2. Written documentation of at least three (3) sources contacted and basis for selection			
	<b>COMPETITIVE SEALED BID</b>			
	1. Bid Package (material, supplies and construction services, only)			
	2. Bid Advertisements			
	3. Minutes from public bid opening and copies of bids received			
	4. Bid Tabulation (List of responding bidders)			
	5. Evidence of Bidders' Receipt of Addenda, if applicable			
	6. Written reason for rejecting any or all bids, if applicable			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>PROCUREMENT (CONTINUED)</b>	<b>NON-COMPETITIVE SEALED BID PROCUREMENT</b>			
	1. Written approval from the GLO			
	2. Evidence of Plans and Bid Documents sent to construction providers			
	3. Bid Tabulation and copies of responses or offers received			

Category	Files to Maintain	Location of Files	Present Y/N?	File Review Comments
<b>REPORTS</b>	Monthly Reports flagged by year and filed in chronologic order			
	Financial Interest Reports (FIRs) NOTE: FIRs must be filed for the GA, engineer, contractor, and any subcontractors.			
	Other Reports (Section 3 reports)			
Category	Files to Maintain	Location of Files	Present Y/N?	File Review Comments
<b>ACQUISITION</b>	Initial Real Property Acquisition Report (not detailed)			
	Real Property Acquisition Report (details for each parcel), if any	Subrecipient		
	URA Policy (Acquisition Policy)	Subrecipient		
	For each parcel, easement or right of way to be acquired and/or obtained:	Subrecipient		
	1. Notice to Owner, for Involuntary Acquisitions: include evidence the owner received “When a public Agency Acquires Your Property” and “The Texas Landowner’s Bill of Rights”	Subrecipient		
	2. Determine Fair Market Value/ Valuation by appraisal or tax office	Subrecipient		
	3. Invitation to Accompany Appraiser, if applicable	Subrecipient		

	4. Statement of the basis for the determination of Just Compensation, if applicable	Subrecipient		
	5. Written purchase offer and documentation of delivery	Subrecipient		
	6. If property is donated, documentation from property owner agreement "Waivers of Right to Just Compensation"	Subrecipient		
	7. Any and all negotiations with property owners	Subrecipient		
	8. Settlement and Contract Sale or Act of Donation	Subrecipient		
	9. Record of purchase (cancelled check)	Subrecipient		
	10. Evidence of Filing with County Clerk			
	11. Record of any appeals or complaints files, if applicable	Subrecipient		
	Back-up Acquisition Documents			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>DEMOLITION</b>	For Each Property/Parcel Demolished			
	1. A separate file for each property/parcel demolished			
	2. Proof property was vacant prior to demolition			

	3. If property is acquired for construction, see list of required documents in Acquisition			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>RELOCATION</b>	URA Policy			
	Claim Forms			
	a. Claim(s) for Fixed Payment in lieu of Payment for Actual Moving and Related Expenses			
	b. Claim(s) for Moving Costs			
	c. Claim for Replacement Housing Payment for Homeowners			
	d. Claim for Rental Assistance or Down Payment Assistance			
	Acknowledgement of Receipt of Relocation Expenses/Payments			
	FOR EACH CLAIM			
	Evidence and dates of personal contacts and description of services provided			
	Identification of person, displacement property, beneficiary data, monthly expenses and relocation needs			
	Notice of Eligibility for Relocations Assistance			

	Notice of Displacement			
	Household Case Record for housing needs			
	Referrals to replacement properties and documentation for declining, if applicable			
	Copy of 90-Day Notice to vacate notice, if issued			
	Details of actual replacement property (sale, monthly expenses, date of relocation)			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>RELOCATION (CONTINUED)</b>	Replacement property inspection report			
	Approval claim form and evidence the person received payment			
	Copy of any complaints and/or appeals			
	Copy of deferred loan lien agreement			
	<b>BUSINESS RELOCATION</b>			
	General Information Notice (GIN)			
	Notice of Interest to Owner			
	Evidence business received timely notice of possible displacements and description of relocation payments and eligible services to			

	include procedures for these services			
	Documentation of referrals to replacement properties			
	Copy of 90-Day Notice to vacate notice, if issued			
	Identification of displacement property, beneficiary data, monthly expenses and relocation needs			
	Copy of replacement dwelling inspection report			
	Copy of each approved claim form and person received payment			
	Copy of any complaints and/or appeals			
	Copy of deferred loan lien agreement, if applicable			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>FOR PERSONS/ BUSINESSES NOT DISPLACED</b>	Documentation timely written notice was issued & received that displacement would not take place			
	Documentation occupants received a timely offer of: (a) reasonable opportunity for another dwelling b) reimbursement for out-of-pocket expenses incurred with temporary relocation			

	Ineligible: Documentation occupants elects to move, reason for the move and understands they do not qualify for relocation assistance			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>CONSTRUCTION PROJECT FILES</b>	Special studies, surveys, test results for project			
	Copy of preliminary design(s) and cost estimates which were included as part of the application			
	Final design and cost estimates by engineer and acceptance by subrecipient			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>LABOR STANDARDS</b>	Appointment of Labor Standards Officer Form			
	The following should be duplicated for each bid package:			
	Wage Rate Determination/Wage Decision			
	10-day Call Confirmation			
	Contract Eligibility Verification (printout <a href="https://sam.gov/">https://sam.gov/</a> )	Subrecipient		
	Notice to Proceed	Subrecipient		
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>

<b>LABOR STANDARDS (CONTINUED)</b>	The following should be duplicated for each bid package:			
	Pre-Construction Conference Report NOTE: Include sign-in sheet, and minutes.	Subrecipient		
	Additional Wage Rate Classification Requests/Approval, as applicable  NOTE: if no additional requests, include a note in the file stating this.	Subrecipient		
	Evidence of LSO Review of Contractor's Weekly Payroll Records (initialed/dated by LSO).	Subrecipient		
	1. Contractors and subcontractors certified weekly payrolls	Subrecipient		
	2. Certified corrected payrolls, if applicable	Subrecipient		
	3. Restitution documentation, if applicable	Subrecipient		
	4. Apprenticeship/Trainee documentation, if applicable	Subrecipient		
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>LABOR STANDARDS (CONTINUED)</b>	The following should be duplicated for each bid package:			
	Employee Interviews			

	Monitoring and Inspection Reports NOTE: these reports may be provided by the engineer. Can consist of reports, pictures, etc.			
	Evidence Federal Wage Determination, EEO and Safety poster were posted at job site			
	Complaints for workers, if any, and action taken			
	Contractor and subcontractor Section 3 Compliance for contracts over \$100,000			
	Certificate of Construction Completion (COCC)			
	As Built Drawings			
	Clear Lien certificate, if applicable			
	Final Wage Compliance Report (FWCR)			
	Documentation for all applicable special conditions (e.g., CCN approval; TCEQ water review, TxDOT review for bridge construction/rehabilitation; TCEQ sewer permit), ADA Accessibility			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>FORCE ACCOUNT</b>	Force Account Labor Payroll Records, as applicable	Subrecipient		

	NOTE: if force account labor is not utilized, include a note in the file stating this.			
	Personnel Cost Calculation Sheet			
	Equipment Cost Calculation Sheet			
	Administrative Personnel Time Sheet			
	Force Account Equipment Use and Construction Personnel Time Sheets/Rate Records	Subrecipient		
	Invoices/Justification of Equipment, Fuel and Repairs (non-FEMA)	Subrecipient		
	Force Account Certificate of Construction Completion	Subrecipient		
	Procurement Policy/Rationale for Method of Procurement	Subrecipient		
	Evidence of Analysis of Lease or Purchase Alternatives, as applicable	Subrecipient		
	Method of Procurement utilized for equipment (lease, rental, purchase)	Subrecipient		
	Method of Procurement utilized for materials	Subrecipient		
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
	Complaints (if any) and action taken to notify GLO-CDR or HUD	Subrecipient		

<b>FAIR HOUSING SECTION 3 CIVIL RIGHTS</b>	Complaints and action taken to notify GLO-CDR or HUD, if applicable  NOTE: if no complaints have been received, include a note in the file stating this.	Subrecipient		
	Appointment of Section 3 Coordinator Form	Subrecipient		
	The following documents must be referenced in the TOC and flagged in the executed construction contract document:	Subrecipient		
	1. Equal Opportunity Provisions	Subrecipient		
	2. Contractor Certification of Equal Opportunity Compliance	Subrecipient		
	3. Contractor Certification of non-segregated facilities	Subrecipient		
	4. Contractor Certification of Section 3 Compliance			
	Locality's Section 3 Plan or its equivalent	Subrecipient		
	Pre-construction Report  NOTE: if this report is included in the Pre-Construction Conference Report, reference that in the TOC and tab it in the Pre-Construction Conference Report	Subrecipient		
	Personnel Policies/Handbook NOTE: include a copy in the file or a	Subrecipient		

	note indicating where it can be accessed			
	Affirmative Action Plan	Subrecipient		
	Equal Employment Opportunity Plan	Subrecipient		
	Documentation of fair housing activities	Subrecipient		
	Sample Advertisements for Subrecipient Employment	Subrecipient		
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>FAIR HOUSING SECTION 3 CIVIL RIGHTS (CONTINUED)</b>	Section 503 Compliance (affirmative action to employ and advance in employment qualified individuals with disabilities)	Subrecipient		
	Section 504 Self-Evaluation Review Form	Subrecipient		
	Section 504 Newspaper Publication. NOTE: this item is required to be submitted with the Grant Completion Report (GCR)	Subrecipient		
	Section 504 Grievance Procedures. NOTE: this item is required to be submitted with the Grant Completion Report (GCR)	Subrecipient		
	Designation Form for Section 504 and Civil Rights Officer			

<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>MONITORING/ INSPECTION FILES</b>	GLO letter(s) of findings			
	Subrecipient response(s) to findings			
	GLO response clearing findings			
	All other correspondence related to GLO monitoring visits			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>CLOSEOUT (as applicable)</b>	Program Completion Report			
	Final Performance Statement and Budget			
	Map of actual construction locations			
	GLO-CDR administratively complete letter			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>AUDIT</b>	Method utilized to procure audit firms(s)	Subrecipient		
	Professional Services Contract Agreement for independent auditor			
	Required initial audit report demonstrating financial capacity or independent auditors report			

	Audit Certification Forms in chronologic order for every fiscal year the contract is active			
	Single Audits (OMB A-133) or Program Specific Audits in chronologic order  NOTE: \$750,000 expenditure threshold			
	Responses to audit report/audit compliance letters			
<b>Category</b>	<b>Files to Maintain</b>	<b>Location of Files</b>	<b>Present Y/N?</b>	<b>File Review Comments</b>
<b>CORRESPONDENCE / NOTES</b>	General Compliance Correspondence—Incoming and outgoing correspondence that does not fall into the above categories or specific project file			

### 3.7 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 3.1	HUD CDBG-DR Toolkits	<a href="https://www.hudexchange.info/programs/CDBG-DR/toolkits/">https://www.hudexchange.info/programs/CDBG-DR/toolkits/</a>	N/A
Resource 3.2	Urgent Need National Objective Form	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-administration/flood-grant-administration/2c-form-1405-urgent-need-national-objective-all.xlsx">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-administration/flood-grant-administration/2c-form-1405-urgent-need-national-objective-all.xlsx</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](https://get.adobe.com/reader/).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 4—FINANCIAL MANAGEMENT

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# CHAPTER 4—FINANCIAL MANAGEMENT

## 4.1 Introduction

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

- Administrative requirements (Chapter 2)—Including duplication of benefits requirements, provisions related to charging pre-award costs, conflict of interest, reporting fraud, and distinction between agencies/government components, subrecipients, contractors, developers, and beneficiaries;
- Recordkeeping and Reporting requirements (Chapter 3)—Including records retention and financial reporting requirements;
- Procurement requirements (Chapter 5)—Including requirements related to bonding, insurance, suspension, and debarment;
- Contract conditions (Chapter 7);
- Force Account (Chapter 10)—Including requirements for tracking, documenting, and charging personnel costs and applicable fringe benefits and classification, purchasing, tracking, insuring, and disposing of equipment, supplies, and federally purchased tangible and intangible property;
- Contract amendments (Chapter 12);
- Contract closeout (Chapter 13);
- Monitoring and Quality Assurance (Chapter 14)—Including requirements related to preventing fraud, waste, and abuse; and
- Audit (Chapter 15)—Including Single Audit or program-specific audit requirements.

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

The following is a non-inclusive list of key federal and state regulations governing financial management:

- 24 CFR 570 Subpart I—governs the state CDBG-DR program;
- 2 CFR 200, including all of Subpart E Cost Principles;
- Uniform Grant Management Standards (UGMS)—Texas Comptroller of Public Accounts and guidance under 2 CFR 200; and
- Texas Local Government Code Chapter 171.

It is a subrecipient's responsibility to be knowledgeable and compliant with these requirements to ensure the appropriate, effective, timely, and eligible use of all funds

related to CDBG-DR and/or CDBG-MIT funded projects. Subrecipients are responsible for monitoring their vendors and projects, and the GLO is in turn is responsible for monitoring the subrecipient's compliance with applicable financial management standards, for processing CDBG-DR and/or CDBG-MIT payment requests for funds, and for audit review.

As used throughout this chapter, a cost objective is a pool of related costs, which could be related based on subrecipient agency, department, function, eligible contract with the GLO, or any other basis. The term is used to capture a variety of scenarios in which costs may be categorized for purposes of cost allocation or eligibility determinations.

## 4.2 Subrecipient Duties and Controls Prior to Receipt of CDBG-DR AND CDBG-MIT Funds

### 4.2.1 Establish Internal Controls (See 2 CFR 200.303)

The subrecipient should establish and maintain written policies and procedures for internal controls and guidance documentation for responsible financial management of CDBG-DR and/or CDBG-MIT funds. These policies and procedures should meet the following criteria:

- The subrecipient should have an established internal control system and documented segregation of duties. Examples of appropriate segregation of duties include:
  - No person should have complete control over every phase of a financial transaction. For example, the person who authorizes payments to contractors should not draft and issue the payment check and the person who writes a payment check should not reconcile associated bank records;
  - Where feasible, monthly bank reconciliation and/or direct deposit monthly statements should be reviewed by someone who is not responsible for handling cash or issuing checks; and
  - The person issuing checks for grant expenses should not also handle payroll preparation/issuance of paychecks.
- The subrecipient should have procedures for taking prompt action when an instance of noncompliance is identified internally or through audit findings.
- The subrecipient should take reasonable measures to safeguard protected personally identifiable information (PII) and other information that HUD or the GLO designates as sensitive or that the local government considers sensitive consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.
- The subrecipient should have policies and procedures governing their expenditures of CDBG-DR and/or CDBG-MIT funding, including procedures to ensure the timely expenditure of funds, subject to the Period of Performance within their Subrecipient Agreement. The GLO has procedures to ensure timely expenditures of funds and subrecipients will be subject to monitoring under those procedures.
- The subrecipient must incorporate performance requirements and liquidated damages into each procured contract used to provide discrete services or deliverables. Contracts that describe work performed by general management consulting services need not adhere to this requirement.
- All federal, state, and local conflict of interest provisions apply, including the

requirements of Texas Local Government Code Chapter 171.

#### 4.2.2 Establish budgets and accounting records (2 CFR 200.305)

The subrecipient is responsible for ensuring all CDBG-DR and/or CDBG-MIT expenditures:

- Are authorized in an approved, documented budget.
- Do not exceed the approved, documented budget amount.
- Do not exceed the amount in the Subrecipient Agreement.

Subrecipients generally have two methods available to request a drawdown of CDBG-DR and/or CDBG-MIT funds to pay for project and vendor costs: the reimbursement method and the cash advance method.

- The reimbursement method transfers CDBG-DR and/or CDBG-MIT funds to the subrecipient based on invoices and costs already paid by the subrecipient before it requests a draw.
- The advance method transfers CDBG-DR and/or CDBG-MIT funds from the GLO to the subrecipient based on invoices received and determined eligible for payment, but not yet paid by the subrecipient.

The GLO strongly recommends that the subrecipients establish a separate account for grant and local funds. If the subrecipient receives funds from the GLO on a cash advance basis, then the subrecipient should ensure that all CDBG-DR and/or CDBG-MIT funding received is held in an insured, interest-bearing account (2 CFR 200.305(b)).

A subrecipient may elect to deposit CDBG-DR and/or CDBG-MIT funding into a non-interest-bearing account if it meets the following conditions:

- A. Option 1:
  - a. The subrecipient only receive CDBG-DR funding on a reimbursement basis; AND
  - b. The subrecipient henceforth provides evidence of liquidated expenditures (e.g. cancelled checks) to accompany all future draw requests.
- B. Option 2:
  - a. The subrecipient receives federal funding in amounts less than \$250,000 per year, inclusive of any anticipated future CDBG-DR and/or CDBG-MIT awards.; AND
  - b. The subrecipient has evaluated all possible interest-bearing accounts available to it and it would not be expected to earn interest in excess of \$500 per year on federal.

In all cases, the subrecipient's accounting records must be managed in such a way that they clearly track CDBG-DR and/or CDBG-MIT grant funds separately from the general municipal/county funds.

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

- Distinct accounting information for separate eligible activities and federal grants;

- Accurate records of encumbrances/obligations against these distinct line items when vendor contracts or purchase orders are issued; and
- Accurate records on grant awards, unobligated balances, assets, liabilities, expenditures, program income, and applicable interest.

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

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

Furthermore, subrecipients should maintain accounting systems or processes that provide for clear, real-time tracking of costs related to the CDBG-DR and/or CDBG-MIT grants, including by national objective, by most impacted and distressed geographies, and by targets outlined in the Subrecipient Agreement. Systems should be in place to ensure proficient management of programmatic cost caps, especially those set for project delivery (if applicable), engineering (if applicable), and program-specific award caps (e.g., per beneficiary assistance caps).

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

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

- Transaction registry documenting:
  - All invoices associated with each Request for Payment; and
  - Source of funds for each invoice (grant funds by activity, matching funds, and/or other funds).
- Source documentation, including the following:
  - Copies of Requests for Payment;
  - Addendum record of direct deposit payments;
  - Verification of deposits;
  - Monthly bank statements with canceled checks;
  - Check register/transaction ledger from the subrecipient system of record;
  - Employee time sheets and payroll records;
  - Equipment time record sheets;
  - Property inventory;
  - Purchase orders, invoices, and contractor requests for payments;
  - Electronic Transfer Form (EFT); and
  - All original source documents.

### 4.2.3 Establish Responsible Persons—Authorized Signatory Designation

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

- Signatures of the persons (at least two) authorized by the local governing body to sign these documents for the subrecipient must be submitted to GLO-CDR;
- A copy of the resolution passed by the local governing body authorizing the signatories (by job title is recommended); and
- If an authorized signatory of the subrecipient changes (due to elections, illness, resignations, etc.), the form and/or resolution must be updated.

### 4.2.4 Direct Deposit Authorization

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

### 4.2.5 Subrecipient Capacity

Subrecipients should ensure that it has staff and contractor capacity sufficient to manage all CDBG-DR and/or CDBG-MIT grant funds under its control. Subrecipients may procure a grant administrator to assist with management of grant compliance, subject to federal and state procurement guidelines and requirements outlined in this Implementation Manual (see [Chapter 2](#)).

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

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

## 4.3 Classifying Federal and CDBG-DR/CDBG-MIT Costs

### 4.3.1 Eligible/Allowable Costs (2 CFR 200.403)

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

In order to be allowable as a charge against any federal award pursuant to 2 CFR 200.403, costs must be:

- Necessary and reasonable for the performance of the federal award and be allocable to that award and not to a different award or cost objective;
- In conformance with any limitations or exclusions set forth in 2 CFR 200 or in the federal award as to types or amount of cost items;
- Consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the subrecipient;
- Accorded consistent treatment;
  - A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal award as an indirect cost;
- Determined in accordance with generally accepted accounting principles (GAAP); and
- Adequately documented.

### 4.3.2 Necessary Costs (2 CFR 200.404)

CDBG-DR and/or CDBG-MIT funding must be necessary to meet program objectives. Unnecessary costs are those that are not required to achieve the objectives of the Subrecipient Agreement or not related to the CDBG-DR and/or CDBG-MIT programs being administered.

### 4.3.3 Reasonable Costs (2 CFR 200.404)

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

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

- Market prices for comparable goods or services for the geographic area;
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the subrecipient, its employees, the public at large, the GLO, and the federal government; and
- Whether the subrecipient significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the cost.

#### 4.3.4 Allocable Costs and Applicable Credits (2 CFR 200.405 and 200.406)

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

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

All cost objectives which benefit from the subrecipient's indirect (F&A) cost, including unallowable activities and donated services by the subrecipient or third parties, will receive an appropriate and proportionate allocation of indirect costs.

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

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

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

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

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

#### 4.3.5 Classification of Costs: Direct and Indirect (2 CFR 200.412)

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double charging of federal awards.

#### 4.3.6 Direct Costs (2 CFR 200.413)

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

The salaries of administrative and clerical staff (e.g., human resources, information technology, facilities management, executive oversight, etc.) should normally be treated as indirect (F&A) costs. Direct charging of these costs may be allowable if permitted by a subrecipient's Grant Manager and if they are not also charged as part of an indirect rate.

#### 4.3.7 Indirect Costs and Indirect Cost Rates

Pursuant to 2 CFR 200.332(a)(4), the GLO will honor an indirect cost rate that has been negotiated between the subrecipient and the federal government, subject to program caps and budget constraints. Subrecipients have two additional options for recoupment of indirect (F&A) costs if such a rate has not been negotiated with the federal government:

- Subrecipients may elect to utilize a de minimis 10 percent indirect cost rate (subject to limitations described below); or
- Subrecipients may request to direct charge for certain indirect costs that can reasonably be allocated as direct based on a methodology approved by the GLO (contact your Grant Manager if pursuing this option).

Requirements for the development and approval of cost allocation plans and indirect cost proposals are complex. For additional information, contact your Grant Manager and reference:

- Appendix III to 2 CFR 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)
- Appendix IV to 2 CFR 200 - Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations
- Appendix V to 2 CFR 200—State/Local Governmentwide Central Service Cost Allocation Plans;

- Appendix VII to 2 CFR 200—States and Local Government and Indian Tribe Indirect Cost Proposals.

A subrecipient that does not receive more than \$35 million in direct federal funding in a fiscal year may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC) which may then be used indefinitely.

MTDC means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each Subrecipient Agreement executed by a subrecipient of the GLO (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. If a de minimis rate is chosen, this methodology once elected must be used consistently for all federal awards until such time as the subrecipient chooses to or is required to negotiate for a rate.

#### 4.3.8 Classification of CDBG-DR and CDBG-MIT Costs – Program Administrative Costs, Project Delivery Costs, Project Costs, and Planning Costs

Regardless of the determination of costs as either direct or indirect, all HUD CDBG-DR and CDBG-MIT costs must also be allocated to the eligible activity and CDBG-DR and/or CDBG-MIT-funded program based on the type of cost and the function performed. Options include:

- **Project Costs**—direct costs of undertaking a project and providing a benefit to a beneficiary of CDBG-DR or CDBG-MIT funding;
- **Project Delivery Costs (PD)**—costs of carrying out a specific CDBG-DR or CDBG-MIT program and providing a program benefit;
- **Planning Costs**—costs related to the development of Action Plans, functional plans, methods of distribution, or other activities as described more below; and
- **Program Administrative Costs (PACs)**—costs incurred for the general management, oversight, and coordination of the CDBG-DR or CDBG-MIT grant.

Each of these cost types have budget and caps described within each Subrecipient Agreement and Application Guide. Further description of each is below:

- Project costs include all assistance directly to developers, homeowners, businesses, and other beneficiaries. Examples of project costs:
  - Construction hard costs for building improvements or infrastructure projects;
  - Grants or loans to homeowners or businesses;
  - Developer fees and associated contractor overhead and profit related to provision of direct services when using a developer; and
  - All costs related to the provision of public services, including staff time and

other direct costs (such as supplies) to deliver these services.

- Project Delivery Costs (PD) include staff and consultant costs necessary to implement and carry out a specific CDBG-DR or CDBG-MIT program or cost objective. Developers, homeowners, assisted businesses, and other beneficiaries cannot incur PD. Examples of eligible PD when paid directly by subrecipients:
  - Staff time and grant administrator time necessary to administer a specific program;
  - Site-specific environmental costs and broad reviews;
  - Engineering/design/architecture services for a project;
  - Applicant intake/eligibility screening in a specific program;
  - Project underwriting/selection; and
  - Other vendor services required to implement the project.
- Planning costs are those costs that generally result in the development of “a plan” (although with some exceptions). Developers, homeowners, assisted businesses, and other beneficiaries cannot incur planning costs.
  - Each Subrecipient should refer to its Subrecipient Agreement to determine whether any planning funding has been allocated and for what purpose. Examples of eligible planning activities:
    - Development of Action Plan, amendments, needs determinations, and methods of distribution;
    - Watershed Management Plans; and
    - Functional plans for housing/land use/economic development.
- Program Administration Costs (PACs) must only be used for activities related to the CDBG-DR or CDBG-MIT grant and cannot pay for general operational expenses unrelated to the grant. Developers, homeowners, assisted businesses, and other beneficiaries cannot incur PACs. Examples of eligible administrative costs:
  - Monitoring contractors, projects, or overall program performance;
  - Leased general-purpose office space and general operations;
  - Staff time and/or contracted services to manage funding and the CDBG-DR or CDBG-MIT grant overall;
  - Administrative support;
  - Legal/accounting/HR/audit;
  - Financial management;
  - Reporting/QPR;
  - Closeout activities; and
  - On-going compliance monitoring after project close-out.

A subrecipient managing a single program (e.g., owner-occupied housing rehabilitation) may not need to incur any PACs, since all of their costs may be directly related to that single activity. Subrecipients should review their Subrecipient Agreement carefully to understand whether PAC funding has been allocated and in what amount. Subrecipients may not use PD funding to pay for costs that are only eligible as PACs.

### 4.3.9 Program Income

Program income for CDBG-DR and CDBG-MIT is defined within 24 CFR 570 and the Federal Register Notice allocating such funding to the State of Texas. Generally, program income is the gross income in excess of \$35,000 received in a single calendar year by the subrecipient that was generated from activities funded in whole or in part by the Subrecipient Agreement. When program income is generated by an activity that is partially funded with CDBG-DR or CDBG-MIT, then the income must be prorated to reflect the percentage of the total funding that the CDBG-DR and/or CDBG-MIT funding comprised.

Unless directed otherwise, subrecipients are required to submit monthly data on income generated by CDBG-DR- and/or CDBG-MIT-funded activities. At the end of each quarter (or whenever requested by the GLO, in its sole discretion), subrecipients must remit all program income received in the calendar year to the GLO.

If the income does not exceed \$35,000 within the calendar year, it is not program income and not subject to the requirements of the Subrecipient Agreement. In this case subrecipients are authorized to retain the income they received and utilize it for any non-CDBG-DR and/or -CDBG-MIT purpose. Subrecipients will generally not be required to submit additional documentation if program income does not exceed \$35,000 within a calendar year, but these funds and the calculation of income received will be subject to monitoring efforts by GLO.

Examples of program income include, but are not limited to, the following:

- Proceeds from the sale or long-term lease of real property purchased or improved with CDBG funds;
- Proceeds from the disposition of equipment purchased with CDBG funds;
- Gross income from the use or rental of property acquired by the subrecipient with CDBG funds, less the costs incidental to the generation of such income;
- Gross income from the use or rental of property owned by the subrecipient that was constructed or improved with CDBG funds, less any costs incidental to the generation of such income;
- Proceeds from the sale of obligations secured by loans made with CDBG funds; and
- Interest earned on program income, pending disposition of such program income.

Any program income earned must be returned to the GLO, subject to applicable terms and conditions within a Subrecipient Agreement. Upon request subrecipients may be permitted to use program income in certain circumstances—contact your GLO Grant Manager for more information.

Program income is subject to all federal requirements. See 2 CFR 200.307 and 24 CFR 570.489 for additional regulations. If a subrecipient earns or anticipates generating or earning income from CDBG-DR and/or CDBG-MIT assisted activities, contact your GLO Grant Manager.

#### 4.3.10 Federal Requirements for Treatment of Special Types of Costs

Federal requirements place limitations on specific items of costs, including prohibiting certain costs from being charged to a federal award (notable examples include expenditures for lobbying, alcohol, and payment on uncollectable debts). These requirements are specific and enumerated in 2 CFR 200.420–200.476. Subrecipients should reference these requirements and become familiar with them in order to carry out any federal program.

Pursuant to 24 CFR 570.489(p), all cost items described in 2 CFR 200.420–200.476 that specify the requirement for preapproval from HUD are allowable without prior approval of HUD, to the extent that they otherwise comply with the requirements of 24 CFR 570 and 2 CFR 200 and are otherwise eligible, except for the following:

- Depreciation methods for fixed assets shall not be changed without the express approval of the cognizant federal agency (2 CFR 200.436);
- Fines, penalties, damages, and other settlements are unallowable costs to the CDBG-DR and/or CDBG-MIT program (2 CFR 200.441);
- Housing cost (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445); and
- Organization costs (2 CFR 200.455).

#### 4.3.11 Ineligible Costs and Improper Payments

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

- Individuals, homes, or projects not approved as beneficiaries or projects in the application;
- Billing software and related equipment not physically connected to the CDBG-DR- and/or CDBG-MIT-funded projects, including software that must be considered in relation to GLO's System of Record;
- Generators that are not permanently installed at the designated location (trailer mounted generators are not considered permanently installed);
- Cost of obtaining permits or other documentation that would be required regardless of the current projects, including CCN applications, renewal of TCEQ permits, etc.;
- Commercial advertising and public relations costs such as the replacement or addition of a logo, water system name, or other cosmetic painting on CDBG-DR- and/or CDBG-MIT-funded water tanks and other structures;
- Projects that have not received environmental clearance Authority to Use Grant Funds (AUGF);

- Funds to benefit political campaigns;
- Funds for costs associated with conduct of government (e.g., city hall, courthouses, EOC); and
- Other similar costs.

Refer to 2 CFR 200 Subpart E—Cost Principles for the basic guidelines on eligible costs. If the subrecipient will be incurring any special or unusual costs, the subrecipient should seek prior written approval from the GLO (see 2 CFR 200.407).

#### 4.3.12 Collection of Unallowable Costs (2 CFR 200.410)

Payments made for costs determined to be unallowable by HUD, the GLO, auditors, the subrecipient’s cognizant agency for indirect costs, or any other oversight entity, either as direct or indirect costs, must be refunded (including applicable interest) to the GLO in accordance with instructions from the entity that determined the costs are unallowable.

As described further in Chapter 14 of this Manual, subrecipients should have adequate internal and quality controls to appropriately prevent the issuance of improper payments to contractors or beneficiaries. Subrecipients should also implement quality assurance procedures to check for such improper payments and take appropriate corrective actions upon identifying such payments.

### 4.4 Release of Funds

#### 4.4.1 Initial “Start Up” Documentation

As part of the beginning “Start Up” the subrecipient must submit, at a minimum, the following documentation:

- Executed Subrecipient Agreement;
- Depository/Authorized Signatories Form and supporting resolution (see [Resources](#)—Resource 4.1 at the end of this chapter);
- The Environmental Compliance Exemption Form for exemption of environmental studies, administrative and engineering services (see [Chapter 6](#) of this Manual);
- Applicable Financial Interest Report(s) (see [Chapter 5](#) of this Manual);
- Documentation of compliance with civil rights and fair housing (see [Chapter 11](#) of this Manual);
- Labor Standards Officer Appointment (see [Chapter 9](#) of this Manual);
- Direct Deposit Authorization Form (see [Resources](#)—Resource 4.2 of this chapter);
- Texas Identification Number System (TINS) Form; and
- Other documents as required for the respective allocation by GLO-CDR.

Additional special condition documentation may be required based on the specific funding or project description and will be listed in the Subrecipient Agreement.

#### 4.4.2 Draw Procedures in GLO’s System of Record

Subrecipients will submit all draws in GLO’s System of Record. If submission through the System of Record is not possible, subrecipients will follow the instructions below. Once the subrecipient is able to submit within the System of Record, the subrecipient will receive instruction from the respective Grant Manager.

#### 4.4.3 Draw Procedures Outside of GLO’s System of Record

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

Regardless of the instructions provided, every draw request submitted outside of GLO’s System of Record must include backup documentation justifying payment for each budget line item from which CDBG-DR and/or CDBG-MIT funds are requested. All costs must, at a minimum, be:

- Supported by invoices or similar documentation, which includes price, quantity, materials stored, and service delivery dates;
- Detailed in a completed request for payment document with enough information to confirm all items are eligible under the Subrecipient Agreement; and
- Accompanied by approvals or signatures to confirm the work billed has been completed and reviewed.

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

#### 4.4.4 Minimizing the Time Between Draw and Disbursement

Subrecipients may submit a draw request for eligible costs as often as is actually needed, subject to timing limitations in their Subrecipient Agreement (and subject to the requirements of 2 CFR 200.305(b)(2), which allows subrecipient to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used).

Subrecipients must submit a reimbursement request for incurred expenses based on the contract terms which may be:

<b>Disaster</b>	<b>Timelines</b>
2015 Floods	No Later than 60 Days after incurring the cost
2016 Floods	No Later than 60 Days after incurring the cost

Harvey Grant	No Later than 120 Days after incurring the cost
CDBG-MIT Grant	No Later than 120 Days after incurring the cost

Subrecipients must submit final reimbursement requests to the GLO no later than 60 days after the Subrecipient Agreement expires or is terminated (2015 Floods, 2016 Floods, and Hurricane Harvey grants) or prior to the expiration of their contract (CDBG-MIT grants), as defined by the applicable Subrecipient Agreement. The GLO, in its sole discretion, may deny payment and de-obligate remaining funds from the Subrecipient Agreement after this deadline.

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

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

In all cases, subrecipients are responsible for ensuring that funding is drawn against their Subrecipient Agreement amount at a pace that ensures completion by their contract end date. Subrecipients are in turn responsible for adhering to the payment terms in their respective contracts with service delivery providers or locally procured vendors.

#### 4.4.5 Delays, Ineligible Costs, and Denial of Payment

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

#### 4.4.6 Subrecipient Provided Leverage Funds

Leverage funds are funds reflected in a subrecipient’s application to GLO-CDR and used to support the CDBG-DR and/or CDBG-MIT Performance Statement scope of work. Leverage funds may include subrecipient funding, FEMA, SBA, insurance, eligible funding from other state or federal agencies, and/or non-profit or charitable donations.

Leverage funds cited in a subrecipient’s application must be used for:

- Activities described in the CDBG-DR and/or CDBG-MIT Performance Statement; or
- Activities that are directly related to support the activities proposed for CDBG-DR and/or CDBG-MIT funding.

Leverage funds may be considered only if the subrecipient has used an acceptable and reasonable method to document the value of the leverage. Except for cash leverage funding, the subrecipient must submit an attachment/schedule which shows how the value of each type of leverage was determined. Please note that leverage can only be counted for expenditures that would not occur if the CDBG-DR and/or CDBG-MIT Subrecipient Agreement were not funded. Leverage funds will only be considered for eligible expenses that meet GLO-CDR program requirements. Expenditures of leverage funds must be reflected in the financial transaction register and on applicable requests for payment.

Each subrecipient is required to expend the amount of leverage funds as submitted in the application and memorialized in the Subrecipient Agreement. Subrecipients are strongly encouraged to apply leverage funds early in the life of the contract or proportionately in each applicable request for payment.

When a project has cost savings due to lower prices or reduced scope, the savings will accrue to the CDBG-DR/MIT share of the project. CDBG-DR/MIT is a funding of last resort and is dependent on a duplication of benefits analysis that accounts for all other sources of funding available to the project before applying CDBG-DR or CDBG-MIT to address remaining unmet needs. Reduced need would therefore not result in savings to leverage funds until the entire need for CDBG-DR or CDBG- MIT funding has been eliminated as a result of cost savings.

When leverage funds are determined to no longer be available to support the CDBG-DR and/or CDBG-MIT Performance Statement scope of work, the subrecipient should notify their Grant Manager of the amount that is no longer available and the circumstances that make the leverage funds unavailable. GLO will need to evaluate the determination to see how it impacts the subrecipient's original application for assistance, including scoring determinations if applicable, and whether the project is still feasible with the reduced funding.

In these instances, GLO will need to review the evidence and determine whether the leverage funds are truly unavailable, which include a memo explaining how the funds are no longer available and how it should be eliminated from the duplication of benefits calculation for the project (if applicable). Examples of leverage funds that would be considered unavailable to a project include expected insurance payouts that do not materialize, FEMA award funds that are expected but are not provided, or locally-provided funding that can be documented as unavailable due to extreme hardship, such as impact by another major disaster after the point of award or cost savings used to fund other CDBG-DR MIT projects that were not awarded funds.

#### 4.5 CDBG-DR and/or CDBG-MIT Funding Used as Match (Non-Federal Share) for other Federal Awards

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

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

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

Within a subrecipient's application, the subrecipient must submit documentation of the following to GLO-CDR:

- The amount of funds granted and/or received from each source;
- The scope of the project funded through sources other than CDBG-DR or CDBG-MIT (to confirm CDBG-DR or CDBG-MIT may act as non-federal share for the project); and
- Award letter or similar document indicating funds have been committed to the subrecipient.

If additional funding is obtained after the submission of the application, the subrecipient should submit the funding award notification and/or other relevant documentation to GLO-CDR within thirty (30) days of any change in the expected sources. Other sources include all potential federal, state, local, private, non-profit, utility, and insurance funding that may be available to the project in any amount. These sources may constitute leverage funds but may also introduce a duplication of benefits into the project that might reduce the amount of CDBG-DR or CDBG-MIT eligible to be received in certain circumstances.

See [Resources](#) at the end of the chapter for additional information and forms.

## 4.6 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 4.1	Depository/Authorized Signatories Form	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Financial Management
Resource 4.2	Direct Deposit Authorization Form	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Financial Management

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with Adobe Acrobat.** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 5—PROCUREMENT

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# CHAPTER 5—PROCUREMENT

## 5.1 Introduction

This chapter establishes the standards and guidelines for the procurement of supplies, equipment, construction, engineering, grant administration, architectural, consulting, and other professional services for CDBG-DR or CDBG-MIT programs. The Texas General Land Office Community Development and Revitalization (GLO-CDR) department has adopted 2 CFR §200.317 as it relates to the administration of CDBG-DR and CDBG-MIT programs. As such, CDBG-DR and CDBG-MIT subrecipients are required to follow the federal procurement requirements found in 2 CFR §200.318 through §200.327.

The following standards and guidelines are being furnished to ensure subrecipients of CDBG-DR or CDBG-MIT funds procure materials and services in an efficient and economical manner in compliance with the applicable provisions of federal law, state laws, and executive orders.

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

GLO-CDR staff will relay the information contained herein to subrecipients via the GLO-CDR website, <https://www.glo.texas.gov/disaster-recovery>, through trainings and checklists, and during on-site monitoring and reviews (see [Resources](#)—Resource 5.1 for a link to GLO-CDR’s Procurement and Contracting Guidance). Additional resources may be found on the HUD Exchange website, [www.hudexchange.info](http://www.hudexchange.info), including example procurement documents and checklists. These samples can assist subrecipients in complying with federal regulations; however, subrecipients should review all procurement documents and procedures to ensure compliance with local and state laws and regulations. Refer also to the State of Texas Procurement and Contract Management Guide (see [Resources](#)—Resource 5.2).

## 5.2 Local Procurement Policies

Before securing contract services, subrecipients should determine whether their procurement policies and procedures comply with all federal requirements contained in 2 CFR §200.318-.327. If the subrecipient intends to use federal funds to pay for goods or services and their procurement policy does not contain all federal requirements, the policy must be amended accordingly. Inadequate policies and procedures do not eliminate the subrecipient’s responsibility to comply with all federal, state, and local laws regarding purchases of goods or services.

Each subrecipient must have a written and adopted procurement policy that addresses, at a minimum, the following:

1. **Oversight.**<sup>1</sup> Subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Standards of Conduct.**<sup>2</sup> Every subrecipient must maintain written procedures covering conflicts of interest governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award, and administration of contracts, the award of CDBG-DR or CDBG-MIT assistance, or the management of federally assisted or purchased property. The subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 and Texas Local Government Code Chapter 171.
  - For the procurement of goods and services, no employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g), Uniform Grant Management Standards (UGMS) of the Texas Comptroller, 2 CFR §200.318(c)(1)).
  - The officers, employees, or agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient.
3. **Avoidance of Unnecessary or Duplicative Items.**<sup>3</sup> Subrecipients' procurement procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
4. **Value Engineering Clauses.**<sup>4</sup> Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. **Awarding to Responsible Contractors.**<sup>5</sup> Subrecipients must award contracts only to responsible contractors capable of performing successfully under the terms and conditions of a proposed procurement contract. Consideration shall be given to such matters as

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<sup>1</sup> 2 CFR §200.318(b)

<sup>2</sup> 2 CFR §200.318(c)(1)

<sup>3</sup> 2 CFR §200.318(d)

<sup>4</sup> 2 CFR §200.318(g)

<sup>5</sup> 2 CFR §200.318(h)

contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

6. **Record Keeping.** Subrecipients must maintain records sufficient to detail the history of each procurement transaction. These records shall include, but are not limited to, the following:
  - Rationale for the method of procurement;
  - Selection of contract type;
  - Contractor selection or rejection; and
  - The basis for the contract price.<sup>6</sup>
7. **Time and Materials Contracts.** Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable, and if the contract includes a ceiling price, the contractor exceeds it at its own risk. Time and materials type contracts are the sum of:
  - The actual cost of materials; and
  - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.<sup>7</sup>
8. **Dispute Resolution.** Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for settling all contractual and administrative issues arising from their procurements transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve subrecipients of any contractual responsibilities under their contracts.<sup>8</sup>

### 5.3 Local Procurement Procedures

Subrecipients must have written procedures for procurement transactions that ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Identify all requirements that the offerors must fulfill;
- Identify all other factors to be used in evaluating bids or proposals; and<sup>9</sup>
- Are conducted in a manner providing full and open competition;<sup>10</sup>
  - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from

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<sup>6</sup> 2 CFR §200.318(i)

<sup>7</sup> 2 CFR §200.318(j)

<sup>8</sup> 2 CFR §200.318(k)

<sup>9</sup> 2 CFR §200.319(d)

<sup>10</sup> 2 CFR §200.319(a)

- competing for such procurements.
- Some situations considered to be restrictive of competition include, but are not limited to, the following:
    - Placing unreasonable requirements on firms in order for them to qualify to do business.
    - Requiring unnecessary experience and excessive bonding.
    - Noncompetitive pricing practices between firms or between affiliated companies.
    - Noncompetitive contracts to consultants that are on retainer contracts.
    - Organizational conflicts of interest.
    - Specifying only ‘brand name’ products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement.
    - Any arbitrary action in the procurement process.<sup>11</sup>

When using prequalified lists, subrecipients must ensure that all lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subrecipients must not preclude potential bidders from qualifying during the solicitation period.<sup>12</sup>

## 5.4 Price and Cost Analysis

For all procurement actions exceeding the Federal Simplified Acquisition Threshold, including change orders or contract modifications, subrecipients must perform a cost or price analysis as described in 2 CFR §200.324. If the local or state acquisition threshold is more restrictive, use the stricter one. Note that subrecipients must consider price reasonableness for micro-purchases as well as small purchases (see [Section 5.7](#) below).

### 5.4.1 Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services without evaluating separate cost elements and should be documented in the procurement file. Price analysis techniques include comparing proposed prices received in response to the solicitation, historical prices for the same or similar items, or comparing proposed prices with prices obtained through market research for the same or similar items.<sup>13</sup>

Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, it

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<sup>11</sup> 2 CFR §200.319(b)

<sup>12</sup> 2 CFR §200.319(e)

<sup>13</sup> Federal Acquisition Regulation 15.404-1 (b) (2)

must be determined if the goods or services are comparable. It is the subrecipient's responsibility to determine that the price is fair and reasonable.

### *5.4.2 Cost Analysis*

Subrecipients will use this process to determine whether proposed costs are allowable, reasonable, and allocable, as described in 2 CFR §200.403-405. Within a reasonable time period prior to receiving bids or proposals, subrecipients must prepare an independent cost estimate (ICE) for the goods or services to be procured. The ICE should include sufficient detail to enable the subrecipient to appropriately estimate the costs and to be able to perform a thorough comparison of the estimates in the ICE to the proposals received.

When conducting a cost analysis, subrecipients must review and evaluate the separate elements of cost and negotiate profit or fee in a received proposal.<sup>14</sup> It is the subrecipient's responsibility to determine that the cost is fair and reasonable.

A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

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

### *5.4.3 Conducting a price or cost analysis*

Subrecipients should document the following in their analysis:

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

### *5.4.4 Profit Negotiation*

As of October 1, 2024, profit negotiation in 2 CFR 200.324(b) was removed and is no longer required. For procurement before October 1, 2024: Subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price

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<sup>14</sup> Federal Acquisition Regulation 15.404-1 (c) (1)

competition and, in all cases, where cost analysis is performed.<sup>15</sup> All of the following criteria should be considered when negotiating profit:

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

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

## 5.5 Contracting with Small and Minority Businesses, Women's Business Enterprises, Veteran-owned Business, and Labor Surplus Firms

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.<sup>16</sup>

Furthermore, subrecipients need to recognize that only including The Texas Veteran Heroes United in Business (VetHUB) program does not fully meet the federal requirements for small businesses or labor surplus firms, and additional action may be necessary to take affirmative steps to reach all specified businesses. In the event that state and federal requirements conflict, the federal requirements take priority.

Affirmative steps, as presented in 2 CFR §200.321(b), must include the following:

- Placing qualified small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms on solicitation lists.
- Assuring that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms.
- Utilizing, as appropriate, organizations such as the Small Business

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<sup>15</sup> 2 CFR §200.324(b)

<sup>16</sup> 2 CFR §200.321(a)

Administration and the Minority Business Development Agency of the Department of Commerce; and

- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above.

## 5.6 Suspension and Debarment

Subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR Part 180. These regulations restrict making awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.<sup>17</sup>

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

- **Contractors:** All contractors, including professional consulting and engineering firms, should be registered, maintain active status, not be included in the Texas Comptroller's debarred vendor list, and are cleared via a search of the Federal System of Award Management (SAM) to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/search/>
- **Subcontractors:** Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, verifying the subcontract is not debarred on SAM portal or the Texas Comptroller's debarred vendor list, and meet state licensing requirements.

It should be noted that if any of the above-listed parties are deemed ineligible to receive CDBG-DR and/or CDBG-MIT funds after awarding the contract, the contract will be immediately terminated. The matter must be reported to the GLO-CDR for further action (via email).

## 5.7 Methods of Procurement

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

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<sup>17</sup> 2 CFR §200.214

## *Micro-Purchases*

The micro-purchase method is used for the acquisition of supplies or services that do not exceed the micro-purchase threshold and must be distributed equitably among qualified suppliers. In most instances under CDBG-DR and CDBG-MIT, the micro-purchase threshold is \$10,000 (prior to October 1, 2025) and \$15,000 (after October 1, 2025), except for:

- Procurement of construction services subject to Davis Bacon requirements, the threshold is \$2,000.
- Procurement of services subject to Service Contract Labor Standards, the threshold is \$2,500.

The 2021 Winter Disaster Grant was awarded to the state after October 1, 2025. For it and any subsequent grants the Micro-Purchase Threshold is \$15,000 subject to the above two exceptions.

Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable and maintains documentation to support its conclusion.<sup>18</sup>

## *Small Purchases*

The small purchase method is used for the acquisition of supplies or services that exceed the micro-purchase threshold but are less than or equal to the small purchase threshold. Small purchase procedures are relatively informal and do not require a formal solicitation for securing services, supplies, or other property.<sup>19</sup>

The federal small purchase threshold is \$350,000. For local governments, the State small purchase threshold is \$50,000. Since these grants and programs are funded with federal money, but we are also governed by state rules, we must follow the stricter of the two regulations. Subrecipients must use the stricter of the two regulations. Small purchase procedures must not be used in procurements anticipated to exceed \$50,000.

If small purchase procedures are used, the subrecipient must attempt to obtain price or rate quotations from at least 3 qualified sources.<sup>20</sup> Documentation of the rate quotations must be maintained for record-keeping requirements.

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<sup>18</sup> 2 CFR 200.320(a)(1)

<sup>19</sup> 2 CFR 200.320(a)(2)

<sup>20</sup> Texas Government Code §2155.132(h): A state agency making a purchase under this section for which competitive bidding is required must attempt to obtain at least three competitive bids from sources listed on the master bidders list that normally offer for sale the goods being purchased.

## *Sealed Bids*

Sealed bids are publicly solicited through an invitation and result in a firm fixed price contract (lump sum or unit price). The contract is awarded to the bid responsible, whose bid conforms with all the terms and conditions of the invitation for bids and is the lowest price. This is the preferred method for construction contracts.<sup>21</sup>

## *Competitive Proposals*

The competitive proposals procurement technique is normally used when either a fixed price or cost-reimbursement type contract is awarded and when conditions are not appropriate for using sealed bids. A Request for Proposal (RFP) is used when qualifications and price are used to evaluate proposals and is the preferred method for administrative services and environmental assessments. Proposals must be solicited from multiple qualified entities. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used to evaluate proposals and price is not used as a selection factor.<sup>22</sup>

## *Noncompetitive Procurements*

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The aggregate amount of the procurement does not exceed the micro-purchase threshold.
- The procurement transaction can only be fulfilled by a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, the competition is determined to be inadequate.<sup>23</sup>

The subrecipient must document the circumstances that the procurement transaction met to use the noncompetitive procurement method and the how the subrecipient ensured compliance with the requirements.

GLO-CDR published a Noncompetitive Procurement Checklist to guide subrecipients in documenting the efforts taken to procure goods and services using the noncompetitive

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<sup>21</sup> 2 CFR §200.320(b)(1)

<sup>22</sup> 2 CFR §200.320(b)(2)

<sup>23</sup> 2 CFR §200.320(c)

procurement. While the checklist is intended as a general tool, the circumstances of some procurements may require additional support or documentation.

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

<b>Procurement Type</b>	<b>Cost Reasonableness</b>	<b>Contract Type</b>	<b>Solicitation Method</b>	<b>Applications</b>
<b>Micro-Purchase</b>	Price Analysis	Purchase Order Fixed Price	No solicitation required	Supplies Produced items Single task service
<b>Small Purchase</b>	Price Analysis	Purchase Order Fixed Price	Quotations Submitted Bids	Supplies Produced items Single task service
<b>Sealed Bid (formal advertising)</b>	Price Analysis Cost Analysis	Fixed Price	Submitted Bids	Construction items Produced or designed items
<b>Competitive Proposals</b>	Price Analysis Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Professional services Multi-task services Designed items
<b>Noncompetitive Proposals</b>	Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Produced items Single task service Professional services Multi-task services Designed Items

## 5.8 Micro-Purchase Procedures

Prior to utilizing the Micro-Purchase method of procurement, subrecipients should plan and document the number of products or services required. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the micro-purchase threshold (see [Section 5.7](#) above). For micro-purchases of construction services in excess of \$2,000, subrecipients must adhere to the Davis-Bacon and Related Acts (see Chapter 9).

To the extent practicable, subrecipients must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable by conducting a price analysis (see [Section 5.4](#)). Prior to issuing a purchase order under this method, subrecipients must verify

that the vendor is not debarred in the System for Award Management (see [Section 5.6](#) above).

## 5.9 Small Purchase Procedures

Prior to utilizing the Small Purchase method of procurement, subrecipients should consider the aggregate cost of the goods or services. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the small purchase threshold (see [Section 5.7](#) above).

Subrecipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding the competitive bidding and competitive proposal requirements.<sup>24</sup>

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

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

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

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

Subrecipients must use the Small Purchase Procurement Record ([Infrastructure Forms | Texas General Land Office](#)) to document quotes received. Quotations may be requested via telephone, fax, email, mail, or any other reasonable method.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

### *Step 3: Award the contract.*

Subrecipients should conduct a price analysis and award to the lowest-priced quote (see [Section 5.4](#) above). If the subrecipient does not award the contract to the lowest-cost respondent, the rationale must be documented and comply with federal, state, and local regulations.

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<sup>24</sup> Local Government Code, Sec. 262.023 (c) and Sec. 252.062

Subrecipients must verify that the vendor is not debarred under the System for Award Management or is in the Texas Comptroller’s Debarred Vendor List. (see [Section 5.6](#) above).

See [Section 5.13.5](#) for details on change orders.

#### *Step 4: Execute the contract.*

When using Small Purchase Procurement for contracts, subrecipients must submit the Small Purchase Procurement Record. Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

### 5.10 Sealed Bid Procedures

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

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

**Note:** Sealed bid procurement can be conducted electronically. The federal and state guidance and laws that must be followed are detailed in the General Land Office document titled “E-Bid Procurement Guidance.” ([Procurement & Contract Guidelines | Texas General Land Office](#))

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

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

- Be sealed by an architect or engineer registered in the State of Texas and if the project falls under the jurisdiction of another state agency, approval is required prior to construction.
- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility for individuals with disabilities have been or will be satisfied must be executed and co-signed by a local jurisdictional official and filed in the contract documents.
- Include details for all properly acquired lands, rights-of-way, and/or easements

necessary for carrying out the project.

- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project.
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations.

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

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

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

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

### *Step 3: Advertise for Bids*

The invitation for bids must be publicly advertised, and bids shall be solicited from an adequate number of qualified sources with sufficient time provided prior to the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services so the bidder can properly respond.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

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

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

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

Subrecipients should take action within 45 days of the bid opening, or as otherwise specified in the bid documents, to either award a contract to the lowest responsible bidder or reject any and

all bids for just cause. Any or all bids may be rejected if there is a sound, documented reason.

If only one bid is received, the bid should be compared with an in-house estimate of the cost and prices paid for the same or substantially similar item(s) in the past. Information from the marketplace should be gathered if it was not done so when developing the estimate. If the sealed bid is cancelled and negotiations proceed with the single bidder, the subrecipient must document the rationale it used to determine that competition was not adequate and whether it performed any additional or direct solicitations to prospective bidders. In addition, a complete cost breakdown must be obtained, and a cost analysis performed. If the bidder refuses to comply, bids must be resolicited. All rationale for decisions must be documented.

If accepted, the subrecipient and the lowest responsible bidder may, by mutual written consent, agree to extend the award deadline by one or more extensions of 30 calendar days. Any final contracts awarded must be done so in compliance with the federal wage decision (See Labor Chapter 9 for details). Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

### *Step 5: Award the Contract*

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

Subrecipients must verify that the vendor is not debarred under the Texas Comptroller Debarred Vendor List (<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>) or the System for Award Management (Sam.gov) prior to awarding a contract (see [Section 5.6](#) above).

### **Procedures for Bids that Exceed Cost Estimates**

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the subrecipient shall determine the best course of action in consideration of the following options:

- Reject all bids received and re-advertise the project.
- Revise or reduce specifications and re-advertise the project after scope changes are approved by GLO-CDR via a contract change request.
- Reallocate funds to cover the overage.
- Seek other funding sources, such as local funds, to cover the overage.
- Enter into a legally binding contract with the lowest bidder for the amount of the bid presented and, subsequently, execute a change order\* to bring the project cost within the limits presented by the allocated funds.

\*A change order that alters the approved scope of work will require submission of a contract change order request. All changes resulting from bids that exceed cost estimates must be submitted to GLO-CDR within 30 days of the award. It is strongly advised that the subrecipient thoroughly analyzes how exercising this option would affect the other bidders prior to awarding the contract. See [Section 5.13.5](#) for details on change orders.

## *Step 6: Execute the Contract*

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

### 5.11 Competitive Proposal Procedures

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

#### *5.11.1 Request for Proposals (“RFPs”)*

RFPs are used to procure professional services for project delivery, such as grant administration and environmental services. This does not include architectural and engineering (“A/E”) professional services where the price negotiation occurs.

#### *5.11.2 Request for Qualifications (“RFQs”)*

RFQs are used to procure professional services such as engineering or architectural firms. RFQs use a competitive negotiation method. The selection is made based upon the competitor’s qualifications, subject to negotiation of fair and reasonable compensation.

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

All A/E contracting fees, even those provided for under either a fixed-price contract or a cost reimbursement contract, must be deemed reasonable, justifiable, and below the applicable GLO-CDR cap. If, after a project has been funded, the project scope changes, a contract change request must be submitted for consideration by GLO-CDR. Changes to the project’s scope may impact the service provider’s fees as established by the applicable fee caps and the total construction amount.

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

### 5.11.3 Conducting an RFP/RFQ

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

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

- Description of subrecipient's requirements and the scope of services;
- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance;
- Detailed instructions on proposal requirements;
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.
  - A solicitation may authorize offerors to propose alternative terms and conditions.
  - When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

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

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

Proposals must be solicited from multiple qualified sources. Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

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

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

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

If only one proposal or qualification statement is received, the subrecipient must determine whether to resolicit the RFP/RFQ. If the RFP/RFQ is cancelled and negotiations proceed with the single respondent, the subrecipient must document the rationale it used to determine that competition was not adequate and whether it performed any addition or direct solicitations to prospective respondents.

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

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

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the subrecipient, with price and other factors considered (see [Section 5.4](#) above).

Subrecipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract (see [Section 5.6](#) above).

See [Section 5.13.5](#) for details on change orders.

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

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.5.12 Noncompetitive Procurement Procedures

Subrecipients MUST ensure compliance with 2 CFR 200.320(c) prior to using this procurement method. A Self-Certification of Noncompetitive Procurement must be completed for each applicable procurement and maintained by the subrecipient for record-keeping requirements.

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
- The procurement transaction can only be fulfilled by a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, competition is determined inadequate.

Subrecipients must conduct a cost analysis to determine if proposed costs are allowable, reasonable, and allocable (see [Section 5.4](#) above). Subrecipients must also verify that the vendor is not debarred under the System for Award Management (see [Section 5.6](#) above).

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

## 5.13 Contracting

### 5.13.1 Types of Contracts

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

- Agency name and address;
- Agency contract or Purchase Order number;
- Date of the order;
- Term of contract (delivery period after receipt of order or beginning and end dates);
- Contractor's name, payee/vendor identification number, and address, including zip code;
- National Institute of Government Purchasing (NIGP) class/item for each item; Purchase Code Category;
- List of contract documents and their order of precedence;
- List of awarded items with quantity, unit of measure, and unit price with extended totals; and
- Signature of authorized/certified purchasing representative.<sup>25</sup>

**Fixed-Price Contract.** A fixed price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset. This contract type (1) places maximum risk and full responsibility for costs and resulting profit loss on the contractor, (2) provides maximum incentive for the contractor to control costs and perform effectively, and (3) imposes a minimum administrative burden upon the contracting parties.

**Cost Reimbursement Contract.** A cost reimbursement contract is suitable for situations in which uncertainties are involved in contract performance that do not permit costs to be estimated with sufficient accuracy to establish a fixed contract price. These types of contracts establish an estimate total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at their own risk).

**Time and Materials Contract.** A time and materials contract is suitable for use only after it has been determined that no other contract is suitable. This type of contract provides for the

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<sup>25</sup> State of Texas Procurement and Contract Management Guide.

payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable and if the contract includes a cost ceiling that the contractor exceeds at its own risk.

**Note:** Subrecipients must ensure that the contract is not a prohibited cost-plus-a-percentage-of-cost or percentage-of-construction-cost contract.

### *5.13.2 Required Contract Provisions*

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

- Performance requirements and penalties;
- Project schedule including the performance period and completion date;
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions;
- All Section 3 covered contracts shall include the Section 3 clause;<sup>26</sup> and
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.<sup>27</sup>

**Other Federally Required Provisions.** The subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.<sup>28</sup>

1. **Remedies.** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.<sup>29</sup>
2. **Termination for cause and for convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the subrecipient including the manner

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<sup>26</sup> 24 CFR §135.38

<sup>27</sup> 42 United States Code (U.S.C.) §6201

<sup>28</sup> 2 CFR §200.327

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

by which it will be affected and the basis for settlement.<sup>30</sup>

3. **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.<sup>31</sup>
4. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>32</sup>
5. **Records of non-Federal entities.** The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas General Land Office Community Development and Revitalization (GLO-CDR), and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-federal entity which are pertinent to the federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-federal entity's personnel for the purpose of interview and discussion related to such documents.<sup>33</sup>
6. **Record Retention.** Financial records, procurement records, labor records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-federal entities. The only exceptions are the following:
  - a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the

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

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

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

<sup>33</sup> 2 CFR §200.337(a)

- records have been resolved and final action taken;
- b. When the non-federal entity is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
  - c. Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition;
  - d. When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-federal entity;
  - e. Records for program income transactions after the period of performance. In some cases, subrecipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-federal entity's fiscal year in which the program income is earned;
  - f. Indirect cost rate proposals and cost allocation plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates);
  - g. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission;
  - h. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.<sup>34</sup>
- 7. Contracting with small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.**
- a. The non-federal entity must take all necessary affirmative steps to assure that small, minority businesses, women's business enterprises, and labor surplus area firms are used when possible;
  - b. Affirmative steps must include:
    - i. Placing qualified small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms on solicitation lists;
    - ii. Assuring that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms are solicited whenever they are potential sources;

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<sup>34</sup> 2 CFR §200.334

- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms;
  - v. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor to apply the requirements of this section to subcontracts.<sup>35</sup>
8. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”<sup>36</sup>
9. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay laborers and mechanics wages at a rate not less than the prevailing wage specified in a wage determination issued by the Secretary of Labor. In addition, contractors must be required to pay wages at least once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported

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<sup>35</sup> 2 CFR 200.321

<sup>36</sup> 2 CFR 200 APPENDIX II (C)

violations to the federal awarding agency.<sup>37</sup>

10. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>38</sup>
11. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).<sup>39</sup>
12. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors who apply for or bid on an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds conducted in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier until they reach the non-federal award.<sup>40</sup>
13. **Solid Waste Disposal Act.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of

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<sup>37</sup> 2 CFR 200 APPENDIX II (D)

<sup>38</sup> 2 CFR 200 APPENDIX II (E)

<sup>39</sup> 2 CFR 200 APPENDIX II (G)

<sup>40</sup> 2 CFR 200 APPENDIX II (I)

the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>41</sup>

14. **Domestic preferences for procurements.** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under the federal award.<sup>42</sup>

#### **Additional Required Provisions.**

1. **Verification No Boycott Israel.** As required by Chapter 2271, Texas Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.<sup>43</sup>
2. **Foreign Terrorist Organizations.** Pursuant to Chapter 2252, Texas Government Code, Vendor represents and certifies that, at the time of execution of this Agreement neither Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.<sup>44</sup>
3. **Verification of No Telecommunications or Surveillance Equipment.** As stated in 2 CFR 216, vendors must ensure that no telecommunications or surveillance equipment is

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<sup>41</sup> 2 CFR 200.323

<sup>42</sup> 2 CFR 200.322

<sup>43</sup> Texas Government Code Chapter 2271

<sup>44</sup> Texas Government Code Section 2252.152

purchased, installed, or repaired using any components manufactured or provided by any entity identified as prohibited in 2 CFR 216.<sup>45</sup>

### *5.13.3 Bonding Requirements*

Subrecipients are encouraged to accept the bonding policy and requirements of the GLO-CDR for construction and facility improvement contracts and subcontracts exceeding the simplified acquisition threshold.

- For contracts over \$50,000, subrecipients should require a bid guarantee from each bidder equivalent to five percent of the bid price consisting of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- For contracts over \$100,000, Subrecipients should require a performance bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Subrecipients should require a payment bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract;
  - Municipalities: A payment bond is required if the contract exceeds \$50,000.<sup>46</sup>
  - Counties: A payment bond is required if the contract exceeds \$25,000.<sup>47</sup>

### *5.13.4 Workers' Compensation Requirements*

Subrecipients that enter into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each of the contractor's employees employed on the public project.<sup>48</sup> Each subcontractor on the public project shall provide the general contractor with a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the subrecipient.<sup>49</sup> Additionally, Subrecipients must include in bid specifications and contracts the specific language and provisions found in 28

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<sup>45</sup> 2 CFT 216

<sup>46</sup> Government Code 2253.021(a)(2)(B)

<sup>47</sup> Government Code 2253.021 (a)(2)(A)

<sup>48</sup> Texas Labor Code 406.096 (a)

<sup>49</sup> Texas Labor Code 406.096 (b)

Texas Administrative Code, §110.110(c)(7). Subrecipients are responsible for compliance with all applicable statutory policies.

### *5.13.5 Changes to an Executed Contract*

When there are changes to an executed contract that affect the budget or scope change of a Subrecipient Agreement, the subrecipient should request an adjustment to both the Subrecipient Agreement and the subrecipient contract (such amendments in whole dollars only).

When changes to an executed construction or materials contract are necessary, the subrecipient must submit a Construction Contract Change Order form to GLO-CDR after fully executing the change order. The GLO-CDR will review change orders for programmatic compliance to ensure costs are eligible and procured in accordance with federal regulations. The change order must meet the following requirements:

- Sufficient grant or local funds are available to meet any increased costs;
- The original contract price has not been increased by more than 25 percent or decreased (without the consent of the contractor) by more than 25 percent for municipalities and 18 percent for counties;
- All items listed on the change order were competitively procured through the original bid or are defined as reasonable and substantiated by an independent cost estimate; and
- All items listed on the Change Order are eligible and comply with the Subrecipient Agreement, including the performance statement, implementation schedule, budget, and environmental review requirements.

Subrecipients are responsible for ensuring that any change order complies with program guidelines and meets the applicable procurement standards.

### *5.14 Equipment Purchases*

Equipment purchased with CDBG-DR and/or CDBG-MIT funds must be used by the subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the CDBG-DR and/or CDBG-MIT award. The subrecipient must not encumber the property without prior written approval from the GLO-CDR and HUD.<sup>50</sup> Prior approval should be requested through a memorandum sent through the GLO and to HUD.

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

- Activities under the CDBG-DR and/or CDBG-MIT award which funded the original program or project; then
- Activities under federal awards from other federal awarding agencies. This includes

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<sup>50</sup> 2 CFR §200.313(c)

consolidated equipment for information technology systems

\*Subrecipients must include documentation in the property records to justify utilizing the equipment for other purposes.

When acquiring replacement equipment, subrecipients should use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.<sup>51</sup>

**Equipment Records.**<sup>52</sup> Subrecipients must maintain a property record that includes the following information:

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

A physical inventory of the property must be conducted, and the results reconciled with the property records at least once every two years.<sup>53</sup>

#### *5.14.1 Disposition Requirements*<sup>54</sup>

Prior to disposing of any equipment purchased with CDBG-DR and/or CDBG-MIT funds, subrecipients must request disposition instructions from the GLO-CDR if required by the terms and conditions of the Subrecipient Agreement. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the GLO-CDR. However, any proceeds received may be considered program income.

### 5.15 Recordkeeping

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

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<sup>51</sup> 2 CFR §200.313(c)(4)

<sup>52</sup> 2 CFR §200.313(d)(1)

<sup>53</sup> 2 CFR §200.313(d)(2)

<sup>54</sup> 2 CFR §200.313(e)

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

## 5.16 Resources

GLO-CDR has created a comprehensive website that contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 5.1	GLO-CDR Procurement and Contracting Guidance	<a href="https://www.glo.texas.gov/disaster-recovery/procurement-contract-guidelines">https://www.glo.texas.gov/disaster-recovery/procurement-contract-guidelines</a>	N/A
Resource 5.2	State of Texas Procurement and Contract Management Guide	<a href="https://comptroller.texas.gov/purchasing/publications/procurement-contract.php">https://comptroller.texas.gov/purchasing/publications/procurement-contract.php</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#). If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest version of the document. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 6—ENVIRONMENTAL

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# CHAPTER 6—ENVIRONMENTAL

## 6.1 Introduction

HUD regulations use the term Responsible Entity (RE) to refer to the unit of general government (city or county), a state, or federally recognized tribe responsible for meeting environmental review requirements. A subrecipient that is a city or county may assume the role of RE for the GLO-administered CDBG-DR and/or CDBG-MIT funds. The RE/subrecipient is responsible for completing the environmental review, with or without assistance from a third party.

The RE must designate a Certifying Officer under the terms of the certification required by Sec. 58.71, a REs certifying officer is the “responsible Federal official” as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). This person is the chief elected official (e.g., County judge or City mayor), chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all federal, state, and local environmental requirements have been followed. This function may not be assumed by administering agencies or consultants. The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also: (a) represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and (b) ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

This chapter provides highlighted components of the HUD Environmental review process; however, it is not inclusive and the RE is responsible for understanding and adhering to all environmental requirements provided in 24 CFR 58 (see [Resources—Resource 6.1](#)). Periodic updates may be provided by HUD environmental compliance staff. CDBG-DR and/or CDBG-MIT subrecipients, and personnel completing the environmental review, should be familiar with all federal and state environmental requirements along with the resources and forms found on the HUD Exchange—Environmental Review website (see [Resources—Resource 6.2](#)) and should contact the GLO-CDR Regulatory Oversight staff to request technical assistance by emailing [env.reviews@recovery.texas.gov](mailto:env.reviews@recovery.texas.gov).

Effective 12/27/2021, the GLO-CDR Regulatory Oversight team will continue to provide technical assistance, guidance, and training to all subrecipients; however, submitted environmental documents will not be reviewed for compliance. Subrecipients are required to upload completed and certified Environmental Review Records (ERR) to the Texas Integrated Grant Reporting (TIGR) system. GLO will process HUD 7015.15 Request for Release of Funds (RROFs) in accordance with federal regulation 24 CFR 58.72. The RE must ensure all ERRs are maintained and current in TIGR as the project progresses.

The GLO-CDR Regulatory Oversight team will conduct in-depth environmental monitoring of ERRs to determine compliance in accordance with HUD’s Community Planning and Development (CPD) Monitoring Handbook (see [Resources](#)—Resource 6.3). Failure to comply with these requirements will jeopardize the project and could lead to disallowed costs, repayment of funds, and debarment from the program for the subrecipient and administrators involved with the environmental review process. If the subrecipient is unsure how to proceed, contact your GLO-CDR Regulatory Oversight staff by emailing [env.reviews@recovery.texas.gov](mailto:env.reviews@recovery.texas.gov).

Visit HUDs environmental review webpage for comprehensive information on the environmental review process and regulations (see [Resources](#)—Resource 6.4).

## 6.2 Basics of Environmental Review

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (e.g., every project's environmental impact must be examined, but the extent of this examination varies by action), but every project must be in compliance with the 24 CFR 58, National Environmental Policy Act (NEPA) (see [Resources](#)—Resource 6.5), and other related Federal and state environmental laws.

## 6.3 Timing of the Environmental Review & Choice Limiting Actions

An important concept under environmental regulation is the timing of the environmental review. An environmental review must be performed before any funds, regardless of source, are committed on an activity or a project. No activity or project may be undertaken if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives (24 CFR 58.22(a)). HUD’s restrictions on choice limiting actions apply only after receipt of an application for HUD assistance (including insurance) associated with a specific project or activity. At that point, the project is considered a Federalized project, and NEPA applies.

This prohibition on committing funds to “choice-limiting actions” prohibits physical activity including acquisition, rehabilitation, and construction, as well as contracting for any of these actions considered and followed prior to any work being initiated or funded.

It is imperative to discuss choice limiting actions as they relate to project re-evaluations (24 CFR 58.47). If a RE fails to comply with 24 CFR 58.47, a choice limiting action as described in 24 CFR 58.22(a) may have occurred. For brevity, a re-evaluation is required when the project footprint or area of potential effect (APE) changes regardless of the amount of linear feet/area, project activities are added/removed, unexpected conditions

arise, or changes are made to the nature, magnitude, or extent of the project. If the original finding is assessed as still valid, the environmental review record (ERR) would be updated with a memo to the file, which is commonly referred to as a Letter of Re-evaluation or LRE. If the original finding is assessed as no longer valid, the RE may have to prepare a new environmental review record and proceed with the approval process, which includes but is not limited to a new environmental review record, public notices, public comment and objection periods, and a new Request for Release of Funds (RROF) and Authority to Use Grant Funds.

According to 24 CFR 58.72, in cases where the GLO is exercising HUD's responsibilities outlined in 24 CFR 58.18 and has approved an environmental certification and RROF but subsequently learns that the RE violated 58.22(a), or otherwise failed to comply with any applicable environmental authority, the GLO can impose appropriate remedies and sanctions in accordance with the law and regulations for the program under which the violation was found. This may include repayment of federal funds. Refer to the GLO-CDR Environmental webpage (<https://www.glo.texas.gov/disaster-recovery/environmental>) for the revised (dated January 7, 2022) Policy Memos on Choice Limiting Activities and Project Re-evaluations (see [Resources](#)— Resource 6.6).

### 6.3.1 Option Contracts for Purchase of Property

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

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

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

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

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

The provision allows flexibility regarding the term “nominal” and any reasonable interpretation is acceptable. For instance, it is reasonable to conclude that the nominal amount for option contracts will vary depending upon the local real estate market and the purchase price. Refer to the HUD website for the August 26, 2011, guidance memo titled “Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58” for additional information (see [Resources](#)—Resource 6.7).

## 6.4 Environmental Review Process

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

# Environmental Review Process

(To Be Conducted by Responsible Entity)



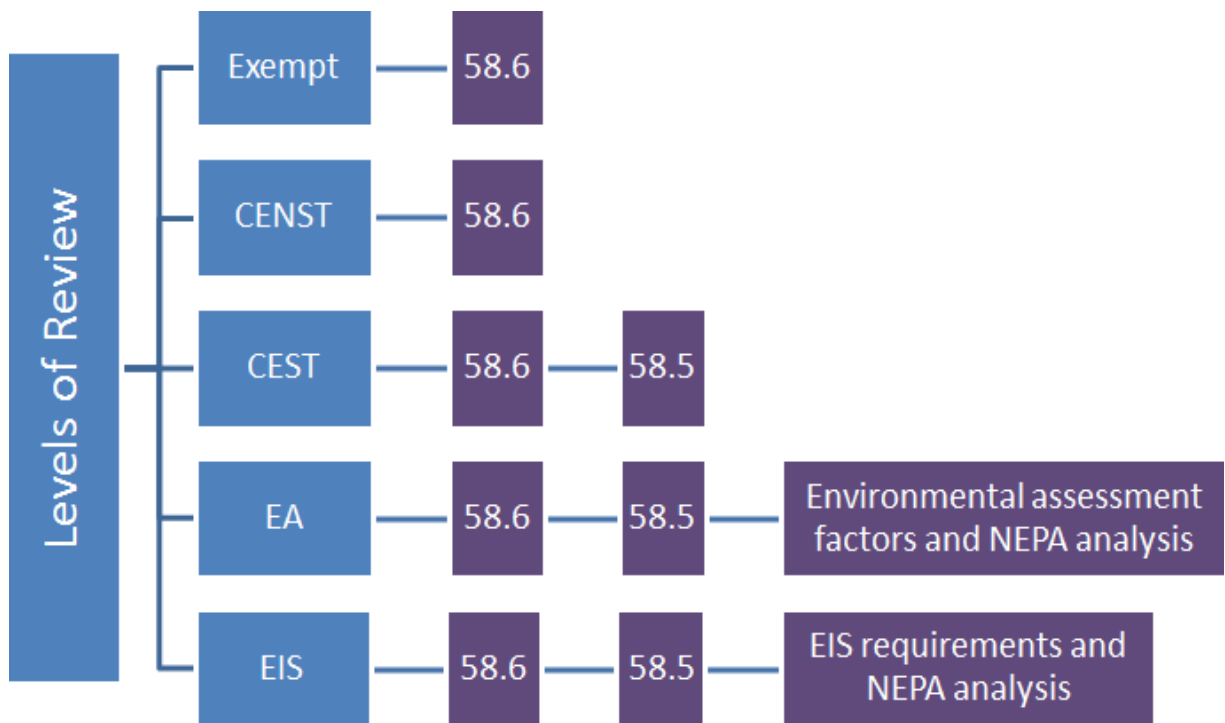
## 6.4.1 Levels of Review

The RE should take adequate time to clearly establish the scope of work and project description prior to initiating the environmental review. Once the scope of the project is known you can determine the appropriate level of environmental review. Accurate scoping, project description and project aggregation are critical success factors.

Project Aggregation, as defined in 24 CFR 58.32, requires the RE to group together, and evaluate as a single project, all individual activities which are related either on a geographical or functional basis or are logical parts of a composite of contemplated actions. The purpose of project aggregation is to adequately analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions (see [40 CFR 1508.25\(a\)](#)). The RE may choose:

- Functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions;
- Geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or
- A combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

There are five levels of environmental review as depicted below and discussed in the following pages:



### *24 CFR 58.34 Exempt Activities*

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 may be exempt from environmental review:

- Environmental and other studies;
- Information and financial services—Administrative and management activities; Engineering and design costs;
- Interim assistance (emergency) activities 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 disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training—Payment of principal and interest on loans made or guaranteed by HUD;
- Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations.

#### *24 CFR 58.35(b) Categorically Excluded, Not Subject To §58.5 (CENST)*

The following activities, listed at 24 CFR Part 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to 24 CFR 58.5 compliance determinations.

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local state and federal government services and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- 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;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

## *24 CFR 58.35(a) Categorically Excluded, Subject To §58.5 (CEST)*

The list of categorically excluded activities is found at 24 CFR Part 58.35. While the activities listed in 58.35(a) are categorically excluded from NEPA requirements, the RE must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 24 CFR 58.5.

The following are categorically excluded activities subject to 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation 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;
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons;
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units;
    - The land use is not changed; and
    - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.
  - For multifamily residential buildings (with more than four units):
    - Unit density is not changed more than 20 percent;
    - The project does not involve changes in land use from residential to non-residential; and
    - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.
  - For non-residential structures including commercial, industrial, and public buildings:
    - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
    - The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to four-family dwelling where there is a maximum of four units on any one site. “Individual action” refers to new construction, development, demolition, acquisition, disposition, or refinancing (does not include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in between;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site; and
- 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;
- Combinations of the above activities.

### *Environmental Assessment*

Activities which are neither exempt nor categorically excluded (under each category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD, and with the environmental requirements of other applicable federal laws. Comprehensive guidance for completing this level of review can be found on the [HUD EA website](#) (see [Resources](#)—Resource 6.8).

### *Environmental Impact Statement*

An Environmental Impact Statement (EIS) is required when the Subrecipient's Environmental Assessment results in a Finding of Significant Impact, indicating that its proposed project or activity will significantly impact the human environment. It is unlikely that a funded activity will trigger an EIS. In the event a subrecipient finds itself involved with this level of review, the subrecipient should contact the Regulatory Oversight team via [env.reviews@recovery.texas.gov](mailto:env.reviews@recovery.texas.gov) immediately for further instructions.

## 6.4.2 Other Types of Environmental Review and Reports

### *Categorical Exclusion Converted to Exempt 24 CFR 58.34(a)(12) & 58.35(a):*

Under rare circumstances the subrecipient could find their Categorically Excluded project falls under Exempt status per section 58.34(a)(12) and that none of the statutory requirements under section 58.5 apply to the project. Using the Categorical Exclusion Subject to §58.5, the subrecipient will determine if the project it is preparing to undertake can be converted to Exempt under section 58.34(a)(12).

### *Project Re-evaluations (24 CFR 58.47)*

Reevaluation of a project is necessary under the following circumstances:

- The recipient proposes substantial changes in the nature, magnitude, or extent of the project, including adding new activities not anticipated in the original scope of the project;
- 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 during the implementation of the project or activity which is proposed to be continued; or
- The recipient proposes the selection of an alternative not in the original finding.

The environmental review record should be updated, and the responsible entity should confirm whether the original findings are still valid. If the original findings are no longer valid, a new environmental assessment must be prepared. Please refer to the Revised Regulatory

Oversight Policy Memo on Project Re-evaluations (dated January 7, 2022) for additional information (see [Resources](#)—Resource 6.6).

### *Tiered Reviews*

For projects with multiple, non-contiguous locations, such as a housing rehabilitation project with work sites that are scattered throughout a county or city, a tiered environmental review may be appropriate. It should be noted, tiering is not appropriate for projects where specific locations have been identified, and for which the development of site-specific reviews is feasible.

For the project as a whole, complete a Broad-Level Tiered Environmental Review using the format provided on the HUD website. This review will identify which review requirements must be addressed site-by-site. For each specific site, document compliance with the review requirements identified in the Broad-Level Tiered Environmental Review. The subrecipient may request a RROF based on the Broad-Level review; however, the Site-Specific review must be completed prior to obligating funds for each site. Refer to the HUD website on [Tiered Reviews](#) for additional information (see [Resources](#)—Resource 6.9).

### *ASTM Phase I and II Environmental Site Assessment*

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

## 6.6 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 6.1</b>	HUD Exchange: Environmental Regulation Process (24 CFR Part 58)	<a href="https://www.hudexchange.info/resource/167/environmental-review-procedures-24-cfr-58/">https://www.hudexchange.info/resource/167/environmental-review-procedures-24-cfr-58/</a>	N/A
<b>Resource 6.2</b>	HUD Exchange: Environmental Review	<a href="https://www.hudexchange.info/programs/environmental-review/">https://www.hudexchange.info/programs/environmental-review/</a>	N/A
<b>Resource 6.3</b>	HUD Exchange: Community Planning and Development (CPD) Monitoring Handbook	<a href="https://www.hudexchange.info/resource/290/hud-community-planning-and-development-monitoring-handbook-65092-rev7/">https://www.hudexchange.info/resource/290/hud-community-planning-and-development-monitoring-handbook-65092-rev7/</a>	N/A
<b>Resource 6.4</b>	HUD Exchange: HUD Environmental Regulations	<a href="https://www.hudexchange.info/programs/environmental-review/">https://www.hudexchange.info/programs/environmental-review/</a>	N/A
<b>Resource 6.5</b>	National Environmental Policy Act (NEPA)	<a href="https://www.epa.gov/nepa/what-national-environmental-policy-act">https://www.epa.gov/nepa/what-national-environmental-policy-act</a>	N/A
<b>Resource 6.6</b>	GLO-CDR Environmental webpage:	<a href="https://www.glo.texas.gov/disaster-recovery/environmental">https://www.glo.texas.gov/disaster-recovery/environmental</a>	N/A
	<ul style="list-style-type: none"> <li>Revised Policy Memo on Choice Limiting</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-</a>	GLO Resources

	Activities (January 7, 2022)	<a href="https://www.glo.texas.gov/sites/default/files/resources/administration/environmental/revised-choice-limiting-policy-memo.pdf">administration/environmental/revised-choice-limiting-policy-memo.pdf</a>	
	<ul style="list-style-type: none"> <li>Revised Policy Memo on Project Re- evaluations (January 7, 2022)</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/environmental/revised-project-reevaluation-policy-memo.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/environmental/revised-project-reevaluation-policy-memo.pdf</a>	GLO Resources
<b>Resource 6.7</b>	HUD Memo: Guidance on Options and Conditional Contracts for Purchase of Real Property for Environmental Reviews Conducted by a Responsible Entity under 24 CFR 58 (August 26, 2011)	<a href="https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/">https://www.hudexchange.info/resource/5032/hud-memo-guidance-on-options-and-conditional-contracts-for-purchase-of-real-property-for-environmental-reviews-conducted-by-a-responsible-entity-under-24-cfr-58/</a>	N/A
<b>Resource 6.8</b>	HUD Exchange: Environmental Assessment (EA)	<a href="https://www.hudexchange.info/programs/environmental-review/environmental-assessment/">https://www.hudexchange.info/programs/environmental-review/environmental-assessment/</a>	N/A
<b>Resource 6.9</b>	HUD Exchange: Tiered Environmental Reviews	<a href="https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/">https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](https://get.adobe.com/reader/). If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's

standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 7—CONTRACT SPECIAL CONDITIONS

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# CHAPTER 7—CONTRACT SPECIAL CONDITIONS

## 7.1 Introduction

In addition to the standard federal, state, and program requirements, special conditions or permits may apply based on the specific project description or location. These special conditions are included in the Subrecipient Contract or Agreement. Please note that project activities included in this chapter may not pertain to every subrecipient agreement. Subrecipient must document proof of compliance with all applicable permitting provisions. In correspondence with appropriate agencies concerning the special condition or permit, subrecipient should reference the applicable CDBG-DR and/or CDBG-MIT grant contract number.

## 7.2 Reimbursement, Generally

CDBG-DR funds may not be used for activities that are eligible to be reimbursed by, or for which funds are made available by, (a) the Federal Emergency Management Agency (FEMA); (b) the Army Corps of Engineers (Corps); (c) any other federal funding source; or (d) covered by insurance. Subrecipient shall ensure compliance with all such requirements.

## 7.3 Projects in a Floodplain

Subrecipient completing projects in a floodplain must participate in the National Flood Insurance Program (NFIP). The subrecipient shall provide documentation to GLO-CDR prior to contract termination which indicates that it has received approval from the Texas Water Development Board as the NFIP State Coordinating Agency that appropriate ordinances or orders necessary for the subrecipient to be eligible to participate in the NFIP have been adopted. Documentation may also be required as part of the environmental process to document project eligibility. Where activities involve structures that are located in Special Flood Hazard Areas (SFHA), flood insurance may be required and documentation showing evidence of compliance submitted to GLO-CDR. See Subrecipient Agreement for additional requirements.

Additionally, if any property that is the subject of an activity under the grant contract is located within a floodplain, the following terms and conditions shall apply:

- Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:
  - The community in which the area is situated is participating in the National Flood Insurance Program ("NFIP") (44 CFR parts 59 through 79), or less than one (1) year has passed since the FEMA notification regarding such hazards; and
  - The community is participating in the NFIP, or that flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

- Where the community is participating in the NFIP and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the subrecipient is responsible for ensuring that flood insurance under the NFIP is obtained and maintained.
- Under Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 515a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for flood damage to any personal, residential, or commercial property if:
  - The person had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and
  - The person failed to obtain and maintain flood insurance
- Subrecipients have a responsibility to inform homeowners receiving disaster assistance that triggers the flood insurance purchase requirement of the homeowner's responsibility, to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. This notification should be in writing and should be acknowledged by a signed document.

The requirement to maintain flood insurance, at the federal level, is as follows:

**Housing:** Residential buildings in a Special Flood Hazard Area (100-year Floodplain) must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.

**Infrastructure (Public Facilities and Improvements):**

- Non-residential structures must be elevated at least two feet above the 100-year (or 1 percent annual chance) floodplain;
- Critical Actions within the 500-year (or .2 percent annual change) floodplain must be elevated or flood proofed the higher of the 55-year floodplain elevation or three feet above the 100-year floodplain elevation.

#### 7.4 Projects Requiring Designs/Plans/Specifications

The subrecipient shall receive and maintain copies in written and/or digital format of the project(s) final design record drawing(s) and/or engineering schematic(s), as constructed. A copy of the record drawings or as-built plans must be provided to the GLO as required by the applicable contract milestone. See executed subrecipient agreement for additional information.

#### 7.5 Water System Improvements

Prior to the GLO-CDR's release of funds for the construction of any water system improvements, subrecipient shall provide certification to GLO-CDR that plans, specifications, and related documents for the specified water system improvements have been prepared by

the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the applicable Texas Commission on Environmental Quality (TCEQ) review requirements described in Title 30 of the Texas Administrative Code.

Prior to construction, subrecipient shall provide documentation to the GLO-CDR that an approved new or amended Certificate of Convenience and Necessity (CCN), or the equivalent permit or authority for the area to be served, has been issued by the TCEQ.

**Water Well Projects.** Prior to subrecipient's submission of the Project Completion Report, the subrecipient shall provide a letter from the TCEQ that the constructed well is approved for interim use and may be temporarily placed into service pursuant to 30 Texas Administrative Code, Chapter 290—Rules and Regulations for Public Water Systems. After the water well is in service for six (6) to nine (9) months, TCEQ will test the water and issue a permanent approval letter.

## 7.6 Sewer System Improvements

Prior to the construction of any sewer system improvements, subrecipient shall provide certification that plans, specifications, and related documents for the specified sewer system improvements have been prepared by the engineer selected for such activities, or the engineer's duly authorized representative, and that the review of such plans, specifications, and related documents meet the Texas Commission on Environmental Quality (TCEQ) review requirements described in 30 Texas Administrative Code, Chapter 217, Subchapter D.

Prior to the construction of any sewer lines or additional service connections, the subrecipient shall provide notification of the start of construction on any sewer treatment plant of other system- related improvements included in the grant contract.

## 7.7 Wastewater Treatment Construction

Prior to incurring costs for any wastewater treatment construction, subrecipient shall provide documentation of an approved permit or amendment(s) to an existing permit for such activities from the TCEQ's Water Quality Division.

In addition, the subrecipient shall provide documentation to the GLO-CDR that an approved new or amended Certificate of Convenience and Necessity (CCN), or equivalent permit or authority for the area to be served has been issued by the TCEQ.

## 7.8 Septic System Improvements

Subrecipient shall provide documentation that final plans, specifications, and installation of its septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by the TCEQ.

Subrecipient shall mitigate all existing septic systems in accordance with 30 Texas Administrative Code, Chapter 285, Subchapter D, §285.36(b), which states, "All tanks,

boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall have the wastewater removed by a waste transporter, holding a current registration with the executive director. All tanks, boreholes, cesspools, seepage pits, holding tanks, and pump tanks shall be filled to ground level with fill material (less than three inches in diameter), which is free of organic and construction debris."

Prior to the selection of program recipients for proposed On-Site Sewer Facilities (OSSF), a subrecipient shall provide a copy of its proposed program guidelines to GLO-CDR for review. All proposed OSSF programs must meet or exceed guidelines set forth in 30 Texas Administrative Code, Chapter 285, Subchapter D.

## 7.9 Building Construction

Subrecipient shall provide documentation that the construction of a new building and facilities are in compliance with the Texas Accessibility Standards (TAS) of the Architectural Barriers Act, Chapter 469, Texas Government Code, and the Texas Department of Licensing and Regulation (TDLR) Architectural Barriers Administrative Rules, 16 Texas Administrative Code, Part 4, Chapter 68. If estimated construction costs exceed Fifty Thousand Dollars (\$50,000.00), Construction Documents must be submitted to the Texas Department of Licensing and Regulation (TDLR) for an accessibility plan review.

All subrecipients must ensure their project activities are in compliance with all provisions of the Americans with Disabilities Act of 1990 (ADA).

The subrecipient is responsible for recordkeeping which documents full compliance with all requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act, Texas Administrative Code, and Texas Accessibility Standards.

## 7.10 Bridge Construction/Rehabilitation

Subrecipient shall use the minimum design requirements of the Texas Department of Transportation (TxDOT) for bridge construction/rehabilitation. Final plans and specifications must be submitted to TxDOT for review and approval prior to the start of construction, and documentation of such approval must be provided to the GLO-CDR.

## 7.11 Disaster Shelters

Subrecipient shall ensure that the primary purpose of the facility is to serve as a disaster shelter and that the facility is operated at all times in a manner that ensures that the priority use is to serve as a disaster shelter regardless of any other scheduled uses or commitments that existed at the time of the disaster or emergency situation. Additionally, subrecipient shall prepare an emergency management plan or incorporate into a previously approved plan, identification of the shelter as a facility that provides short-term lodging for evacuees during and immediately after an emergency situation. Subrecipient shall submit a copy of

Subrecipient's Emergency Management Plan Annex for Shelter and Mass Care to the GLO-CDR.

## 7.12 Debris Removal

Prior to beginning debris collection operations, subrecipient must address all pertinent environmental concerns, adhere to all applicable regulations, and obtain all required permits. Subrecipient shall ensure that any debris to be removed consists primarily of vegetation, construction, and demolition materials from damaged or destroyed structures, and personal property. Only debris identified as the responsibility of the local jurisdiction will be eligible for the reimbursement of cost of removal.

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal by use of temporary debris storage and reduction sites (TDSR). Subrecipient will prepare and operate the TDSR sites, or local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA Debris Management Guide regarding the use of TDSR sites. This document may be obtained at <https://www.fema.gov/pdf/government/grant/pa/demagde.pdf>. Subrecipient disposing of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. Any project disposing of woody and/or vegetative debris must be approved in writing by the GLO-CDR.

## 7.13 Use of Bonds

Subrecipient must notify the GLO-CDR of its issuance and sale of bonds for completion of the project funded under CDBG-DR and provide associated documentation.

## 7.14 Direct Benefit Program Guidelines

CDBG-DR and/or CDBG-MIT funded projects that provide direct benefit to homeowners selected through an application process must receive GLO-CDR approval for the proposed program guidelines prior to the selection of program recipients.

Where applicable, the guidelines must include provisions for compliance with the Federal Fire Prevention and Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation). Information regarding Program Guidelines can be found in the CDBG-DR Toolkit for Program Implementation and required Guidelines can be found on the GLO-CDR website by program; links to both are provided in [Resources](#)—Resource 7.1 and Resource 7.2 at the end of the chapter.

## 7.15 Housing Rehabilitation or Reconstruction Assistance

Prior to the selection of program recipients, subrecipient shall provide a copy of its proposed housing rehabilitation assistance program guidelines for GLO-CDR review and approval. The guidelines must include provisions for compliance with the Federal Fire Prevention and

Control Act of 1974 (which requires that any housing unit rehabilitated with grant funds be protected by a hard-wired or battery-operated smoke detector) and provisions for compliance with 24 CFR 35 (HUD lead-based paint regulation).

The housing rehabilitation or reconstruction assistance provided by subrecipient shall be in the form of a three-year unsecured forgivable promissory Note at zero interest. Provided all terms and conditions under which the assistance was provided continue to be fulfilled, the Note will be forgiven at a rate of 33 percent per year, for the first two years, and 34 percent after the third year, until the applicant fulfills their note requirement (the requirements are defined in the promissory note document).

If the homeowner occupies the home for the full three-year term, the Note expires and no repayment is required, nor will any conditions be imposed relative to the disposition of the property. If any of the terms and conditions under which the assistance was provided are breached or if the property is sold, leased, transferred or vacated by the homeowner for any consecutive thirty (30) day period during the three-year Note term, the repayment provisions of the promissory note and DOT shall be enforced.

If, during the three-year Note term, the homeowner vacates the unit for any consecutive thirty (30) day period, the locality may forgive, as evidenced by the program director, city council, or commissioner court action, the remaining loan balance. Prior to forgiveness of all or any portion of the assistance provided, the request for forgiveness must be approved by the local governing body and be based on documented and justifiable conditions or circumstances that would result in an unnecessary hardship to the homeowner and the determination that the national objective of benefiting low to moderate-income persons was met. If the Homeowner passes away, the Promissory note is treated as if it is expired and the home can pass to the heirs either testate or intestate with no CDBG-DR program restrictions.

The national objective will be considered met only when the program director, city council, or county commissioners court determines that a low- to moderate-income person has occupied the rehabilitated or reconstructed home for a time sufficient to meet the national objective. If the national objective was not achieved, subrecipient is liable for repayment of an amount equal to the difference in the appraised value of the home prior to reconstruction and the sales price when the home is sold during the term of the three-year forgivable Note.

If the property is sold or transferred to a person other than an eligible LMI person, the remaining pro-rated balance of the DPL must be repaid by the subrecipient from the sales proceeds. Notwithstanding the preceding, subrecipient shall be held liable for any balance remaining over and above the sales proceeds. In all instances, upon completion of the three year note or repayment of the assistance (in full or in part), the subrecipient shall prepare and record a release of lien document in the land records of the applicable county.

Monitoring of the three-year Note is performed during and after the grant is closed. Subrecipient must utilize non-CDBG-DR funds to fulfill the monitoring obligations for its impacted recovered community.

The subrecipient will maintain a list of homeowners that do not maintain flood insurance as documented in their promissory note. This list shall include their full name, property location, and identification number such as Social Security Number, Driver's license, etc. This list will be retained for use in edibility verification by the subrecipient and a copy of the list shall be forwarded to the GLO. These applicants will not be allowed to receive future assistance.

### 7.16 Rental Housing Rehabilitation, Reconstruction, or New Construction Assistance

Rental housing rehabilitation, reconstruction, or new construction assistance will be provided in the form of a grant at zero interest dependent upon the applicable Federal Register notice, Action Plan or Housing Guidelines. Provided all terms and conditions under which the assistance was provided continue to be fulfilled, the note will be forgiven on a pro-rated basis until the applicant fulfills their note requirement. Requirements are defined in the promissory note document.

The purpose of the program is to facilitate the rehabilitation, reconstruction, and/or new construction of affordable rental housing needs within the service area of the disaster event. A minimum of 51 percent of the multifamily units must be restricted during the affordability period for low to moderate income (LMI) persons. At a minimum, rents must comply with High HOME Investment Partnership (HOME) Rents and other existing Land Use Restriction Agreement (LURA) restrictions, if applicable. HOME rent limits are defined by HUD and must equal the lesser of fair market rents or 30 percent of the adjusted income for people earning 65 percent of the AMFI.

### 7.17 Coastal Management

Any project that may impact a Coastal Natural Resource Area must be consistent with the goals and policies of the Texas Coastal Management Program as described in 31 Texas Administrative Code, Part 16, Chapter 501.

### 7.18 Project Signage

Permanent signage identifying the location as a CDBG-DR and/or CDBG-MIT-funded project is required for any CDBG-DR and/or CDBG-MIT funded public building or facility. Some examples of projects requiring permanent signage include community centers, parks/recreation facilities, fire stations, and significant improvements to existing facilities such as Water/Wastewater facilities. Project signage is an eligible construction cost.

Requirements of permanent signage include, at a minimum, the following:

- Placement in a prominent visible public location;
- Formatted to fit the architectural design of the building or facility;
- Legible from at least three (3) feet of distance; and
- Minimum required text included in the grant contract.

Other than single family activities, all CDBG-DR and/or CDBG-MIT construction projects utilizing CDBG-DR and/or CDBG-MIT funding must have temporary signage displayed in a prominent location at the construction project site or along a major thoroughfare within the community.

Requirements of temporary signage include, at a minimum, the following:

- Minimum required text included in the subrecipient agreement and
- Evidence of sign placement must be submitted to GLO-CDR before the first construction draw.

Temporary signage may be reused for future CDBG-DR and/or CDBG-MIT projects. Subrecipient should reference the executed subrecipient agreement for additional details.

## 7.19 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 7.1	HUD CDBG-DR Toolkit for Program Implementation	<a href="https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/">https://www.hudexchange.info/programs/cdbg-dr/toolkits/program-implementation/</a>	N/A
	<ul style="list-style-type: none"> <li>HUD Disaster Recovery Homeowner Rehabilitation Program Housing Guidelines</li> </ul>	<a href="https://www.hudexchange.info/resource/2858/disaster-recovery-homeowner-rehabilitation-program-housing-program-guidelines/">https://www.hudexchange.info/resource/2858/disaster-recovery-homeowner-rehabilitation-program-housing-program-guidelines/</a>	N/A
	<ul style="list-style-type: none"> <li>HUD Homebuyer Program Guidelines</li> </ul>	<a href="https://www.hudexchange.info/resources/documents/Disaster-Recovery-Homebuyer-Program-Assessment-Guide.docx">https://www.hudexchange.info/resources/documents/Disaster-Recovery-Homebuyer-Program-Assessment-Guide.docx</a>	N/A
	<ul style="list-style-type: none"> <li>HUD Multifamily Rental Housing Program Guidelines</li> </ul>	<a href="https://www.hudexchange.info/resources/documents/Disaster-Recovery-Multifamily-Rental-Creating-Eligible-Rental-Projects.docx">https://www.hudexchange.info/resources/documents/Disaster-Recovery-Multifamily-Rental-Creating-Eligible-Rental-Projects.docx</a>	N/A
	<ul style="list-style-type: none"> <li>HUD Buyout Program Guidelines</li> </ul>	<a href="https://www.hudexchange.info/resources/documents/Disaster_Recovery_Buyout_Program_Guidelines.docx">https://www.hudexchange.info/resources/documents/Disaster_Recovery_Buyout_Program_Guidelines.docx</a>	N/A
Resource 7.2	GLO-CDR Housing Program Guidelines:	<a href="https://www.glo.texas.gov/disaster-recovery/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/housing-guidelines</a>	GLO Housing Guidelines

	<ul style="list-style-type: none"> <li>• 2018 South Texas Floods and 2019 Disasters—GLO-CDR Housing Guidelines</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/2018-2019-housing-guidelines-final.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/2018-2019-housing-guidelines-final.pdf</a>	GLO Housing Guidelines
	<ul style="list-style-type: none"> <li>• Hurricane Harvey—GLO-CDR Housing Guidelines</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/harvey-housing-guidelines1.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/harvey-housing-guidelines1.pdf</a>	GLO Housing Guidelines
	<ul style="list-style-type: none"> <li>• Hurricane Harvey—City of Houston Housing Guidelines</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-houston-housing-guidelines.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-houston-housing-guidelines.pdf</a>	Homeowner Assistance Program (HAP) in the City of Houston
	<ul style="list-style-type: none"> <li>• Hurricane Harvey—Harris County Housing Guidelines</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-harris-county-housing-guidelines.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/glo-harris-county-housing-guidelines.pdf</a>	Homeowner Assistance Program (HAP) in Harris County
	<ul style="list-style-type: none"> <li>• 2015-2015 Floods—GLO-CDR Housing Guidelines</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/15-16-housing-guidelines.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/15-16-housing-guidelines.pdf</a>	GLO Housing Guidelines
	<ul style="list-style-type: none"> <li>• Hurricane Ike and Dolly Round 2 Housing Guidelines</li> </ul>	<a href="https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/ike-and-dolly-round-2-housing-guidelines.pdf">https://www.glo.texas.gov/sites/default/files/resources/cdr/documents/grant-administration/grant-implementation/housing/housing-guidelines/ike-and-dolly-round-2-housing-guidelines.pdf</a>	GLO Housing Guidelines

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 8—ACQUISITION & RELOCATION

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# CHAPTER 8—ACQUISITION & RELOCATION

## 8.0 CDBG-MIT Guidance

CDBG-MIT provides funding for communities to implement acquisition and relocation activities that remove properties from flood prone areas. Buyout Programs increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters in the most impacted and distressed areas.

These activities support hazard mitigation, further floodplain management goals, and foster resiliency by funding buyout and relocation programs that remove homeowners from a floodplain or repetitive flood loss areas that may be defined as Disaster Risk Reduction Areas. Vulnerability to future flood damage and injury may be substantially mitigated by removing homes from a disaster-prone floodplain. The land acquired through a buyout program must either revert to a natural floodplain, be converted into a water retention area, be retained as green space for recreational purposes, or become a component of an ecosystem restoration or wetlands management system. The buyout and relocation activity serves multiple objectives and provides a resilient alternative to elevating and rebuilding within a floodplain, reducing repetitive loss and lowering risk to human health and safety.

## 8.1 Introduction and Purpose

Acquisition of real property may be necessary as an activity within an infrastructure program, or a subrecipient may create housing Buyout or Acquisition Programs.

- A Buyout Program (“Buyouts”) encompasses the purchase of eligible properties within a floodway, floodplain, or designated Disaster Risk Reduction Area (“DRRA”). Once a property is acquired, it is converted in perpetuity to green space, wetland management, or flood plain management.
- An Acquisition Program (“Acquisitions”) includes the acquisition of eligible disaster-damaged properties to ultimately be used to satisfy a HUD national objective. Acquisition is typically associated with a redevelopment activity through which the end use of the acquired property meets a CDBG National Objective.

A subrecipient choosing to administer a Buyout or Acquisition Program shall create guidelines using GLO-CDR’s Local Buyout or Acquisition Program Guidelines Checklist posted on the GLO-CDR website and submit them for GLO-CDR approval. A link to the checklist is available in [Resources](#)—Resource 8.1 at the end of this chapter. All housing buyout or acquisition program guidelines must be available locally for a 30-day public comment period. Approval of the program guidelines document is a benchmark in the subrecipient contract.

CDBG-DR funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601 *et seq.* (the “URA”), and the federal regulations found in 49 C.F.R. Part 24 (see also section

104(d) of the Housing and Community Development Act of 1974 and implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD funded programs). The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of acquisition, rehabilitation, or demolition of real property for any phase of a federal or federally funded project. The URA also establishes equitable land acquisition policies. See GLO Regulatory Information—URA in [Resources](#)—Resource 8.2 for additional information.

Relocation requirements of the URA are discussed in the Relocation Guidelines available on the HUD website (see [Resources](#)—Resource 8.3).

Additionally, HUD’s Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 FR 5844 (February 9, 2018), for Harvey Grants can be found in the Federal Register (see [Resources](#)—Resource 8.4).

The purpose of the URA is:

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

The URA is triggered when real property acquisition is contemplated or persons are displaced as a direct result of acquisition, demolition, and rehabilitation at any phase of a federally funded project. Specifically, 24 CFR 570.606(e) requires that acquisition of real property for a CDBG-funded activity or series of activities (including CDBG-funded acquisition itself) must comply with the URA real property acquisition requirements at 49 CFR Part 24, Subpart B. Additionally, persons displaced because of the acquisition may become eligible to receive relocation assistance.

### 8.1.1 General Requirements

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

URA acquisition rules apply any time an acquiring entity:

- Undertakes the purchase of property directly;
- Provides a nonprofit or for-profit entity with funds to purchase the property;

- Hires an agent or consultant to act on its behalf in acquisition;
- Undertakes acquisition on or after a CDBG-DR application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity; or
- Undertakes an acquisition before the application submission date and the acquisition was intended to support a subsequent CDBG-DR activity.

Property owners must be properly informed of their rights, as required by law, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their property, even if they are a direct beneficiary of the project. Before requiring the property owner to surrender possession of the real property, the acquiring entity must pay the agreed purchase price to the owner. An Acquisition Program allows for properties to be acquired—using the post disaster fair market value—and to be redeveloped in a resilient manner.

If the acquisition is only a portion of a property but would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

## 8.2 Environmental and Acquisition

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

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

- Option agreement specifically states it is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58; and
- Cost of the option is a nominal portion of the purchase price.

## 8.3 Terms and Definitions

### 8.3.1 Acquiring Entity / Acquiring Agency

The term “acquiring entity” and “acquiring agency” are used interchangeably and refer to the entity (in most cases, the subrecipient) performing the acquisition or under whose authority the acquisition is performed. Ultimately, the subrecipient is responsible for ensuring compliance with all URA requirements. This does not prevent another entity such as a water supply corporation or third-party non-profit from acquiring real property for the grant-funded project. URA rules are applicable to projects with any amount of CDBG participation regardless of the type of entity completing the acquisition activity or the source of funds being used in the transaction.

### 8.3.2 Acquisition

Purchase of eligible, disaster damaged property to be utilized to meet a HUD National Objective.

### 8.3.3 Buyout

Purchase of eligible properties within a floodway, floodplain, or designated Disaster Risk Reduction Area (DRRA). Once a property is acquired in a Buyout program, it is then converted in perpetuity to green space, wetland management, or flood plain management.

### 8.3.4 Eminent Domain

Eminent domain refers to the power of the government to take private property and convert it to public use. Constitutional protections require just compensation be paid for any private property converted to public use.

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

### 8.3.5 Condemnation

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

### 8.3.6 Personal Property

Property other than real property. It may be tangible, having physical existence, or intangible. (2 CFR 200.78)

In the State of Texas, all manufactured homes are considered personal property unless elected otherwise on a completed Application for Statement of Ownership and recorded with the County Clerk.

### 8.3.7 Real Property

All public improvements or activities related to an eligible CDBG-DR and/or CDBG-MIT project must be constructed on public property, owned by the subrecipient, or recorded as a right-of way or easement. Public property extends to that owned by water supply corporations flood control district or non-profits performing public purposes on behalf of the subrecipients through a binding agreement. Real property in the context of acquisition refers to permanent interest in real property as well as certain less-than-full-fee interests in real property.

Acquisition rules apply to CDBG-DR and/or CDBG-MIT projects in the following situations:

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

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

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

Eligible costs associated with a Buyout or Acquisition Program are limited to the actual costs for services used to complete the buyout of a home in a floodplain or floodway when the intent is to relocate the homeowner to a low-risk area outside of the floodplain/floodway. Property acquired through a buyout program must be dedicated and maintained in perpetuity as either open space, recreational land, as a component of floodplain management, or as a component of wetlands management. New structures may not be erected on property acquired, accepted, or from which a structure was removed under the buyout program other than: (1) a public facility that is open at all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (2) a rest room; or (3) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream or downstream, and that the local floodplain manager approves the structure, in writing, before the commencement of the construction of the structure.

Subrecipients without eminent domain authority fall under the requirements at 49 CFR 24.101 (b)(2).

## 8.4 Methods of Acquisition

To acquire real property a subrecipient must first determine whether the acquisition is voluntary or involuntary (see below description of determining whether an acquisition is voluntary or involuntary). Examples of common types of real property transactions are as follows:

- **Donation:** A transaction may be considered a donation only if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions;
- **Just Compensation Purchase:** The acquisition price is determined through a valuation process by a licensed appraiser. A real estate appraiser provides an objective and unbiased estimate or appraisal of the value of a property. The subrecipient notifies the owner in writing of the property's fair market value;
- **Negotiated Purchase:** Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement. For a buyout or acquisition housing program, this may include incentives to resettle beneficiaries. Subrecipient must ensure that the intent of the housing incentive is satisfied at award;
- **Condemnation/Eminent Domain:** A subrecipient should use condemnation as a last resort. The acquiring subrecipient with eminent domain authority must determine whether acquisition is voluntary or involuntary before starting any acquisition activity. Once the subrecipient starts down the "voluntary" acquisition path- the use of eminent domain is not available. If an agency conducts acquisition using the "involuntary" approach it is NOT committed to using eminent domain but may retain that option as a last resort. Subrecipients must comply with Chapter 2206 of the Texas Government Code and all other applicable law. Any subrecipient considering condemnation must be aware of spending requirements associated with CDBG-DR

funds. See applicable Federal Register and your GLO-CDR Grant Manager for additional information.

## 8.5 Determining Voluntary or Involuntary

Acquisitions may be either voluntary or involuntary. The terms relate to whether the acquiring entity possesses the authority of eminent domain (condemnation) and if the transaction occurs because of the use or the intent to use that authority. The URA provides different protections to property owners depending on whether the acquisition is voluntary or involuntary. (See 49 CFR 24, Subpart B Real Property Acquisition).

For a housing Buyout or Acquisition program a subrecipient with eminent domain authority should work to consider a voluntary program over an involuntary program to minimize the costs and maximize the benefits of buyouts.

A subrecipient should design and implement buyout or acquisition programs using the following best practice principles:

- Using real property damage data, e.g., Flood Plain Administrator reports, FEMA Individual Assistance property loss, Flood Indentation Maps, Geographic Information System (GIS) software, repetitive loss data, substantial damage data, etc. allows the subrecipient the opportunity to consider how it will best acquire a sufficient number of contiguous properties to create a public amenity;
- With support data as discussed above, the subrecipient should identify and prioritize buyout areas in advance and create a list of willing sellers and incorporate plans for a buyout into its hazard mitigation plans;
- Look for opportunities to connect to existing open space to satisfy the end use, which is to create a wetland, green space, park, etc.;
- Create program incentives and strategies for homeowners to participate in a buyout and relocate within the community;
- Work with local government entities to identify relocation areas outside the floodway, flood plain, DRRA in advance if program start; and
- Partner with state or local parks systems to manage lands acquired as part of the buyout.

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

## 8.5.1 Voluntary

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

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

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

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

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

## 8.5.2 Involuntary

If an acquisition by an entity with eminent domain authority does not comply with the voluntary acquisition requirements described above (see 49 CFR 24.101(b)(1)(i) – (iv)), the acquisition is considered involuntary. Involuntary acquisition procedures must be followed for any acquisition of real property for programs and projects funded in part or in whole by federal funds.

## 8.6 Voluntary Acquisition Process

- **Step 1—Determine Property to be Acquired**  
Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property to be acquired. For a housing Buyout or Acquisition program, see [8.5 Determining Voluntary or Involuntary](#).
- **Step 2—Submit Initial Real Property Acquisition Estimate Report to GLO**

The Initial Real Property Acquisition Report must be completed in its entirety. Subrecipients must document an estimated number of parcels and associated costs in line with the approved application budget.

- **Step 3—Determine Fair Market Value of the Property**

The subrecipient may use a fair market estimate such as a tax valuation to determine value. For a housing Buyout or Acquisition program, an appraisal is required.

- **Step 4—Notify Owner of Property Rights**

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

The subrecipient must notify the owner in writing, prior to making a purchase offer, of the property's fair market value. The subrecipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached.

**Optional:** In addition, the owner can also be invited to donate the property. The acquiring entity may include a form for the owner to complete allowing him/her to accept or decline the request to donate the land. For Housing Buyouts or Acquisitions, the subrecipient may consider incentives as part of the negotiations. Incentives must be outlined in the subrecipient approved Buyouts or Acquisitions Guidelines.

- **Step 5—Complete Environmental Review**

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

- **Step 6—Determine Price or Donation**

The owner may choose to donate the property or accept the fair market value of the property and has notified in Steps 3 and 4. If the donation and the fair market value are rejected by the owner, then the subrecipient may then negotiate with the property owner to reach an agreement. A best practice is to create a calculation that is applied to all properties to ensure that all are treated uniformly by the subrecipient. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations for voluntary acquisition, it would be entirely appropriate for the subrecipient to apply the administrative settlement concept and procedures in 49 CFR 24.102(i) to document the rationale for determining the negotiated price.

- **Step 7—Execute Agreement**

The subrecipient and the property owner must execute a sale or donation agreement and the deed must be recorded as required by State regulations. Title clearance activities may also be required prior to deed transfer.

- **Step 8—Report Acquisition Parcel Information**

The subrecipient must prepare and submit to GLO-CDR a Real Property Acquisition Detail Report and all supporting documentation per parcel. A complete acquisition packet including these documents must be submitted for review to GLO prior submission of the associated request for payment. Acquisition documentation for each packet must be accepted by the GLO prior to submitting a Request for Payment for the associated acquisition costs.

## 8.7 Involuntary Acquisition Process

- **Step 1—Determine property to be acquired**

Prior to beginning an acquisition process, the subrecipient must have a clear understanding of the grant-funded project and the property to be acquired. For a housing Buyout or Acquisition program, see [8.5 Determining Voluntary or Involuntary](#).

- **Step 2—Submit Initial Real Property Acquisition Estimate Report to GLO**

The Initial Real Property Acquisition Report must be completed in its entirety. Subrecipients must document an estimated number of parcels and associated costs in line with the approved application budget.

- **Step 3—Notify Owner of Property Rights**

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

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

- Notice to Owner for Involuntary Acquisition (see [Resources](#)—Resource 8.5 at the end of this chapter and 49 CFR Part 24);
- General Information Notice (GIN)
- “When a Public Agency Acquires Your Property”—This HUD booklet describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (see [Resources](#)—Resource 8.6); and
- “The Texas Landowner’s Bill of Rights”—This required informational booklet explains the rights and protections available to landowners (see [Resources](#)—Resource 8.7 at the end of this chapter, § 402.031, Texas Govt. Code, and Property Code §21.0112).

**Optional:** the owner can also be invited to donate the property. The acquiring entity may include the following documents:

- Form for the owner to complete accepting or declining the request to donate the land and/or
- Form on which the owner may waive the right to an appraisal of the land.

- **Step 4—Determine Appraised Value of the Property**

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

- the property valuation is simple, and the anticipated value of the proposed acquisition is \$10,000 or less, a formal appraisal is not required;
- the owner is donating the property and releases the acquiring/condemning authority from its obligation to appraise the property.

The process of estimating value when an appraisal is determined to be unnecessary is considered a “waiver valuation.” If the value of the proposed acquisition is \$10,000 or less, the subrecipient may prepare a waiver valuation and present a reasonable basis for the waiver valuation. If the value of the property exceeds \$10,000, but is less than \$25,000, GLO- CDR may consider written requests for waiver of appraisal.

Criteria for appraisals are addressed in 49 CFR 24.103.

The property owner, or the owner’s designated representative, must be invited to accompany the appraiser 49 CFR 24.102(c)(1). The subrecipient should consult with their legal counsel for guidance with respect to the requirements and procedures of the URA in determining just compensation.

*Qualifications of Appraiser and Review Appraiser*

The appraisal procedures require a qualified appraiser and a qualified review appraiser be procured (49 CFR 24.103 -.104) in compliance with applicable federal procurement standards and applicable state procurement law. A contract appraiser hired to perform an appraisal, or a review appraisal must be a state licensed or certified real estate appraiser.

- **Appraiser**—The appraiser must provide an independently and impartially prepared opinion of the value of the defined property as of a specific date, supported by the presentation and analysis of relevant fair market information;
- **Review Appraiser**—Per 49 CFR 24.104, the review appraiser must examine the analysis of fair market information in appraisals to assure that they meet the definition of appraisal found in 49 CFR 24.2(a)(3), appraisal requirements found in 49 CFR 24.103, and all other applicable requirements. The review appraiser may be a member of the staff but must demonstrate adequate experience, education, training, and certification/licensing. If the review appraiser is unable to recommend or approve an appraisal as an adequate basis for the establishment of just compensation, the review appraiser may, as part of the review, present fair market information to support a recommended value. GLO may request documentation to support the review appraiser’s qualifications.

- **Step 5—Notification—Establishment and Offer of Just Compensation**

Before the initiation of negotiations, the subrecipient must establish an amount believed to be just compensation to offer the property owner. The subrecipient must

provide the just compensation value of the property to the owner in writing prior to making a purchase offer. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account duplication of benefits as well as the value of allowable damages or benefits to any remaining property. The just compensation determination statement and notification to the owner must be signed by subrecipient's local designated official and must include, at a minimum, the following:

- (1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated;
- (2) A description and location identification of the property and the interest in the property to be acquired; and
- (3) An identification of any buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation.

(See generally 49 CFR 24.102(e)(1)-(3))

- **Step 6—Complete Environmental Review**

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

- **Step 7—Determine Price**

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

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

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

If negotiations are unsuccessful and the subrecipient has authority to use eminent domain, the subrecipient may determine this is the next course of action. Please confer with legal counsel and local officials for specific guidance.

- **Step 8—Execute Agreement**

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

- **Step 9—Report Acquisition Parcel Information**

The subrecipient must prepare and submit to GLO-CDR a Real Property Acquisition Detail Report and all supporting documentation per parcel. A complete acquisition packet including these documents must be submitted for review to GLO prior submission of the associated request for payment. Acquisition documentation for each packet must be accepted by the GLO prior to submitting a Request for Payment for the associated acquisition costs.

## 8.8 Relocation

It is the GLO's goal to minimize the displacement of persons and/or entities involved in or affected by disaster-recovery related activities. To do so, the GLO will follow its Residential Anti-displacement and Relocation Assistance Plan ("RARAP"). Subrecipients should consider procuring a Uniform Relocation and Real Property Acquisition specialist to help navigate the relocation of displaced persons.

The GLO-CDR will take the following steps and require subrecipients and developers to minimize the direct and indirect displacement of persons from their homes:

- Plan construction activities to allow tenants to remain in their units as long as possible, by rehabilitating empty units or buildings first;
- Where feasible, give priority to rehabilitation of housing, as opposed to demolition, to avoid displacement;
- Adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods;
- Adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas; or
- Target only those properties deemed essential to the need or success of the project. However, if displacement is unavoidable, relocation assistance may be available to those displaced.

The relocation assistance requirements at section 104(d)(2)(A) of the Housing and Community Development Act (HCDA) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the notice for activities related to disaster recovery.

**Note:** The waiver of the HCDA provisions listed above should be verified in the applicable Federal Register for each allocation of funding.

Relocation assistance may be made available on a case-by-case basis and only as approved by the GLO-CDR. Relocation may be needed for displaced persons. URA assistance is generally

required if a person is displaced, is a tenant in good standing, and meets set eligibility criteria such as citizenship, residency at the time of the declared disaster, and more. Note that under a voluntary program, a subrecipient is not required to assist in providing a comparable dwelling and may instead opt to only purchase the property.

### 8.8.1 Relocation Steps

- **Step 1—Send General Information Notice and HUD Brochure**

At the time of the acquisition Notice of Intent (NOI) discussed earlier in this chapter, tenants should be mailed a General Information Notice (GIN) and the HUD “When a Public Agency Acquires Your Property” brochure. This brochure describes important features of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Owner-occupants and landowners should also be provided with a copy of the “The Texas Landowner’s Bill of Rights.” This required informational booklet explains the rights and protections available to landowners. (See § 402.031, Texas Govt. Code and Property Code §21.0112).

- **Step 2—Schedule Intake and Confirm Eligibility**

An intake meeting or event should be scheduled with all affected owner-occupants or tenants. A notification of relocation benefits eligibility is provided at this meeting. This is an opportunity for the owner-occupant or tenant to learn about the process, ask questions and to submit necessary income verification information. Owner-occupants or tenants should receive a written notification of their eligibility for benefits after it is confirmed they will be displaced and after other eligibility items have been confirmed (living in property before NOI, citizenship/legal residency, etc.) The subrecipient should determine current occupancy and conduct owner-occupant or tenant interviews.

- **Step 3—Certify Income and Determine National Objective**

In addition to completing eligibility-related documentation, the owner-occupant or tenant household must complete an income certification so that national objective can be determined (Low-to Moderate Income or Urgent Need).

- **Step 4—Initiate Negotiations**

Once eligibility and national objective are determined, the owner-occupant or tenant file remains “on hold” pending the initiation of negotiations (ION). In a buyout/acquisition program, this is generally used as the Contract of Sale date (when the buyer and seller have entered into an agreement for the property to be purchased).

- **Step 5—Identify Comparable Dwellings**

At this time, in an involuntary program, comparable replacement dwellings that are available for rent or purchase are selected by a real estate professional or URA specialist. Comparable dwellings should meet Decent Safe and Sanitary (DSS) and Housing Quality Standards (HQS) so that displaced persons are relocated to safe and sanitary housing. Comparable replacement dwellings cannot be in a Special Flood Hazard Area (SFHA). The comparable dwellings are presented on HUD

Form 40061 and a “most comparable dwelling” is chosen based on objective criteria. Benefits are calculated based on the rent of the “most comparable dwelling” and estimated utilities of the displacement dwelling and “most comparable dwelling.” Subrecipients must develop a methodology for determining estimated monthly utilities at the displacement dwelling and at the replacement dwelling. The simplest way of doing this is looking at the utility allowance worksheets for local housing authorities or Section 8 agencies.

- **Step 6—Send Notice of Eligibility and 90-day Notice**

Upon subrecipient approval of the HUD Form 40061, the tenant or owner-occupant is mailed a Notice of Eligibility (NOE) and a 90-Day Notice. The Notice of Eligibility informs the owner-occupant or tenant that they are eligible for relocation benefits, provides the maximum amount of assistance the tenant is eligible for, and indicates that the tenant has 90 days to relocate. The NOE also explains that the tenant has the right to appeal the determination of the most comparable dwelling. It is critical that tenants are informed in writing that they may appeal the determination of their relocation benefits based on the comparable dwelling selected in the 40061.

- **Step 7—Determine Displacee Eligibility for and Amount of Assistance**

If the displacee is found to be eligible for benefits, HUD Forms 40054 and 40058 are completed. These forms calculate the amount of assistance the tenant will receive. HUD Form 40054 pays the tenant’s moving expenses. HUD Form 40058 pays relocation expenses equivalent to 42 months of the tenant’s rent increase *or 42 months of any monthly rent amount over 30 percent of the tenant’s monthly income*. The tenant signs the HUD Forms 40054 and 40058 along with an authorized party from the subrecipient.

- **Step 8—Relocate Tenant or Owner Occupant**

The tenant or owner occupant has 90 days to relocate to a new dwelling. The tenant or owner occupant can choose any dwelling they want; they are not required to select the most comparable dwelling or any of the comparable dwellings noted on the HUD Form 40061.

- **Step 9—Inspect New Tenant Unit or Residential Owner-Occupant**

In cases of residential relocation when the displacee selects a new unit, the unit is inspected to ensure it meets DSS/HQS standards. The subrecipient must also verify that the unit is not located in a SFHA. The unit must not be in a SFHA, and it must meet DSS/HQS standards for the tenant or owner occupant to receive benefits.

- **Step 10—Disburse Assistance Payment**

Once an amount is determined, the moving expense payment to the tenant is disbursed. The rental assistance payment is made in no less than 3 parts over a 42-month period.

Additional information on required forms is located on the GLO-CDR Buyout and Acquisition Program Resources Page. See [Resources](#)—Resource 8.8 at the end of this chapter.

## 8.9 Acquisition and Other Program Requirements

**Procurement:** surveyors, appraisers, title companies, URA vendors and other professionals whose services are required for acquisition and URA compliance must be procured in compliance with applicable federal procurement standards.

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

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

### **Release of Funds:**

- No CDBG-DR construction funds will be released until property acquisition is complete (for infrastructure related projects). Environmental reviews must be completed prior to executing a commitment to acquire any property other than through a contract option as described in section 8.2 and at 24 CFR 58.22(d).
- All acquisition activities must be fully documented, completed, executed, and recorded, prior to the execution of any related construction contracts.
- If acquisition is necessary, additional documentation may be required before construction funds may be released to support compliance with URA.

**Subrecipient Agreement:** Addition or deletion of acquisition activities to the Subrecipient Agreement must be approved by GLO-CDR.

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

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

### **Private to private acquisition of Real Property:**

- **URA**—If an acquisition is a private-to-private acquisition of real property, the URA does not apply. The private development is considered separate; therefore, acquisition by a private entity from another private entity entirely for private use is not considered to be subject to URA. However, if CDBG-DR funds are invested in public infrastructure

to support that private enterprise, any acquisition with respect to that public infrastructure is subject to URA.

- **Environmental**—If the private-to-private transfer of property would not have occurred if not for the federal project, then the real property must pass environmental clearance before the acquisition (a choice limiting action) occurs.

## 8.10 Buyout or Acquisition Housing Programs

CDBG-DR funds can be used to acquire residential properties, or vacant properties, in a target area with the intent to demolish the structures and create park amenities, open space, or flood storage/overflow areas. Buyout programs are especially effective in communities that have endured multiple disasters in the same neighborhood in the recent past or sustained severe damage where there is high risk of additional disasters. Buyouts allow communities to strategically retreat from their highest-risk areas, protecting life and property while reducing the need for local, state, and federal resources in the future.

GLO-CDR and HUD encourage subrecipients to use buyouts strategically as a means of acquiring contiguous parcels of land for uses identified above. To the maximum extent practicable, subrecipients should avoid circumstances in which parcels that could not be acquired through a buyout remain alongside parcels that have been acquired through the grantee's buyout program. Subrecipients should evaluate community needs before undertaking a buyout or acquisition program. Buyout programs require a community commitment to demolish structures on purchased land while establishing perpetual restrictions on future development. In contrast, acquisitions allow for a community to develop new resilient housing on purchased lots.

GLO-CDR encourages subrecipients implementing housing buyout and/or acquisition programs to assign homeowners individual case managers to assist them throughout the process. Case managers are responsible for assisting the program applicants with application intake, documentation requirements, project updates, and should serve as the homeowner's primary point of contact. Case managers should strive to provide a positive customer service experience to participating homeowners, especially low-income or otherwise vulnerable populations. Subrecipients should also develop a plan for assisting households with limited English proficiency, including (but not limited to) bilingual case management staff and translated versions of program documents.

Housing buyout and acquisition programs funded through CDBG must include applicant disclosures of storm-related benefits already received. Grantees that choose to undertake a buyout program have the discretion to determine the appropriate valuation method, including paying either pre-disaster or post-disaster fair market value (FMV). In most cases, a program that provides pre-disaster FMV to buyout applicants provides compensation at an amount greater than the post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG funds in excess of the FMV are considered assistance to the seller, thus making the seller a beneficiary of CDBG assistance. If the seller receives assistance as part of the purchase price, this may have

implications for duplication of benefits calculations or for demonstrating national objective criteria, as discussed below. However, a program that provides post-disaster FMV to buyout applicants merely provides the actual value of the property; thus, the seller is not considered a beneficiary of CDBG assistance.

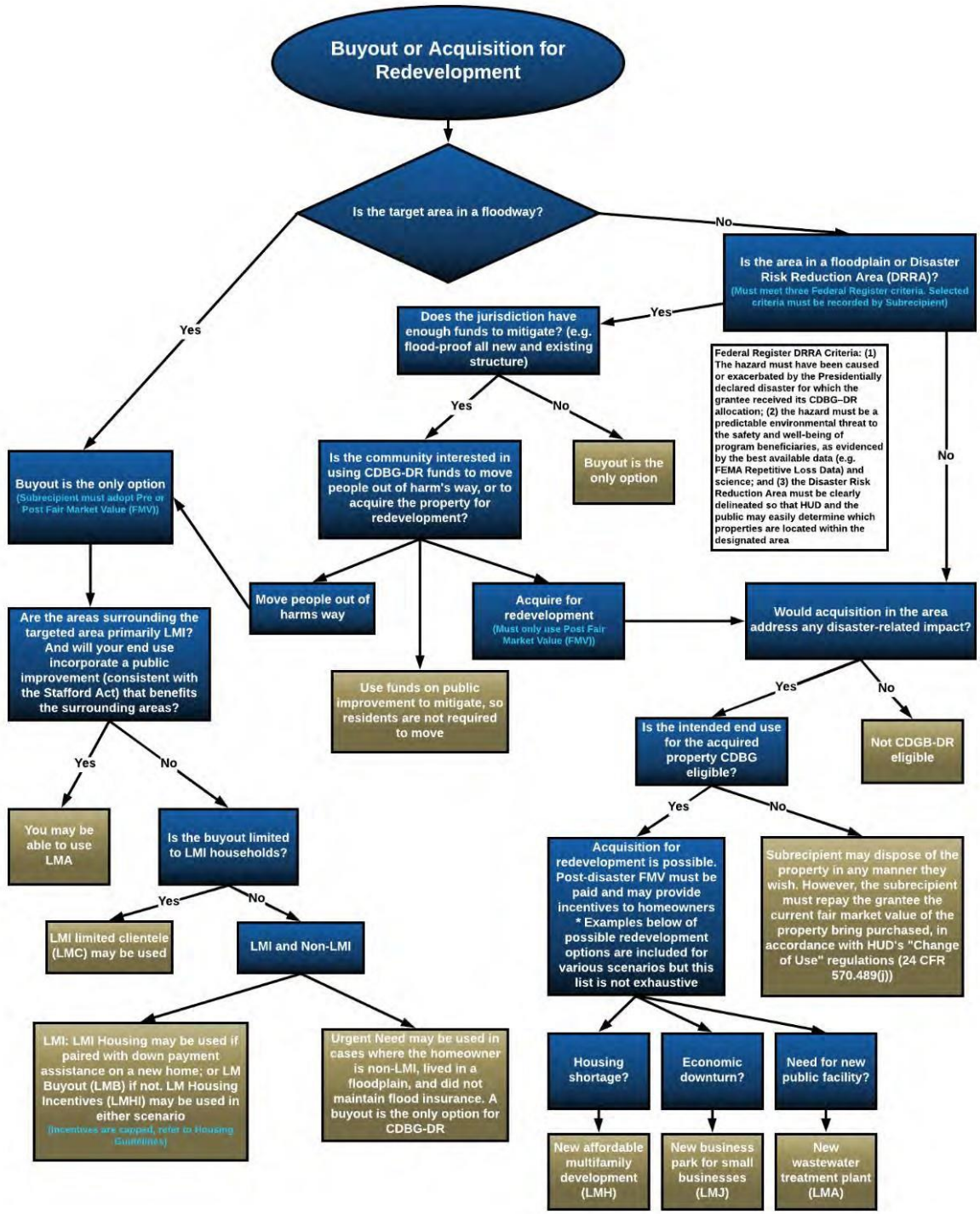
Housing incentives and relocation incentives are often required so that applicants have the financial resources they need to relocate to replacement housing outside of the floodplain or DRRA. Housing incentives can generally be paid as down-payment assistance on the applicant's purchase of a new home, or as an additional benefit to applicants that purchased new homes after they were displaced by the disaster event. Subrecipients may also use housing incentives as a method of keeping its displaced residents local, as to not disrupt local or school tax bases. For example, a County could establish a housing incentive with an eligibility component that requires property owners to purchase a new home within that same County to qualify for the incentive money. Ultimately, incentives should be utilized to help ease the financial burden of moving and buying a new home for individuals and families that are displaced.

The GLO-CDR considers funding buyout activities as a viable option to reduce risk from future flooding of properties location in a floodplain, floodway or within a Disaster Risk Reduction Area (DRRA) by converting the property to open space, recreational, or floodplain and wetlands uses. A DRRA is an area which is located outside of floodways or floodplains that is established by the subrecipient to reducing risks from the hazard that led to its designation in accordance with the buyout requirements of the approved action plan and Federal Register Notices. For buyout, the property acquired will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreation, or floodplain and wetlands management practices. This contrasts with the previously discussed types of acquisition, where the property may be used for certain redevelopment activities as long as they support resiliency and mitigate the impact of future disasters.

A property can be designated as a DRRA if it meets, at a minimum, the following criteria:

- The hazard must have been caused or exacerbated by the presidentially declared disaster under which the subrecipient received its CDBG-DR allocation;
- The hazard must be a predictable environmental threat to the safety and well-being of Program beneficiaries, as evidenced by the best available data and science;
- The Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the Disaster Risk Reduction Area; and
- In carrying out acquisition activities, the subrecipient must ensure they are compliant with their long-term redevelopment plans.

The following decision tree walks through the questions a subrecipient will need to answer when considering whether buyout or acquisition activities are appropriate for potential redevelopment.



An appraisal is required for buyout activities but subrecipient may set as a policy whether to use a pre-disaster appraisal or a post disaster appraised value. For acquisition of real property, the subrecipient must only use the post disaster fair market value. More information regarding buyout programs is available on the [GLO-CDR website](#).

## 8.11 Best Practices

Subrecipients should seek to:

- Design a program that best suits the community’s long-term resiliency needs.
- Use real property damage data, e.g., Flood Plain Administrator reports, FEMA Individual Assistance property loss, Flood Indentation Maps, Geographic Information System (GIS) software, etc. which will allow the subrecipient the opportunity to consider how it will best acquire a sufficient number of contiguous properties to create a public amenity.
- Identify and prioritize buyout areas with the data available in advance and create list of willing sellers and incorporate plans for a buyout into its hazard mitigation plans.
- Look for opportunities to connect to existing open space to satisfy the end use, which is to create a wetland, green space, park, etc.
- Create program incentives and strategies for homeowners to participate in a buyout and relocate within the community.
- Work with local government entities to identify relocation areas outside the floodway, flood plain, DRRA in advance.
- Partner with state or local parks systems to manage lands acquired as part of the buyout.
- Determine at the beginning of the decision-making process if involuntary is the best course of action, so the proper procedures and notifications are performed. Failure to follow the proper procedure for the type of acquisition may result in disallowed costs or other penalties.
- Determine early on if the use of pre-storm or current fair market valuations are most appropriate. Consider using a current fair market value appraisal approach in programs where properties targeted for buyout may have increased in value since the time of disaster.
- Begin title research early in the acquisition process to correct title issues that may cause delays, and to determine more accurate contact information for property owners. Document like Tax Appraisal District documents may not reflect current owners.
- Consult with GLO-CDR to determine which activities may occur prior to completing acquisition when a project includes multiple activities and only some of the activities require acquisition.
- Use HUD’s Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 FR 5844 (February 9, 2018) for Harvey Grants are provided below.

## 83 FR 5844 Reference Guide for Buyouts and Acquisitions

Updated March 13, 2019

The summary below is based on HUD’s Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees, 83 FR 5844 (February 9, 2018). It includes only those requirements specifically applicable to buyouts and acquisitions for redevelopment. All requirements contained within HUD regulations (24 CFR), 2 CFR 200, Federal Register Notices, and HUD CPD notices related to this allocation also apply. We strongly recommend that subrecipient understand all of these requirements and not just those listed below, when undertaking activities with CDBG-DR funding.

Full document here: <https://www.govinfo.gov/content/pkg/FR-2018-02-09/pdf/2018-02693.pdf>

Requirement Topic	Requirement Summary	Page
One-for-Once Replacement Housing, Relocation and Real Property Acquisition	CDBG-DR activities and projects are subject to URA and section 104(d) of the HCD Act. HUD is waiving:	5858-5859
	<ul style="list-style-type: none"> <li>104(d) and exempts disaster-damaged units that meet the grantee’s definition of “not suitable for rehabilitation” that must be defined in the grantee’s action plan;</li> </ul>	
	<ul style="list-style-type: none"> <li>Relocation assistance requirements at section 104(d)(2)(a) of HCD Act and 24 CFR 42.350 are waived to the extent they differ with 49 CFR part 24 for activities related to disaster recovery providing that a displaced person is eligible to receive a rental assistance payment that is calculated to cover a period of 42 months;</li> </ul>	
	<ul style="list-style-type: none"> <li>Arm’s length voluntary purchase: requirements at 49 CFR 24.101(b)(2)(i) and (ii) are waived for persons using funds that does not have the power of eminent domain in connection with the purchase and occupancy of a principal residence by that person. Tenants living in the property may be eligible for relocation assistance;</li> </ul>	
	<ul style="list-style-type: none"> <li>Optional relocation policies: Regulations at 24 CFR 570.606(d) is waived and grantees, or their subrecipient, receiving CDBG-DR funds may</li> </ul>	

	establish optional relocation policies;	
	<ul style="list-style-type: none"> <li>• Waiver of section 414 of the Stafford Act: to the extent that is applied to acquisition, rehabilitation, or demolitions of real property for a project beginning more than one year after the disaster to simplify the administration of the program by the waiver does not apply to persons that meet the occupancy requirement to receive replacement housing.</li> </ul>	
Down-payment Assistance	Waive 42 U.S.C. 5305(a)(24)(A) and (D) to allow: (1) homeownership assistance to households earning up to 120% of AMI but only households up to 80% qualify as meeting LMI persons benefit national objective; (2) down payment assistance up to 100%	5861
Acquisition of real property: flood and other buyouts	The term “buyouts” refers to acquisition of properties located in a floodway or floodplain intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas (defined in next section). Grantees are encouraged to use buyouts strategically, acquiring contiguous parcels of land for uses compatible with open space, recreational, natural floodplain functions, other ecosystem restoration, or wetlands management practices and should avoid circumstances in which parcels that could not be acquired to remain alongside parcels acquired through the buyout program. Real property acquisitions with CDBG-DR funding are subject to URA.	5863
	Clarification of “Buyout” and “Real Property Acquisition Activities” In a buyout program, grantees have the discretions to determine the appropriate valuation method, including paying either pre-disaster or post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, making the seller a CDBG-DR beneficiary. This may have implications for a DOB calculation. Seller is not considered a beneficiary if they receive a post-disaster FMV. Only “buyouts” are subject to the land use restrictions. The key factor in	5863

	determining an acquisition is a “buyout” is if the intent is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction area for which a grantee has criteria in its policies and procedures that include the following requirements:	
	1. Clarification of “Buyout” and “Real Property Acquisition Activities” In a buyout program, grantees have the discretions to determine the appropriate valuation method, including paying either pre-disaster or post-disaster FMV. When the purchase price exceeds the current FMV, any CDBG-DR funds in excess of the FMV are considered assistance to the seller, making the seller a CDBG-DR beneficiary. This may have implications for a DOB calculation. Seller is not considered a beneficiary if they receive a post-disaster FMV. Only “buyouts” are subject to the land use restrictions. The key factor in determining an acquisition is a “buyout” is if the intent is to reduce risk of property damage in a floodplain or a Disaster Risk Reduction area for which a grantee has criteria in its policies and procedures that include the following requirements:	5863
	a. Hazard must have been caused or exacerbated by the Presidentially declared disaster;	5863
	b. Hazard must be a predictable environment threat to safety and well-being of program beneficiaries; and	5863
	c. Area must be clearly delineated so that it is easy to determine properties located within the area. Grantee may only redevelop a property not acquired through a “buyout” program.	5863
	2. Buyout Requirements:	5863-5864
	a. Any property acquired, accepted, or from which a structure will be removed and will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.	5863-5864

	b. No new structure will be erected on property other than: (a) a public facility open on all sides and functionally related to a designated open space; (b) a rest room; or (c) a flood control structure.	5863-5864
	c. After receipt of the assistance, no subsequent application for additional disaster assistance for any purpose will be made to any federal entity in perpetuity	5863-5864
	d. Grantees have the discretion to determine a valuation method but must uniformly apply whichever valuation method it chooses.	5863-5864
	e. All buyout activities must be classified using the “buyout” activity type in the DRGR system.	5863-5864
	f. State grantee implementing a buyout program or activity must consult with affected local governments.	5863-5864
	g. To demonstrate that a buyout meets the LMH national objective, grantees must meet all requirements of the HCD Act and applicable regulatory criteria. 42 U.S.C. 5305(c)(3) provides that any assisted acquisition of property to provide housing shall be considered to benefit persons of low- and moderate-income will, upon completion, be occupied by such persons. State CDBG regulations at 24 CFR 1003.208(c) apply the LMH national objective to an eligible activity providing or improving permanent residential structures that will be occupied by LMI households. A buyout program does not result in an LMI household occupying a residential structure and doesn’t meet the LMH national objective. Buyout programs that assist LMI persons can be structured in one of the following ways: (a) combines the acquisition with another direct benefit-LMI housing activity, such as down payment and assistance-that results in occupancy; (b) meets the national objective low- and moderate- income area (LMA) benefit criteria provided that the grantee can	5863-5864

	document that the properties acquired will benefit all residents in a defined service area where at least 51 percent of the residents are LMI persons; or (c) The program meet the criteria for the LMI limited clientele national objective, including the prohibition on the use of the limited clientele national objective when an activity’s benefits are available to all residents of the area, if it restricts buyout program benefit to the LMI sellers by providing pre-disaster valuation uniformly to participants. (d) The program meets the criteria for the Low/Mod Buyout (LMB) or LMHI national objectives for buyouts and the use of housing incentives as authorized in the Department’s August 7, 2017, Federal Register notice at 82 FR 36285 and described in paragraph B.38 of section VI in this notice.	
	3. Redevelopment of Acquired Properties:	5864
	a. Grantees may redevelop an acquired property not acquired through a buyout program and the purchase price is based on the property’s post-disaster value. Grantees may provide relocation assistance or housing incentives to the owner if the property is purchased through voluntary acquisition, and the owner’s need for additional assistance is documented.	5864
	b. In carrying out acquisition activities, grantees must comply with their long-term redevelopment plans.	5864
Additional LMI national objective criteria for buyouts and housing incentives	HUD is establishing an alternative requirement to clarify the criteria under which buyout activities and housing incentives can meet an LMI national objective. CDBG regulations for LMI national objective are activities meeting 4 established criteria in 24 CFR 570.208(a)(1)-(4) and 570.483(b)(1)-(4) and buyout activity in 80 FR 72102. HUD is providing grantees with an additional method to demonstrate how LMI households benefit when buyouts and housing incentives are used in long term recovery. HUD is	5864

	<p>establishing an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households that use CDBG-DR funding provided pursuant to this notice. To meet the new LMB and LMHI national objectives, grantees must demonstrate the following:</p>	
	<p>1. CDBG-DR funds have been provided for an eligible activity that benefits LMI households supporting their move from high-risk areas. The following activities shall qualify, and must also meet the eligibility criteria of the notices governing the use of the CDBG-DR AND CDBG-MIT funds:</p>	5864
	<p>a. Low/Mod Buyout (LMB) When CDBG-DR funds are used for a buyout to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.</p>	5864
	<p>b. Low/Mod Housing Incentive (LMHI). When CDBG-DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.</p>	5864
	<p>2. Activities that meet the above criteria will be considered to benefit low- and moderate- income persons and count towards the calculation of a CDBG-DR grantee’s overall LMI benefit.</p>	5864

## 8.12 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 8.1</b>	GLO Local Buyout or Acquisition Program Guidelines Checklist	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions">https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions</a>	GLO Resources
<b>Resource 8.2</b>	GLO Regulatory Information: Uniform Relocation Assistance (URA)	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/technical-assistance-training">https://www.glo.texas.gov/disaster-recovery/grant-administration/technical-assistance-training</a>	Additional Training Materials & Information
<b>Resource 8.3</b>	HUD Exchange: Real Estate Acquisition and Relocation Guidelines	<a href="https://www.hudexchange.info/programs/relocation/">https://www.hudexchange.info/programs/relocation/</a>	N/A
<b>Resource 8.4</b>	Federal Register: 83 FR 5844 (February 9, 2018)	<a href="https://www.govinfo.gov/content/pkg/FR-2018-02-09/pdf/2018-02693.pdf">https://www.govinfo.gov/content/pkg/FR-2018-02-09/pdf/2018-02693.pdf</a>	N/A
<b>Resource 8.5</b>	Notice to Owner Involuntary Acquisition (HUD Appendix 30)	<a href="https://www.hud.gov/sites/documents/1378x30cpdh.pdf">https://www.hud.gov/sites/documents/1378x30cpdh.pdf</a>	N/A

<b>Resource 8.6</b>	“When a Public Agency Acquires Your Property” (HUD Booklet)	<a href="https://www.hud.gov/sites/documents/1041cpd.doc">https://www.hud.gov/sites/documents/1041cpd.doc</a>	N/A
<b>Resource 8.7</b>	The Texas Landowner’s Bill of Rights	<a href="https://texas.public.law/statutes/tex._gov%27t_code_section_402.031">https://texas.public.law/statutes/tex._gov%27t_code_section_402.031</a>	N/A
<b>Resource 8.8</b>	GLO-CDR Buyout and Acquisition Program Resources	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions">https://www.glo.texas.gov/disaster-recovery/grant-admin/buyouts-acquisitions</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer’s browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 9—LABOR STANDARDS & DAVIS-BACON

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## CHAPTER 9—LABOR STANDARDS & DAVIS-BACON

### 9.1 Introduction

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

Information about each requirement can be found on HUD’s website at the following link:

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

The Office of Davis-Bacon and Labor Standards (DBLS) is responsible for HUD’s overall compliance with the federal prevailing wage requirements applicable to HUD funded CDBG programs. Title I of the Housing and Community Development Act of 1974 requires the payment of local prevailing wage rates (which are determined by the U.S. Department of Labor) to all workers on CDBG funded construction projects in excess of \$2,000. (42 USC §5310; 40 USC 3142(d)). **THESE REQUIREMENTS APPLY REGARDLESS OF THE PROCUREMENT METHOD. SEE CHAPTER 5 OF THIS MANUAL: PROCUREMENT.**

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

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

Real property acquisition.

- Grant administration.
- Environmental services.
- Architectural and engineering services.
- Other professional services (Legal, accounting, testing, etc.)
- Other non-construction items (furniture, business licenses, real estate taxes)

\*\*Note: For questions, please refer to Department of Labor (DOL) Field Operations handbook, 15d05, for additional guidance.

## 9.2 Objectives of Davis-Bacon

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

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

- Apply Davis-Bacon requirements properly.
- Support subrecipient compliance with labor standards through technical assistance and guidance.
- Monitor subrecipient performance.
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators, if necessary.

By executing the CDBG-DR and/or CDBG-MIT Subrecipient Agreement, a subrecipient agrees to administer and enforce all Davis-Bacon labor standards requirements and accepts the responsibilities described in this chapter.

### 9.2.1 Apprentices and Trainees

Apprentices are those persons employed under a bona fide apprentice program and registered with a state apprenticeship agency which is recognized by the Department of Labor Employment and Training Administration. (DOL, ETA). Trainees are those persons receiving on the job training. Generally, Apprentices and Trainees are paid a lower salary than Journeyman and fall under special rules that are in the DOL Handbook, Chapter 15, e, 01 and 02 found on the DOL website at <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15b06>. Particular care must be taken in observing the maximum ratio of Journeymen to Apprentices and when Apprentices and Trainees are working outside of their training or apprenticeship, such as serving as general laborers. Working outside their training or apprenticeship is a change to their job classification and is a common point of audit concern.

## 9.3 Labor Standards Compliance Steps

A construction project covered by federal labor standards, including infrastructure and housing, requires a series of specific actions by labor standards personnel. Eight (8) of these must occur *prior to the actual start of construction*.

The Pre-Construction Tasks Are:

1. Designate a Labor Standards Officer
2. Obtain an Applicable Wage Determination (WD) for the construction project. (Note: Wage Determination and Wage Decision are used interchangeably by different federal agencies. HUD's preferred term is Wage Decision.)
3. Include the Wage Determination in the Bid Documents
4. Ensure the Wage Determination is Current Before Bid Opening
5. Confirm the Recommended Construction Contractor's Eligibility Status
6. Award the Construction Contract
7. Conduct a Pre-Construction Conference to Explain Labor Standards
8. Submit the Labor Standards Record to the GLO

The Post "Start of Construction" Tasks Are:

1. Submit Weekly Payrolls During Construction
2. Review Certified Payroll Reports During Construction
3. Submit a Labor Standards Officer (LSO) Payroll Certification Form
4. Conduct Employee Interviews During Construction
5. Submit Construction Completion Reports—GLO Certificate of Construction Completion (COCC) & GLO Final Wage Compliance Report (FWCR)

The Subrecipient must comply with the following tasks:

- Designate a Labor Standards Officer (LSO) (Pre-Construction)  
The appointment and maintenance of a LSO is required for all Subrecipient Agreements with construction activities, including those utilizing Force Account. Force Account is a situation in which a governmental entity uses their own staff to administer and/or construct all or part of a project. If the project otherwise meets the requirement to adhere to federal labor standards, those portions of the project not completed "in house" must meet all fair labor standards requirements. For questions, please see Chapter 15 of the Department of Labor field operations handbook at <https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-15#B15b06>. The use of the GLO Appointment of Labor Standards Officer Designation Form is a required form and must be submitted to GLO. If the individual designated as the LSO changes, a new Appointment of LSO Designation Form must be submitted prior to submitting any associated requests for payment or related documentation. The LSO may be an employee of the subrecipient or a private consulting firm. The primary qualification of an LSO is a good understanding of HUD's overall compliance requirements with the federal prevailing wage obligations applicable to HUD funded

CDBG programs.

The LSO is responsible for the regulatory administration and enforcement of the federal labor standards provisions on all Subrecipient Agreements covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction advice and support to the subrecipient and other project principals (for example, the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a construction contractor that is ineligible (e.g., debarred) for federally assisted work.
- Providing the proper Davis-Bacon prevailing wage rate and ensuring that wage rate and applicable provisions are incorporated into all construction contracts and subcontracts.
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing weekly payroll reports ensuring that the applicable Davis-Bacon wage rate and the Department of Labor’s “Notice to All Employees” federal posters are displayed at the job site.
- Overseeing any enforcement actions that may be required.
- Documenting timely compliance of required tasks and deliverables in the local file and as required by GLO.
- Obtain an Applicable Wage Determination for the Construction Project (Pre-Construction)

Wage Determinations:

- Are established by the U.S. Department of Labor (DOL).
- List construction work classifications (such as: Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates, fringe benefits and geographic location of the prevailing wage rate.
- Are categorized into four groups (Building, Heavy, Highway, and Residential Construction).
- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified regularly to keep them current.

The LSO must obtain the applicable Wage Determination for each specific CDBG-DR and CDBG-MIT construction contract where DBRA regulations apply. Wage Determinations are available at <https://sam.gov/content/wage-determinations> **and are required to be posted at the job site.**

## Type of Construction for Wage Determinations

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

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

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

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

*Residential Construction*—Residential projects include the construction, alteration, or repair of single-family houses, apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks. NOTE: HUD has determined new construction and rehabilitation of single-family residence/property is exempt from Davis-Bacon labor standards if such property contains less than eight (8) contiguous units. Property is defined as one or more buildings on an undivided lot or on contiguous lots/parcels which are commonly owned and operated as one rental or project.

- Include the Wage Determination in the Bid Documents (Pre-Construction)  
The wage determination (and any modifications) must be included in the bid package. (See [Chapter 5: Procurement](#), for more information on the bid process and documents.) Review the various Wage Determinations for each county and choose the one that is most appropriate for the work to be done. The type of work and the locations where these decisions are applicable are listed in the first paragraph of the wage rate.
- Ensure the Wage Determination is Current Before Bid Opening (Pre-Construction)  
The LSO must confirm the Wage Determination in the bid specifications for construction contracts is still current for the bid opening date or the Notice to Proceed for Housing Projects. The LSO must verify the Wage Determination is current and complete the GLO Ten-Day Confirmation Form ten (10) calendar days or less before

the bid opening.

A completed GLO Ten-Day Confirmation Form, signed by the Labor Standards Officer, and a copy of the current Wage Determination must be retained in the local files with other labor standards documentation, and must be provided to GLO representatives upon request.

The date the wage rates were confirmed by the Labor Standards Officer must be recorded on the Labor Standard Record Form and submitted to GLO.

- For Housing: the “Bid Open Date” is the Notice to Proceed date. GLO staff are instructed to withhold the Notice to Proceed (NTP) until a Building Permit from local jurisdiction authorizes project construction and Loan Closing Specialist or GLO Grant Manager confirms the loan has closed or the grant is ready to proceed. The Owner/ Developer must pay any fees noted on Building Permit and send evidence to the LSO and GLO with copy of Building Permit. The NTP is a 10-day window to begin construction. If construction cannot be started during that period, the LSO must pull the General Wage Decision (GWD) again. (Also see *Section 9.8 Multifamily Construction* for more information about the Notice to Proceed).
- For Competitive Sealed Bid: the “Bid Open Date” is the date sealed bids are opened.
- For Micro purchase, Small Purchase, Other Non-Sealed Bids: the “Bid Open Date” is the due date for Quotes. At a minimum the wages must be confirmed prior to the due date of when quotes were received.

Modifications to wage determinations published by DOL less than 10 days before bid opening may be disregarded if found and there is not sufficient time to notify bidders. If this occurs, the LSO must place a written explanation in the Subrecipient Agreement file. For more information see HUD Handbook 1344.1 Rev-3, Chapter 3, 3-10 A, found at <http://www.hud.gov/sites/dfiles/OCHCO/documents/13441C3SECH.pdf>.

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

- For Housing: Wage decision “locks-in” at construction contract award or start of construction, whichever occurs first.
- For Infrastructure: Wage decision “locks-in” at bid opening provided construction contract is awarded within 90 days. The LSO must confirm the wage decision if the construction contract is awarded beyond 90 days of the bid opening. See Task 6 below for additional information when the construction contract is awarded beyond 90 days of the bid opening.
- Confirm the Recommended Construction Contractor’s Eligibility Status (Pre-Construction)

The LSO must verify prior to awarding and executing any construction contract that all prime contractors (and their subcontractors) are not identified as “debarred” in the System for Award Management (<https://sam.gov/content/home>). See [Resources](#)—

**Resource 9.1** at the end of this chapter. You will need to register to use SAM and look each contractor individually. Refer to the FAQs on the landing page for assistance in registration and searches.

The LSO must keep records of these verifications from the SAM website, retain copies in the local files, and must provide such documents to GLO representatives upon request.

The date the contractor is shown to be eligible to work on a federally funded project (the date the SAM check was conducted) must be recorded on the Labor Standards Record.

All contractors must be verified to be eligible to work on a federally funded project through the SAM website prior to any formal action authorizing the award of the construction contract.

- Award the Construction Contract (Pre-Construction)

Each construction contract subject to Davis-Bacon labor standards requirements must include the applicable Wage Determination(s) and provisions containing labor standards compliance clauses as indicated in the executed Subrecipient Agreement and program guidance.

The labor standards compliance clauses:

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

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

**Best Practice:** Review construction term to ensure action to award is compliant with the contract term defined by the executed Subrecipient Agreement. If the award extends beyond the end date of the Subrecipient Agreement, a request for a contract extension as allowed by the executed Agreement must be submitted for GLO consideration.

## Additional Classification and Wage Rate

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

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

**NOTE:** As a general guide, the wage rate proposed for a trade classification (such as an Electrician) must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. “Trade classifications” are generally all work classifications, excluding Laborers, Truck Drivers, and Power Equipment Operators.

Requests for Equipment Operators must specify the type(s) of equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any Power Equipment Operator that appears on the applicable wage determination.

The Request for Additional Classification and Rate form must be submitted to the GLO Labor Standards Officer via email or uploaded to the GLO system of record, if available. The GLO Labor Standards Officer or designee will review the requested classification and proposed hourly rate and fringe rates to ensure that all required information is submitted.

GLO will refer the request to the DOL for a final determination, and provide the response to the Subrecipient upon receipt from the DOL. It can take 6-8 weeks to receive DOL’s official response. GLO will forward the DOL response to the LSO upon receiving DOL’s response. The LSO is responsible for providing a copy to the construction contractor and asking the contractor to post a copy on-site. The request and DOL response must be kept in the local file.

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

If construction ends prior to receiving the DOL’s formal response, the LSO will proceed to submit the Final Wage Compliance Report and Grant Completion Report within the prescribed timeframe as indicated in the executed Subrecipient Agreement. The GLO contract does not need to remain active if DOL does not respond before the contract end date.

- Conduct a Pre-Construction Conference (Pre-Construction)

A pre-construction conference must be held with the subrecipient, developer/owner, engineer/architect, prime contractor, subcontractor(s), inspector(s), LSO, associated utility providers, and other personnel key to construction prior to the start of construction. The subrecipient and LSO must document and retain in the local file, the signed Pre-Construction Conference Report and required supporting documentation including meeting minutes, a list of attendees, and other applicable documentation in support of DBRA compliance discussed during the pre-construction conference.

The pre-construction conference must include:

- Advice to all parties regarding their responsibilities and obligations on a federally funded or federally assisted project.
- Discussion of applicable federal, state, local, and program guidelines.
- Discussion of all construction details, time frame of project, payment requirements, and labor standards requirements and penalties for failure to comply with requirements.
- Submission of all bonds and certificates of insurance to the subrecipient.
- Review of applicable Wage Determinations required labor posters, additional classifications and instructions to facilitate project completion.
- Provide Davis Bacon and Labor Standards related Project Signage (found here: <https://www.dol.gov/whd/regs/compliance/posters/davis.htm>); and
- Discussion of applicable special conditions identified in the Subrecipient Agreement and construction contract and identify responsibility for.

In addition to any required temporary or permanent signage as defined by the Subrecipient Agreement and as indicated in the construction contract, the prime contractor must post a copy of the Wage Determination and a copy of the DOL Davis-Bacon poster entitled “Employee Rights under the Davis-Bacon Act” (see [Resources—Resource 9.2](#) below for link) at the job site in a place that is easily accessible to all of the construction workers employed for the associated project. If the contractor requests additional classification(s) as described above, the contractor must also post a notice of the request and the associated wage decision on the job site.

- Submit the Labor Standards Record (Pre-Construction)

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

A separate LSR must be submitted for each prime construction contractor and must reflect all subcontractors listed under that prime contractor. Financial Interest Reports are also required for all construction contractors and subcontractors and must be submitted to the GLO as part of the contract startup phase. If subcontractors change or are identified during the construction period, the Supplemental LSR must be submitted to record subcontractor changes or additions.

The Labor Standards Record must be submitted after the preconstruction conference is held and before submission of the first Request for Payment for associated construction work.

**Best Practice:** Subrecipients should submit the complete and signed LSR upon construction contract execution and determination of the construction start date to allow sufficient time for GLO review and revisions, if necessary. Allow at minimum 5-7 business days for GLO review and feedback. LSR's submitted less than five days prior to submission of the associated request for payment may lead to delays in processing or withdrawal of the request for payment.

- **Submit Weekly Payrolls During Construction**

Contractors and subcontractors are required to pay prevailing wage rates as identified in the associated Wage Determination for the project. A weekly certified payroll report must be submitted to the Subrecipient (owner of the project) by the prime contractor and all subcontractors for the duration of the construction term. Employers may use the DOL's Wage and Hour Division Payroll Form WH-347, similar form, or an electronic format, if all required information is provided.

Form WH-347 is available online at the Davis-Bacon and Labor Standards (DBLS) website at [https://www.hud.gov/program\\_offices/\\_bacon\\_and\\_labor\\_standards/olrform](https://www.hud.gov/program_offices/_bacon_and_labor_standards/olrform) and on DOL's website at <https://www.dol.gov/whd/forms/wh347.pdf>.

Page 2 or the reverse side of Form WH347 may be used as the "Statement of Compliance" or another document that includes the same language. The owner or authorized designee must sign the "Statement of Compliance" in ink.

The certified payroll reports must be maintained in the Subrecipient file, beginning with the first week of construction on the project and for every week thereafter until the work is complete. The contractor must submit the payroll reports promptly after the end of each week for review by the LSO.

- **Review Certified Payroll Reports During Construction (Post Start of Construction)**

The Certified Payroll Reports submitted by the prime contractor and subcontractors must be reviewed by the LSO in a timely manner to ensure that:

- Workers are properly listed on the payroll for the days, work classification, and rate

of pay (compare to interview forms).

- The payrolls are complete and signed.
- Employees are paid no less than the prevailing wage rate for the work classification reported.
- Apprentice and trainee certifications are submitted; and
- Employee payroll deduction authorizations for other deductions are submitted, if applicable.

The LSO is responsible for ensuring compliance and identifying any corrective action. The LSO must ensure the original certified payroll reports are maintained in the local subrecipient file and include evidence of payroll reviews. In addition, the LSO must complete and sign GLO LSO Payroll Certification Form to accompany each subrecipient request for payment that includes construction costs to which DBRA is applicable.

- Submit a Labor Standards Officer Payroll Certification Form (Post Start of Construction)

The LSO must submit a GLO LSO Payroll Certification Form (see [Resources—Resource 9.3](#) at the end of the chapter) with each subrecipient payment request for the applicable time period. This certification is completed by the LSO stating that all payrolls for the prime and subcontractors have been reviewed for the time period covered in the request are in compliance with DBRA. The signed original weekly certified payroll report for all prime and subcontractors must be kept in the local Subrecipient file. If a Request for Payment is submitted for a period in which there is no Davis Bacon Related Act covered construction, then a Payroll Certification Form is not required. For GLO programs that perform reviews for all certified payroll reports before payment, the LSO Payroll Certification Form is not mandatory,

- Conduct Employee Interviews During Construction (Post Start of Construction)

The LSO or designee must conduct on-site visits to the project site and interview a proportion of the workers concerning their employment on the project. Interviews must be recorded on the GLO Record of Employee Interview form and compare the information collected and activity observed with the Wage Determination, certified payrolls, and other related documentation to ensure the contractor is in compliance with DBRA. If any discrepancies are identified, the interviewer must inform the subrecipient of any corrective action.

### **On-site Interviews**

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

Employee Interviews should be representative of all classifications of employees on the project. The number and quality of interviews documented should reflect that the LSO is diligently ensuring that workers are paid at least minimum prevailing wage rates, the interviews are confidential, and the employee will be asked the type of work they perform and their rate of pay.

Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work. Interview information must be recorded on the Record of Employee Interview. If employees are not available for interview during the LSO's on-site visit, the LSO must document the date of the on-site visit, the reason employees were not available, and the attempt to obtain the required information through other means, such as sending questionnaires by mail.

- Submit Construction Completion Reports—GLO Certificate of Construction Completion (COCC) & GLO Final Wage Compliance Report (FWCR) (Post Start of Construction)

Upon completion of the construction contract, after all the work has been completed including punch list items, a final inspection must be conducted, and all parties must agree the work is acceptable. A final inspection is required for each prime construction contract and documents to support acceptance of the project must be signed by the subrecipient, engineer, and contractor. The GLO Certificate of Construction Completion (COCC) form is required to document construction is complete and must reflect the final construction costs, including all change orders and performance metrics. The COCC must match the information entered on the Final Wage Compliance Report.

A Final Wage Compliance Report (FWCR) signed by the LSO is required for each prime construction contract subject to Davis-Bacon Labor Standards. wage restitution and liquidated damages are documented on the FWCR, if applicable. The LSO must ensure the required corrective action has been taken and appropriately documented in the subrecipient file.

**Note:** The COCC and FWCR must be received and accepted by GLO in addition to the Record Drawings or As-Built Plans prior to reimbursement of the final draw for each prime construction contract and the final engineering draw. These documents are required to satisfy the construction contractor's obligations and must be completed prior to the contractor's final payment.

**Best Practice:** Subrecipients should submit the COCC, FWCR, and As-Built drawings for review in advance of submitting the final construction retainage draw to allow sufficient time for GLO review and revisions, if necessary. Allow at minimum 5-7 business days for GLO review and feedback. COCC, FWCR, and As-Built submitted less than five days prior to draw submission of the associated request for payment may lead to delays in processing or withdrawal of the request for payment.

## 9.4 Restitution for Underpayment of Wages

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

### Notification to the prime contractor

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

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

### Computing wage restitution

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

### Overtime and underpayment

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

- If the project is greater than \$100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (*CWHSSA*) *overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project.
- The employer will also be liable to United States for liquidated damages (overtime violation dollar penalty). The Monetary Penalty on or before 1/15/25 is \$32 per day per violation. The Monetary Penalty on or after 1/16/25 is \$33 per day per violation or as amended annually by DOL and defined at <https://www.dol.gov/agencies/whd/government-contracts/cwhssa>.
- Once liquidated damages are computed, the subrecipient shall notify the prime contractor in writing of the fine and wage restitution owed. A check (payable to GLO) in the amount of the liquidated damages must be forwarded to GLO to be processed for HUD:

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

**Checks will be sent to:**

Texas General Land Office

**Attn:** Agency Receiver

PO Box 12873

Austin, TX 78711-2873

- The employer may request a reduction or waiver of liquidated damages under one or both of the following reasons:
  - The computation of liquidated damages is incorrect; and/or
  - the violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer
- The employer's request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted; and
- If Liquidated Damages are equal to or less than \$100.00, the employer is encouraged to seek a reduction or waiver of liquidated damages from the GLO Labor Standards Officer.

## Correction payrolls

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

## Review of corrected payroll

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

## Inability to locate worker

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

## 9.5 Labor Disputes

### Administrative Review on Labor Standards Disputes

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

- Findings of underpayment: Compliance reviews and other investigations may result in findings of underpayment. The employer will have an opportunity to provide additional information to the LSO that may explain apparent inconsistencies and/or resolve the discrepancies.
- Withholding: The LSO may cause withholding of payments due to the prime contractor to ensure the payment of wages which are believed to be due and unpaid, for example, if wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor.

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

## Deposits and Escrows

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

- Where the parties have agreed to the amount of wage restitution that are due, *but* the employer has not yet furnished evidence that all the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers not

supported by adequate documentation of payment. As proper documentation is received, amounts corresponding to the documentation are returned to the prime contractor. Amounts for any workers who cannot be located are held in the escrow account for three years and disbursed as described above (See Restitution on Underpayment of Wages).

- Where underpayments are suspected or alleged, and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the prime contractor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above. If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained earlier.
- Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit shall be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

## Debarment

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

## 9.6 Exemptions

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

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

- Prime Construction contracts of \$2,000 or less.
- Single-Family, Owner-Occupied Residences.

- Rehabilitation of residential properties designed for fewer than eight (8) families.
- Volunteer labor as long as nominal benefits cannot be tied to productivity, hours worked, or in any way be construed as wages.
- Convict labor is subject to DBRA, there are no exemptions for convict/prison inmate labor on DBRA covered contracts unless another exemption applies.
- Employees of the Local Subrecipient (Force Account labor).
- Only private or local funds used for rehab or construction unrelated to the CDBG-DR project.
- Holding/maintaining properties (land bank).
- Some Demolition Activities may be exempt. However, demolition, clearance, and debris removal are covered by DBRA when planned as part of the same construction contract or subsequent construction is contemplated as part of a future construction project under another DBRA eligible activity.
- Construction Contracts of \$100,000 or less are exempt from Contract Work Hours and Safety Standards Act (CWHSSA) only.
- Professional service activities such as acquisition, engineering, architectural, and administrative services are exempt and do not require an LSR.
- Labor/installation charges on equipment or materials purchases if that portion of the contract is less than 13 percent of the total cost of the item(s) purchased.
- Construction work performed by a public utility (such as a city owned electric company or drainage district) extending its own utility system. \*

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

## 9.7 Recordkeeping Requirements

To show compliance with Davis Bacon regulations, the subrecipient must maintain a file with the following documentation for each construction contract (see the links in [Resources](#)—**Resource 9.3** at the end of this chapter to find forms online): (*\*Must be submitted to GLO*)

- Appointment of Labor Standards Officer. \*
- Copy of Wage Determination(s).
- Ten-Day Confirmation Form(s).
- Additional Classification request(s). \*
- Eligibility Verification printouts from SAM (for each prime and/or subcontractor).

- Pre-construction conference report, meeting minutes and sign-in sheet(s).
- Labor Standards Record. \*
- Supplemental LSR, if any. \*
- Financial Interest Report. \*
- Section 3 Contractor Report for contracts over \$100,000. \*
- Payrolls, with evidence of compliance review.
- Employee interviews.
- Compliance with Section 3, Fair Housing construction, EEO, and HUB mandates.
- Interim inspection reports (Housing Only).
- Wage violations (amount of restitution, number of hours and days).
- Liquidated damages fees and documentation (if any); \*
- Certificate(s) of Construction Completion; \* and
- Final Wage Compliance Report(s)\*

## 9.8 Multifamily Construction

CDBG-DR and/or CDBG-MIT housing construction consisting of properties with 8 or more residential units is subject to Davis Bacon regulations. Subrecipient of CDBG-DR and/or CDBG-MIT housing-related projects meeting DBRA criteria are subject to Labor Standards requirements contained within this chapter and the following, as applicable:

- For the State Affordable Rental Program, the LSO must obtain the construction Notice to Proceed (NTP) from the appropriate GLO staff or agency designee prior to any project construction activity. The NTP authorizes project construction to start and locks in the general wage decision issued for the project. Wages must be re-verified if construction does not begin within 10 days of the NTP.

The subrecipient must also adhere to all provisions of the Subrecipient Agreement and comply with all local, state, and federal laws, rules, and regulations and agencies as referenced in the Land Use Restriction Agreement (LURA).

## 9.9 Laws and Regulations

- DAVIS-BACON ACT (40 USC Chapter 31, Subchapter IV)
- CONTRACT WORK HOURS & SAFETY STANDARDS ACT (CWHSSA)
- COPELAND (ANTI-KICKBACK) ACT (18 USC 874; 40 USC 3145)

## FAIR LABOR STANDARDS ACT

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR). 29 CFR Parts 1, 3, 5, 6 and 7. See [Resources](#)—**Resource 9.4** at the end of this chapter for links to Davis-Bacon Laws and Regulations.

## 9.10 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 9.1</b>	System for Award Management (SAM)	<a href="https://www.SAM.gov/content/home">https://www.SAM.gov/content/home</a>	N/A
<b>Resource 9.2</b>	Employee Rights Under the Davis Bacon Act Poster	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fedprojc.pdf</a>	N/A
<b>Resource 9.3</b>	Required Subrecipient Davis-Bacon Forms:	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Appointment of Labor Standards Officer	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Labor Standards Officer Payroll Certification	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Ten Day Confirmation Form	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Request for Additional Classifications and Rates	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards

	Pre-Construction Conference Report	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Labor Standards Record	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Financial Interest Report	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Procurement
	Record of Employee Interview	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Final Wage Compliance Report	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	US Dept of Labor Wage and Hour Division Payroll Form WH-347	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Construction Contract Change Order	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
	Certificate of Construction Completion	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Davis Bacon Labor Standards
<b>Resource 9.4</b>	Davis-Bacon Laws and Regulations:		
	US DOL Davis-Bacon and Related Acts	<a href="https://www.dol.gov/agencies/whd/government-contracts/construction">https://www.dol.gov/agencies/whd/government-contracts/construction</a>	N/A

	Contract Work Hours and Safety Standards Act as Amended (CWHSSA)	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/safe01.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/safe01.pdf</a>	N/A
	Copeland (Anti-Kickback) Act	<a href="https://webapps.dol.gov/elaws/elg/kickback.htm">https://webapps.dol.gov/elaws/elg/kickback.htm</a>	N/A
	Fair Labor Standards Act	<a href="https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf">https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FairLaborStandAct.pdf</a>	N/A
	29 CFR	<a href="https://www.ecfr.gov/cgi-bin/text-idx?SID=2fbc76ba1ebf6d4c076736e8f3a82dcd&amp;mc=true&amp;tpl=/ecfrbrowse/Title29/29cfrv1_02.tpl#0">https://www.ecfr.gov/cgi-bin/text-idx?SID=2fbc76ba1ebf6d4c076736e8f3a82dcd&amp;mc=true&amp;tpl=/ecfrbrowse/Title29/29cfrv1_02.tpl#0</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with **Adobe Acrobat**. If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 10—FORCE ACCOUNT LABOR

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# CHAPTER 10—FORCE ACCOUNT LABOR

## 10.1 Introduction

Force account labor is defined by the Internal Revenue Service as labor classified as professional services, construction, rehabilitation, repair, or demolition performed by municipal, county, or Council of Government employees.

Force account occurs when a subrecipient decides to perform specific duties using its own employees or equipment to perform CDBG-DR and/or CDBG-MIT project related work, as opposed to using a contractor or vendor to complete those services. Force account may be used for services including construction, inspection, administration, project delivery, engineering, or other professional services. For example, a locality may procure a contractor to replace storm-damaged sewer lines but may choose to make the necessary post-construction street repairs using force account labor and equipment.

If eligible and properly documented, force account work may be reimbursable from the subrecipient's CDBG-DR and/or CDBG-MIT project budget. Force account may also help subrecipient leverage CDBG-DR and/or CDBG-MIT funds to use for other expenditures for which the subrecipient lacks in-house capacity.

The subrecipient must ensure they have the staff capacity to complete the task(s) identified, to implement a project using force account labor in a CDBG-DR and/or CDBG-MIT project. The proposed use of force account labor is usually identified during the application phase. If a decision to use force account is made after the application phase, the subrecipient must notify the grant manager in writing before associated activities are underway. GLO-CDR may request additional documentation to ensure the use of force account is aligned with the approved budget, schedule, and scope of work.

To be eligible for force account reimbursement, the subrecipient must document that the employee is on the subrecipient's payroll records as either a regular or temporary employee. Status may also be documented through W-2 Wage and tax statements.

When using local employees, the subrecipient must assure, at a minimum, the following:

- Subrecipient has written personnel and employment policies that include specifically prohibited discriminatory practices;
- Conflict of Interest provisions are in place and enforced;
- EEO guidelines are followed in advertising for new employees; and
- All contract provisions are in compliance with Fair Labor Standards.

The basic requirements a subrecipient should consider in planning for the use of force account labor include:

- Skillful workforce;
- Adequate supervision;
- Established management control system; and

- Capacity to serve as own general contractor.

Force account applies to the following types of employees:

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

Determining whether a worker is an employee rather than an independent contractor depends on many factors including the nature and degree of control by the principal/payer. Each subrecipient must maintain files documenting the relationship between it and the personnel it uses as force account labor (see IRS <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee> for information).

A cost-benefit analysis should be conducted to determine if the type of labor, the proposed scope of work, and the project description is better accomplished by procuring an outside, dedicated labor force. The completed cost-benefit analysis must be maintained in the local project file. This analysis should define, at a minimum, the following:

- How the employees’ regular duties will be suspended or re-assigned;
- If the regular work duties of the employees will be adversely affected;
- How long the subrecipient be able utilize the employees;
- A plan for staff turnovers; and
- Whether employees have the required licenses or certifications for jobs being considered.

In addition to force account construction work, subrecipient may utilize local employees to administer and/or engineer their CDBG-DR and/or CDBG-MIT funded projects. A cost benefit analysis should also be completed for these job duties before proceeding with using force account labor to complete these activities and be available in the local file for review upon request by the GLO-CDR.

Force account work is not subject to Davis-Bacon and Related Acts wage requirements. Governmental agencies and states or their political subdivisions are not considered “contractors” or “subcontractors” within the meaning of the Davis-Bacon and Related Acts. Subrecipient must continue to pay the employees their regular wages and benefits [HUD Handbook 1344.1]. Documentation of accurate payrolls is required for CDBG-DR and/or CDBG-MIT reimbursement. However, any part of the work not performed using force account labor but contracted out may be subject to Davis-Bacon and Related Acts (DBRA) and

Contract Work Hours and Safety Standards Act (CWHSSA) as described in Chapter 9 — Labor Standards & Davis Bacon.

The advantages to using force account may include:

- Exemption from DBRA, CWHSSA, and the Copeland Acts;
- Cost effectiveness, if the activity is one that traditionally is performed by subrecipient personnel;
- Jobs are kept in the community; and
- Greater local control over scheduling and costs.

Subrecipient should consider the following when using force account:

- Work does not have a warranty;
- Construction may take longer, making it a challenge to meet contract time frame;
- Extensive record keeping is required;
- Availability of skilled local workers and appropriate equipment;
- 2 CFR 200 procurement standards apply to purchase of materials; and
- Inspection process may be less frequent and rigorous.

Subrecipients that use force account labor should be prepared to provide, at a minimum, the following as supporting justification upon request by the GLO:

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

## 10.2 Allowable Force Account Costs

CFR Part 200, Subpart E, establishes the Cost Principles for federally funded or federally assisted projects. Only actual expenditures incurred by the subrecipient as a result of the CDBG-DR and/or CDBG-MIT project are considered allowable costs. This applies whether these costs are being reimbursed with CDBG-DR and/or CDBG-MIT funds or paid by other funds. These costs may include labor, materials, equipment, and other services required to implement the CDBG-DR/CDBG- MIT award.

The subrecipient must maintain documentation in the local files to support force account costs. Examples of supporting documentation include timesheets, payroll data, and GLO personnel and equipment cost calculation forms. Updated documents are required if salaries, rates, or other items identified in the calculation of personnel or equipment costs change. These documents are required to support a request for reimbursement for all force account costs. A link to the Force Account associated forms are included in the [Resources](#)—Resource 10.1 at the end of this chapter.

## 10.3 Allowable Reimbursable Cost Categories

### 10.3.1 Real Hourly Force Account Wages

Subrecipient who use force account labor shall maintain evidence of reasonable wages supported by accurate documentation in the local file and provided to GLO-CDR, as required. This includes personnel cost calculation forms, administrative and construction personnel time sheets, and payroll records. Each document must be certified by the certifying officer or designee. Compensation is considered reasonable when it is comparable to wages that are paid for similar work in other areas of that same government entity. When comparable work is not found within that entity, a salary survey should be conducted. Only time worked on the project may be claimed for grant reimbursement or matching funds.

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

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

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

### 10.3.2 Overtime Force Account Wages

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

### 10.3.3 Fringe Benefits

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

Information to consider in the personnel cost calculation are:

- Hourly wage or annual salary
- Employer portion of FICA
- Employer portion of retirement
- Worker's compensation
- Unemployment insurance
- Insurance contribution by employer
- Hours worked per year
- Hours worked per year Holiday time allowed
- Estimated sick leave
- Other leave time

The GLO-CDR provides a Force Account Personnel Cost Calculation Form as a resource. See the [Resources](#) section of this chapter for a link to the form's location.

### 10.3.4 Material Costs

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

If the subrecipient uses materials already on hand, rather than purchasing materials specifically for the project, reimbursement will be based on the actual cost of the material at the time of purchase. Competitive procurement requirements still apply to materials on hand. For documentation purposes and to ensure cost reasonableness, it is highly recommended that a subrecipient procure materials specifically for the proposed force account activity using 2 CFR 200 requirements rather than using materials on hand.

If there is inventory of unused supplies greater than \$5,000 upon termination or completion of the project and the supplies are not needed for any other federal award, the non-federal entity must retain the supplies for use on other activities or sell them and compensate the federal government for its share. (2 CFR 200.314)

### 10.3.5 Equipment Costs

Subrecipient may be compensated for the use of equipment on CDBG-DR and/or CDBG-MIT projects, including construction equipment. An equipment cost calculation form must be

submitted for each piece of equipment for which the subrecipient requests grant reimbursement or matching costs.

All methods of charging for equipment usage must be based on an hourly rate. Considerations for charging for equipment usage are as follows:

- Only actual hours of “in use” construction time at the project site are eligible (“in use” means that the equipment is in actual operation performing eligible work);
- Standby equipment costs are not eligible;
- The hours charged for equipment use must agree with the corresponding hours documented for the equipment operator (if two pieces of equipment are used in tandem by a single operator, please include an explanation in the request for payment)
- When calculating equipment rates instead of using FEMA’s Schedule of Equipment Rates below, include all eligible costs of ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incident to operation [Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121]. Fuel and maintenance costs are not eligible for separate reimbursement;
- Equipment rates should not include the labor costs of the equipment operator as those labor costs should be claimed separately; and
- Vehicles used to transport people (work crew, engineer, or other city personnel authorized to document progress for drawdown requests, etc.) must be based on mileage traveled and the FEMA rate per mile unless documentation is provided that the vehicle was used for an eligible purpose other than transporting people.

### *FEMA Equipment Rates*

GLO-CDR will generally allow subrecipient to use FEMA’s Schedule of Equipment Rates for calculating the compensation for the use of equipment owned by the subrecipient, in lieu of calculating their own rates as described in item 4 above. Current rates can be found at <https://www.fema.gov/schedule-equipment-rates> and are also referenced in [Resources](#)—Resource 10.2 at the end of this chapter.

### *Rental Cost Reimbursement*

Subrecipient may request reimbursement for the time rented equipment is in actual use for a CDBG-DR and/or CDBG-MIT project using an hourly rate (actual rental cost divided by a 40-hour work week) plus fuel costs. The subrecipient must compare the hourly rental rate to the FEMA rate and document in the local file. Additional explanation or justification for the difference will be required if the rental costs are higher than the FEMA rate. The table below summarizes some keys points on the different methods of charging equipment use:

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

### 10.4 Force Account Recordkeeping

The subrecipient must maintain thorough documentation of all costs. This applies whether these costs are being reimbursed with CDBG-DR and/or CDBG-MIT funds or used to document all or part of leveraged funds. All costs charged to the project must apply to a particular line item of the CDBG- DR and/or CDBG-MIT contract budget. This documentation must include, at a minimum, the following:

- Employee personnel policies that delineate paid leave, overtime, equal employment, travel, terms of employment policies, compliance with the Fair Labor Standards Act, and Section 504;
- If temporary workers are hired to complete the project, the employee personnel policies must address temporary employees;
- A personnel cost calculation that is signed and approved by either the employee’s supervisor or other authorized personnel that determines the hourly cost for each employee;
- Time sheets identifying construction or administrative personnel and work performed;
- All timesheets should correspond to the subrecipient regular employee time sheets to the extent that no one should be charged to the project if they are not in attendance
- Certified timesheets and corresponding subrecipient payroll records must be retained in the local project file);
- 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. 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 rate for the equipment; and
- Invoices and canceled checks for all construction materials and other supplies.

## 10.5 Documentation required for each Request for Payment

All requests for payment that include force account costs must include, at a minimum, the following:

- Complete and certified documentation to support the requested amount including, but not limited to:
  - Invoices,
  - Force Account Construction Personnel Time Sheet,
  - Administrative Personnel Time Sheet,
  - Workforce Summary Page,
  - Equipment use and rate calculations;
- A map of the project area that clearly identifies the areas where work has been completed to date including the current request for payment and work to be performed in the future;
- Request for Payment coversheet; and
- Other documents as deemed necessary by GLO-CDR to support associated costs.

## 10.6 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 10.1</b>	Force Account Labor Forms:	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor
	Personnel Cost Calculation Sheet	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor
	Equipment Cost Calculation Sheet	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor
	Administrative Personnel Time Sheet	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor
	Force Account Construction Personnel Time Sheet	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor
	Certification of Construction Completion for Force Account	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor
	Force Account Internal Workforce Summary Page*	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Force Account Labor

<b>Resource 10.2</b>	FEMA Schedule of Equipment Rates	<a href="https://www.fema.gov/assistance/public/tools-resources/schedule-equipment-rates">https://www.fema.gov/assistance/public/tools-resources/schedule-equipment-rates</a>	N/A
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**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 11—CIVIL RIGHTS

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# CHAPTER 11—CIVIL RIGHTS REQUIREMENTS

## 11.1 Introduction

Subrecipients are required to comply with the requirements of Title 1 Housing and Community Development Act, to include Title VI (Civil Rights Act) and Title VIII (Fair Housing Act). This chapter presents summaries of the key regulations and requirements of civil rights, fair housing, Section 3, and equal opportunity laws applicable to the administration and implementation of CDBG-DR and CDBG-MIT funds. Additionally, HUD’s website includes a CDBG-DR Toolkit Resources Summary that provides a snapshot of applicable regulations by program (see [Resources](#)—Resource 11.1 at the end of this chapter for the link).

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

- Race,
- National Origin,
- Religion,
- Color,
- Sex,
- Age,
- Disability (mental and physical), or
- Familiar Status

## 11.2 Civil Rights Requirements—Laws and Statutes

Civil Rights laws applicable to CDBG-DR and CDBG-MIT programs which subrecipient must adhere to are set forth, but not limited to, the statutes and Executive Orders below:

<b>Statute/Executive Order</b>	<b>Description</b>
Title VI of the Civil Rights Act of 1964	No person shall be excluded from participation, denied program benefits, or subjected to discrimination based on: <ul style="list-style-type: none"><li>• Race</li><li>• Color</li><li>• National Origin</li></ul>
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	Prohibits discrimination in housing based on: <ul style="list-style-type: none"><li>• Race</li><li>• Color</li><li>• Religion</li><li>• Sex</li><li>• National Origin</li><li>• Age</li></ul>

	<ul style="list-style-type: none"> <li>• Familiar status</li> <li>• Disability (physical and/or mental)</li> </ul>
Section 3 of the Housing and Urban Development Act of 1968, as amended	<p>To the greatest extent possible, provide training, employment, contracting, and other economic opportunities to:</p> <ul style="list-style-type: none"> <li>• Low and very low-income persons; and</li> <li>• That provide economic; opportunities to low and very low-income persons</li> </ul>
Section 504 of the Rehabilitation Act of 1973, as amended and Section 508	<p>504 - requires agencies to provide individuals with disabilities an equal opportunity to participate in their programs and benefit from their services</p> <p>508- requires Federal agencies to ensure that persons with disabilities (both employees and members of the public) have comparable access to and use of electronic information technology</p>
The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination based on age.
Executive Order 13166	Improving access to services for persons with Limited English Proficiency.
Equal Access to Housing in HUD programs § 5.105 (a)(2) (i-ii)	Ensures that housing across HUD programs is open to all eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status.
Americans with Disabilities Act (ADA)	Legislation that prohibits discrimination and guarantees that people with disabilities have the same opportunities as everyone else.
Architectural Barriers Act of 1968	Requires that buildings and facilities designed, constructed, altered, or leased with certain federal funds after September 1969 must be accessible to and usable by persons with disabilities.

### 11.3 Strategies and Procedures

CDBG-DR and CDBG-MIT subrecipients must assure all CDBG-DR and/or CDBG-MIT funded activities are conducted in a manner that ensures equal opportunity and access to all persons in accordance with civil rights, equal opportunity, and affirmative action laws, regulations, and requirements. Subrecipient must also have written policies in place to promote fair and equal access to housing and employment opportunities for Section 3 residents, minority, and female-

owned businesses. Documentation must be available to ensure Historically Underutilized Businesses (HUBs) are informed of contract opportunities whenever they are a potential resource. This section presents strategies and procedures for documenting and complying with these regulations.

### 11.3.1 Preparation of Plans and Policies Regarding Civil Rights

A critical element of civil rights compliance is preparing plans and strategies for inclusion of all persons, followed by documentation that the subrecipient completed the actions described in the plans. the following, are required:

- Equal Opportunity (EO)/Non-discrimination: subrecipient policy manuals/handbooks must include statement that they are an Equal Opportunity Employer in job postings, applications, and in all contracts greater than \$10,000.
- Section 3 Economic Opportunity policy: adopt a policy based on the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended and make available to the public. Subrecipient should review GLO-CDR's Section 3 Policy posted on the GLO's Section 3 Resources page (see [Resources](#)—Resource 11.2) for best practices in developing a Section 3 Plan.
- Excessive Force: adopt a policy limiting the use of excessive force during non-violent civil rights demonstration and pass a resolution prohibiting Excessive Force.
- Participation by HUB's, Minority, Small Business, and Women-owned Businesses: take all necessary steps to affirmatively assure HUBs, small and minority businesses, women's business enterprises, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.
- Section 504 of the Rehabilitation Act of 1974: if the subrecipient employs 15 or more people, adopt a policy against discrimination based on disability, adopt written grievance procedures concerning Section 504, and pass a resolution (See 24 CFR 8.53). Establish procedures for providing auxiliary aids to allow individuals with disabilities to obtain information concerning the existence and location of CDBG accessible services, activities, and facilities.
- Affirmatively Furthering Fair Housing (AFFH): subrecipient must conduct at least one Fair Housing activity each year of the grant period and maintain documentation of the activity. (See [Resources](#)—Resource 11.6)
- Limited English Proficiency (LEP) Standards: establish a plan for determining if there is a need for LEP services and, if applicable, how appropriate language assistance will be given. Refer to [Census Bureau Data](#) to determine the need for LEP services. For written translation guidance, determine whether the size of the language group requires the translation of key documents such as Citizen Participation notices and/or other notices (see [Section 11.6](#)). [Welcome to LEP.gov](#) has resources available for guidance.

### 11.3.2 Designate a Civil Rights Officer (CRO)

The CRO serves as the subrecipient's Section 504 Coordinator, Equal Opportunity Officer, and Fair Housing Officer. subrecipient must submit the CRO designation information to GLO-CDR,

including both the name and title of designated officer, using the Appointment of Civil Rights Officer form.

**Best Practice:** CRO should be a local staff member.

### 11.3.3 Develop Citizen Participation Plan and Procedures

Subrecipient must provide for and encourage citizen participation (see Section 104(a) (2) of the Housing and Community Development Act and 24 CFR 570.486) except where waivers or alternative requirements are provided. Subrecipient must:

- Prepare and adopt an Outreach and Marketing and Citizen Participation Plan. As part of this plan, procedures must include methods for encouraging citizen participation and should provide citizens the email, address, phone number, and times for submitting complaints; and
- Develop grievance procedures. The written complaint procedures shall also provide for a timely written response to complaints and grievances, within 14 working days where practicable.

GLO-CDR's Citizen Participation Plan ([Citizen Participation Plans / Language Access Plans | Texas General Land Office](#)) is available to view on the agency website (see [Disaster Recovery | Texas General Land Office](#) and [Resources](#)—Resource 11.3 at the end of this chapter). For a detailed discussion of Citizen Participation Requirements, contact your GLO Grant Manager.

Concerned citizens can file a complaint or appeal a decision to the Texas General Land Office Community Development and Revitalization department. An outline of the GLO-CDR's complaint process can be found at the link in [Resources](#)—Resource 11.4.

### Fraud, Waste, or Abuse of Government Funds

Complaints regarding fraud, waste, or abuse of government funds should be forwarded to the U.S. Department of Housing and Urban Development Office of Inspector General Fraud Hotline (phone: 1-800-347-3735 or email: [hotline@hudoig.gov](mailto:hotline@hudoig.gov). See link in [Resources](#)—Resource 11.5 at the end of this chapter.

### 11.3.4 Publish Citizen Participation and Civil Rights Notices

Subrecipients must publish notices regarding Citizen Participation, Complaint Procedures, Section 504, AFFH and all rights and responsibilities associated with federal grant funding received.

Initial Civil Rights notices should be provided to GLO-CDR at project start-up once the executed Subrecipient Contract with the GLO is received.

The subrecipient must publicize in one of three ways:

- Newspaper advertisement\* (documented with tear sheet/full-page advertisement/photocopy with publisher's identification and date/publisher's

- affidavit).
- Public posting at both the city hall/courthouse and at least one location within the target area (documented with affidavit of posting and copy of the notice); or
- Public posting in courthouse/city hall and on subrecipient’s website during the term of the contract (documented with affidavit of posting and copy of the notice as well as screen shots of the posting).
- \* Newspaper notices are considered valid if published within two years prior to the Subrecipient Contract? start date. This means that published notices can be used for multiple CDBG-DR and/or CDBG-MIT projects with contract periods that occur consecutively.

## 11.4 Developing and Implementing a Fair Housing Program

Subrecipients must agree to administer all programs and activities related to housing and community development in a manner that affirmatively furthers fair housing and conforms with the Fair Housing Act Title VIII

### 11.4.1 Fair Housing / AFFH Review for Housing Programs

For the purpose of expediting project reviews and authorizing use of funds for CDBG-DR and/or CDBG-MIT housing programs, the GLO-CDR has established a series of elements and information for subrecipient to provide which reflects an understanding of the community and supports approval of a project.

- Demographic information by census tract which includes prevailing population characteristics relating poverty level, income, ethnicity, race, household sizes, age group data, and other relevant factors;
- Crime rates for the immediate and surrounding geographic areas;
- Identification of key community features, both positive and negative, including distance to each and public transportation time if applicable; and
  - Positive features: large employment centers/opportunities, schools, grocery stores, health care facilities, public transportation, libraries, recreational areas, childcare, and other community centers;
  - Negative features: unsightly facilities, industrial sites, health hazards, retail/business density, low-income housing, etc.;
- Identification of economic trends in the area including pending or approved government projects or bonds.

### 11.4.2 Fair Housing Activities Requirement

Subrecipients must develop and maintain records of efforts taken to assure fair housing. Subrecipients must conduct at least one Fair Housing activity each year of the grant period and maintain documentation of the activity. The documentation must be available during GLO-CDR monitoring visits and identify the type of Fair Housing activity that was or will be conducted (community seminar, brochure distribution, etc.), the target audience (the general public, real estate brokers etc.), and the category of Fair Housing information provided.

## Ideas for Meeting the Fair Housing Activities Requirement:

- Conduct a community-wide housing analysis to determine impediments to fair housing and implement actions to eliminate these impediments;
- Municipalities can pass a fair housing ordinance and if possible, include a penalty clause. Publicize the ordinance in a (e.g., newspaper advertisement or fliers enclosed in utility bills). Subrecipient should consult with their attorney or contact the applicable trade association (e.g. Texas Municipal League) for a sample fair housing ordinance;
- Counties can adopt written fair housing policies and procedures that are equivalent to a fair housing ordinance and publicize them in a newspaper advertisement). Subrecipient should consult with their attorney or contact the applicable trade association (e.g. Texas Association of Counties) for a sample fair housing policy;
- Sponsor or fund fair housing counseling/referral services for owners and renters;
- Develop a written local complaint and monitoring process and notify the public of its existence through newspaper advertisements or notices in utility statements;
- Promote housing opportunities outside historically minority and/or low and moderate-income neighborhoods;
- Designate April or any other month as "Fair Housing Month" by Proclamation or Resolution along with another sponsoring activity. (An additional fair housing activity must take place if this activity is chosen. See note below.);
- Utilize local businesses and banking institutions to promote fair housing by displaying fair housing posters;
- Announce the subrecipient's support of fair housing by means of newspaper advertisements, marquis displays, or public service announcements;
- Conduct free training workshops on fair housing laws to homebuyers, rental property owners, and tenant organizations;
- Sponsor a poster contest or essay writing contest at local schools to educate and promote fair housing;
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, fair housing choice; and/or
- Find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Fair Housing Act.

**Note:** National Fair Housing Month is April of each year in recognition of April 11, 1968, when this law was enacted. However, subrecipients may designate any month as Fair Housing Month at the local level. Designating April as "Fair Housing Month" by proclamation must be accompanied by sponsoring another activity such as the ones listed above to support fair housing.

### 11.4.3 Fair Housing Activities Resources

HUD's Fair Housing Website (see [Resources](#)—Resource 11.7) contains a wealth of information and tools for subrecipients to use in conducting fair housing activities. These resources include:

- A fair housing planning guide;

- Fair Housing brochures and logos;
- Fair Housing best practices;
- Contact information for fair housing advocacy organizations; and
- Accessibility guidelines for housing units

## 11.5 Section 504

Subrecipient must operate their CDBG-DR and/or CDBG-MIT programs in compliance with Section 504 requirements (24 CFR 8.50(a)). Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs based on disability and imposes requirements to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds. Subrecipient must adhere to the following requirements.

- Complete a self-evaluation of their Section 504 compliance using the Section 504 Self-Evaluation Form and keep it on file for monitoring purposes. During the self-evaluation process, the subrecipient must consult with individuals with disabilities or organizations representing them. The self-evaluation should include an examination of policies and practices relative to the 504 regulations. Any policies or practices that do not meet the requirements for program accessibility should be modified (24 CFR 8.51);
- Ensure those with visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials; and
- Maintain documentation for GLO-CDR showing the extent to which individuals with disabilities are beneficiaries of all CDBG-DR and/or CDBG-MIT programs and activities.

If the subrecipient employs fifteen or more persons, a responsible employee of the subrecipient must be designated to coordinate the subrecipient's efforts to comply with Section 504 (see [Section 11.3.2](#)). Additionally, the subrecipient must:

- Adopt grievance procedures that incorporate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited Section 504. Grievance procedures are not required for complaints from applicants for employment or from applicants for housing;
- Publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the subrecipient, that it does not discriminate based on handicap in violation of Section 504. The notice must state, where appropriate, the subrecipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notice shall also identify the designated Civil Rights Officer; and
- Maintain files available for public inspection and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description

of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

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

### *Structural changes to non-housing facilities*

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

- Identify all physical obstacles that limit the accessibility of programs and activities;
- Describe the methods that will be used to make the facilities accessible;
- Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;
- Indicate the official responsible for implementation of the plan; and
- Identify the persons or groups with whose assistance the plan was prepared.

**Note:** New non-housing projects (designed, constructed, or altered after July 11, 1988) must be designed and constructed to be readily accessible to and usable by the protected classes with handicaps (24 CFR 8.32). Unless the subrecipient has recently acquired a facility that was constructed prior to 1988 which will house programs and services available to the public, the three-year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

## 11.6 Limited English Proficiency (LEP) Requirements

Limited English Proficiency (LEP) persons are individuals whose primary language is not English and who have limited abilities to read, write, speak, or understand English. Subrecipients must take steps to provide meaningful access to federally funded programs for all LEP persons. Subrecipients should establish and adopt a plan that determines if there is a need for LEP services within the community and, if applicable, how appropriate language assistance will be given.

Program activities that should be made accessible to LEP persons include:

- Public notices and hearings regarding applications for grant funding, amendments to project activities, and completion of grant-funded projects;
- Publications regarding environmental reviews, civil rights, and
- other program requirements/documents as needed

To determine the local need for LEP services, subrecipients may use the [Census Bureau Data](#).

The table below sets forth safe harbors for written translations.

<b>Size of Language Group</b>	<b>Requirement</b>
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required

### 11.7 Section 3 of the HUD Act of 1968 Compliance Requirements

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

Section 3 compliance is applicable when CDBG-DR assistance exceeds \$200,000 for projects that involve the construction or rehabilitation of housing or other public construction, such as street repair, sewage line repair or installation, and updates to building facades. Covered projects include:

- Housing Rehabilitation (to include reduction of lead-based paint hazards, and demolition);
- Housing Construction (to include reduction of lead-based paint hazards and demolition);
- Public Infrastructure (e.g., street repair, sewage line repair or installation, updates to building facades, etc.); and
- Public Facilities and Park Improvements.

There are no minimum thresholds for Public Housing Authorities (PHAs). The requirements of Section 3 apply to all PHAs regardless of the amount of assistance received. PHAs do not have thresholds for construction projects. Contractors hired by PHAs are required to comply with Section 3 regardless of the dollar amount of the contract.

Subrecipient and contractors may demonstrate compliance with Section 3 by meeting HUD’s numeric benchmarks for labor hours, or by reporting qualitative efforts showing their attempts at encouraging Section 3 participation. The GLO-CDR Section 3 Coordinator will examine the subrecipient’s efforts and provide technical assistance as necessary.

The numeric benchmarks for 24 CFR 75 are:

- 25% of all labor hours reported for each project are performed by Section 3 workers
- 5% of all labor hours reported for each project are performed by Targeted Section 3 workers

If the subrecipient does not meet these numerical benchmarks, they must demonstrate and provide evidence of the qualitative efforts they have made to achieve them.

**Note:** Section 3 does not apply to homebuyer assistance activities (e.g. down payment assistance).

### 11.7.1 Designate Section 3 Coordinator (Optional)

- Subrecipient should submit the Section 3 Coordinator designation information to GLO-CDR, including both the name and title of designated officer, using the “Appointment of Section 3 Coordinator”\_form located on the [Infrastructure Forms | Texas General Land Office](#) page, under the “Civil Rights Requirements” accordion.
- **Best Practice:** Section 3 Coordinator should be a local staff member.

### 11.7.2 Section 3 Employment Goals

The subrecipient must demonstrate compliance goals with Section 3 by providing employment opportunities and job training to lower income residents. Subrecipient must apply Section 3 goals “to the greatest extent feasible”.

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

- Prepare and make available to the public Section 3 policies;
- Include the subrecipient’s Section 3 Policy and Procedures in all construction contracts;
- Contractors and subcontractors must document efforts to comply with subrecipient’s Section 3 goals.

### 11.7.3 Section 3 Employment Efforts

The following examples can be used to ensure that employment objectives of Section 3 are met. These examples can be used to assist in reaching Section 3 residents and businesses for employment opportunities.

- Post advertisements of employment opportunities in the service area, identifying the positions, qualification requirements, and where to obtain additional information about the application process;
- Contact community organizations and resident organizations to request assistance in notifying residents of the employment positions to be filled;

- Sponsor a job informational meeting in the service area of the project;
- Conduct job interviews and job application workshops for residents of the service area;
- Arrange for a location in the service area where job applications may be collected by the subrecipient or contractor representative;
- Consult with state and local agencies administering Job Training Partnership Act (JTPA), probation and parole agencies, unemployment compensation programs, etc., to assist with recruiting Section 3 residents for employment;
- Advertise job opportunities through the local media, such as community television networks, newspapers of general circulation, and radio;
- Employ a job coordinator or contract with a business concern to undertake the efforts to match eligible and qualified Section 3 residents with the employment positions;
- Where there are more qualified Section 3 residents than there are positions to be filled, maintain a file of eligible qualified Section 3 residents for future employment positions;
- Contact local education institutions to provide job counseling, education, and related programs; and/or
- After selection of bidders, but prior to execution of contracts, incorporate into the contract a negotiated provision for a specific number of Section 3 residents to be trained or employed on the Section 3 project.

#### 11.7.4 Section 3 Contracting Goals

A subrecipient, contractor, or subcontractor who has not met the goals has to demonstrate why it was not feasible to meet these goals. Documentation must be maintained including what efforts were undertaken and why those goals were deemed unattainable. The following are examples of efforts which can be utilized in reaching the specified goals in employment and contracting:

##### *Contracting Guidelines*

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

- The use of small purchase procedures such as soliciting quotations from a minimum of three (3) qualified sources (contract may not exceed the small purchase threshold). At the time of solicitation, inform the parties of the Section 3 requirements of the contract with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain three quotes from qualified sources must be made and documented (see [Chapter 5](#));
- In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract;
- Utilize minority contractor associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders;
- Advertise contracting opportunities by posting notices concerning work to be contracted in common areas of housing developments;
- Provide written notice to all known Section 3 business concerns of the contracting

- opportunities;
- Follow up with Section 3 businesses that have expressed interest in contracting opportunities and provide additional information;
- Coordinate pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities;
- Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities;
- Advise Section 3 businesses as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance;
- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 businesses;
- Where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns;
- Contact agencies administering HUD supported programs and notify these agencies of contracting opportunities;
- Advertise contracting opportunities through trade association papers and local media such as television, newspapers, and radio;
- Develop a list of eligible Section 3 business concerns; and/or
- Establish numerical goals (dollar amounts and number of awards) for contracts to Section 3 business concerns.

### 11.7.5 Section 3 Reporting and Recordkeeping

Subrecipients are required to maintain documentation and report Labor hours and any qualitative efforts attempted to the GLO-CDR on a quarterly basis.

The following items are required to be reported to show Section 3 Compliance (24 CFR 75):

<b>Employment</b>
<ol style="list-style-type: none"> <li>1. Total labor hours worked during reporting period.</li> <li>2. Total labor hours worked by Section 3 workers during reporting period.</li> <li>3. Total labor hours worked by Targeted Section 3 workers during reporting period.</li> </ol>

**Note:** Section 3 does not mandate certification or evidence of a person's Section 3 status; however, the subrecipient or the contractor have the right to request documentation which will support their reporting for Section 3. An example of documentation is the receipt of public assistance, evidence of participation in a public assistance program, residency in a public housing development, evidence of a Section 8 certificate, voucher assistance, participation in JTPA, and/or receipt of welfare assistance. Documentation does not have to be proof of income.

### 11.8 Excessive Force Policy

Subrecipient receiving CDBG-DR and/or CDBG-MIT funding must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations. (See also State Certification Requirements at 24 CFR 91.325(b)(6)).

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

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

## 11.9 Equal Opportunity and Non-Discrimination Provisions

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

### Nondiscrimination, Equal Opportunity, and Affirmative Action in Employment.

Employment opportunities may not be denied based on race, color, national origin, sex, age, religion, familial status, or disability. Steps to prevent discrimination in employment include the following:

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

### Nondiscrimination, Equal Employment Opportunity and Affirmative Action for Construction Contracts.

Subrecipient must take all necessary steps to notify minority businesses, women's business enterprises, labor surplus area firms, and Section 3 businesses of bidding opportunities. Contractors may not discriminate against any employee or applicant for employment because of race, color, national origin, sex, age, religion, or familial status. Steps to prevent discrimination and monitor for compliance include the following:

- Advertise as an equal opportunity employer in bid solicitations;
- Include minority businesses, women's business enterprises, labor surplus area firms,

- and Section 3 businesses in bid solicitations whenever possible;
- Document and maintain a list of locally owned businesses that were awarded contracts;
- Include Section 3 and Equal Employment Opportunity clauses as part of bid packets and all applicable contracts;
- Inform contractors of Section 3 and equal opportunity requirements at pre-construction conference or through other means of notification;
- Require contractors to submit monthly utilization reports; and
- Monitor contractor's compliance at work site.

## Nondiscrimination, Equal Opportunity and Affirmative Action in Housing.

The Fair Housing Act prohibits discrimination against protected class members in the sale, rental, conditions, and financing of dwellings and in other housing-related transactions. Steps to prevent discrimination in housing include the following:

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

### 11.10 Civil Rights Compliance Documentation

Subrecipients are required to document their compliance with the key regulations and requirements, including civil rights, fair housing, Section 3, and equal opportunity laws, at the start

of the program. They are also expected to remain diligent and consistent in fulfilling their civil rights responsibilities throughout the program's duration.

### 11.10.1 Documentation Required at Project Start Up

Prior to releasing any funds, the GLO-CDR must receive the following Project Start Up documentation:

- Appointment of Civil Rights Officer;
- Appointment of Section 3 Coordinator (Optional);
- Citizen Participation Plan, including complaint and grievance procedures;
- Nondiscrimination/Equal Employment Opportunity Policy;
- Policy and notice of nondiscrimination on basis of handicapped status. Subrecipient may combine this policy with their Nondiscrimination/Equal Employment Opportunity policy;
- Excessive Force Policy;
- Section 3 Policy (Optional);
- Section 504 Self-Evaluation Review;
- Section 504 Grievance Procedures;
- Civil Rights Resolution regarding Citizen Participation, Section 3, Excessive Force, Section 504 Policy and Grievance Procedures, and Fair Housing Policy;
- Public Notices regarding Civil Rights (see [Section 11.3.4](#)); and
- Fair Housing activity documentation

### 11.10.2 Ongoing Compliance Documentation

During the grant period, subrecipients must assure all CDBG-DR and/or CDBG-MIT funded activities are conducted in a manner that ensures equal opportunity and access to all persons in accordance with civil rights, equal opportunity, and affirmative action laws, regulations, and requirements.

- Fair Housing: document efforts to affirmatively further fair housing;
- Section 3 Business Participation: document efforts to solicit Section 3 businesses and maintain data concerning the number and dollar amount of contract awarded to locally owned businesses;
- Minority Business Participation: document efforts to solicit minority and women-owned businesses and maintain data concerning the number and dollar amount of contracts awarded to minority businesses;
- Maintain records of any monitoring trips to project site and any findings as well as copies of contractors' certifications and monthly utilization reports documenting contractor compliance;
- Maintain records of program applicants as well as direct and indirect beneficiaries including race, color, sex, national origin, age and handicap status;
- Record race, head of household, age, and income data of persons affected by displacement and/or relocation, if applicable;
- Human Resources documents regarding employment should be on file including

training handbooks, policy and procedure manuals, resolutions, and ordinances regarding Civil Rights requirements; and

- Documentation related to any complaints received and action taken to notify GLO-CDR or HUD, if applicable.

## 11.11 Civil Rights Complaints

A complaint may not always refer to a violation of a civil rights law and should be reviewed as a civil rights complaint if the complainant:

- Indicates the belief that he or she has been denied opportunities, treated differently, etc.; and/or
- States his or her race, ethnicity, gender, status as a handicapped person, or age in the complaint.

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

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

Confidentiality is mandatory. The name(s) of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than the Department of HUD. The GLO-CDR should, however, be notified that a complaint has been registered.

**Note:** Complaints of employment discrimination should be referred to:

Texas Workforce Commission, Civil Rights Division (see [Resources](#)—Resource 11.7 below for link)

Equal Employment Opportunity Commission at <http://www.EEOC.gov/> ([Resources](#)—Resource 11.8)

## 11.12 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

<b>Resource Number</b>	<b>Topic</b>	<b>Web Page URL</b>	<b>File Located Under Section / Accordion</b>
<b>Resource 11.1</b>	HUD CDBG-DR Toolkit	<a href="https://www.hudexchange.info/resources/documents/CDBG-DR-Resources-Summary.pdf">https://www.hudexchange.info/resources/documents/CDBG-DR-Resources-Summary.pdf</a>	N/A
<b>Resource 11.2</b>	GLO-CDR Section 3 Resources	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/grant-admin/infrastructure-forms</a>	Civil Rights Requirements
<b>Resource 11.3</b>	GLO Citizen Participation Plans	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/citizen-participation-plans-language-access-plans">https://www.glo.texas.gov/disaster-recovery/grant-administration/citizen-participation-plans-language-access-plans</a>	N/A
<b>Resource 11.4</b>	GLO-CDR Complaint and Appeals Process	<a href="https://www.glo.texas.gov/disaster-recovery/filing-complaint-or-appeal">https://www.glo.texas.gov/disaster-recovery/filing-complaint-or-appeal</a>	N/A
<b>Resource 11.5</b>	GLO-CDR Fraud, Waste, and Abuse Process	<a href="https://www.glo.texas.gov/disaster-recovery/report-fraudwasteabuse">https://www.glo.texas.gov/disaster-recovery/report-fraudwasteabuse</a>	N/A
<b>Resource 11.6</b>	GLO-CDR's Affirmatively Furthering Fair Housing (AFFH) Resources	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/affirmatively-furthering-fair-housing">https://www.glo.texas.gov/disaster-recovery/grant-admin/affirmatively-furthering-fair-housing</a>	N/A
<b>Resource 11.7</b>	HUD's Fair Housing Website	<a href="https://www.hud.gov/program_offices/fair_housing_equal_op/fair_housing_and_related_law">https://www.hud.gov/program_offices/fair_housing_equal_op/fair_housing_and_related_law</a>	N/A

<b>Resource 11.7</b>	Texas Workforce Commission Civil Rights and Discrimination Division	<a href="https://www.twc.texas.gov/programs/civil-rights/employment-discrimination">https://www.twc.texas.gov/programs/civil-rights/employment-discrimination</a>	N/A
<b>Resource 11.8</b>	Equal Employment Opportunity Commission (EEOC)	<a href="https://www.eeoc.gov/">https://www.eeoc.gov/</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with **Adobe Acrobat**. If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 12—CONTRACT (SUBRECIPIENT AGREEMENT) AMENDMENTS

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# CHAPTER 12—CONTRACT (SUBRECIPIENT AGREEMENT) AMENDMENTS

## 12.1 Introduction

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

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

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

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

## 12.2 Performance Statement and Budget Changes

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

Changes specific to Attachment A, including the performance statement and budget, will be reviewed by the GLO Grant Manager and compared to the current performance statement to ensure federal, state, and programmatic requirements continue to be satisfied.

## 12.3 Subrecipient Agreement Extensions

The subrecipient is responsible for monitoring Subrecipient Agreement progress, including overall project delivery including grant administration and environmental services, engineering services, and construction activity to comply with the Subrecipient Agreement end date. CDBG-DR and CDBG-MIT Subrecipient Agreements allow a specific time period to

complete the activities identified in the Performance Statement. If a subrecipient is reasonably assured that project costs will be incurred beyond the Subrecipient Agreement end date and that incurring these costs is beyond the control of the subrecipient, an amendment for a Subrecipient Agreement extension must be requested from GLO-CDR to extend the current Subrecipient Agreement end date.

To avoid interruptions to the Subrecipient Agreement or possible exclusion of reimbursement for project costs, subrecipient should submit a request for a Subrecipient Agreement extension as soon as the need is identified. Subrecipient Agreement extension requests should be submitted at least sixty (60) days prior to the termination date of the Subrecipient Agreement.

## 12.4 Documentation Required for Change Requests

Documentation required to process Change Requests include following:

- Request from the subrecipient by letter from the chief elected official, authorized representative or by official action if required by the local governing body;
- Revised Attachment A performance statement and/or budget, “redlined” using “track changes” in Word format;
- Re-evaluation of environmental findings, if applicable;
- Revised project maps clearly identifying locations of the original and amended project activities, if applicable;
- Revised beneficiary documentation, including census data or surveys, map defining the service area and corresponding census geographic area, if applicable;
- Table 2/Budget Justification of Retail Costs prepared and signed by the project engineer, if applicable;
- Construction change order form if proposed changes occur after a construction contract has been awarded;
- Revised project schedule indicating when milestones will be achieved for the remaining project or activity, as applicable;
- Justification for any extension requests indicating current status, efforts expended to date, reason for delays, details describing a plan to accomplish remaining goals; and
- Other documentation deemed necessary to justify the change, as requested by GLO-CDR.

**Note:** GLO-CDR staff will provide an electronic version of the current Attachment A for use in documenting changes.

## 12.5 Considerations for Submitting Change Requests

Applications are approved for funding based on the applicable program guidance per funding opportunity. The Subrecipient Agreement defines terms of the agreement including the scope of work, budget, and effective and end dates. The approved scope of

work describes the projects and/or activities to be implemented. The budget defines the CDBG grant award and the amount of other funds to be contributed by the subrecipient.

Proposed changes to the scope of work will be reviewed to determine if they are supported by the required justification, supporting documents, and in accordance with the applicable review criteria. An incomplete scope of work may result in repayment by the subrecipient.

Scope of work changes may arise as a result of the environmental review, final design or change orders. All changes to the scope of work should be discussed with a GLO Grant Manager to determine complexity with consideration to the impact on environmental review. If the need for a change is identified prior to issuance of the Authority to Use Grant Funds (AUGF), supporting documentation should reference incorporation of eligible changes in the AUGF.

The Performance Statement should be evaluated prior to finalizing the construction bid documents. Subrecipient should consider the use of bid alternates to address possible variances between the bid documents and the Performance Statement. A construction award issued by a governing body should reflect the Performance Statement. If the scope of the award and Performance Statement vary, a change request will be necessary.

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

- Alternate bid items;
- Change Orders;
- Bidding the additional work separately;
- Force account labor, material, and/or equipment (subrecipients are reminded that extensive documentation is required in order to use force account resources).

While changing from force account labor to bid/contract labor ordinarily does not trigger a Performance Statement Amendment, the subrecipient must comply with Davis Bacon and Labor Standards before advertising for bids, including securing the appropriate prevailing wage rates.

If the AUGF has been issued, the subrecipient is required to re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether the AUGF still applies to the proposed changes. It is critical that a subrecipient complete this re- evaluation in coordination with GLO Environmental Staff. subrecipients should consider the project location and any variance from the original type of work as well as the extent of work resulting in increases to capacity when completing a re-evaluation. Supplemental information or a new environmental clearance may be necessary for the

proposed changes and associated costs to be considered CDBG-DR and/or CDBG-MIT eligible.

## 12.6 Process to Submit Change request

- Subrecipient identifies the need for a change request
- Subrecipient notifies the GLO Grant Manager
- Grant Manager provides a current version of the Attachment A to “redline” for change requests involving the Performance Statement or Budget
- Subrecipient prepares required supporting documentation described in Section 12.4
- Subrecipient submits change request documentation to Grant Manager
- Grant Manager reviews and requests additional documentation if needed to support the proposed change
- Upon receipt of a complete change request, Grant Manager will route for GLO approval

Subrecipient should consider the impact of proposed changes to the budget, performance statement, beneficiaries, and project schedule when preparing a change request. Changes impacting one or more of these areas should be included in the same request.

GLO will process one change request at a time. Changes to the Subrecipient Agreement may impact agency processes related to reimbursement of funds.

## 12.7 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

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The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 13—CONTRACT (SUBRECIPIENT AGREEMENT) CLOSEOUT

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# CHAPTER 13—CONTRACT (SUBRECIPIENT AGREEMENT) CLOSEOUT

## 13.1 Introduction

The CDBG-DR and/or CDBG-MIT Contract closeout process is designed to ensure all CDBG-DR and/or CDBG-MIT activities are completed and funds are expended in accordance with the Subrecipient Agreement, program rules, and state and federal requirements. This means any financial, administrative, and performance issues related to the CDBG-DR and/or CDBG-MIT Subrecipient Agreement and stipulated as part of the Subrecipient Agreement have been resolved to the satisfaction of GLO, HUD, and the subrecipient. The closeout process also certifies that the persons benefiting from the activities described in the Subrecipient Agreement Attachment A Performance Statement (Performance Statement) are receiving services or a benefit from the use of the new or improved project, facilities and/or activities.

The closeout process begins when all of the following are complete:

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

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

## 13.2 Closeout Process

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

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

### 13.2.1 Grant Closeout Report (GCR)

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

## *Certificate of Expenditures (COE)*

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

- GLO-DR Budget: Funds allotted to each budget activity according to the CDBG-DR and/or CDBG-MIT Subrecipient Agreement, Budget (Exhibit B), including all amendments and revisions;
- GLO-DR Funds Expended (Including Final GA Draw): Funds received from CDBG-DR and/or CDBG-MIT through approved Requests for Payment. Pending Requests for Payment are included in this amount;
- Final GA Draw: Amount of final GA Draw;
- Unutilized Funds: Total grant funds that will NOT be requested by the subrecipient, including all funds not Drawn to Date or requested for Reserve. All funds included in this column will be de-obligated by GLO upon administrative completion of the Subrecipient Agreement and will be unavailable for reimbursement; and
- Local Contribution: All funds or local contribution other than CDBG-DR and/or CDBG-MIT funds used to complete the project.

GLO will de-obligate all funds that are:

- Identified by the subrecipient in the Unutilized Funds (Deob) column and/or
- Not requested for payment with appropriate documentation within sixty (60) days after the Subrecipient Agreement end date.

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

- Prior written approval by GLO-CDR;
- Must include a specific timeline/schedule for completion;
- CDBG-DR and/or CDBG-MIT Subrecipient Agreement is part of a project funded through multiple funding agencies and total project is not complete;
- CDBG-DR and/or CDBG-MIT Subrecipient Agreement is involved in litigation or dispute;
- Project Delivery for final five percent (5%) of Project Delivery budget; or
- Actual costs of a Single Audit.

## *Civil Rights & Citizen Participation*

The GCR requires the subrecipient to certify the following federal and state requirements are complete. Chapter 11—Civil Rights of this manual details the information/documentation mandated for the CDBG-DR and/or CDBG-MIT Subrecipient Agreement. Supporting documentation should be available for review and monitoring: Equal Employment Opportunity Requirements; Section 3; Excessive Force Policy and Resolution; and Section 504. Fair Housing Activities must also be entered into this section as well as the Work Completed Date.

## *Certifications*

The chief elected official (highest elected official of the political subdivision) must sign the GCR and certify:

- All activities undertaken with funds provided under the Subrecipient Agreement identified in this report have been carried out in accordance with the Subrecipient Agreement;
- The information contained in this GCR is accurate All records related to Subrecipient Agreement or activities are available for review;
- CDBG-DR and/or CDBG-MIT funds were not used to reduce the level of local financial support for housing and community development activities;
- No attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless:
  - Such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds or
  - For purposes of assessing any amount against properties owned and occupied by persons of moderate income, contractor certifies that it lacks sufficient funds under this Subrecipient Agreement to comply with the requirements of the immediately preceding clause.
- The persons to benefit from the activities described in the Performance Statement are receiving service(s) or a benefit(s) from the use of the new or improved facilities and activities;
- For all activities undertaken with funds provided under the Subrecipient Agreement identified in this report, promotion of MBE participation has been undertaken;
- All requirement to Affirmatively Further Fair Housing has been met; and copies of all records to include Equal Employment Opportunity Policies, Section 3 Local Opportunity and/or Resolution, Excessive Force Policy/Resolution and Section
- 504 Resolution/Policy, Designation Form, Grievance Procedure and Self-Evaluation form are available for review; and
- Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims the State of Texas is under no obligation to make any further payment to the recipient under the Subrecipient Agreement in excess of the amount identified in the Certificate of Expenditures table as "Final GA Draw".

## *Attachments*

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

### 13.2.2 Performance Report

#### Actual Accomplishments

The GCR reports all work completed by the activity. Engineering and Project Delivery/Grant Administration are not reported in the Performance Statement. The work reported must correspond to the project described in the CDBG-DR and/or CDBG-MIT Subrecipient Agreement Performance Statement and be reported in the same quantitative terms as those used in the Subrecipient Agreement (if the Performance Statement describes a project without using linear feet, report the item as a linear foot metric).

If the current Performance Statement and actual accomplishments vary in quantities and/or number of beneficiaries served, report the differences and the reasons to the GLO-CDR. A GLO Grant Manager will provide technical assistance. A Subrecipient Agreement revision or amendment is required when quantities vary. The subrecipient must confirm the work stated as part of the GCR was performed in the location(s) described in the most recently approved or updated Performance Statement. If work was performed in a different location, the subrecipient must resolve this issue with GLO-CDR prior to submitting the GCR. The GLO is not obligated to reimburse work that is not included in the Performance Statement of the CDBG-DR and/or CDBG-MIT Subrecipient Agreement.

### *HUD Performance Measures*

The Subrecipient must enter the activity, objective, outcome, benefit indicator, and special category (if applicable) for all activities in the Performance Statement of the CDBG-DR and/or CDBG-MIT Subrecipient Agreement.

### *Beneficiary Detail Report*

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

### *Complete Beneficiary Detail Reports*

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

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

- Beneficiary Detail Report – Activities on Public Property – report all beneficiaries for the group of activities according to gender, race, ethnicity, and income level;
- Beneficiary Detail Report – Activities on Private Property – report all information required for persons benefitting, as well as similar information for each household receiving a benefit;
  - Gender, race, and ethnicity and gender information must be reported for the person

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

If the number of beneficiaries or homes actually served varies from the number of beneficiaries required by the most recently approved Performance Statement, the subrecipient must submit a Subrecipient Agreement revision or amendment. The GCR will not be accepted until all change request documents are acceptable. GLO is not obligated to reimburse work that is not included in the Performance Statement of the CDBG-DR and/or CDBG-MIT Subrecipient Agreement.

### *Summary*

The CDR Single Family Housing team has developed a non-exclusive list of required documents to be submitted by the subrecipient to initiate closeout of a Subrecipient Agreement. The GLO Grant Manager can provide further assistance when compiling these documents.

### *Required Closeout Documentation—Single Family Housing*

The following items are, at a minimum, required at the completion of a Single Family Housing Subrecipient Agreement:

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

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

### 13.2.3 Final Financial Interest Report

The subrecipient must report final procurement information for all contracts executed under the CDBG-DR and/or CDBG-MIT Subrecipient Agreement, including all professional services/Administration and Engineering services, construction contractors and sub-contractors,

and material suppliers, with contracts of \$2,000 or more. The contract amount reported should include any change orders or amendments. Check the appropriate box to report subcontracts valued at \$2,000 or more under the prime contractor.

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

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

### 13.3 Acceptance of the Closeout Report

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

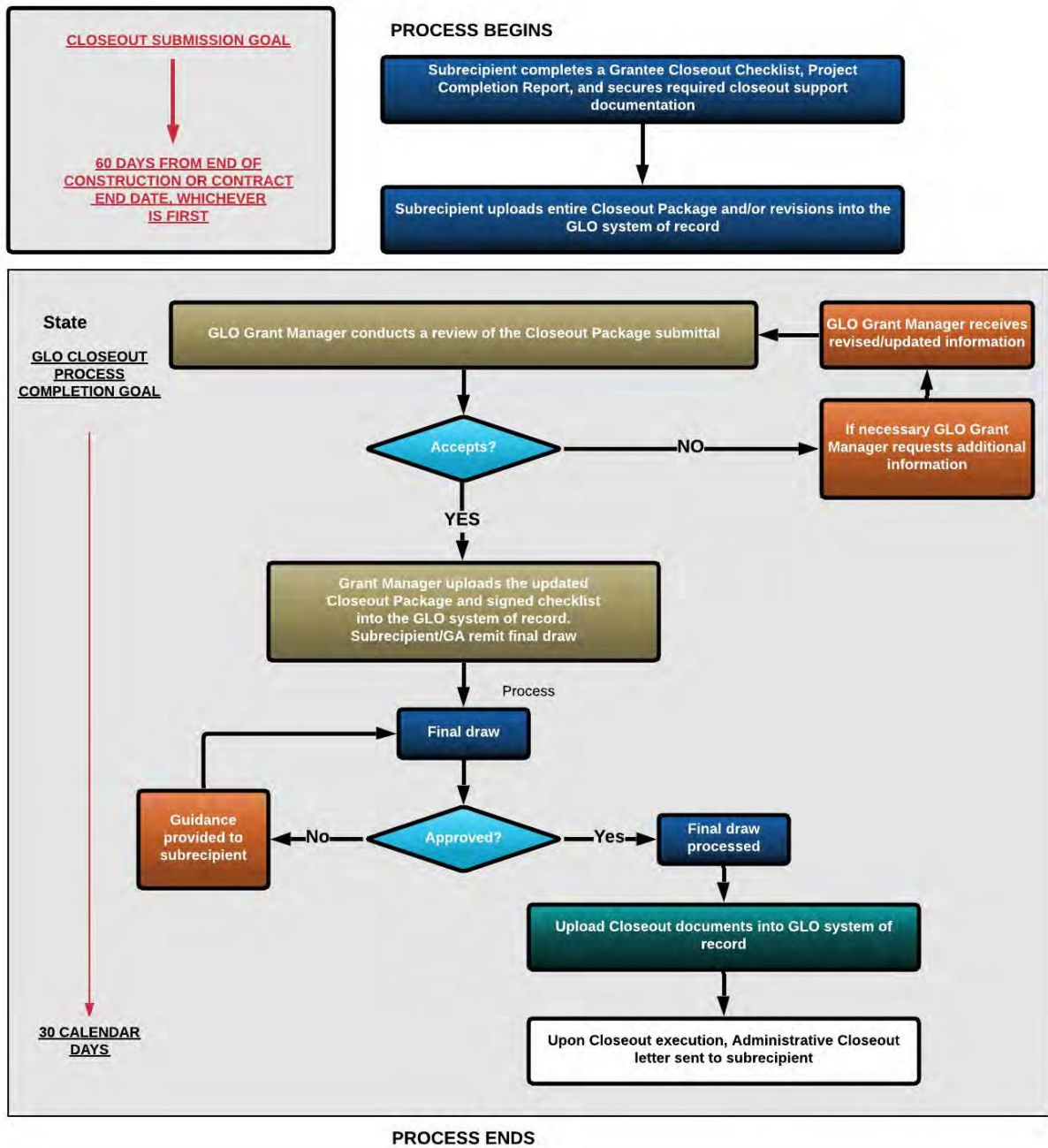
Once the GCR is submitted, GLO Grant Manager will review the report for accuracy and completeness.

- Incomplete reports will not be accepted and will be returned to the subrecipient.
- Subrecipient will be notified by email of minor deficiencies and should correct such deficiencies within 10 days of that notice.
- If any information is missing, inaccurate or incomplete, the Grant Manager will request the information, via e-mail, from the subrecipient.
- GCRs that have major deficiencies or information that does not reflect the Performance Statement and/or Budget will not be accepted and will be returned to the subrecipient.
- The review and request of information continues until all deficiencies and documents have been submitted and accepted by the GLO-CDR.
- All approved closeout documents must be included in the GLO system of record.

See [Resources](#)—Resource 13.1 at the end of this chapter for a list of documents which may be required as part of the closeout submittal. The Grant Manager can assist with program closeouts.

**Note:** Subrecipient Agreement closeout does not begin the record retention period for the Subrecipient Agreement. A letter will be sent by GLO to the subrecipient once HUD has closed out the project to start the 3-year retention period.

## 13.4 Closeout Process—Infrastructure



## 13.5 Resources

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Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
<b>Resource 13.1</b>	Grant Closeout Documentation:		
	<ul style="list-style-type: none"> <li>State Program Housing Documentation</li> </ul>	<a href="https://www.glo.texas.gov/disaster-recovery/state-program-forms">https://www.glo.texas.gov/disaster-recovery/state-program-forms</a>	Closeout and Affordability Period Monitoring
	<ul style="list-style-type: none"> <li>2015-2016 Subrecipients Documentation</li> </ul>	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients">https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients</a>	Closeout and Affordability Period Monitoring
	<ul style="list-style-type: none"> <li>Infrastructure Grant Closeout Report</li> </ul>	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	Contract Closeout

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## CHAPTER 14—CDR COMPLIANCE

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# CHAPTER 14—CDR COMPLIANCE

## 14.1 Introduction

### 14.1.1 GLO-CDR Compliance Review

This chapter provides guidance on the monitoring review process conducted by the GLO-CDR Compliance team. The GLO-CDR ensures program compliance based on a risk analysis. In addition to the day-to-day oversight activities and review of information submitted, GLO-CDR staff schedule topic-specific reviews both via desk review and in the field. The results of these reviews are documented in written reports detailing the specifics of that review and any corrective actions deemed necessary.

Throughout the life of any CDBG-DR and/or CDBG-MIT grant, the GLO-CDR Compliance team will conduct monitoring efforts of subrecipient and related contractors by reviewing internal processes to ensure compliance with federal regulations, to prevent fraud, waste, and abuse, and to identify places of improvement.

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

### 14.1.2 GLO-CDR Compliance Section

GLO-CDR strives to ensure CDR Disaster Recovery programs, subrecipient, and vendors meet all federal, state, and other legal program requirements.

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

- Review Subrecipient Agreement compliance. A subrecipient or contracted vendor will be monitored to ensure all funded activities are eligible; beneficiaries served are accountable; and funds have been expended in accordance with GLO-CDR, state, and federal requirements, as outlined in the Subrecipient Agreement. Compliance areas reviewed by GLO-CDR Compliance include financial management, advance payment, force account labor, acquisition, equipment, procurement, environmental approvals, and labor standards.
- Procedures to detect fraud, waste, and abuse. A subrecipient or contracted vendor's processes or systems and other policies and procedures used to administer GLO CDBG-DR and/or CDBG-MIT funds will be monitored for adequate protections against fraud, waste, and abuse.
- Identify any necessary corrective actions. A review could result in prescribed corrective measures to be carried out by the subrecipient or contracted vendors up to and including repayment.
- Identify technical assistance needs. A review may reveal a need for additional technical assistance. Repeated unsatisfactory performance and/or delays in submitting responses to monitoring reports may affect a subrecipient or contracted vendors eligibility to apply for future CDBG-DR or CDBG-MIT funding or receive funds

under current grants.

## 14.2 Monitor Review Types

The GLO-CDR Compliance team performs desk or on-site monitoring reviews.

### 14.2.1 Desk Review

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

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

### 14.2.2 On-site Review

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

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

## 14.3 General Monitoring Methodology

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

The following steps are integral to conducting a monitoring review:

- Conducting an entrance conference with the appropriate representatives to explain the purpose of review;
- Applying the applicable requirements through documented workpapers;
- Reviewing the applicable files;
- Interviewing members of staff, engineers, and/or consultants, as appropriate to discuss project related issues;
- Conducting an exit conference with the appropriate representatives to present the preliminary conclusions identified during the review; and

- Issuing a formal written report summarizing the conclusions of the review.

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

## 14.4 Results of the Monitoring Review

### 14.4.1 Decision Categories

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

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

The terms above are defined by HUD as follows:

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

### 14.4.2 Non-Compliance Procedures

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

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

Depending on the severity of the issues identified in the report, corrective actions may include remedies for non-compliance that may include, but are not limited to, the following:

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

### 14.4.3 Compliance Procedures

The results of the monitoring review may indicate reasonable assurance that the scope under review complied with the terms and conditions of the program and Subrecipient Agreement requirements. In these instances, the non-compliance activities of section 14.4.2 are not required.

### 14.4.4 Pass-through Requirements

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

### 14.4.5 Training Resources

In order to provide the information and resources both subrecipient and GLO Grant Managers need to successfully implement and manage CDBG-DR and/or CDBG-MIT funded projects and programs, the GLO-CDR offers and participates in various training opportunities. The GLO's Training Plan outlines the process by which training needs are identified and the manner in which they will be implemented. The GLO-CDR has also developed a number of topic-specific resources and offers Web links to relevant federal resource documents. These training tools and resources are available through the GLO website. Links to the GLO-CDR Training Plan and to additional training resources can be found in [Resources](#)—Resource 14.1 at the end of this chapter. HUD provides guidance on monitoring CPD programs in the CPD Monitoring Handbook (see [Resources](#)—Resource 14.2).

## 14.5 Resources

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Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 14.1	GLO-CDR Technical Assistance / Training Page	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/technical-assistance-training">https://www.glo.texas.gov/disaster-recovery/grant-administration/technical-assistance-training</a>	N/A
Resource 14.2	HUD CPD Monitoring Handbook (6509.2)	<a href="https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2">https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/6509.2</a>	N/A

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# CHAPTER 15—AUDIT REQUIREMENTS

This chapter presents a summary of the audit requirements. Subrecipients are required to comply with 2 CFR 200 Subpart F – Audit Requirements (see Resources—Resource 15.1 at the end of this chapter). GLO-C DR holds each subrecipient responsible for all funds expended. Links to fillable forms are available at <https://www.glo.texas.gov/disaster-recovery>.

## 15.1 Audit Process

One of the primary financial management requirements implicit with the use of federal funds pertains to audits. There are both federal and state requirements for audits. Subpart F of 2 CFR 200 provide the federal requirements for audits of governmental entities and nonprofit organizations. Failure to comply with both audit requirements can jeopardize the subrecipient's ability to draw grant funds and to receive future grants.

## 15.2 Audit Costs

The only costs allowable under the CDBG -DR and/or CDBG-MIT Programs for financial report preparation are single audit costs. If single audit costs are to be charged to the CDBG -DR and/or CDBG-MIT program, the subrecipient must follow the Professional Services Procurement guidelines established under the Procurement chapter and 2 CFR 200. Due to the importance of the audit process, subrecipients are reminded that not all CPAs are qualified to perform audits of governmental entities and in particular, under the Single Audit Act. Care should be exercised to select an experienced, qualified firm, rather than simply selecting the firm offering to perform the audit at the lowest price.

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

Under the latest revisions to 2 CFR 200.500, if appropriate documentation of the single audit costs provides a higher amount than the formula, the higher single audit costs may be charged to the program. Supporting documentation should be available for review by Disaster Recovery CDBG staff.

## 15.3 Audit Types

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

### *15.3.1 Single Audit*

As defined in 2 CFR 200 Subpart F any non-federal entity expending \$750,000 or more in federal Awards for audits of fiscal years beginning before October 1, 2024, or \$1,000,000 or more in federal Awards for audits of fiscal years beginning on or after October 1, 2024, must have a single audit conducted. Single audits must be conducted in accordance with 2 CFR 200.514 unless it elects to have a program-specific audit. It is the responsibility of each subrecipient to ensure that a Single Audit or Program Specific Audit, if required, is uploaded to the Federal Audit Clearinghouse (FAC) database as detailed in 2 CFR 200.512. The FAC is operated on behalf of the Office of Management and Budget and can be accessed through the following website: <https://harvester.census.gov/facweb/>.

**Note:** A subrecipient expending less than \$750,000 or more in federal Awards for audits of fiscal years beginning before October 1, 2024, or \$1,000,000 or more in federal Awards for audits of fiscal years beginning on or after October 1, 2024, a year in federal awards is exempt from the Single Audit requirements for that year. However, records must be available for review or audit by appropriate officials of the federal agency, and the pass-through entity.

### *15.3.2 Program-specific Audit Election*

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

### *15.3.3 For-Profit Subrecipient Audits*

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

## 15.4 Submissions

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

It is the responsibility of each subrecipient to complete an Audit Certification Form (ACF) within 60 days after the end of each fiscal year during which the subrecipient has an open Subrecipient Agreement. The submission of an ACF to GLO-CDR is required of all subrecipient regardless of funding received during a fiscal year. After submitting the ACF, if a Single Audit is required, the subrecipient must arrange for the audit. See [Resources](#)—Resource 15.2 at the end of this chapter for a link to the ACF.

### *15.4.2 Delinquent Submissions*

GLO-CDR reserves the right to take action and impose remedies for noncompliance related to delinquent submissions as allowed in 2 CFR 200.338 Remedies for noncompliance.

Delinquent audit items can cause delays with draws, closeout, and other requests at GLO-CDR's discretion.

### *15.4.3 Audit Tracking and Resolution*

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

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

### *15.4.4 Management Decisions*

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

### *15.4.5 Management Decision Response*

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

## **15.5 Request for Additional Information**

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

## 15.6 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 15.1	2 CFR 200 Subpart F Audit Requirements	<a href="https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-F">https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-F</a>	N/A
Resource 15.2	Audit Certification Forms	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/monitoring-auditing">https://www.glo.texas.gov/disaster-recovery/grant-administration/monitoring-auditing</a>	Single Audit

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## CHAPTER 16—INFRASTRUCTURE

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# CHAPTER 16—INFRASTRUCTURE

## 16.1 Introduction

This implementation manual details activities related to the compliant execution of CDBG-DR and/or CDBG-MIT Programs. This chapter is designed to cover activities relating specifically to implementation of a local infrastructure program including additional information regarding Method of Distribution processes, subrecipient responsibilities, the application process, eligible and ineligible activities, contracting, and project kickoff.

The Texas General Land Office staff will relay information to the subrecipient via the Texas General Land Office Community Development and Revitalization website, <https://www.glo.texas.gov/disaster-recovery>, through trainings and checklists, and during on-site monitoring and reviews. Additional resources may be found on GLO-CDR's Infrastructure Resources Page (see [Resources](#)—Resource 16.1 at the end of this chapter).

## 16.2 Method of Distribution

The Method of Distribution (“MOD”) defined by the applicable Action Plan outlines how funding is disseminated for each disaster allocation. The MOD may take many factors into consideration including census data, FEMA Individual Assistance data, FEMA Public Assistance data, the Social Vulnerability Index (“SoVI”), and other relevant factors to distribute funds. Many past allocations have defined use of partnerships with the Texas Association of Regional Councils and the Regional Councils of Government to determine the most effective and efficient way to distribute infrastructure funds to local communities following those specific disasters.

## 16.3 Subrecipient

Subrecipient should review the appropriate Application Guide prior to beginning the application process. While preparing the application for submission, the subrecipient is responsible for identifying tie back to the specific disaster, eligible program activities proposed, the national objective to be met, CDBG-DR and/or CDBG-MIT funded activities and other funding to be used in a detailed budget proposal, and the level of environmental review required. Subrecipients are encouraged to integrate mitigation measures into rebuilding activities and encouraged to achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction. Each infrastructure activity must demonstrate how it will contribute to the long-term recovery and restoration of housing.

Each subrecipient must provide information about how the declared disaster impacted the community and the plan for recovery and resiliency. Descriptions should identify the specific disaster (date and duration), describe how the disaster threatened health and safety in the community, the facilities that were damaged, the current condition of those

facilities, and detail of how the specific project will resolve the issue and ensure a more safe and resilient community.

In all cases, the GLO works closely with local communities throughout the grant process to ensure projects remain eligible for CDBG-DR and/or CDBG-MIT funding and are successful and compliant. In addition to all rules and regulations identified in the Subrecipient Agreement, each project must undergo an environmental review, contractors must be procured properly under 2 CFR 200, and costs must be carefully tracked for duplication of benefits and eligible activities.

#### 16.4 Affirmatively Furthering Fair Housing (AFFH) Review

The GLO will seek to ensure that infrastructure activities will avoid disproportionate impact on vulnerable communities and will create, to the extent practicable, opportunities to address economic inequities facing local communities. All project applications will undergo an AFFH review by the GLO before approval. AFFH application reviews will include assessments of a proposed project's (1) area demography, (2) socioeconomic characteristics, (3) housing configuration and needs, (4) educational, transportation, and health care opportunities, (5) environmental hazards or concerns, and (6) all other factors material to the AFFH determination.

#### 16.5 Eligibility Review Procedures

GLO completes an eligibility review of every application. Through this process the Grant Manager or assigned representative confirms the application is complete and all proposed activities are program eligible.

All applications will be reviewed by GLO staff or its assigned representatives to determine if each application (1) is complete, (2) proposes activities that are eligible, (3) meets a national objective, and (4) meets program requirements.

The application review procedures consist of the following steps:

1. Each eligible entity must apply prior to the application due date and time as indicated in the corresponding Application Guide.
2. Review of applications for completeness and eligibility of proposed activities. Upon receipt of an application, GLO will perform a completeness and eligibility review to determine whether the application is complete and whether all proposed activities are program eligible. If the application does not include all required information, staff will contact the locality and explain the deficiencies that have been discovered and how they must be addressed. A response correcting the deficiencies must be submitted to GLO within the prescribed timelines. This review will be conducted by GLO or an appointed representative and may require the applicant to correct, clarify, and resubmit deficient documents electronically.

## 16.6 Activity Related Eligibility

Infrastructure activities must contribute to the long-term recovery and restoration of housing. CDBG-DR and/or CDBG-MIT eligible activities will be allowed so long as the activity is directly related to the major natural disaster declaration, through actual damage or subsequent indirect damage, and is allowed under the applicable Action Plan. An activity underway prior to a Presidential disaster declaration will not qualify unless the disaster impacted the project.

Nonresidential structures must be elevated to the standards described in this paragraph or floodproofed, in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain. All Critical Actions, as defined at 24 CFR 55.2(b)(3), within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year floodplain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an “activity for which 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.” For example, Critical Actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

The following categories are not exhaustive and are meant to provide additional guidance and further definition concerning eligible and ineligible activities.

### 16.6.1 Flood control and drainage repair and improvements

#### *Eligible Activities:*

- Common drainage projects include reshaping and protecting eroded banks, correcting damaged drainage facilities, construction of water detention ponds, and repairing levees dams and structures. However, the purchasing of floodplain easements will be categorized under the Property Buyout Projects category for this application;
- If CDBG-DR funds are used for levees and dams, the applicant must: (1) register and maintain entries regarding such structures with the U.S. Army Corps of Engineers (“USACE”) National Levee Database or National Inventory of Dams, (2) ensure that the structure is admitted in the USACE PL 84–99 Program (Levee Rehabilitation and Improvement Program), and (3) ensure that the structure is accredited under the FEMA National Flood Insurance Program; and
- Permanent drainage facilities (storm sewer lines, concrete structures, culverts, related ditch grading). Note: The CDBG-DR program considers curb and gutter, when eligible, to be a street improvements activity and not a drainage improvements activity.

#### *Ineligible Activities:*

- Ditch cleaning and other operation/maintenance activities; and
- Dam and Levees are prohibited from being used to enlarge a dam or levee beyond the

original footprint of the structure that existed prior to the disaster event.

### 16.6.2 Restoration of infrastructure (i.e. water and sewer facilities, streets, provision of generators, removal of debris, bridges, etc.)

#### *Eligible Activities:*

- Replacement of existing lines (only if damaged or resulted in failure to function as designed);
- Installation of fire hydrants;
- Reconstruction of intake stations;
- Replacement of major equipment (e.g., clarifiers);
- Reconstruction of elevated or ground storage tanks.
- Emergency power generators; and
- Acquisition of real property (including ROWs/easements).

#### *Ineligible Activities:*

- Cleaning of lines;
- Maintenance/repair of existing ground and elevated storage tanks (including interior and exterior painting unless the repair extends the useful life of the tank by at least 10 years);
- Improvements made necessary because of poor maintenance or operational practices;
- Replacement of minor equipment;
- Minor facility repairs; and
- Any improvements which will result in operations that are not in compliance with applicable state, federal, and local laws and regulations.

### 16.6.3 Wastewater Improvements

#### *Eligible Activities:*

- Replacement of existing lines (only if damaged or resulted in failure to function as designed);
- Installation of service connections and service reconnections on public property;
- Reconstruction of lift stations;
- Reconstruction of a sewage treatment plant;
- Emergency power generators; and
- Acquisition of real property (including ROWs/easements).

#### *Ineligible Activities:*

- Cleaning of lines;
- Rehabilitation of lift stations if no damage or failure to function took place;
- Replacement of minor equipment;
- Minor facility repairs;
- Improvements made necessary because of poor maintenance or operational practices; and

- Any improvements which will result in operations that are not in compliance with applicable state, federal, or local laws and regulations.

#### 16.6.4 Road/Street Improvements

The repair of roads under this project type must be directly related to damages sustained as a result of the event and not a lack of maintenance.

##### *Eligible Activities:*

- Construction of roadways at new locations, regardless of surface materials to be used;
- Construction of added width capacity in the form of additional lanes;
- Acquisition of additional right-of-ways for construction at new locations, or for added width capacity;
- Projects that increase the structural strength of the roadway or improve service of the roadway; generally, this refers to improvements in the surface material quality (e.g., caliche to crushed rock, crushed rock to asphalt, etc.);
- Bridge/culvert replacement (where deteriorated or damaged). Bridges within the Texas Department of Transportation Bridge Program may not be eligible. These structures will be reviewed by GLO on a case-by-case basis; and
- Curb and gutter, when done in conjunction with other eligible street activities. (Note: The CDBG-DR program considers curb and gutter, when eligible, to be a street improvement activity and not a drainage improvements activity).

##### *Ineligible Activities:*

- Seal-coating;
- Overlays; and
- Level-ups.

#### 16.6.5 Debris Removal

Debris may consist primarily of vegetation, construction and demolition materials from damaged or destroyed structures, and personal property. The methods by which applicants may choose to collect and store debris prior to proper disposal depends greatly on the type of debris, as well as the capabilities of the jurisdiction. Prior to collecting debris, all pertinent environmental concerns must be taken into consideration; for example, the removal of debris from natural streams will often require a Clean Water Act Section 404 permit from the United States Army Corp of Engineers (“USACE”).

While construction and demolition debris may be collected and disposed of at an appropriately rated landfill, woody and/or vegetative debris must be stored prior to disposal; this will require the use of a temporary debris storage and reduction sites (“TDSR”). The preparation and operation of a TDSR site is typically left to the contractor; however, local jurisdictions choosing to conduct their own debris operations may review Chapter 7 of the FEMA Debris Management Guide regarding the use of TDSR sites.

Maintaining the life expectancy of landfills in and around the state is of great concern; therefore, applicants proposing to dispose of woody and/or vegetative debris must choose burning, chipping, or grinding as the method of disposal. If the project proposes to dispose of woody and/or vegetative debris by sending it to a landfill, the applicant must provide adequate justification for their decision. These applications will be reviewed on a case-by-case basis. Applicants choosing other forms of disposal for woody and/or vegetative debris must contact GLO prior to submitting their applications for additional direction. All required permits must be acquired prior to beginning debris operations (e.g., TCEQ Burn Permits, Environmental Documents, etc.).

### 16.6.6 Gas System Improvements

#### *Eligible Activities:*

- Replacement of existing lines (only if damaged or resulted in failure to function);
- Replacement of major equipment; and
- Acquisition of real property (including ROWs/easements).

#### *Ineligible Activities:*

- Cleaning of lines;
- Improvements made necessary because of poor maintenance or operational practices;
- Replacement of minor equipment; and
- Any improvements which will result in operations that are not in compliance with applicable state, federal, and local laws and regulations.

### 16.6.7 Fire Protection Facilities

#### *Eligible Activities:*

- Fire stations; fire trucks; fire equipment; and
- Emergency power generators.

#### *Ineligible Activities:*

- Equipment and furnishings not necessary for fire protection.

### 16.6.8 Neighborhood/Community/Senior Centers/Shelter

#### *Eligible Activities:*

- Rehabilitation or replacement of existing buildings;
- Acquisition of real property;
- Emergency power generators;
- Fixed equipment; and
- Construction of new shelters.

#### *Ineligible Activities:*

- Improvements not directly related to the disaster event, direct or indirect damage;

- Facilities that have a primary and/or sole purpose as a Point of Distribution (POD);
- Emergency Operations Centers (EOCs); and
- Fueling stations.

### 16.6.9 Demolition, Rehabilitation of Publicly or Privately-Owned Commercial or Industrial building, and Code Enforcement

All demolition activities must be explained within the Project Summary section of the application in terms of how the proposed activity does not overlap with non-infrastructure funds available through GLO. For example, clearance and demolition of a damaged housing structure would be a Housing activity, not a Clearance and Demolition project under GLO infrastructure activities.

### 16.6.10 Subrecipient Agreement Execution

When all project eligibility issues have been resolved, GLO staff will draft the Subrecipient Agreement based on the information approved in the subrecipient's application. GLO may negotiate any technical elements with the subrecipient provided the award amount is not increased, the level of benefits described in the application is not decreased, and/or there are no changes that would impact eligibility.

## 16.7 Kick-off Meeting

There are two types of formal Kick-Off meetings that occur for Infrastructure projects, the first is the Subrecipient Agreement Kick-Off meeting. This meeting occurs as soon as a Subrecipient Agreement is fully executed between the subrecipient and the GLO. This meeting thoroughly reviews the Subrecipient Agreement terms, expectations, and requirements. Budgets and schedules are confirmed and subrecipient are advised of next steps including documentation required before funding can be paid.

The other type of Kick-Off meeting is also known as a Pre-Construction conference and occurs after the construction contract has been executed. This type of Kick-off meeting is between the subrecipient and their construction contractors. In these Kick-Off meetings, the following information is provided: verification of bonds & insurance, explanation of all Davis Bacon requirements, other requirements for inspections and draw submissions. The subrecipient is responsible for issuing wage determination in advance of procurements, along with Section 3 and MBE/DBE/WBE requirements. In addition, the subrecipient is responsible for securing "cost reasonableness" estimates and conducting procurement for project contractors. The subrecipient is required to prepare a Pre-construction conference report to document this meeting.

## 16.8 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 16.1	GLO-CDR Infrastructure Resources Page	<a href="https://www.glo.texas.gov/disaster-recovery/infrastructure-forms">https://www.glo.texas.gov/disaster-recovery/infrastructure-forms</a>	N/A

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## CHAPTER 17—HOUSING GUIDELINES

This chapter provides instructions for developing and adopting Housing Guidelines. Links to the GLO-CDR Housing Guidelines, fillable forms and checklists are found in the [Resources—Resource](#) at the end of this chapter and are available at <https://www.glo.texas.gov/disaster-recovery>.

### 17.1 Housing Guidelines Required

Subrecipients that receive CDBG-DR and/or CDBG-MIT funding to implement housing activities where multiple grants, loans, or other funding awards will be made to individual households or to owners or developers of multifamily housing shall develop and adopt Housing Guidelines in accordance with their Subrecipient Agreements and the action plan for disaster recovery that pertains to the CDBG-DR and/or CDBG-MIT funding.

Guidelines developed by the subrecipient should be modeled on the GLO-CDR Housing Guidelines (see [Resources—Resource 17.2](#)). Any changes to the Housing Guidelines proposed by a subrecipient shall be approved in writing by the GLO. Subrecipient Housing Guidelines shall address the following operational details:

- Eligibility requirements;
- Housing assistance caps;
- Construction standards;
- Accessibility requirements;
- Visitability standards;
- Reporting requirements; and
- Other program requirements.

Subrecipient Housing Guidelines with all modifications clearly indicated shall be submitted to the GLO-CDR prior to the start of the public comment posting period for preliminary review. Subrecipient Housing Guidelines shall be posted for public comment and submitted to the GLO- CDR for approval before they take effect.

### 17.2 Eligibility Requirements

The Program Design section of the GLO-CDR Housing Guidelines contains discussion of the CDBG National Objectives, eligible activities, proof of event damage, unit sizes, and other requirements that subrecipient shall address in their own guidelines. The Subrecipient may replace program titles with subrecipient-specific names where appropriate or remove references to activities that it will not perform, but otherwise most content in this section should remain unchanged in the Subrecipient Housing Guidelines unless approved by the GLO in writing.

### 17.3 Housing Assistance Caps

The maximum amount of assistance available to a household through a CDBG-DR and/or CDBG-MIT single family or buyout activity is established for all subrecipients by the GLO-CDR Housing Guidelines in the Housing Assistance Caps section. These caps cover the following items:

- Base unit;
- Manufactured housing unit replacement;
- Coastal and non-coastal elevation;
- Water wells and septic systems;
- Accessibility;
- Abatement of lead based paint and/or asbestos;
- Project soft costs;
- Relocation assistance;
- Down payment assistance;
- Buyout incentives; and
- Homeowner reimbursement.

A subrecipient may establish housing assistance maximums that are equal to or less than the GLO-CDR's housing assistance maximums or request a waiver to exceed the GLO caps for one or more categories of cost including elevation costs. The GLO-CDR will evaluate waiver requests for cost-effectiveness before approving or denying the request.

Subrecipients managing multifamily rental programs where multiple projects will receive assistance will establish total CDBG-DR and/or CDBG-MIT funding request limits for each applicant in their action plan and Housing Guidelines. The GLO has not established per-unit housing assistance caps for multifamily rental programs carried out by itself or by a subrecipient.

Multifamily rental program participants shall follow federal and state procurement requirements that mandate reasonable rehabilitation, reconstruction, or new construction costs. To evaluate reasonable elevation costs, the GLO-CDR and subrecipient will rely on project budget justifications by licensed engineers or architects, third-party estimates using industry-standard cost estimation tools, and underwriting reviews.

The GLO-CDR will encourage subrecipients to consider the costs and benefits of each CDBG-DR and/or CDBG-MIT housing activity when selecting CDBG-DR and/or CDBG-MIT eligible projects. Cost reasonableness shall be determined for each specific housing project using methods which include, but are not limited to, the following:

- Independent third-party cost estimates by licensed professional engineers or architects;
- Estimates that use industry-standard methods and tools;
- Underwriting reviews; or
- Data collected and analyzed by agencies while administering similar housing programs.

## 17.4 Construction Standards

All Federal procurement standards (2 CFR 200.318 through 200.326) must be followed during the process of securing contract services to ensure that subrecipients are in compliance with the applicable provisions of federal and state laws. GLO's required construction standards are located primarily in the Site and Development Restrictions section of the GLO-CDR Housing Guidelines. These standards may include, but are not limited to, the following:

- Lead-based paint requirements;
- Green Building Standards;
- Elevation standards;
- Resiliency standards;
- Substantial improvement/damage requirements;
- Accessibility requirements; and
- Visitability standards.

The GLO-CDR Housing Guidelines indicate which standards are appropriate for the various housing activities that a subrecipient may undertake. Generally, these standards may not be removed or altered in the Subrecipient's Housing Guidelines and any variations must be approved by the GLO in writing.

## 17.5 Reporting Requirements

The Reporting Requirements section of the GLO-CDR Housing Guidelines includes instructions for, at a minimum, the following:

- Tracking and reporting of Section 3 compliance;
- Collection and reporting of applicant data; and
- Retention of records.

These requirements should not be altered in the Subrecipient's Housing Guidelines unless approved by the GLO in writing.

## 17.6 Other Program Requirements

### 17.6.1 Public Comment and Posting

Subrecipient shall make the Housing Guidelines, including a needs assessment (see [17.6.3](#), below), available to the public for review for at least 30 days on a publicly accessible website. Notice of the posting of the guidelines shall be provided to the GLO-CDR not later than the day of posting to the website. If any public comment is made, the subrecipient must address the comment in a public response. Questions or comments presented by the public that relate to state or federal requirements may be referred to GLO-CDR for further review and response.

## 17.6.2 Affirmative Marketing and Outreach Plan

GLO-CDR and subrecipient administering the Program are committed to affirmatively furthering fair housing through established affirmative marketing policies (see also Chapter 11—Civil Rights). GLO-CDR and the subrecipient may coordinate with HUD-approved housing counseling organizations in this effort (see [Resources](#)—Resource 17.3 for additional Affirmatively Furthering Fair Housing Resources). Affirmative marketing efforts shall include an affirmative marketing plan, based on HUD regulations. The goal is to ensure that outreach and communication efforts reach eligible homeowners from all racial, ethnic, national origin, religious, familial status, disabled, "special needs", gender groups, and vulnerable populations.

Subrecipient may use GLO-CDR's Housing Marketing and Outreach Plan Checklist (see [Resources](#)—Resource 17.4) to assist in the creation of Marketing and Outreach Plans for their housing programs.

## 17.6.3 Needs Assessment

GLO-CDR staff members will assist subrecipients regarding the data and analysis methodology required to develop local needs assessments for housing activities where projects will be identified through an application process and needs specific to a particular household or housing unit are unknown. In turn, the subrecipient will consult with affected citizens, stakeholders, local governments, and public housing authorities regarding local unmet needs.

Administrators of multifamily housing programs that will use an application process to select projects may also request GLO-CDR assistance for FEMA Individual Assistance (IA) data related to renters affected by the disaster. This data may be used to demonstrate local and regional damage levels sustained by rental properties and renter households, which in turn may be used to assess unmet need for multifamily rental properties across income categories.

Buyout programs may use FEMA IA data from the current disaster event and repetitive loss (National Flood Insurance Program) data provided by the local flood plain administrator for current and previous events to identify areas of the community that have unmet needs for targeted buyout activities.

For single family housing programs, the local needs assessment and analysis of HUD/FEMA demographic data, including IA data, is used to establish funding goal levels in the Housing Guidelines for each LMI and non-LMI household income category defined by CDBG-DR:

- Earning at or below 30 percent of the area median family income (AMFI), very low income;
- Earning more than 30 percent and up to 50 of AMFI, low income;
- Earning more than 50 percent and up to 80 percent of AMFI, moderate income; and
- Earning more than 80 AMFI, non-LMI (urgent need).

For single family housing programs, deviations from funding goals set during the needs assessment process, as described below, must be approved by the GLO in writing before the subrecipient may move forward with adoption of their Housing Guidelines. If the subrecipient is unable to meet one or more of the LMI category goals during initial housing activity application intake, the subrecipient will execute outreach actions described in its Affirmative Marketing and Outreach Plan ([17.6.2](#)) to encourage participation by households in the underrepresented income categories and seek guidance from the GLO.

#### 17.6.4 Needs Assessment Checklist and Data Requirements

GLO-CDR's Needs Assessment Checklist (see [Resources](#)—Resource 17.5) assists subrecipients with setting single family housing program funding goals across the four CDBG-DR income categories. Subrecipients, working with GLO-CDR, shall collect the following information to complete the Needs Assessment Checklist:

- An analysis of the overall damages including at a minimum FEMA IA registrant data; GLO-CDR may provide redacted FEMA IA data, when available;
- An analysis of the overall damages by FEMA IA registrant reported income, in particular the number of registrant households in each of the four CDBG-DR income categories described above where the registrants owned and occupied the home as their primary residence and where the total amount of FEMA verified loss (FVL) exceeds \$0;
- An analysis of FEMA IA registrants special needs, number of occupants, elderly populations, access and functional needs as captured in the FEMA data;
- HUD Income Limits by County in effect at time of event, used to determine income ranges located at <https://www.huduser.gov/portal/datasets/il.html>; note these income limits are the HUD Section 8 income limits, which describe CDBG very low income persons as “extremely low income,” CDBG low income persons as “very low income,” and CDBG moderate income persons as “low income;”
- The Current fiscal year LMISD Local Governments data by State, the most current 2006-2010 American Community Survey by Place (where FEMA IA data is unavailable, use LMISD to determine LMI levels only);
- The funding amount provided by the awarding agency (GLO, County or Council of Government) through an Action Plan or approved Method of Distribution (MOD); and
- The Needs Assessment will also include an evaluation of the types of public services activities that may be needed to complement the program, such as housing counseling, legal counseling, job training, mental health, and general health services, and other damage data approved by GLO-CDR such as survey data that may include on-site visits to areas identified by local stakeholders, broken out by income category.

#### 17.6.5 Needs Methodology

The Needs Methodology calculates the proportional amount of damage sustained by single family owner occupied households in each of the four CDBG-DR income categories described above, using the following steps:

1. Establish minimum target Floor Goal Percentages by calculating the percentage of FEMA IA recipient households in each of the four income categories. If necessary, ensure that at least 70 percent of the total is reflected in the three LMI categories by reassigning any percentage points for the non-LMI category that exceeds 30 percent of the total to the “non-targeted” LMI category;
2. Establish maximum Ceiling Goal Percentages by calculating the number of FEMA IA registrants proportionally across only the three LMI categories;
3. Calculate the housing funding allocation floor for each income category and the other category by multiplying percentages calculated in step 1 by the total dollar amount available for the activity; and
4. Capture FEMA Calculation Data by Income Categories in a table. Include a qualifier for applicants with special needs, elderly, access and functional needs, etc.

The following figure illustrates the Needs Methodology funding targets calculation:

**Funding Targets (%) by Income Category**

Income Category	Count	% of Count	Minimum Target (LMI)	Maximum
Greater of 0-30% AMFI or Federal Poverty Level	1,000	20.00%	20.00%	
31-50% AMFI	500	10.00%	10.00%	
51-80% AMFI	1,500	30.00%	30.00%	
0-80% AMFI (Non-Targeted)			10.00%	
Above 80% AMFI	2,000	40.00%		30.00%
Total	5,000	100.00%	70.00%	30.00%
Total LMI	3,000	60.00%	70.00%	100.00%

### Funding Targets (\$) by Income Category

	Minimum Target (LMI)	Maximum
Budget	\$5,000,000.00	
Greater of 0-30% AMFI or Federal Poverty Level	\$1,000,000.00	
31-50% AMFI	\$500,000.00	
51-80% AMFI	\$1,500,000.00	
0-80% AMFI (Non-Targeted)	\$500,000.00	
Above 80% AMFI	\$0.00	\$1,500,000.00
Total	\$3,500,000.00	\$1,500,000.00
Total LMI	\$3,500,000.00	\$5,000,000.00

### 17.7 Quick Guides

Subrecipients are encouraged to develop simplified, summarized quick guides to assist program participants and staff with referencing Housing Guideline requirements. For example, the GLO has created a Quick Guide for its Homeowner Reimbursement Program that lists applicant eligibility criteria, defines reimbursable expenses, and describes documentation needed to identify duplication of benefits.

## 17.8 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 17.1	GLO-CDR Housing Guidelines	<a href="https://www.glo.texas.gov/disaster-recovery/housing-guidelines">https://www.glo.texas.gov/disaster-recovery/housing-guidelines</a>	N/A
Resource 17.2	GLO-CDR State Housing Forms and Checklists	<a href="https://www.glo.texas.gov/disaster-recovery/state-program-forms">https://www.glo.texas.gov/disaster-recovery/state-program-forms</a>	Eligibility, Pre-Construction Setup, Financial Draws, Program Inspection Forms and Construction Standard, Closeout and Affordability Period Monitoring
Resource 17.3	Affirmatively Furthering Fair Housing Resources	<a href="https://www.glo.texas.gov/disaster-recovery/grant-administration/grant-implementation/housing">https://www.glo.texas.gov/disaster-recovery/grant-administration/grant-implementation/housing</a>	Affirmatively Furthering Fair Housing Rules
Resource 17.4	GLO-CDR's Housing Marketing and Outreach Plan Checklist	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients">https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients</a>	2015-2016 Flood Grant Administrator
Resource 17.5	GLO-CDR's Needs Assessment Checklist	<a href="https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients">https://www.glo.texas.gov/disaster-recovery/grant-admin/2015-2016-subrecipients</a>	2015-2016 Flood Grant Administrator

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 18—PLANNING, ECONOMIC REVITALIZATION, & PUBLIC SERVICES

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# CHAPTER 18—PLANNING, ECONOMIC REVITALIZATION, & PUBLIC SERVICES

This chapter provides instructions to subrecipients for developing and adopting planning, economic revitalization, and public services guidelines. Refer to the relevant action plan for specific guidance on planning activities. Links to resources and materials are found in the [Resources](#) section at the end of this chapter (including GLO-CDR’s Economic Revitalization Program [Resources](#)—Resource 18.1 and HUD’s CDBG Economic Development Toolkit [Resources](#)—Resource 18.2) and are available at <https://www.glo.texas.gov/disaster-recovery>.

## 18.1 Planning Purpose and Goals

The GLO is committed to ensuring that CDBG-DR and CDBG-MIT funded projects provide the maximum amount of benefit to victims of past disasters and help minimize the damage caused in future events. Local, regional and State planning efforts will help identify projects and activities that will meet both objectives.

Planning activities should:

- Promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account future possible extreme weather events and other natural hazards and long-term risks;
- Coordinate with local and regional planning efforts to ensure consistency, and promote community-level and/or regional (e.g., multiple local jurisdictions) post-disaster recovery and mitigation planning;
- Integrate mitigation measures into rebuilding activities and achieve objectives outlined in regionally or locally established plans and policies that are designed to reduce future risk to the jurisdiction;
- Consider the costs and benefits of the project;
- Ensure that activities will avoid disproportionate impact on vulnerable populations such as, but not limited to, families and individuals that are homeless or at risk of homelessness, the elderly, persons with disabilities, persons with alcohol or other drug addiction, persons with HIV/AIDS and their families, and public housing residents;
- Ensure that activities create opportunities to address economic inequities facing local communities;
- Align investments with other planned state or local capital improvements and infrastructure development efforts, and work to foster the potential for additional infrastructure funding from multiple sources, including existing state and local capital improvement projects in planning, and potential private investment; and
- Employ adaptable and reliable technologies to guard against premature obsolescence of infrastructure.

## 18.2 Identifying Planning Needs

Because of the scope and nature of past disasters and the potential impact of future ones, the GLO-CDR may concentrate its planning efforts on regional approaches as well as the development of specific local solutions. This multi-layered approach will help promote sound long-term recovery efforts. Specific recovery needs will be identified through a variety of sources, including but not limited to: community surveys, public meetings, requests for information, and listening sessions.

## 18.3 Planning Funding

With the exception of localities receiving direct allocations or those who have received GLO approval, planning funds will be administered by the GLO-CDR. Localities with direct planning allocations may incur costs for data gathering, studies, analysis, preparation of plans and identification of actions that will implement plans as well as for staff time costs associated with these activities.

For GLO-CDR administered planning funding the GLO-CDR will make all final determinations regarding planning studies to identify scopes, the parameters of the planning efforts, and the type of data that will be gathered. This will ensure that planning efforts are undertaken in a comprehensive, consistent manner.

Subrecipients must submit an application to the GLO-CDR defining their use of designated planning funds.

The GLO-CDR may also make planning funds available for a competitive application process allowing local governmental entities to apply for specific studies of their choosing. Subrecipients conducting localized planning studies shall identify unmet needs and mitigation and resiliency solutions within the subrecipient's locality or region.

The amount of CDBG-DR and/or CDBG-MIT funds that may be used for planning activities may be capped or subject to the statutory limitation on planning and administrative costs.

## 18.4 Planning Activities

Planning efforts may include, but are not limited to, the following:

- General planning to assist in determining community disaster recovery needs;
- Urban environmental design;
- Flood control;
- Drainage improvement;
- Resilient housing solutions;
- Analysis of impediments to fair housing choice;
- Fair housing;
- Comprehensive plans;

- Individual project plans;
- Community Development plans;
- Capital improvement programs;
- Small area and neighborhood plans;
- Environmental and historic preservation studies;
- Homelessness;
- Surge protection;
- Economic revitalization/development;
- Infrastructure improvements;
- Functional plans (such as plans for housing, land use, energy conservation or economic development);
- Mitigation; and
- More detailed description of planning and capacity building activities is located at 24 CFR 570.205 of the regulations, HCDA 105(a)(12).

Ineligible planning activities include those that:

- Do not have a direct tie-back to the specific disaster associated with the CDBG-DR funds;
- Engineering or architecture plans in support of construction activities;
- Will not impact the intended geographic area; and
- Are outside of any set funding caps or limitations.

## 18.5 Planning Procurement and Selection

A subrecipient conducting a planning activity may need to procure an outside provider to perform the study. If formally procured, the requirements at 2 CFR 200 must be followed (see [Chapter 5—Procurement](#)).

For planning activities conducted by the GLO, selection criteria will be established in the application, Notice of Funding Availability (NOFA), procurement action, or other competitive process and should include at a minimum:

- Planning activity;
- Organizational experience;
- Cost reasonableness and effectiveness; and
- Management of planning activity.

## 18.6 Economic Revitalization Purpose and Goals

Economic revitalization is the third primary component of a comprehensive long-term recovery program, along with housing and infrastructure restoration. Economic revitalization activities are vital not only for the long-term recovery and restoration of housing through job creation and retention but for the long-term viability of regions, communities and neighborhoods.

CDBG-DR funds earmarked for economic revitalization activities help provide recovery assistance to impacted businesses through grants, deferred forgivable loans and other loans in exchange for job creation or retention principally for Low-to-Moderate Income (LMI) employees.

Each economic revitalization activity shall demonstrate how it will contribute to the long-term recovery and restoration of housing. Businesses participate in economic revitalization programs will create or retain jobs, providing employee household members with additional or sustained financial resources to rent, finance, maintain and/or improve their homes. The program will provide a boost to local economies, including the housing market, through increased payrolls, business activity, and tax revenue.

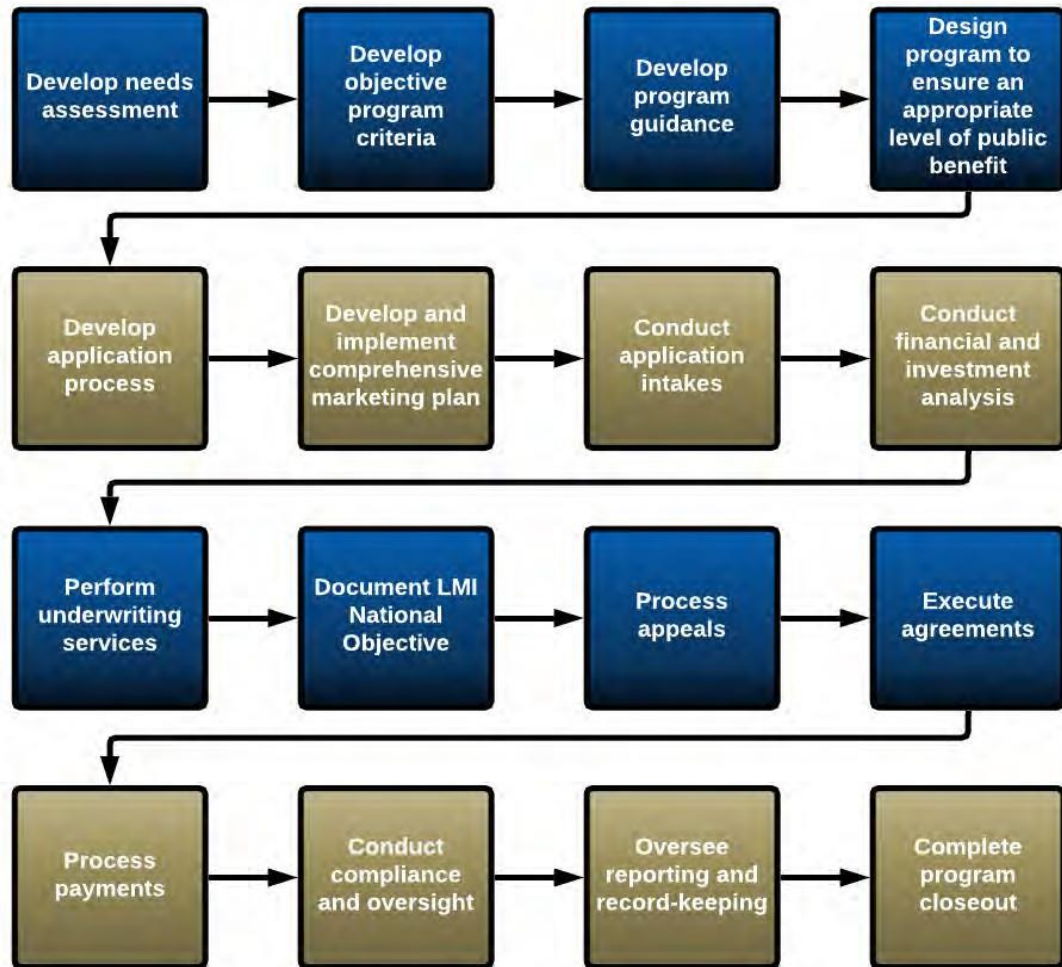
For economic or other non-physical losses, post-disaster analyses or assessments may best document the relationship between the loss and the disaster. The tie to the disaster should be evidenced in every activity file.

All CDBG-DR Economic Development activities must meet a National Objectives defined in the authorizing statute of the CDBG program:

- LMC Microenterprises [24 CFR 570.208(a)(2)(iii)]
- LMJ [24 CFR 570.208(a)(4)]
- LMA [24 CFR 570.208(a)(1)]
- Urgent Need [24 CFR 570.208(c)]

GLO CDBG-DR and CDBG-MIT funded economic revitalization programs will follow the basic process outlined below:

## Economic Revitalization Program Process



### 18.7 Economic Revitalization Funding

Economic revitalization funds are disbursed in the form of grants, deferred forgivable loans, or loans to small businesses as defined the SBA at 13 CFR part 121 or businesses engaged in “farming operations” that meet the U.S Department of Agriculture Farm Service Agency criteria described at 7 CFR 1400.500.

### 18.8 Economic Revitalization Eligibility

The Action Plan for each disaster event describes the National Objective(s) that economic revitalization activities must meet. Eligible economic revitalization activities may include:

- Working capital;
- Commercial construction improvements;

- Equipment;
- Job training;
- Job Creation;
- Providing loans and grants to businesses;
- Making improvements to commercial/retail districts; and
- Financing other efforts that attract/retain workers in devastated communities.

Ineligible economic revitalization activities include those that:

- Do not have a direct tie-back to the specific disaster associated with the CDBG-DR funds;
- Fail to meet the CDBG National Objective(s) described in the Action Plan;
- Provide assistance to a business not defined as a small business;
- Provide assistance to any privately-owned utility;
- Fail to meet cost-reasonableness or other underwriting criteria; or
- Assist a business that received prior federal disaster relief assistance which required that the business or entity maintain flood insurance and the business or entity failed to do so.

For more information about eligible and ineligible activities, contact your GLO Grant Manager.

## 18.9 Economic Revitalization Underwriting Review

Proposed CDBG-DR and CDBG-MIT funded economic revitalization projects will undergo an underwriting review to evaluate and select economic development projects as described in guidelines at 24 CFR Section 570.209. The underwriting guidelines are designed to ensure that:

- Project costs are reasonable;
- All sources of project financing are committed;
- To the extent practicable, CDBG funds are not substituted for non-federal financial support;
- The project is financially feasible;
- To the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
- To the extent practicable, CDBG funds are disbursed on a pro rata basis with other finances provided to the project.

## 18.10 Fair Housing and Equal Opportunity Collection

The Program may collect demographic data relating to the beneficiary(ies) receiving assistance, including information about the Applicant Business owners, and staff in the positions created or retained as part of the National Objective completion.

## 18.11 Economic Revitalization Elevation and Environmental Standards

Nonresidential structures must be elevated to the standards or flood-proofed, in accordance with FEMA flood-proofing standards at 44 CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above the 100-year (or 1 percent annual chance) floodplain. Critical Action facilities such as

hospitals, nursing homes, and other facilities as defined at 24 CFR 55.2(b)(3) located within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or flood-proofed to the higher of the 500-year floodplain elevation or three feet above the 100- year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action facility is in the 100- year floodplain, then the structure must be elevated or flood-proofed at least three feet above the 100-year floodplain elevation.

Economic revitalization activities shall also comply with the appropriate environmental requirements outlined in 24 CFR part 58. For more information, see [Chapter 6—Environmental](#).

### 18.12 Economic Revitalization Flood Insurance Requirements

Business facilities located within the special flood hazard area (100-year floodplain) that receive economic revitalization assistance for repairs, improvements, or acquisition shall purchase and maintain flood insurance for the assisted facility in perpetuity. Flood insurance is not required for HUD-assisted leasing of a building or structure provided that the assistance is not used for repairs, improvements, and acquisition.

Businesses using economic revitalization assistance to purchase equipment, inventory, or other items considered “contents” under a flood insurance policy that are stored at a facility located within the special flood hazard area shall also purchase and maintain flood insurance.

### 18.13 Economic Revitalization Reporting Requirements

Depending on how the CDBG-DR and CDBG-MIT funds are used (for example: working capital, equipment purchase, construction) subrecipients and benefitting businesses’ reporting requirements may include, but are not limited to, the following:

- Tracking and reporting of Section 3 compliance;
- Collection and reporting of applicant data;
- Job creation-related data collection and reporting;
- Procurement;
- Labor Standards compliance; and
- Retention of records.

### 18.14 Economic Revitalization Procurement and Selection

Economic Revitalization beneficiaries and/or subrecipients are selected through an application, NOFA, or other competitive process. The application or NOFA clearly establishes the process and acceptance period, threshold criteria, selection criteria, and the award process.

Selection criteria will be established in the application, NOFA or competitive process and should include, at a minimum, the following:

- Activity/project description;
- Organizational experience;

- Cost reasonableness and effectiveness;
- Management of activity/project; and
- Expected benefit (anticipated jobs created).

### 18.15 Public Services Purpose and Goals

CDBG-DR and CDBG-MIT program subrecipients are required to assess whether public services are necessary to complement activities intended to address housing, infrastructure, and economic revitalization and how those services are to be made accessible to individuals having wide-ranging disabilities including mobility, sensory, developmental, emotional, and other impairments.

All CDBG-DR and CDBG-MIT funded public service activities must meet at least one of the three National Objectives defined in the authorizing statute of the CDBG program:

- Benefiting Low- and Moderate-Income Persons (LMI) (80 percent of Area Median Income);
- Preventing or Eliminating Slum or Blight; and
- Meeting an urgent need by alleviating emergency conditions (such as providing assistance to households making in excess of 80 percent of the Area Median Income (AMI)).

### 18.16 Identifying Public Services Needs

Public services programs and activities should be based on needs determined through a needs assessment. The needs assessment may help identify vulnerable and affected populations to target public services programs and to prioritize when considering options. Target or priority populations may include but are not limited to:

- Elderly or disabled individuals;
- Families with young children;
- Homeless populations; and
- Individuals and families in need of disaster recovery services.

For public service programs funded by CDBG, the service must be a new service or a “quantifiable increase in service.” More information is available at Basically CDBG for States, <https://www.hudexchange.info/sites/onecpd/assets/File/Basically-CDBG-State-Chapter-7-Public-Services.pdf>.

## 18.17 Establishing Record Keeping, Financial Systems, Public Services Program Guidelines

Subrecipients may indeed be providing highly effective public services to its low-income clientele; but it is only through its record-keeping and financial systems that the subrecipient will be able to justify its use of CDBG funds by showing that the activities were both eligible and consistent with its Subrecipient Agreement with the GLO, and that its expenses were appropriate and allowable under the program guidelines.

Subrecipients that implement public services programs with CDBG-DR and/or CDBG-MIT funds should develop public services guidelines that detail what service the program will provide and how selection criteria and any prioritization of beneficiaries should be established in the guidelines.

## 18.18 Public Services Funding

Most CDBG-DR and CDBG-MIT funded programs include a public services component. Subrecipients may also develop public services programs to both support other CDBG-DR and/or CDBG-MIT programs and/or as a stand-alone program.

Please note that the amount of CDBG-DR funds used for public services activities may be capped or subject to the 15 percent CDBG statutory limitation on public services.

## 18.19 Public Services Activities

Potentially eligible public services activities include but are not limited to:

- Transportation services;
- Healthcare services;
- Medical education services;
- Housing and/or rehousing services;
- Mental health services;
- Case management services;
- Legal services;
- Housing counseling services;
- Employment services;
- Education Programs;
- Services for senior citizens;
- Services for homeless persons;
- Substance abuse services (counseling and treatment);
- Counseling;
- Job training and education services;
- Workforce development; and
- Childcare services.

Ineligible public services activities are those that:

- Do not have a direct tie-back to the specific disaster associated with the CDBG-DR funds;
- Do not address a HUD National Objective;
- Do not primarily benefit LMI persons/households;
- Provide “income payments;”
- Consist of political activities; or
- Are outside of any set funding caps or limitations.

## 18.20 Public Services Procurement and Selection

Subrecipients executing public service activities may need to procure an outside provider for implementation. Subrecipients must follow procurement requirements at 2 CFR 200.

Subrecipients may also utilize an application or NOFA process. The application or NOFA establishes the process and acceptance period, threshold criteria, selection criteria, and the award process.

Selection criteria and any prioritization of beneficiaries should be established in the Public Services guidelines, NOFA/RFP, or application. Selection criteria may include, at a minimum, the following:

- Activity and need;
- Cost reasonableness and effectiveness;
- Activity management and implementation; and
- Experience/past performance.

## 18.21 Resources

GLO-CDR has created a comprehensive website which contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 18.1	GLO-CDR Economic Revitalization Program (Texas Back in Business)	<a href="https://www.glo.texas.gov/disaster-recovery/hurricane-harvey/texas-back-business">https://www.glo.texas.gov/disaster-recovery/hurricane-harvey/texas-back-business</a>	N/A
Resource 18.2	HUD CDBG Economic Development Toolkit	<a href="https://www.hudexchange.info/resource/2376/cdbg-economic-development-toolkit/">https://www.hudexchange.info/resource/2376/cdbg-economic-development-toolkit/</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. **If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#).** If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest document version. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## APPENDIX A—DEFINITIONS

### A

#### **Acquisition—**

- a. Purchase of supplies or services (including construction); or
- b. Activities to obtain an interest in, and possession of, real property.

**Administrative Cost—**Costs of overall program management, budgeting, coordination, monitoring, reporting, and evaluation. This includes salaries and benefits for personnel engaged in these activities, as well as the costs of administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services. It can also include the costs of goods and services required for program administration, including the rental or purchase of equipment, insurance, utilities, office supplies, and the rental and maintenance (but not purchase) of office space.

**Aggregate Cost—**The total cost to complete the project, job, and/or service. Allowable Cost—Costs that meet the criteria of 2 CFR 200.403.

#### **Architect/Engineer Services—**

- a. Professional services of an architectural or engineering nature, as defined by State law, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;
- b. Professional services of an architectural or engineering nature that are associated with research, planning, development, design, construction, alteration, or repair of real property; or
- c. Other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services"

### B

**Bid or Sealed Bid—**An offer, enclosed in a sealed envelope, submitted in response to invitation to bid.

**Brownfield Redevelopment Area—**An abandoned, idled, or underused property where expansion or redevelopment is complicated by real or potential environmental contamination.

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

## C

**Change Order**—A written order, signed by the contracting officer, directing the contractor to make an authorized change to order without the contractor’s consent.

**Citizen Participation**—An open process in which the rights of the community to be informed, to provide comments to the Government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

**Code of Federal Regulations**—Identifies rules and regulations published in the Federal Register.

**Colonia**—A rural community or neighborhood located within 150 miles of the U.S.-Mexican border that lacks adequate infrastructure and frequently also lacks other basic services.

**Component Purchases**—Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

**Contract**—A mutually binding legal relationship obligating the seller to furnish supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the subrecipients to an expenditure of appropriated funds and, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include but are not limited to awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.

**Contracting**—Purchasing, renting, leasing, or otherwise obtaining supplies or services from non- federal sources. Contracting includes the description of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

**Contractor**—An entity that receives a contract as defined above.

**Copeland "Anti-kickback" Act**—A U.S. labor law and act of Congress that supplemented the Davis– Bacon Act of 1931 that prohibits contractor or subcontractor from inducing an employee into giving up any part of the compensation that he or she is entitled to under the

terms of his or her employment contract and requires employers to file weekly compliance reports.

**Cost Analysis**—The review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

**Cost-Reimbursement Contract**—Provides for payment of allowable incurred costs, to the extent prescribed in the contract.

**Critical Actions**—Any activity for which even a slight chance of flooding might be too great because such flooding might result in a loss of life, injury to persons, or damage to property.

## D

**Direct Cost** – Costs that can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

**Disaster Risk Reduction Area**—An area which is located outside of floodways or floodplains that is established by the subrecipients to reducing risks from the hazard that led to its designation in accordance with the buyout requirements of the approved action plan and Federal Register Notices. A designated area is 1) that is located outside of floodways or floodplains and 2) that runs the risk of disaster hazards. A Disaster Risk Reduction Area is subject to the Buyout Program's requirements per the action plan and the Federal Register Notices. The subrecipients designate the area.

**Displacement**—Activity where any household, business, farm, or nonprofit organization moved permanently from real property as a direct result of a CDBG-assisted rehabilitation, demolition, or acquisition activity.

## E

**Employee**—Anyone who performs services for you is your employee *if you can control what will be done and how it will be done*. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. Determining whether a worker is an employee vs. an independent contractor depends on many factors including the nature and degree of control by the principal/payer. (see IRS 20 Point Checklist for Independent Contractors).

**Equipment**—Tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000.

## F

**Favored Activity**—An economic development activity that is of important National interest.

**Firm-Fixed-Price Contract**—Provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

**Float Funded**—An eligible activity carried out using CDBG funds that were also programmed for one or more other activities at the time the funds were committed to the new activity. Activities financed with float loans must generate sufficient program income within an established time frame to enable the subrecipients to carry out the activities that were initially programmed.

**Force Account**—Professional services, construction, rehabilitation, repair, or demolition that is performed by municipal or county employees.

## G

**General Land Office**—Texas agency whose mission is to serve the schoolchildren, veterans, and the environment of Texas. The agency does so by preserving our history, maximizing state revenue through innovative administration, and through the prudent stewardship of state lands and natural resources.

**General Land Office-Community Development & Revitalization**—GLO Department that works to rebuild Texas communities by putting Texans back in their homes, restoring critical infrastructure and mitigating future damage through resilient community planning. This task is based on the Governor's order of 2011 which designated the GLO as the agency charged with administering CDBG-DR funds.

## H

**Heavy Construction**—Construction projects that are not properly classified as either building, highway or residential.

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

**Historic Preservation Area**—An area designated for historic preservation by local, state, or federal officials.

## I

**Indirect Cost**—Cost not directly identified with a single final cost objective but identified with two or more final cost objectives or with at least one intermediate cost objective.

## L

**Low-Income Person**—Persons or families whose total household incomes do not exceed 50 percent of the median income for the area.

**Low-Moderate Income Person**—Persons or families whose total household incomes do not exceed 80 percent of the median income for the area.

## M

**Mitigation (MIT)**—Those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters.

**Multi-Unit Housing**—Activity involves two or more units per structure. N

**New Hires (as it relates to payrolls)**—Full-time employees for permanent, temporary, or seasonal employment opportunities.

## O

**Offer**—A general term for a response to a solicitation. See also: bid, proposal, and quote.

**One for One Replacement Housing**—The activity being assisted results in the conversion or demolition of one or more dwelling units that must be replaced.

## P

**Presidentially Declared Major Disaster Area**—An area declared a major disaster under Subchapter IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

**Price Analysis**—The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

**Program Income**—Gross income received by the subrecipients directly generated by a grant supported activity or earned only as a result of the grant contract during the grant period.

**Project Cost**—Total of CDBG-DR funds, local or other matching funds, and total business investment in the project.

**Project Delivery Cost**—Allowable costs incurred for implementing and carrying out eligible CDBG activities.

**Proposal**—A response to a request for proposals, Q

**Quote**—A response to a request for quotations (small purchase) solicitation. R

**Real Property**—Real property or real property interest means any interest in land and any improvements thereto, including fee and less-than-fee interests such as: temporary and permanent

easements, air or access rights, access control, options, and other contractual rights to acquire an interest in land, rights to control use or development, leases, and licenses, and any other similar action to acquire or preserve rights-of-way for a transportation facility.

**Rental Housing**—A housing development comprised of individual units located on a single or scattered site owned by an individual or a legal entity other than the resident. In consideration of an agreed upon monthly rental rate for an agreed upon term, the resident is entitled to occupancy of the premises.

**Request for Qualifications (RFQs)**—Competitive procurement method that requires offerors to submit qualifications in response to the request for architectural and engineering services. This procurement method allows for negotiation.

**Requests for Proposals (RFPs)**—Competitive procurement method that requires offerors to submit a proposal in response to the solicitation. This procurement method allows for negotiation.

**Residential Construction (as it relates to Davis-Bacon)**—Construction projects involving the construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

**Revolving Loan Fund**—Activity funded through a revolving loan fund with a set of accounts that are independent of other program accounts.

## S

**Sealed Bidding**—Competitive procurement method that requires offerors to submit sealed bids in response to the solicitation's requirements. This procurement method does not allow for negotiation.

**Section 3 Business Concern**—A business (1) that is at least 51 percent or more owned by Section 3 residents; (2) whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within 3 years of the date of first employment with the business were Section 3 residents; or (3) that provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be subcontracted to business concerns that meet the qualifications in Nos. 1 or 2 above.

**Section 3 Covered Activity**—Any activity which is funded by Section 3 covered assistance.

**Section 3 Covered Assistance**—Assistance provided under any CDBG program that is expended for work arising in connection with housing rehabilitation, housing construction, or other public construction projects.

**Section 3 Covered Contract**—A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. This does

not include contracts for the purchase of materials and supplies unless the contract includes purchasing of materials and installation of these materials and supplies.

**Section 3 Covered Project**—The construction, reconstruction, conversion, or rehabilitation of housing and other public construction assisted with CDBG funds as related to Section 3 of the HUD Act of 1968.

**Section 3 Resident**—A public housing resident or an individual who resides in the metropolitan area or non-metropolitan county in which the Section 3 of the HUD Act of 1968 covered assistance is expended and who meets the definition of low-moderate or very low-income person.

**Separate Purchases**—Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

**Sequential Purchases**—Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

**Sole Source Acquisition**—A contract for the purchase of supplies or services that is entered into or proposed to be entered into by a subrecipient after soliciting and negotiating with only one source.

**Solicitation**—Any request to submit offers or quotations to the subrecipients. Solicitations under sealed bid procedures are called “invitations for bids”. Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under small purchase procedures may require submission of either a quotation or an offer.

**Special Assessment**—A public improvement activity for which a special assessment will be levied.

**Special Flood Hazard Areas**—The land area covered by the floodwaters of the base flood on NFIP maps. The SFHA is the area where the NFIP's floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies.

**Subcontract**—Any contract, as defined above, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or subcontract. It includes but is not limited to purchase orders and changes and modifications to purchase orders.

**Subcontractor**—Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

**Subrecipient Agreement**—Agreement between GLO and subrecipient.

## T

**Taxpayer Identification Number (TIN)**—The number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

## U

**United States Code (USC)**—A consolidation and codification by subject matter of the general and permanent laws of the United States.

**Urgent Need**—Those activities that alleviate emergency conditions. (See 24 CFR 570.483(d) for further details).

Urgent need qualified activities must meet the following criteria:

- The existing conditions must pose a serious and immediate threat to the health or welfare of the community;
- The existing conditions are of recent origin or recently became urgent. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the state grant recipient's certification.
- The subrecipient certifies and the state determines that:
  - The subrecipient is unable to finance the activity on its own;
  - Other sources of funding are not available.

## V

**Very Low-Income Person**—Persons or families whose total household incomes do not exceed 30 percent of the median income for the area.

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## APPENDIX B—ACRONYMS

<b>Acronym</b>	<b>Term</b>
<b>A/E</b>	Architecture/Engineering
<b>ABFE</b>	Advisory Base Flood Elevation
<b>ACF</b>	Audit Certification Form
<b>ACM</b>	Asbestos Containing Material
<b>ACS</b>	American Communities Survey
<b>ADA</b>	Americans with Disabilities Act
<b>AFFH</b>	Affirmatively Furthering Fair Housing
<b>AFHMP</b>	Affirmative Fair Housing Marketing Plan
<b>AGI</b>	Adjusted Gross Income
<b>AHS</b>	American Housing Survey
<b>AI</b>	Analysis of Impediments
<b>AMI</b>	Area Median Income
<b>AMP</b>	Asset Management Program
<b>AP</b>	Action Plan
<b>APA</b>	Action Plan Amendment
<b>AUGF</b>	Authorization to Use Grant Funds
<b>BCA</b>	Benefit-Cost Analysis
<b>BFE</b>	Base Flood Elevation
<b>BG</b>	Block Group
<b>BLE</b>	Base Level Engineering
<b>BSO</b>	BuySpeed Online

<b>CAFR</b>	Comprehensive Annual Financial Report
<b>CBDO</b>	Community-Based Development Organization
<b>CCN</b>	Certificate of Convenience and Necessity
<b>CDBG</b>	Community Development Block Grant
<b>CDBG-DR</b>	Community Development Block Grant-Disaster Recovery
<b>CDBG-MIT</b>	Community Development Block Grant-Mitigation
<b>CDFI</b>	Community Development Financial Institutions
<b>CDI</b>	Composite Disaster Index
<b>CDL</b>	(FEMA) Community Disaster Loan
<b>CENST</b>	Categorical Exclusion Not Subject To
<b>CFDA</b>	Catalog of Federal Domestic Assistance
<b>CFM</b>	Certified Floodplain Manager
<b>CFR</b>	Code of Federal Regulations
<b>CO</b>	Certificate of Occupancy; Change Order; Contracting Officer
<b>COCC</b>	Certificate of Construction Completion
<b>COG</b>	Council of Government
<b>COI</b>	Conflict of Interest
<b>CoO</b>	Certificate of Occupancy
<b>COP</b>	Change Order Proposal
<b>CPD</b>	(HUD) Community Planning and Development
<b>CRO</b>	Civil Rights Officer
<b>CRP</b>	Coastal Resiliency Program
<b>CWHSSA</b>	Contract Work Hours and Safety Standards Act
<b>DALHR</b>	Direct Assistance for Limited Home Repair
<b>DBA</b>	Davis-Bacon Act

<b>DBRA</b>	Davis-Bacon and Related Acts
<b>DDA</b>	Direct Deposit Authorization
<b>DOB</b>	Duplication of Benefits
<b>DOL</b>	U.S. Department of Labor
<b>DPA</b>	Damaged Property Address
<b>DRGR</b>	Disaster Recovery Grants Reporting (system)
<b>DRRA</b>	Disaster Risk Reduction Area
<b>DSS</b>	Decent, Safe, and Sanitary
<b>DUN</b>	Duns & Bradstreet Number
<b>EA</b>	Environmental Assessment
<b>EAF</b>	Environmental Assessment Field
<b>EC</b>	Environmental Clearance
<b>EEO</b>	Equal Employment Opportunity
<b>EEOC</b>	Equal Employment Opportunity Commission
<b>EHP</b>	Environmental and Historic Preservation
<b>EIN</b>	Employer Identification Number (Federal Tax ID)
<b>EIS</b>	Environmental Impact Statement
<b>EO</b>	Equal Opportunity; Executive Order
<b>EPA</b>	U.S. Environmental Protection Agency
<b>ER</b>	Environmental Review
<b>ERR</b>	Environmental Review Record
<b>F&amp;A</b>	Facilities & Administrative
<b>FAC</b>	Federal Audit Clearinghouse
<b>FAIN</b>	Federal Award Identification Number
<b>FAQ</b>	Frequently Asked Questions

<b>FCE</b>	Fair Cost Estimate
<b>FCN</b>	Field Change Notification
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FEMA</b>	Federal Emergency Management Agency
<b>FFATA</b>	Federal Funding Accountability and Transparency Act
<b>FFE</b>	First Floor Elevation
<b>FHEO</b>	Fair Housing and Equal Opportunity
<b>FHWA</b>	Federal Highway Administration
<b>FIR</b>	Financial Interest Report
<b>FIRM</b>	Flood Insurance Rate Map
<b>FLSA</b>	Fair Labor Standards Act
<b>FOIA</b>	Freedom of Information Act
<b>FONSI</b>	Finding of No Significant Impact
<b>FPM</b>	Floodplain Manager
<b>FR</b>	Federal Register
<b>FTA</b>	Federal Transit Administration
<b>FTE</b>	Full Time Equivalent
<b>FVL</b>	Full Verified Loss
<b>FWA</b>	Fraud Waste and Abuse
<b>FWCR</b>	Final Wage Compliance Report
<b>GAAP</b>	Generally Accepted Accounting Principles
<b>GASB</b>	Governmental Accounting Standards Board
<b>GC</b>	General Contractor
<b>GCR</b>	Grant Completion Report
<b>GIN</b>	General Information Notice

<b>GIS</b>	Geographic Information Systems
<b>GLO</b>	The Texas General Land Office
<b>GLO-CDR</b>	Community Development and Revitalization Program
<b>GM</b>	Grant Manager
<b>HCDA</b>	Housing and Community Development Act of 1974
<b>HCV</b>	Housing Choice Voucher
<b>HERS</b>	Home Energy Rating System
<b>HMAP</b>	Hazard Mitigation Action Plan
<b>HMGP</b>	Hazard Mitigation Grant Program
<b>HMGP-S</b>	Hazard Mitigation Grant Program Supplemental
<b>HMP</b>	Hazard Mitigation Plan
<b>HQS</b>	Housing Quality Standards
<b>HRP</b>	Homeowner Reimbursement Program
<b>HUB</b>	Historically Underutilized Business
<b>HUD</b>	U.S. Department of Housing and Urban Development
<b>HVAC</b>	Heating, Ventilation, and Air Conditioning
<b>IA</b>	Individual Assistance (FEMA)
<b>IBC</b>	International Business Code
<b>ICC</b>	Increased Cost of Compliance
<b>IECC</b>	International Energy Conservation Code
<b>IFB</b>	Invitation for Bid
<b>IGR</b>	Intergovernmental Relations
<b>ILA</b>	Inter-Local Agreement
<b>INF</b>	Infrastructure
<b>IRC</b>	International Residential Code

<b>JTPA</b>	Job Training Partnership Act
<b>KOW</b>	Kick-Off Workshop
<b>LAP</b>	Language Access Plan
<b>LBB</b>	Legislative Budget Board
<b>LBP</b>	Lead-Based Paint
<b>LEP</b>	Limited English Proficiency
<b>LF</b>	Linear Feet
<b>LHMPP</b>	Local Hazard Mitigation Plans Program
<b>LLC</b>	Limited Liability Company
<b>LMI</b>	Low to Moderate Income
<b>LSO</b>	Labor Standards Officer
<b>LSHR</b>	Lead Safe Housing Rule
<b>LSR</b>	Labor Standards Record
<b>LTRG</b>	Long-Term Recovery Group
<b>LURA</b>	Land Use Restriction Agreement
<b>M/WBE</b>	Minority- and Women-Owned Business Enterprise
<b>MH</b>	Modular Housing
<b>MHU</b>	Manufactured Housing Unit
<b>MID</b>	Most Impacted and Distressed
<b>MIN</b>	Move-in Notice
<b>MIT</b>	Mitigation
<b>MOD</b>	Method of Distribution
<b>MOU</b>	Memorandum of Understanding
<b>NA</b>	Needs Assessment
<b>NEPA</b>	National Environmental Policy Act

<b>NFIB</b>	National Federation of Independent Business
<b>NFIP</b>	National Flood Insurance Program
<b>NOAA</b>	National Oceanic and Atmospheric Administration
<b>NOI</b>	Notice of Interest
<b>NOFA</b>	Notice of Funding Availability
<b>NOI/RROF</b>	Notice of Intent to Request Release of Funds
<b>NTP</b>	Notice to Proceed
<b>OMB</b>	Office of Management and Budget
<b>OSSF</b>	On-Site Sewer Facilities
<b>P&amp;P</b>	Policies and Procedures
<b>PA</b>	Public Assistance (FEMA)
<b>PCA</b>	Program Cost Account
<b>PCR</b>	Project Completion Report
<b>PD</b>	Project Delivery
<b>PF</b>	Public Facilities
<b>PHA</b>	Public Housing Authorities
<b>PIA</b>	Public Information Act
<b>PII</b>	Personally Identifiable Information
<b>PIR</b>	Public Information Request
<b>PM</b>	Program Manager; Project Manager
<b>PMO</b>	Project Management Office
<b>PO</b>	Purchase Order
<b>POA</b>	Power of Attorney
<b>POC</b>	Point of Contact
<b>PPDR</b>	Private Property Debris Removal (FEMA)

<b>PREPS</b>	Partial Repair & Essential Power for Sheltering
<b>PSA</b>	Public Service Announcement
<b>PSH</b>	Permanent Supportive Housing
<b>QA</b>	Quality Assurance
<b>QC</b>	Quality Control
<b>QPR</b>	Quarterly Performance Report
<b>RARAP</b>	Residential Anti-Displacement and Relocation Assistance Plan
<b>RCP</b>	Resilient Communities Program
<b>RE</b>	Responsible Entity
<b>RFC</b>	Request for Clarification
<b>RFI</b>	Request for Information
<b>RFP</b>	Request for Proposals
<b>RFQ</b>	Request for Qualifications
<b>RMP</b>	Regional Mitigation Program
<b>ROE</b>	Right of Entry
<b>ROW</b>	Right of Way
<b>RROF</b>	Request for Release of Funds
<b>RRP</b>	Renovation, Repair, and Paint
<b>SA</b>	Single Audit
<b>SAM</b>	System for Award Management (formerly EPLS – Excluded Parties List System)
<b>SAT</b>	Simplified Acquisition Threshold
<b>SBA</b>	Small Business Administration
<b>SFHA</b>	Special Flood Hazard Areas
<b>SHPO</b>	State Historic Preservation Office
<b>SOPs</b>	Standard Operating Procedures

<b>SOW</b>	Scope of Work
<b>SR</b>	Subrecipient
<b>SRO</b>	Single Room Occupancy
<b>SSBG</b>	Social Services Block Grant
<b>SSI</b>	Supplemental Security Income
<b>SWPPP</b>	Stormwater Pollution Prevention Plan
<b>TA</b>	Technical Assistance
<b>TANF</b>	Temporary Assistance to Needy Families
<b>TAS</b>	Texas Accessibility Standards
<b>TCEQ</b>	Texas Commission on Environmental Quality
<b>TDC</b>	Total Development Cost
<b>TDLR</b>	Texas Department of Licensing and Regulation
<b>TDSR</b>	Temporary Debris Storage and Reduction Sites
<b>TGL</b>	Technical Guidance Letter
<b>THC</b>	Texas Historical Commission
<b>TIGR</b>	Texas Integrated Grant Reporting System
<b>TIN</b>	Taxpayer Identification Number
<b>TML</b>	Texas Municipal League
<b>TUMs</b>	Targeted Urban Municipalities
<b>TxDOT</b>	Texas Department of Transportation
<b>TWDB</b>	Texas Water Development Board
<b>UCC</b>	Uniform Commercial Code
<b>UFAS</b>	Uniform Federal Accessibility Standards
<b>UGLG</b>	Units of General Local Governments
<b>UGMS</b>	Uniform Grant Management Standards

<b>UN</b>	Urgent Need
<b>UNM</b>	<b>Urgent Need-Mitigation</b>
<b>URA</b>	<b>Uniform Relocation Act</b>
<b>USC</b>	<b>United States Code</b>
<b>USDA</b>	<b>United States Department of Agriculture</b>
<b>USDOE</b>	<b>United States Department of Energy</b>
<b>USDOJ</b>	<b>United States Department of the Interior</b>
<b>USFWS</b>	<b>United States Fish and Wildlife Service</b>
<b>VOAD</b>	<b>Voluntary Organizations Active in Disaster</b>
<b>WD</b>	<b>Wage Decision</b>
<b>WO</b>	<b>Work Order</b>
<b>WR</b>	<b>Wage Rate</b>

The GLO-CDR Implementation Manual provides guidance for CDBG-DR and CDBG-MIT subrecipients and should not be construed as exhaustive instructions.

## CHAPTER 5—PROCUREMENT

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# CHAPTER 5—PROCUREMENT

## 5.1 Introduction

This chapter establishes the standards and guidelines for the procurement of supplies, equipment, construction, engineering, grant administration, architectural, consulting, and other professional services for CDBG-DR or CDBG-MIT programs. The Texas General Land Office Community Development and Revitalization (GLO-CDR) department has adopted 2 CFR §200.317 as it relates to the administration of CDBG-DR and CDBG-MIT programs. As such, CDBG-DR and CDBG-MIT subrecipients are required to follow the federal procurement requirements found in 2 CFR §200.318 through §200.327.

The following standards and guidelines are being furnished to ensure subrecipients of CDBG-DR or CDBG-MIT funds procure materials and services in an efficient and economical manner in compliance with the applicable provisions of federal law, state laws, and executive orders.

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

GLO-CDR staff will relay the information contained herein to subrecipients via the GLO-CDR website, <https://www.glo.texas.gov/disaster-recovery>, through trainings and checklists, and during on-site monitoring and reviews (see [Resources](#)—Resource 5.1 for a link to GLO-CDR’s Procurement and Contracting Guidance). Additional resources may be found on the HUD Exchange website, [www.hudexchange.info](http://www.hudexchange.info), including example procurement documents and checklists. These samples can assist subrecipients in complying with federal regulations; however, subrecipients should review all procurement documents and procedures to ensure compliance with local and state laws and regulations. Refer also to the State of Texas Procurement and Contract Management Guide (see [Resources](#)—Resource 5.2).

## 5.2 Local Procurement Policies

Before securing contract services, subrecipients should determine whether their procurement policies and procedures comply with all federal requirements contained in 2 CFR §200.318-.327. If the subrecipient intends to use federal funds to pay for goods or services and their procurement policy does not contain all federal requirements, the policy must be amended accordingly. Inadequate policies and procedures do not eliminate the subrecipient’s responsibility to comply with all federal, state, and local laws regarding purchases of goods or services.

Each subrecipient must have a written and adopted procurement policy that addresses, at a minimum, the following:

1. **Oversight.**<sup>1</sup> Subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. **Standards of Conduct.**<sup>2</sup> Every subrecipient must maintain written procedures covering conflicts of interest governing the actions of its employees, agents, consultants, and elected officials engaged in the selection, award, and administration of contracts, the award of CDBG-DR or CDBG-MIT assistance, or the management of federally assisted or purchased property. The subrecipient must design a policy that is at least as restrictive as prescribed in 24 CFR Part 570.489 and Texas Local Government Code Chapter 171.
  - For the procurement of goods and services, no employee, officer, or agent of the subrecipient may participate in the selection, award, or administration of a vendor contract supported by a federal award if he/she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, agent, any member of his/her immediate family, his/her partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in a tangible personal benefit from a firm considered for a vendor contract. (24 CFR 570.489(g), Uniform Grant Management Standards (UGMS) of the Texas Comptroller, 2 CFR §200.318(c)(1)).
  - The officers, employees, or agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.
  - The standards of conduct must also provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the subrecipient.
3. **Avoidance of Unnecessary or Duplicative Items.**<sup>3</sup> Subrecipients' procurement procedures must avoid the acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
4. **Value Engineering Clauses.**<sup>4</sup> Subrecipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
5. **Awarding to Responsible Contractors.**<sup>5</sup> Subrecipients must award contracts only to responsible contractors capable of performing successfully under the terms and conditions of a proposed procurement contract. Consideration shall be given to such matters as

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<sup>1</sup> 2 CFR §200.318(b)

<sup>2</sup> 2 CFR §200.318(c)(1)

<sup>3</sup> 2 CFR §200.318(d)

<sup>4</sup> 2 CFR §200.318(g)

<sup>5</sup> 2 CFR §200.318(h)

contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

6. **Record Keeping.** Subrecipients must maintain records sufficient to detail the history of each procurement transaction. These records shall include, but are not limited to, the following:
  - Rationale for the method of procurement;
  - Selection of contract type;
  - Contractor selection or rejection; and
  - The basis for the contract price.<sup>6</sup>
7. **Time and Materials Contracts.** Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable, and if the contract includes a ceiling price, the contractor exceeds it at its own risk. Time and materials type contracts are the sum of:
  - The actual cost of materials; and
  - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.<sup>7</sup>
8. **Dispute Resolution.** Subrecipients alone must be responsible, in accordance with good administrative practice and sound business judgment, for settling all contractual and administrative issues arising from their procurements transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve subrecipients of any contractual responsibilities under their contracts.<sup>8</sup>

### 5.3 Local Procurement Procedures

Subrecipients must have written procedures for procurement transactions that ensure all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured;
- Identify all requirements that the offerors must fulfill;
- Identify all other factors to be used in evaluating bids or proposals; and<sup>9</sup>
- Are conducted in a manner providing full and open competition;<sup>10</sup>
  - In order to ensure objective contractor performance and eliminate unfair competitive disadvantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from

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<sup>6</sup> 2 CFR §200.318(i)

<sup>7</sup> 2 CFR §200.318(j)

<sup>8</sup> 2 CFR §200.318(k)

<sup>9</sup> 2 CFR §200.319(d)

<sup>10</sup> 2 CFR §200.319(a)

- competing for such procurements.
- Some situations considered to be restrictive of competition include, but are not limited to, the following:
    - Placing unreasonable requirements on firms in order for them to qualify to do business.
    - Requiring unnecessary experience and excessive bonding.
    - Noncompetitive pricing practices between firms or between affiliated companies.
    - Noncompetitive contracts to consultants that are on retainer contracts.
    - Organizational conflicts of interest.
    - Specifying only ‘brand name’ products instead of allowing an equal product to be offered and describing the performance or other relevant requirements of the procurement.
    - Any arbitrary action in the procurement process.<sup>11</sup>

When using prequalified lists, subrecipients must ensure that all lists of persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, subrecipients must not preclude potential bidders from qualifying during the solicitation period.<sup>12</sup>

## 5.4 Price and Cost Analysis

For all procurement actions exceeding the Federal Simplified Acquisition Threshold, including change orders or contract modifications, subrecipients must perform a cost or price analysis as described in 2 CFR §200.324. If the local or state acquisition threshold is more restrictive, use the stricter one. Note that subrecipients must consider price reasonableness for micro-purchases as well as small purchases (see [Section 5.7](#) below).

### 5.4.1 Price Analysis

Price analysis is the process of evaluating and comparing prices for goods or services without evaluating separate cost elements and should be documented in the procurement file. Price analysis techniques include comparing proposed prices received in response to the solicitation, historical prices for the same or similar items, or comparing proposed prices with prices obtained through market research for the same or similar items.<sup>13</sup>

Subrecipients must request an adequate number of bids, proposals, or quotes for the materials, supplies, or services being procured for comparison. When comparing prices, it

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<sup>11</sup> 2 CFR §200.319(b)

<sup>12</sup> 2 CFR §200.319(e)

<sup>13</sup> Federal Acquisition Regulation 15.404-1 (b) (2)

must be determined if the goods or services are comparable. It is the subrecipient's responsibility to determine that the price is fair and reasonable.

### *5.4.2 Cost Analysis*

Subrecipients will use this process to determine whether proposed costs are allowable, reasonable, and allocable, as described in 2 CFR §200.403-405. Within a reasonable time period prior to receiving bids or proposals, subrecipients must prepare an independent cost estimate (ICE) for the goods or services to be procured. The ICE should include sufficient detail to enable the subrecipient to appropriately estimate the costs and to be able to perform a thorough comparison of the estimates in the ICE to the proposals received.

When conducting a cost analysis, subrecipients must review and evaluate the separate elements of cost and negotiate profit or fee in a received proposal.<sup>14</sup> It is the subrecipient's responsibility to determine that the cost is fair and reasonable.

A cost analysis is required when price competition does not exist. The following are examples of when cost analysis is used:

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

### *5.4.3 Conducting a price or cost analysis*

Subrecipients should document the following in their analysis:

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

### *5.4.4 Profit Negotiation*

As of October 1, 2024, profit negotiation in 2 CFR 200.324(b) was removed and is no longer required. For procurement before October 1, 2024: Subrecipients must negotiate profit as a separate element of the price for each contract in which there is no price

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<sup>14</sup> Federal Acquisition Regulation 15.404-1 (c) (1)

competition and, in all cases, where cost analysis is performed.<sup>15</sup> All of the following criteria should be considered when negotiating profit:

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

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

## 5.5 Contracting with Small and Minority Businesses, Women's Business Enterprises, Veteran-owned Business, and Labor Surplus Firms

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms are notified of bidding opportunities and utilized whenever possible.<sup>16</sup>

Furthermore, subrecipients need to recognize that only including The Texas Veteran Heroes United in Business (VetHUB) program does not fully meet the federal requirements for small businesses or labor surplus firms, and additional action may be necessary to take affirmative steps to reach all specified businesses. In the event that state and federal requirements conflict, the federal requirements take priority.

Affirmative steps, as presented in 2 CFR §200.321(b), must include the following:

- Placing qualified small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms on solicitation lists.
- Assuring that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms are solicited whenever they are potential sources.
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms.
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms.
- Utilizing, as appropriate, organizations such as the Small Business

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<sup>15</sup> 2 CFR §200.324(b)

<sup>16</sup> 2 CFR §200.321(a)

Administration and the Minority Business Development Agency of the Department of Commerce; and

- Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in parts (1)-(5) above.

## 5.6 Suspension and Debarment

Subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR Part 180. These regulations restrict making awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.<sup>17</sup>

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

- **Contractors:** All contractors, including professional consulting and engineering firms, should be registered, maintain active status, not be included in the Texas Comptroller's debarred vendor list, and are cleared via a search of the Federal System of Award Management (SAM) to ensure the contractor is in good standing and has not been debarred. The SAM portal can be found here: <https://sam.gov/search/>
- **Subcontractors:** Subrecipients must notify the selected prime contractors that it is the sole responsibility of the prime contractor to verify subcontractor eligibility based on factors such as past performance, proof of liability insurance, possession of a federal tax number, verifying the subcontract is not debarred on SAM portal or the Texas Comptroller's debarred vendor list, and meet state licensing requirements.

It should be noted that if any of the above-listed parties are deemed ineligible to receive CDBG-DR and/or CDBG-MIT funds after awarding the contract, the contract will be immediately terminated. The matter must be reported to the GLO-CDR for further action (via email).

## 5.7 Methods of Procurement

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

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<sup>17</sup> 2 CFR §200.214

## *Micro-Purchases*

The micro-purchase method is used for the acquisition of supplies or services that do not exceed the micro-purchase threshold and must be distributed equitably among qualified suppliers. In most instances under CDBG-DR and CDBG-MIT, the micro-purchase threshold is \$10,000 (prior to October 1, 2025) and \$15,000 (after October 1, 2025), except for:

- Procurement of construction services subject to Davis Bacon requirements, the threshold is \$2,000.
- Procurement of services subject to Service Contract Labor Standards, the threshold is \$2,500.

The 2021 Winter Disaster Grant was awarded to the state after October 1, 2025. For it and any subsequent grants the Micro-Purchase Threshold is \$15,000 subject to the above two exceptions.

Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable and maintains documentation to support its conclusion.<sup>18</sup>

## *Small Purchases*

The small purchase method is used for the acquisition of supplies or services that exceed the micro-purchase threshold but are less than or equal to the small purchase threshold. Small purchase procedures are relatively informal and do not require a formal solicitation for securing services, supplies, or other property.<sup>19</sup>

The federal small purchase threshold is \$350,000. For local governments, the State small purchase threshold is \$50,000. Since these grants and programs are funded with federal money, but we are also governed by state rules, we must follow the stricter of the two regulations. Subrecipients must use the stricter of the two regulations. Small purchase procedures must not be used in procurements anticipated to exceed \$50,000.

If small purchase procedures are used, the subrecipient must attempt to obtain price or rate quotations from at least 3 qualified sources.<sup>20</sup> Documentation of the rate quotations must be maintained for record-keeping requirements.

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<sup>18</sup> 2 CFR 200.320(a)(1)

<sup>19</sup> 2 CFR 200.320(a)(2)

<sup>20</sup> Texas Government Code §2155.132(h): A state agency making a purchase under this section for which competitive bidding is required must attempt to obtain at least three competitive bids from sources listed on the master bidders list that normally offer for sale the goods being purchased.

## *Sealed Bids*

Sealed bids are publicly solicited through an invitation and result in a firm fixed price contract (lump sum or unit price). The contract is awarded to the bid responsible, whose bid conforms with all the terms and conditions of the invitation for bids and is the lowest price. This is the preferred method for construction contracts.<sup>21</sup>

## *Competitive Proposals*

The competitive proposals procurement technique is normally used when either a fixed price or cost-reimbursement type contract is awarded and when conditions are not appropriate for using sealed bids. A Request for Proposal (RFP) is used when qualifications and price are used to evaluate proposals and is the preferred method for administrative services and environmental assessments. Proposals must be solicited from multiple qualified entities. A Request for Qualification (RFQ) is used to procure architectural or engineering professional services where qualifications are used to evaluate proposals and price is not used as a selection factor.<sup>22</sup>

## *Noncompetitive Procurements*

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The aggregate amount of the procurement does not exceed the micro-purchase threshold.
- The procurement transaction can only be fulfilled by a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, the competition is determined to be inadequate.<sup>23</sup>

The subrecipient must document the circumstances that the procurement transaction met to use the noncompetitive procurement method and the how the subrecipient ensured compliance with the requirements.

GLO-CDR published a Noncompetitive Procurement Checklist to guide subrecipients in documenting the efforts taken to procure goods and services using the noncompetitive

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<sup>21</sup> 2 CFR §200.320(b)(1)

<sup>22</sup> 2 CFR §200.320(b)(2)

<sup>23</sup> 2 CFR §200.320(c)

procurement. While the checklist is intended as a general tool, the circumstances of some procurements may require additional support or documentation.

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

<b>Procurement Type</b>	<b>Cost Reasonableness</b>	<b>Contract Type</b>	<b>Solicitation Method</b>	<b>Applications</b>
<b>Micro-Purchase</b>	Price Analysis	Purchase Order Fixed Price	No solicitation required	Supplies Produced items Single task service
<b>Small Purchase</b>	Price Analysis	Purchase Order Fixed Price	Quotations Submitted Bids	Supplies Produced items Single task service
<b>Sealed Bid (formal advertising)</b>	Price Analysis Cost Analysis	Fixed Price	Submitted Bids	Construction items Produced or designed items
<b>Competitive Proposals</b>	Price Analysis Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Professional services Multi-task services Designed items
<b>Noncompetitive Proposals</b>	Cost Analysis	Cost Reimbursement Fixed Price Time & Materials	Submitted Proposals	Produced items Single task service Professional services Multi-task services Designed Items

## 5.8 Micro-Purchase Procedures

Prior to utilizing the Micro-Purchase method of procurement, subrecipients should plan and document the number of products or services required. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the micro-purchase threshold (see [Section 5.7](#) above). For micro-purchases of construction services in excess of \$2,000, subrecipients must adhere to the Davis-Bacon and Related Acts (see Chapter 9).

To the extent practicable, subrecipients must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the subrecipient considers the price to be reasonable by conducting a price analysis (see [Section 5.4](#)). Prior to issuing a purchase order under this method, subrecipients must verify

that the vendor is not debarred in the System for Award Management (see [Section 5.6](#) above).

## 5.9 Small Purchase Procedures

Prior to utilizing the Small Purchase method of procurement, subrecipients should consider the aggregate cost of the goods or services. In order to use this method of procurement, the aggregate dollar amount of the goods or services cannot exceed the small purchase threshold (see [Section 5.7](#) above).

Subrecipients cannot use the small purchase procurement method to make separate, sequential, or component purchases of goods or services with the intent of avoiding the competitive bidding and competitive proposal requirements.<sup>24</sup>

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

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

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

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

Subrecipients must use the Small Purchase Procurement Record ([Infrastructure Forms | Texas General Land Office](#)) to document quotes received. Quotations may be requested via telephone, fax, email, mail, or any other reasonable method.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

### *Step 3: Award the contract.*

Subrecipients should conduct a price analysis and award to the lowest-priced quote (see [Section 5.4](#) above). If the subrecipient does not award the contract to the lowest-cost respondent, the rationale must be documented and comply with federal, state, and local regulations.

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<sup>24</sup> Local Government Code, Sec. 262.023 (c) and Sec. 252.062

Subrecipients must verify that the vendor is not debarred under the System for Award Management or is in the Texas Comptroller’s Debarred Vendor List. (see [Section 5.6](#) above).

See [Section 5.13.5](#) for details on change orders.

#### *Step 4: Execute the contract.*

When using Small Purchase Procurement for contracts, subrecipients must submit the Small Purchase Procurement Record. Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

### 5.10 Sealed Bid Procedures

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

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

**Note:** Sealed bid procurement can be conducted electronically. The federal and state guidance and laws that must be followed are detailed in the General Land Office document titled “E-Bid Procurement Guidance.” ([Procurement & Contract Guidelines | Texas General Land Office](#))

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

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

- Be sealed by an architect or engineer registered in the State of Texas and if the project falls under the jurisdiction of another state agency, approval is required prior to construction.
- For fire stations, garages, and/or buildings that will be accessible to the public once constructed, a certification that applicable standards of accessibility for individuals with disabilities have been or will be satisfied must be executed and co-signed by a local jurisdictional official and filed in the contract documents.
- Include details for all properly acquired lands, rights-of-way, and/or easements

necessary for carrying out the project.

- Contain processes and procedures in accordance with the provisions of the Uniform Relocation Act for the acquisition of land occurring during the project.
- Contain all forms and contract provisions applicable to the project and required by federal and state laws and regulations.

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

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

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

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

### *Step 3: Advertise for Bids*

The invitation for bids must be publicly advertised, and bids shall be solicited from an adequate number of qualified sources with sufficient time provided prior to the date set for opening the bids. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services so the bidder can properly respond.

Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

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

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

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

Subrecipients should take action within 45 days of the bid opening, or as otherwise specified in the bid documents, to either award a contract to the lowest responsible bidder or reject any and

all bids for just cause. Any or all bids may be rejected if there is a sound, documented reason.

If only one bid is received, the bid should be compared with an in-house estimate of the cost and prices paid for the same or substantially similar item(s) in the past. Information from the marketplace should be gathered if it was not done so when developing the estimate. If the sealed bid is cancelled and negotiations proceed with the single bidder, the subrecipient must document the rationale it used to determine that competition was not adequate and whether it performed any additional or direct solicitations to prospective bidders. In addition, a complete cost breakdown must be obtained, and a cost analysis performed. If the bidder refuses to comply, bids must be resolicited. All rationale for decisions must be documented.

If accepted, the subrecipient and the lowest responsible bidder may, by mutual written consent, agree to extend the award deadline by one or more extensions of 30 calendar days. Any final contracts awarded must be done so in compliance with the federal wage decision (See Labor Chapter 9 for details). Subrecipients must maintain documentation of the date, time, and location of the public bid opening.

### *Step 5: Award the Contract*

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

Subrecipients must verify that the vendor is not debarred under the Texas Comptroller Debarred Vendor List (<https://comptroller.texas.gov/purchasing/programs/vendor-performance-tracking/debarred-vendors.php>) or the System for Award Management (Sam.gov) prior to awarding a contract (see [Section 5.6](#) above).

### **Procedures for Bids that Exceed Cost Estimates**

In some instances, the lowest bid received will exceed the amount of funds estimated for a particular project. If this occurs, the subrecipient shall determine the best course of action in consideration of the following options:

- Reject all bids received and re-advertise the project.
- Revise or reduce specifications and re-advertise the project after scope changes are approved by GLO-CDR via a contract change request.
- Reallocate funds to cover the overage.
- Seek other funding sources, such as local funds, to cover the overage.
- Enter into a legally binding contract with the lowest bidder for the amount of the bid presented and, subsequently, execute a change order\* to bring the project cost within the limits presented by the allocated funds.

\*A change order that alters the approved scope of work will require submission of a contract change order request. All changes resulting from bids that exceed cost estimates must be submitted to GLO-CDR within 30 days of the award. It is strongly advised that the subrecipient thoroughly analyzes how exercising this option would affect the other bidders prior to awarding the contract. See [Section 5.13.5](#) for details on change orders.

## *Step 6: Execute the Contract*

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

### 5.11 Competitive Proposal Procedures

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

#### *5.11.1 Request for Proposals (“RFPs”)*

RFPs are used to procure professional services for project delivery, such as grant administration and environmental services. This does not include architectural and engineering (“A/E”) professional services where the price negotiation occurs.

#### *5.11.2 Request for Qualifications (“RFQs”)*

RFQs are used to procure professional services such as engineering or architectural firms. RFQs use a competitive negotiation method. The selection is made based upon the competitor’s qualifications, subject to negotiation of fair and reasonable compensation.

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

All A/E contracting fees, even those provided for under either a fixed-price contract or a cost reimbursement contract, must be deemed reasonable, justifiable, and below the applicable GLO-CDR cap. If, after a project has been funded, the project scope changes, a contract change request must be submitted for consideration by GLO-CDR. Changes to the project’s scope may impact the service provider’s fees as established by the applicable fee caps and the total construction amount.

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

### 5.11.3 Conducting an RFP/RFQ

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

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

- Description of subrecipient's requirements and the scope of services;
- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance;
- Detailed instructions on proposal requirements;
- Deadline for submission; and
- Anticipated terms and conditions that will apply to a contract awarded under the solicitation.
  - A solicitation may authorize offerors to propose alternative terms and conditions.
  - When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement.

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

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

Proposals must be solicited from multiple qualified sources. Subrecipients must take all necessary steps to affirmatively assure small and minority businesses, women's business enterprises, veteran-owned businesses, labor surplus firms, and Section 3 businesses are notified of bidding opportunities and utilized whenever possible (see [Section 5.5](#) above).

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

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

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

If only one proposal or qualification statement is received, the subrecipient must determine whether to resolicit the RFP/RFQ. If the RFP/RFQ is cancelled and negotiations proceed with the single respondent, the subrecipient must document the rationale it used to determine that competition was not adequate and whether it performed any addition or direct solicitations to prospective respondents.

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

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

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the subrecipient, with price and other factors considered (see [Section 5.4](#) above).

Subrecipients must also verify that the vendor is not debarred under the System for Award Management prior to awarding the contract (see [Section 5.6](#) above).

See [Section 5.13.5](#) for details on change orders.

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

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.5.12 Noncompetitive Procurement Procedures

Subrecipients MUST ensure compliance with 2 CFR 200.320(c) prior to using this procurement method. A Self-Certification of Noncompetitive Procurement must be completed for each applicable procurement and maintained by the subrecipient for record-keeping requirements.

Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

- The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold;
- The procurement transaction can only be fulfilled by a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- The federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
- After solicitation of a number of sources, competition is determined inadequate.

Subrecipients must conduct a cost analysis to determine if proposed costs are allowable, reasonable, and allocable (see [Section 5.4](#) above). Subrecipients must also verify that the vendor is not debarred under the System for Award Management (see [Section 5.6](#) above).

Subrecipients are responsible for confirming debarment status for the contract term of all prime contractors and subcontractors. Subrecipients must submit the Financial Interest Report to GLO-CDR within 30 days of executing a prime contract. For subcontractors, the Financial Interest Report is due before the final draw.

## 5.13 Contracting

### 5.13.1 Types of Contracts

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

- Agency name and address;
- Agency contract or Purchase Order number;
- Date of the order;
- Term of contract (delivery period after receipt of order or beginning and end dates);
- Contractor's name, payee/vendor identification number, and address, including zip code;
- National Institute of Government Purchasing (NIGP) class/item for each item; Purchase Code Category;
- List of contract documents and their order of precedence;
- List of awarded items with quantity, unit of measure, and unit price with extended totals; and
- Signature of authorized/certified purchasing representative.<sup>25</sup>

**Fixed-Price Contract.** A fixed price contract is suitable for the acquisition of commercial items, including construction, or for the acquisition of other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset. This contract type (1) places maximum risk and full responsibility for costs and resulting profit loss on the contractor, (2) provides maximum incentive for the contractor to control costs and perform effectively, and (3) imposes a minimum administrative burden upon the contracting parties.

**Cost Reimbursement Contract.** A cost reimbursement contract is suitable for situations in which uncertainties are involved in contract performance that do not permit costs to be estimated with sufficient accuracy to establish a fixed contract price. These types of contracts establish an estimate total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at their own risk).

**Time and Materials Contract.** A time and materials contract is suitable for use only after it has been determined that no other contract is suitable. This type of contract provides for the

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<sup>25</sup> State of Texas Procurement and Contract Management Guide.

payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. Subrecipients may only use a time and materials type contract after a determination is made that no other contract is suitable and if the contract includes a cost ceiling that the contractor exceeds at its own risk.

**Note:** Subrecipients must ensure that the contract is not a prohibited cost-plus-a-percentage-of-cost or percentage-of-construction-cost contract.

### *5.13.2 Required Contract Provisions*

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

- Performance requirements and penalties;
- Project schedule including the performance period and completion date;
- Subrecipients must ensure contracts do not contain any cost plus or incentive savings provisions. No contracts must make reference to compensation adjustments for cost plus or incentive savings provisions;
- All Section 3 covered contracts shall include the Section 3 clause;<sup>26</sup> and
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.<sup>27</sup>

**Other Federally Required Provisions.** The subrecipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.<sup>28</sup>

1. **Remedies.** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.<sup>29</sup>
2. **Termination for cause and for convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the subrecipient including the manner

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<sup>26</sup> 24 CFR §135.38

<sup>27</sup> 42 United States Code (U.S.C.) §6201

<sup>28</sup> 2 CFR §200.327

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

by which it will be affected and the basis for settlement.<sup>30</sup>

3. **Rights to Inventions Made Under a Contract or Agreement.** If the federal award meets the definition of “funding agreement” under 37 CFR 401.2 (a) and the subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.<sup>31</sup>
4. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.<sup>32</sup>
5. **Records of non-Federal entities.** The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas General Land Office Community Development and Revitalization (GLO-CDR), and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-federal entity which are pertinent to the federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-federal entity's personnel for the purpose of interview and discussion related to such documents.<sup>33</sup>
6. **Record Retention.** Financial records, procurement records, labor records, supporting documents, statistical records, and all other non-federal entity records pertinent to a federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-federal entities. The only exceptions are the following:
  - a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the

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

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

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

<sup>33</sup> 2 CFR §200.337(a)

- records have been resolved and final action taken;
- b. When the non-federal entity is notified in writing by the federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
  - c. Records for real property and equipment acquired with federal funds must be retained for 3 years after final disposition;
  - d. When records are transferred to or maintained by the federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-federal entity;
  - e. Records for program income transactions after the period of performance. In some cases, subrecipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-federal entity's fiscal year in which the program income is earned;
  - f. Indirect cost rate proposals and cost allocation plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates);
  - g. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission;
  - h. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.<sup>34</sup>
- 7. Contracting with small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.**
- a. The non-federal entity must take all necessary affirmative steps to assure that small, minority businesses, women's business enterprises, and labor surplus area firms are used when possible;
  - b. Affirmative steps must include:
    - i. Placing qualified small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms on solicitation lists;
    - ii. Assuring that small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms are solicited whenever they are potential sources;

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<sup>34</sup> 2 CFR §200.334

- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms;
  - iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus firms;
  - v. Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
  - vi. Requiring the prime contractor to apply the requirements of this section to subcontracts.<sup>35</sup>
8. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”<sup>36</sup>
9. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis- Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay laborers and mechanics wages at a rate not less than the prevailing wage specified in a wage determination issued by the Secretary of Labor. In addition, contractors must be required to pay wages at least once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported

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<sup>35</sup> 2 CFR 200.321

<sup>36</sup> 2 CFR 200 APPENDIX II (C)

violations to the federal awarding agency.<sup>37</sup>

10. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.<sup>38</sup>
11. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).<sup>39</sup>
12. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors who apply for or bid on an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds conducted in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier until they reach the non-federal award.<sup>40</sup>
13. **Solid Waste Disposal Act.** A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of

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<sup>37</sup> 2 CFR 200 APPENDIX II (D)

<sup>38</sup> 2 CFR 200 APPENDIX II (E)

<sup>39</sup> 2 CFR 200 APPENDIX II (G)

<sup>40</sup> 2 CFR 200 APPENDIX II (I)

the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.<sup>41</sup>

14. **Domestic preferences for procurements.** As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under the federal award.<sup>42</sup>

#### **Additional Required Provisions.**

1. **Verification No Boycott Israel.** As required by Chapter 2271, Texas Government Code, CONTRACTOR hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.<sup>43</sup>
2. **Foreign Terrorist Organizations.** Pursuant to Chapter 2252, Texas Government Code, Vendor represents and certifies that, at the time of execution of this Agreement neither Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.<sup>44</sup>
3. **Verification of No Telecommunications or Surveillance Equipment.** As stated in 2 CFR 216, vendors must ensure that no telecommunications or surveillance equipment is

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<sup>41</sup> 2 CFR 200.323

<sup>42</sup> 2 CFR 200.322

<sup>43</sup> Texas Government Code Chapter 2271

<sup>44</sup> Texas Government Code Section 2252.152

purchased, installed, or repaired using any components manufactured or provided by any entity identified as prohibited in 2 CFR 216.<sup>45</sup>

### *5.13.3 Bonding Requirements*

Subrecipients are encouraged to accept the bonding policy and requirements of the GLO-CDR for construction and facility improvement contracts and subcontracts exceeding the simplified acquisition threshold.

- For contracts over \$50,000, subrecipients should require a bid guarantee from each bidder equivalent to five percent of the bid price consisting of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- For contracts over \$100,000, Subrecipients should require a performance bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract;
- Subrecipients should require a payment bond on the part of the contractor for one hundred percent of the contract price as executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract;
  - Municipalities: A payment bond is required if the contract exceeds \$50,000.<sup>46</sup>
  - Counties: A payment bond is required if the contract exceeds \$25,000.<sup>47</sup>

### *5.13.4 Workers' Compensation Requirements*

Subrecipients that enter into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each of the contractor's employees employed on the public project.<sup>48</sup> Each subcontractor on the public project shall provide the general contractor with a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the subrecipient.<sup>49</sup> Additionally, Subrecipients must include in bid specifications and contracts the specific language and provisions found in 28

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<sup>45</sup> 2 CFT 216

<sup>46</sup> Government Code 2253.021(a)(2)(B)

<sup>47</sup> Government Code 2253.021 (a)(2)(A)

<sup>48</sup> Texas Labor Code 406.096 (a)

<sup>49</sup> Texas Labor Code 406.096 (b)

Texas Administrative Code, §110.110(c)(7). Subrecipients are responsible for compliance with all applicable statutory policies.

### *5.13.5 Changes to an Executed Contract*

When there are changes to an executed contract that affect the budget or scope change of a Subrecipient Agreement, the subrecipient should request an adjustment to both the Subrecipient Agreement and the subrecipient contract (such amendments in whole dollars only).

When changes to an executed construction or materials contract are necessary, the subrecipient must submit a Construction Contract Change Order form to GLO-CDR after fully executing the change order. The GLO-CDR will review change orders for programmatic compliance to ensure costs are eligible and procured in accordance with federal regulations. The change order must meet the following requirements:

- Sufficient grant or local funds are available to meet any increased costs;
- The original contract price has not been increased by more than 25 percent or decreased (without the consent of the contractor) by more than 25 percent for municipalities and 18 percent for counties;
- All items listed on the change order were competitively procured through the original bid or are defined as reasonable and substantiated by an independent cost estimate; and
- All items listed on the Change Order are eligible and comply with the Subrecipient Agreement, including the performance statement, implementation schedule, budget, and environmental review requirements.

Subrecipients are responsible for ensuring that any change order complies with program guidelines and meets the applicable procurement standards.

### *5.14 Equipment Purchases*

Equipment purchased with CDBG-DR and/or CDBG-MIT funds must be used by the subrecipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the CDBG-DR and/or CDBG-MIT award. The subrecipient must not encumber the property without prior written approval from the GLO-CDR and HUD.<sup>50</sup> Prior approval should be requested through a memorandum sent through the GLO and to HUD.

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

- Activities under the CDBG-DR and/or CDBG-MIT award which funded the original program or project; then
- Activities under federal awards from other federal awarding agencies. This includes

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<sup>50</sup> 2 CFR §200.313(c)

consolidated equipment for information technology systems

\*Subrecipients must include documentation in the property records to justify utilizing the equipment for other purposes.

When acquiring replacement equipment, subrecipients should use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.<sup>51</sup>

**Equipment Records.**<sup>52</sup> Subrecipients must maintain a property record that includes the following information:

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

A physical inventory of the property must be conducted, and the results reconciled with the property records at least once every two years.<sup>53</sup>

#### *5.14.1 Disposition Requirements*<sup>54</sup>

Prior to disposing of any equipment purchased with CDBG-DR and/or CDBG-MIT funds, subrecipients must request disposition instructions from the GLO-CDR if required by the terms and conditions of the Subrecipient Agreement. Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the GLO-CDR. However, any proceeds received may be considered program income.

### 5.15 Recordkeeping

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

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<sup>51</sup> 2 CFR §200.313(c)(4)

<sup>52</sup> 2 CFR §200.313(d)(1)

<sup>53</sup> 2 CFR §200.313(d)(2)

<sup>54</sup> 2 CFR §200.313(e)

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

## 5.16 Resources

GLO-CDR has created a comprehensive website that contains necessary forms, checklists, detailed guidance documents, and additional resources to supplement this Implementation Manual. Please see <https://www.glo.texas.gov/disaster-recovery> for more information. The following resources are referenced within this chapter and will be updated as new forms and documents are developed.

Resource Number	Topic	Web Page URL	File Located Under Section / Accordion
Resource 5.1	GLO-CDR Procurement and Contracting Guidance	<a href="https://www.glo.texas.gov/disaster-recovery/procurement-contract-guidelines">https://www.glo.texas.gov/disaster-recovery/procurement-contract-guidelines</a>	N/A
Resource 5.2	State of Texas Procurement and Contract Management Guide	<a href="https://comptroller.texas.gov/purchasing/publications/procurement-contract.php">https://comptroller.texas.gov/purchasing/publications/procurement-contract.php</a>	N/A

**\*Note:** Individuals have reported a better experience when using Internet Explorer or Safari to view files. If you are unable to open a .pdf file in your browser, please download the .pdf file by right-clicking and selecting "Save link as...", then open it with [Adobe Acrobat](#). If Acrobat Reader is not installed on your computer, you can download it for free by visiting: <https://get.adobe.com/reader/>

**Disclaimer:** The Texas General Land Office has made every effort to ensure the information contained in this document is accurate and in compliance with the most up-to-date CDBG-DR and/or CDBG-MIT federal rules and regulations, as applicable. It should be noted that the Texas General Land Office assumes no liability or responsibility for any error or omission on forms that may result from the interim period between the publication of amended and/or revised federal rules and regulations and the Texas General Land Office's standard review and update schedule. The General Land Office updates guidance documents, memos, and forms on its website at <https://www.glo.texas.gov/disaster-recovery>. It is incumbent upon the user to ensure they access the latest version of the document. Users should refresh their computer's browser and clear their cache regularly. The Texas General Land Office assumes no liability or responsibility for any error or omission resulting from reliance on an outdated version of a document. Please contact GLO staff directly should further clarification be needed.

**Questions:** Please direct all questions regarding your specific program or project to your assigned GLO Grant Manager. Send comments related to the GLO-CDR Implementation Manual to [ImplementationManual.glo@recovery.texas.gov](mailto:ImplementationManual.glo@recovery.texas.gov).