Community Development Block Grant –Mitigation (CDBG-MIT) Infrastructure Program Policies & Procedures

Version 2.0

July 2022

Revision History

	Version Number	Comments
10/16/2020	1.0	Original document
7/21/2022	2.0	Addition of Section 3 New Rule and Reporting Requirements (per CPD-21-09)

Contents

CHAPTER I: Introduction

1.1 Purpose

This Manual is provided to assist City of Columbia Office of Community Development sub grantees and subrecipients to implement infrastructure grants funded with Community Development Block Grant – Mitigation (CDBG-MIT) funds. It provides guidance to sub grantees subrecipients regarding the general requirements for activities using CDBG-MIT funds. It is the responsibility of both the City of Columbia Office of Community Development and its subrecipients to ensure compliance with all provisions of this manual, federal rules and regulations, and grant award. All parties must also conduct proper and efficient grant administrative practices. Should questions arise, sub grantees and subrecipients should immediately contact the Office of Community Development

1.2 Definition of Terms

CDBG-MIT: A grant to fund mitigation activities guided by Title I of the Housing and Community Development Act of 1974, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations, laws, assurances and Federal Register waivers, notices, and alternative requirements governed by the Appropriations Act. Funding received has been authorized and allocated pursuant to P.L. 115-123 and the August 30, 2019, CDBG-MIT Federal Register Notice (84 FR 45383)

Cost sharing: Cost sharing or matching means the portion of the costs of a federally assisted project or program not borne by the federal agency initiating the funding and is expected to be paid from State and or local government funds.

Covered Project: For purposes of this notice, a Covered Project is defined as an infrastructure project having a total project cost of $100 million or more, with at least $50 million of CDBG funds (regardless of source (CDBG–DR, CDBG-National Disaster Resilience (NDR), CDBG–MIT, or CDBG)). For grantees that are considered by HUD to have ''unmitigated high risks'' that impact their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the definition of a Covered Project.

Documentation: All projects funded with CDBG-MIT funds must obtain and maintain adequate documentation of eligibility and cost reasonableness.

Duplication of Benefits: Defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.)* (Stafford Act), a duplication of benefits occurs when: 1) a beneficiary receives assistance for a particular recovery purpose, and 2) the assistance is from multiple sources (i.e., FEMA, FHWA, insurance, and local funds), and 3) the assistance amount exceeds the need for the particular recovery purpose thus "duplicating benefits" for the same purpose. The DOB prohibition applies to federally funded programs providing financial assistance "as a result of a major disaster or emergency."

Eligible Activity: Each funded activity must meet the HUD definition of an eligible activity as defined at 24 CFR 570.201-207. Additionally, to be an eligible activity under CDBG-MIT, each program activity must meet the definition of a mitigation activity as defined in the CDBG-MIT FRN (84 FR 45838) and meet at least one of the HUD National Objectives defined at 24 CFR 570.208.

Eligible Costs: Costs for the activities specified in the subrecipient agreement for which grant funds are budgeted, provided that such costs (i) are incurred in connection with any activity which is eligible under P.L. 115-123, Federal Register Notice 6109_n_02 and Title I of the Housing and Community Development Act of 1974, and (ii) conform to the requirements of 2 CFR Part 200.

Environmental Review: A comprehensive analysis of the environmental issues, impacts, and performance related to activities for a project undertaken using CDBG-MIT funds. The National Environmental Policy Act of 1969 (NEPA) is the basic national charter for the protection of the environment. Per the CDBG-MIT FRN (84 FR 45838), HUD will allow the adoption of another federal agencies environmental review so long as the scope of work has not changed significantly from the original agencies review. When there is not another federal agency environmental review that can be adopted, the City of Columbia will complete the environmental review in compliance with 24 CFR Part 58.

Federal Emergency Management Agency (FEMA): The Federal Emergency Management Agency ("FEMA") coordinates the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or manufactured.

Grant: An award of financial assistance, in the form of money, by the federal government to an eligible grantee with no expectation that the funds will be paid back.

Green Infrastructure: Per the August 30, 2019, FRN (84 FR 45838) green infrastructure is defined as "the integration of natural systems and processes, or engineered systems that mimic natural systems and processes, into investments in resilient infrastructure. Green infrastructure takes advantage of the services and natural defenses provided by land and water systems such as wetlands, natural areas, vegetation, sand dunes, and forests, while contributing to the health and quality of life of those in recovering communities."

Low-and Moderate-Income Area ("LMA") Benefit: Per CDBG regulations, an area benefit is an activity which is available to benefit all the residents of an area which is primarily residential. In order to qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51% of the residents are L/M income persons. The benefits of this type of activity are available to all residents in the area regardless of income.

Low-and moderate-income person ("LMI"): Per CDBG regulations, a person is considered to be of low income only if he or she is a member of a household whose income would qualify as "low-to-

moderate income" under the Section 8 Housing Assistance Payments program. CDBG moderate income relies on Section 8 "lower income" limits, which are tied to 80% or less of area median.

National Objective: Each activity must meet one of the following national objectives for the program: 1) benefit low-and moderate-income persons, 2) prevention or elimination of slums or blight, or 3) address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

Project File: HUD requires that each funded project activity with CDBG-MIT funds maintain a project file with sufficient documentation to support determining the project to be an eligible mitigation activity that meets a HUD national objective and that all costs are necessary, reasonable, and allocable to the program in accordance with 2 CFR 200 Uniform Administrative Requirements. Project files can be hard copy, electronic, or a combination of both if they are readily accessible during a monitoring visit.

Stafford Act: The Robert T. Stafford Disaster Relief and Emergency Act ("Stafford Act") (42 U.S.C. §5121 *et seq*.) as amended, authorizes financial and other forms of assistance to the State and local governments and certain Private Nonprofit organizations to support response, recovery, and mitigation efforts following major disasters and emergencies declared by the President of the United States. The Stafford Act describes the declaration process, the types and extent of assistance that may be provided, and fundamental eligibility requirements.

Sub-Grantee: A department of City of Columbia government that is directly administering a project using CDBG-MIT funds. Sub grantees will be guided and directed by a Memorandum of Agreement (MOA). See Appendix D for example.

Subrecipient: Subrecipients are entities that are provided CDBG-MIT funds by a grantee for their use in conducting agreed-upon, eligible activities. Subrecipients may be units of government or non-profit organizations

U.S. Department of Housing and Urban Development ("HUD"): HUD is the federal agency responsible for obligating and disbursing the CDBG-MIT funds as well as monitoring grantees. HUD's stated mission is "to create strong, sustainable, inclusive communities and quality affordable homes for all."

1.3. Overview of the CDBG-MIT Infrastructure Program

The City of Columbia received $18,585,000 from HUD for mitigation activities to be funded in accordance with Community Development Block Grant-Mitigation (CDBG-MIT) funds. In the CDBG-MIT Federal Register Notice [FRN] (85 FR 45838), HUD defines mitigation as "those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to or loss of property, and suffering and hardship, by lessening the impact of future disasters."

The City now intends to utilize CDBG-MIT funding to take additional action to make Columbia more resilient. The City acknowledges the high probability that these extreme weather conditions will continue to affect Columbia's residents and city services and may become more severe or more frequent in occurrence. Proposed projects for funding in the CDBG-MIT Action Plan for infrastructure include:

Columbia Head Gates and Lock Gate Repair

Project Description: This project consists of the design, engineering, and replacement of 12 water control gates and one lock control gate. These gates are used to regulate the raw water supply diverted from the Broad River to the Columbia Canal, which supplies raw water to the Columbia Canal Water Treatment Plant and the Columbia Hydroelectric Facility. These facilities serve more than half of the City's water customers, including most of the city limits and much of Richland County, with portions being located within Lexington County as well. The area within the city limits served by the proposed project is 52% low-to-moderate income. Combining this with the additional service area outside the city limits, the total Canal Water Service Area is 51% low-to-moderate income. MIT funding will be used to ensure continuous operation of these critical facilities during and after extreme weather events.

Olympia Fire Station Replacement

Project Description: The existing Olympia Fire Station, which serves an area that is 65.35% low and moderate income, is a repurposed greenhouse. The facility is both inadequate to support modern fire response demands and poses a health hazard to fire safety personnel, due to its poor ventilation system and lack of suitable support quarters for firefighters. The new fire station will reduce the risk of loss of life and injury, and damage to and loss of property.

Critical Facility Generators

Project Description: The City of Columbia is proposing to add backup generation capacity to the power grid for two of the City's critical buildings – Police Headquarters and the Fleet Services facility. Both the Central Midlands Hazard Mitigation Plan and South Carolina Hazard Mitigation Plan gave "high priority" ranking to the installation of critical facility backup generation projects. The State Plan noted the importance of this goal in ensuring adequate emergency response for the campus of the University of South Carolina. The campus is in the City of Columbia and served by its police and fire departments. At the time the hazard mitigation plans were published, no funding could be identified for either of these projects. The City is 53.45% low and moderate income.

1.4. Administrative Requirements

1.4.1 Conflict of Interest

The following governing regulations shall apply to conflicts of interest: 24 CFR §570.611, and 2 CFR 200.317 through 2 CFR 200.326, as well as the City of Columbia's Conflict of Interest and Procurement policies, as applicable. Those stated regulations affect sub grantees, subrecipients and the subrecipient's designees, agents, members, officers, employees, consultants or members of its governing body; as well as anyone who is in a position to participate in a decision-making process or gain inside information with regard to the project, or has or shall have any interest, whether direct or indirect, or in any contract or subcontract or the proceeds thereof for work performed in connection with the project, or benefit there from. City of Columbia city departments will be governed by the applicable written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts that abide by those referenced regulations and laws. No employee, officer or agent of the city department or subrecipient shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, whether real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent, or
- Any member of his immediate family, or
- His or her partner, or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The sub grantee and subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements. subrecipients may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the subrecipient's officers, employees, or agents, or by contractors or their agents. Columbia's Office of Community Development may impose or enforce additional prohibitions relative to real, apparent, or potential conflicts of interest.

1.4.2 Hatch Act

The subrecipient shall not use any CDBG-MIT funds to finance the use of facilities or equipment for political purposes or engage in other partisan activities (e.g., candidate forums, voter transportation, or voter registration). Sub grantees and subrecipients will comply with the provisions of the Hatch Act that limit the political activity of employees and the Housing and Urban Development (HUD) regulations governing political activity at 24 CFR §570.207.

1.4.3 Authorized Employees

A business entity or employer is prohibited from knowingly employing, hiring, or continuing to employ an unauthorized alien to perform work, either directly or indirectly, for the City of Columbia. Sub grantees, subrecipients and their contractors shall therefore covenant that it is not knowingly in violation of this requirement, and that it will not knowingly employ, hire for employment, or continue

to employ any unauthorized aliens to perform work on the project, and that its employees are lawfully to work in the United States.

1.4.4. Small, Women, Minority, and Veteran Owned Business Enterprises

It is federal and local government public policy to encourage contracting with business enterprises whose ownership is qualified or certified as one of the following or any combination thereof:

1. Small business enterprises (SBEs)
2. Minority business enterprises (MBEs)
3. Women business enterprises (WBEs)
4. Veteran owned business enterprises (VBEs)

It is the policy of the City of Columbia to promote and encourage contracting and supplier opportunities for small, minority and women owned business enterprises (SMWBEs), which have traditionally been underutilized in city contracts. The City of Columbia has developed a Mentor Protégé Program, Local Business Enterprise Preference and Subcontractor Outreach Program to provide meaningful project opportunities for these businesses. Also, pursuant to 40 CFR Part 31.136(e), sub grantees and subrecipients will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus firms are utilized when possible.

Subgrantees, subrecipients and all other participating parties (including contractors and subcontractors) will take all necessary affirmative steps and best efforts to afford small, minority and women owned business enterprises, and labor surplus area firms the maximum practicable opportunity to participate in federally assisted contracts.

1.5 Record Keeping

The general CDBG-MIT standard for record keeping is that records must be accurate, complete and orderly. The sub grantee or subrecipient shall maintain all records required by 24 CFR 570.506 and 2 CRF 200.333 through 2 CFR 200.337, as applicable. Therefore, a subrecipient shall maintain records that will include the following:

1.5.1 Administrative records:

These are files and records that apply to the overall administration of the subrecipient's CDBG-MIT activities. They include the following:

- Personnel files.
- Property management files.
- General program files: files relating to the subrecipient's application to the grantee, the subrecipient agreement, program policies and guidelines, correspondence with grantee and reports, etc.
- Legal files: articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

1.5.2 Financial records:

These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

1.5.3 Project/case files:

These files document the activities undertaken with respect to specific contracts, individual beneficiaries, property owners, and/or properties. See Appendix A for sample file checklist.

1.5.4 Certified Payroll Records:

See Compliance – Chapter IV – Labor Standards

1.5.5 24 CFR 570.506 Records Requirements for Low-Moderate Area Benefit Projects

The City of Columbia's CDBG-MIT infrastructure projects require compliance with HUD's documentation and records retention requirements to substantiate meeting HUD's project eligibility and national objectives. The currently proposed CDBG-MIT infrastructure projects meet HUD's national objective for Low-Moderate Area Benefit (LMA).

Each recipient shall establish and maintain enough records to enable the Secretary to determine whether the recipient has met the requirements of this part. At a minimum, the following records are needed:

> *(a) Records providing a full description of each activity assisted* (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus), the amount of CDBG funds budgeted, obligated and expended for the activity, and the provision in subpart C under which it is eligible.
>
> *(b) Records demonstrating that each activity undertaken meets one of the criteria set forth in §570.208***.** Such records shall include the following information:
>
> *For each activity determined to benefit low-and-moderate income persons based on the area served by the activity:*
>
> - The boundaries of the service area.
> - The income characteristics of families and unrelated individuals in the service area; and
> - If the percent of low-and-moderate income persons in the service area is less than 51 percent, data showing that the area qualifies under the exception criteria set forth at §570.208(a)(1)(ii).
>
> *(c) Records that demonstrate that the recipient has made the determinations* required as a condition of eligibility of certain activities, as prescribed in §§570.201(f), 570.201(i)(2), 570.201(p), 570.201(q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

1.6 Record Retention Requirements

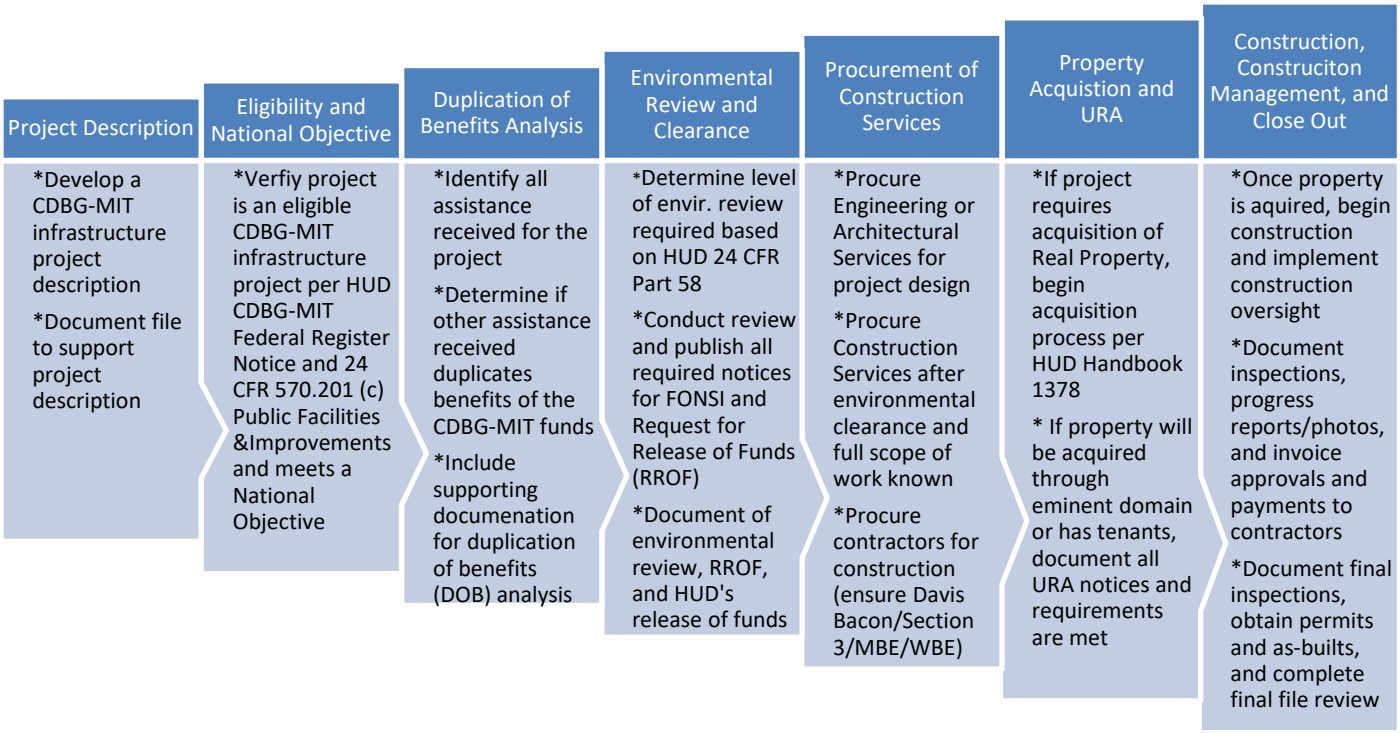
Sub grantee or subrecipient shall maintain all Project records required by 24 CFR 570.506 for three years from the date of submission of the final expenditure report (2 CFR 200.333).

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

Chapter 2: Mitigation Infrastructure Project Implementation

2.1. Infrastructure Project Overview

A HUD compliant infrastructure project will go through many phases and must document compliance at each phase of the process. Below is an overview of the separate phases or steps in the infrastructure process including project description, procurements, implementation, and close out.



2.2 Project Development

2.2.1 Developing a Project Description

The key first step in implementing an eligible CDBG-MIT infrastructure project is to develop a "project description" that meets HUD's criteria for a CDBG-MIT infrastructure project. Each CDBG-

MIT project must have a project file of record which when monitored by the City of Columbia or HUD will clearly "tell the story" of why the project was determined to be an eligible CDBG-MIT infrastructure activity and how the project was implemented in compliance with HUD and other cross-cutting Federal requirements.

HUD issued its Federal Register Notice (FRN) for CDBG-MIT on August 30, 2019 (84 FR 45838). The FRN provides the HUD criteria for an eligible mitigation activity. The project description will need to address **all** the FRN requirements. These requirements are described below.

2.2.2 Eligible Mitigation Activities

A CDBG-MIT infrastructure project must document that the activity will meet HUD's definition of mitigation. The CDBG-MIT FRN describes mitigation activities as "those activities that increase resilience to disaster and reduce or eliminate the long-term risk of loss of life, injury, damage to loss of property, and suffering and hardship, by lessening the impact of future disasters."

Based on this guidance, each project file must include a description of how the infrastructure activity will:

- Increase resilience to disaster,
- Reduce or eliminate the long-term risk of life, injury, damage to loss of property, suffering and hardship, and
- Lessen impact of future disasters.

2.2.3. Eligible Infrastructure Project

A CDBG-MIT infrastructure project must document that the activity will meet HUD's definition of an infrastructure project. The CDBG-MIT FRN provides the following definition for an infrastructure program:

Infrastructure mitigation programs may include regional investments in risk reduction for flood, fire, wind and other hazards to develop disaster-resistant infrastructure; upgrading of water, sewer, solid waste, communications, energy, transportation, health and medical, and other public infrastructure to address specific, identified risks; financing multi-use infrastructure; and green or natural mitigation infrastructure development.

2.2.4 Natural infrastructure

The City of Columbia develop a process to incorporate nature-based solutions and natural or green infrastructure in the design of CDBG–MIT projects. Each project file will need to document that natural or green infrastructure was considered for the project and included when feasible. If infeasible to incorporate natural or green infrastructure, document why.

2.2.5 Construction Standards

All CDBG-MIT infrastructure projects must meet the HUD construction standards for mitigation. The CDBG-MIT FRN requires each project file to include a description of how it will meet the following construction standards:

- Emphasize quality, durability, energy efficiency, sustainability, and mold resistance, as applicable.
- Consider application of the Green Building Standards; and
- Adhere to the advanced elevation requirements of the notice, if applicable.

For projects addressing flood risks, the City of Columbia must describe how it will document its decision to elevate structures and how it evaluated and determined the elevation to be cost reasonable relative to other alternatives or strategies, such as the demolition of substantially damaged structures with reconstruction of an elevated structure on the same site, property buyouts, or infrastructure improvements to reduce the risk of loss of life and property.

2.2.6 Operations and Maintenance

Each CDBG-MIT project must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG–MIT funds. The project file must describe how it will fund long-term operation and maintenance for CDBG–MIT project. Funding options might include State or local resources, borrowing authority or retargeting of existing financial resources. If operations and maintenance plans are reliant on any proposed changes to existing taxation policies or tax collection practices, those changes and relevant milestones should be expressly included in the project file.

Additionally, the City of Columbia must describe any State or local resources that have been identified for the operation and maintenance costs of projects assisted with CDBG–MIT funds.

2.2.7 Cost Verification

Each project file must describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction. OCD and its subgrantees will use an independent, qualified third-party architect, construction manager, or other professional (*e.g.,* a cost estimator) to verify the planned project costs and cost changes to the contract (*e.g.,* change orders) during implementation are reasonable.

The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (*e.g.,* project type, risk, costs), but the description, at a minimum, must address controls for CDBG–MIT infrastructure projects above a certain total project cost threshold identified by the grantee and for Covered Projects as defined for CDBG–MIT funds.

2.2.8 Covered Project

The City of Columbia does not have a CDBG-MIT infrastructure project that meets the definition of a Covered Project in the CDBG-MIT FRN (85 FR 45383). HUD defines a mitigation Covered Project as an infrastructure project having a total project cost of $100 million or more, with at least $50 million of CDBG funds (regardless of source (CDBG–DR, CDBG-National Disaster Resilience (NDR), CDBG–MIT, or CDBG)).

2.3. Verifying Project Eligibility and National Objective

Grantees must demonstrate that CDBG–MIT activities:

- Meet the definition of mitigation activities.
- Address the current and future risks as identified in the grantee's Mitigation Needs Assessment.
- Are CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and
- Meet a national objective, including additional criteria for mitigation activities and Covered Projects.

The grantee can use CDBG–MIT funds for activities that meet these criteria even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for the grantee's CDBG–MIT allocation.

2.3.1 Eligible Activities

All activities to be funded by the Mitigation Infrastructure Program must be an eligible CDBG-MIT activity that meets a HUD national objective. Eligible HUD infrastructure activities are listed in 24 CFR 570.201 (c) and further defined for the CDBG-MIT funds in the FRN (84 FR 45838). Below are the specific eligibility requirements for infrastructure which is considered a "public facility" under the regulations.

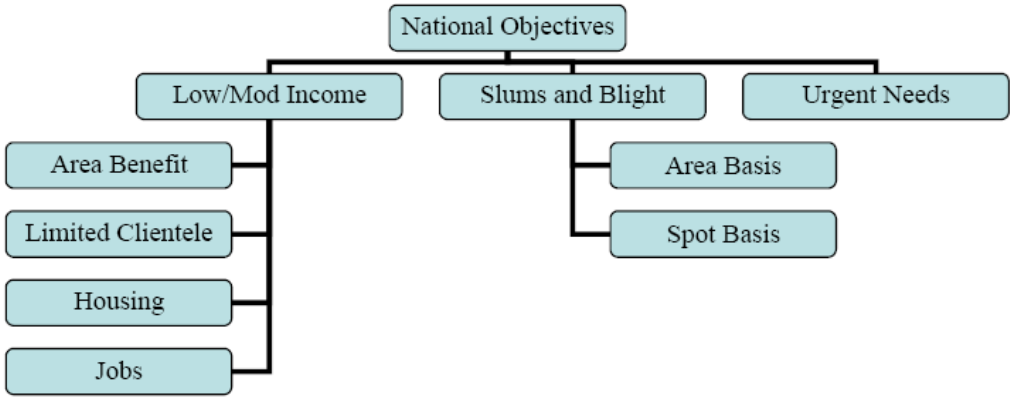
> ***24 CFR 570.201 (c) Public Facilities and Improvements***
> *Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in §570.207(a), carried out by the recipient or other public or private nonprofit entities. (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in §570.207(a)(1).) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in §570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in §570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in §570.200(b).*

2.3.2 National Objectives

All eligible activities using CDBG-MIT funds must meet at least one National Objective as defined by HUD. The three HUD National Objectives are:

- Benefiting Low- and Moderate-Income persons.
- Prevent or eliminate Slums and Blight; and
- Meet an Urgent Need

The chart below shows the three national objectives and criteria to be met under each.



The City of Columbia will use the Low-and-Moderate Income Area (LMA) benefit approach to meet the LMI national objective for its mitigation infrastructure projects. In the unlikely event that the project cannot meet LMA, the Urgent Need national objective may be used in accordance with the CDBG-MIT FRN's additional Urgent Need Mitigation (UNM) criteria discussed below.

National Objectives – Public Facilities and Improvements

OBJECTIVE	QUALIFIES IF	RECORDS TO BE MAINTAINED
Low-and-Moderate Income Area	The public service is available to all the residents in a primarily residential area, and at least 51% of those residents are LMI persons.	Boundaries of the service area and the basis for determining those boundaries; and The percentage of LMI persons in the service area and the data used for determining that percentage.
Urgent Need	The public service is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community, they are of	A description of the condition that was addressed, showing the nature and degree of seriousness of the threat it posed.

	recent origin or recently became urgent, and the grantee is unable to find other available funds to support the activity.	Evidence confirming that other financial resources to alleviate the need were not available. **See additional criteria below

2.3.2.1 Additional criteria applicable to all mitigation activities funded with CDBG–MIT

The provisions of 24 CFR 570.483(e) and 570.208(d) are modified by an alternative requirement in the CDBG-MIT FRN to add the following additional criteria for all mitigation activities funded with CDBG–MIT funds.

To meet a national objective, all CDBG–MIT activities must:

- Demonstrate the ability to operate for the useful life of the project. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG–MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG–MIT projects. Funding options might include State or local resources, borrowing authority, or retargeting of existing financial resources.
- Be consistent with other mitigation activities. The CDBG–MIT activity must be consistent with the other mitigation activities that the grantee will conduct with CDBG–MIT funds. To be consistent, the CDBG–MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG–MIT funds.

2.3.2.2 Additional urgent need national objective criteria for CDBG–MIT Activities

In the context of mitigation and the allocation of CDBG–DR funds, the department has historically provided waivers and established an alternative requirement to the urgent need national objective of the CDBG program as one means of helping communities to recover quickly. Specifically, the department has waived the certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), recognizing that in the context of mitigation those requirements have proven burdensome and redundant.

The Appropriations Act directs the department to allocate CDBG–MIT funds to grantees that received CDBG–DR funds to assist in recovery from major federally declared disasters occurring in 2015, 2016 and 2017. To reflect the direction of the
Appropriations Act to allocate funds to grantees recovering from recent disasters and to address the demonstrable need for significant mitigation improvements by those grantees, the department is waiving the criteria for the urgent national objective as provided at 24 CFR 570.208(c) and 24 CFR 570.483(d) and is establishing an alternative requirement to include new urgent need national objective criteria for CDBG–MIT activities.

To meet the alternative criteria for the urgent need mitigation (UNM) national objective, each grantee must document that the activity:

- Addresses the current and future risks as identified in the grantee's Mitigation Needs
- Assessment of most impacted and distressed areas; and
- Will result in a measurable and verifiable reduction in the risk of loss of life and property.

To meet the UNM national objective criteria, grantees must reference in their action plan the risk identified in the Mitigation Needs Assessment that is addressed by the activity. Grantees must maintain documentation of the measurable and verifiable reduction in risk that will be achieved upon completion of the activity. Action plans must be amended, as necessary, to ensure that this information is included for each activity undertaken with CDBG–MIT funds.

Unless a grantee has received prior approval from HUD, CDBG–MIT activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective is not appropriate in the context of mitigation activities.

2.4. Duplication of Benefits Analysis

The City of Columbia, in compliance with the CDBG-MIT FRN and the Robert T. Stafford Disaster Relief and Emergency Act will complete a duplication of benefit analysis for all infrastructure projects to ensure that CDBG-MIT funds do not duplicate other sources of funding for the same activity.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) requires that recipients of federal mitigation funding make certain that no "person, business concern or other entity" will receive duplicative assistance'. Because disaster assistance to each person/entity varies widely based on their insurance coverage and eligibility for federal funding, grantees cannot comply with the Stafford Act without first completing a duplication of benefits (DOB) analysis specific to each applicant.

A Duplication of Benefit occurs when:

- A beneficiary receives assistance, and
- The assistance is from multiple sources, and
- The assistance amount exceeds the need for a recovery purpose.

In order to ensure that CDBG-MIT funding is spent on eligible activities, the City is responsible to verify that each program provides assistance to a person or entity only to the extent that the person or entity has a mitigation need that has not been fully met by funds that have already been, or will be paid, from another source.

The purpose of this section is to outline the process by which the City will verify that all applications

for assistance from the programs funded by the City, as well as all projects implemented by City sub grantees, contractors and sub-recipients, will be reviewed for duplication of benefits. The procedures described below are also applicable to all grantees and sub-recipients and must be incorporated in the design and administration of programs/projects undertaken by them.

2.4.1 Duplication of Benefits Requirement

The City of Columbia requires any sources of funding assistance provided for the same purpose as the scope of work to be assisted with CDBG-MIT funds to be considered a duplication of benefits ("DOB") and must be deducted from the CDBG-MIT assistance to be provided.

2.4.2 Potential DOB Sources

The following are a list of sources of funding assistance to be considered in a duplication of benefits review:

- FEMA National Flood Insurance Program ("NFIP").
- U.S. Army Corps of Engineers ("USACE").
- U.S. Department of Transportation, including the Federal Highway Administration ("FHWA") and the Federal Transit Administration ("FTA").
- Federal Economic Development Agency ("FEDA").
- Federal Emergency Management Agency ("FEMA")
- U.S. Food and Drug Administration ("FDA")
- Private Insurance.
- Increased Cost of Compliance ("ICC").
- Philanthropic funds.
- Any other funding source that may duplicate assistance.

2.4.3 Specific DOB Guidance for CDBG-MIT

The CDBG-MIT FRN provides the following additional guidance for duplication of benefits requirements regarding SBA and declined loans. See specific guidance below:

"Section 312 of the Stafford Act, as amended, prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which such person, business concern, or other entity has received financial assistance under any other program or from insurance or any other source. To comply with Section 312 and the requirement that all costs are necessary and reasonable, each grantee must ensure that each activity provides assistance to a person or entity only to the extent that the person or entity has a mitigation need that has not been fully met. Accordingly, grantees must comply with the requirements of the 2019 DOB Notice. "

The DOB Notice shall apply equally to CDBG–MIT funds and CDBG–MIT grants. As described in the 2019 DOB Notice, all CDBG–MIT grants are subject to the requirement under the tenth proviso following the Community Development Fund heading of Public Law 115–123 (Declined Loans Provision) and the requirements for its implementation in the 2019 DOB Notice. The Declined Loan Provision states: ''Provided further, That with respect to any such duplication of benefits, the Secretary and any grantee under this section shall not take into consideration or reduce the amount

provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration under section 7(b) of the Small Business Act (15 U.S.C. 636(b)).''

Chapter 3: Applicable Environmental Regulations

3.1 Environmental Review

The City of Columbia will comply to the following environmental regulations when implementing CDBG-MIT infrastructure activities:

- 40 CFR Part 1500-1508 (Regulations for Implementing the National Environmental Policy Act)
- 24 CFR Part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities)
- 24 CFR Part 51 (Environmental Criteria and Standards)
- 24 CFR Part 55 (Floodplain Management)
- 24 CFR Part 35 (Lead Based Paint Rule)
- 36 CFR Part 800 (Protection of Historic Properties)

3.2 Environmental Review Process (24 CFR 58.30)

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with Sec. 58.32.
(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

3.3 Levels of Environmental Review

The City of Columbia will undertake the environmental review for the CDBG-MIT activities in accordance with the appropriate levels of review as defined under 24 CFR Part 58.

Overview of the Level of Review

Level of Review	Level of Impact	Sample Infrastructure Activities
Exempt (24 CFR 58.34)	The responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the exempt activities	• Environmental and other studies • Inspections and testing of properties for hazards or defects • Engineering or design costs • Purchase of tools
Categorical Exclusion Not Subject to Statutory Checklist (24 CFR 58.35(b))	Actions do not individually or cumulatively have a significant effect on the human environment.	• Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs.
Categorical Exclusion Subject to Statutory Checklist (24 CFR 58.35 (a))	Actions having minimal physical impact and/or alteration of site conditions.	• 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 (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

Level of Review	Level of Impact	Sample Infrastructure Activities
Environmental Assessment	Actions that are not categorical exclusions and do not normally require an EIS. A determination is made on whether there is potential for significant impact on the human environment.	• Improvement project that increases the size or capacity by more than 20% (Increase the size of a water or sewer line from a 2" pipe to an 8" pipe)
Environmental Impact Statement (EIS)	Actions that may have a significant environmental impact, including when an EA was completed but did not result in a finding of no significant impact.	The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

1) Exempt (24 CFR Part 58.34)

Except for the applicable requirements of Sec. 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies.
(2) Information and financial services.
(3) Administrative and management activities.
(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, childcare, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects.
(6) Purchase of insurance.
(7) Purchase of tools.
(8) Engineering or design costs.
(9) Technical assistance and training.
(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.
(11) Payment of principal and interest on loans made or obligations guaranteed by HUD.
(12) Any of the categorical exclusions listed in Sec. 58.35
(a) if there are no circumstances which require compliance with any other Federal laws and authorities cited in Sec. 58.5.
(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

2) Categorically Excluded, not subject to 58.5 (24 CFR Part 58.35(b))

The department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in Sec. 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances requiring NEPA review. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except NEPA review applies.

Circumstances requiring NEPA review*:* If a responsible entity determines that an activity or project identified in this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of an Environmental Impact Statement (EIS).

The recipient remains responsible for carrying out any applicable requirements under Sec. 58.6.

(1) Tenant-based rental assistance.
(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs.

(4) 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.

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including 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.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

3) Categorically Excluded, subject to 58.5 (24 CFR Part 58.35(a))

The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 58.5:

(1) 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 (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a
floodplain or in a wetland.

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20
percent.

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

(ii) 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.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) 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.

(6) Combinations of the above activities.

4) Environmental Assessment (24 CFR Part 58.36)

If a project is not exempt or categorically excluded under Secs. 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under Sec. 58.37, the responsible entity should proceed directly to an EIS.

SUBPART E--ENVIRONMENTAL REVIEW PROCESS: ENVIRONMENTAL ASSESSMENTS (EA'S)
SEC. 58.40 PREPARING THE ENVIRONMENTAL ASSESSMENT

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in Sec. 58.5 and Sec. 58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in Secs. 58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to Sec. 58.43.
(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

SEC. 58.43 DISSEMINATION AND/OR PUBLICATION OF THE FINDINGS OF NO SIGNIFICANT IMPACT.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by Sec. 58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and
(2) Advise the public to specify in their comments which ``notice'' their comments address.
(3) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

SEC. 58.45 PUBLIC COMMENT PERIODS

Required notices must afford the public the following minimum comment periods, counted in accordance with Sec. 58.21:

(a) Notice of Finding of No Significant Impact (FONSI) 15 days when published or, if no publication, 18 days when mailing and posting

(b) Notice of Intent to Request Release of Funds (NOI-RROF) 7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices 15 days when published or, if no publication, 18 days when mailing and posting.

SEC. 58.46 TIME DELAYS FOR EXCEPTIONAL CIRCUMSTANCES.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project.
(b) The proposed project is like other projects that normally require the preparation of an EIS; or
(c) The project is unique and without precedent.

5) Environmental Impact Statement (24 CFR Part 58.37)

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.
(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.
(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under Sec. 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.
(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, based on an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.
(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where Sec. 58.53 is applicable.
(e) Recommended EIS Format. The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

3.4 Re-evaluation of environmental assessments and other environmental findings (Sec. 58.47)

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) 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.
(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or
(3) The recipient proposes the selection of an alternative not in the original finding.

(b) (1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.
(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.
(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraphs (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3)of this section, and must them permit the responsible entity to re-evaluate the findings before proceeding.

3.5 Project Aggregation

Further, consistent with HUD's NEPA implementing requirements at 24 CFR 58.32(a), in responding to the requirements of the CDBG-MIT notice, the City of Columbia must group together and evaluate as a single infrastructure project all individual activities which are related to one another, either on a geographical or functional basis, or are logical parts of a composite of contemplated infrastructure-related actions.

Related activities are ones that:

- Automatically trigger other actions
- Cannot or will not proceed unless other actions are taken beforehand or at the same time
- Are mutually dependent parts of a larger activity/action

In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the City of Columbia 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.

The purpose of project aggregation is to group together related activities so that the City of Columbia can:

(1) Address adequately and 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)).
(2) Consider reasonable alternative courses of action.
(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.
(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

When the City of Columbia provides for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

The City of Columbia will:

(1) Seek to complete environmental reviews and authorization decisions for major infrastructure projects in not more than an average of two years, measured from the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to the issuance of the Record of Decision (ROD);
(2) Develop a Permitting Timetable that includes milestones for applicable environmental reviews and authorizations and is updated at least quarterly on the Permitting Dashboard (*www.permits.performance.gov*).
(3) Coordinate with cooperating and participating Federal agencies, to develop a single EIS and coordinate a single ROD.
(4) Seek to ensure that all necessary authorization decisions for the construction of the project are completed within 90 days of issuance of the ROD: and
(5) Seek to ensure that there is an effective process in place to elevate instances in which a Permitting Timetable milestone is missed or extended, or is anticipated to be missed or extended, to higher officials (including senior responsible entity leadership) for timely resolution, and that if follow such process.

Chapter 4: Procurement Standards and Procedures

Subrecipients must maintain records that document the rationale for the method used for procurement, selection of the contract type, contractor selection or rejection, and the basis for the selection including cost or price. Refer to the previous chapter for Rules of Conduct that must be followed throughout the project, including during procurement.

4.1 Definition of Terms

Bid or sealed bid: An offer in response to invitations for bids.

Bidder (contractor/consultant): A generic term that refers to a person or entity who submits an offer in response to a solicitation.

Contract (Subrecipient Agreement): A mutually binding legal relationship obligating the seller (contractor; professional A/E) to furnish the supplies or services (including construction) and the buyer (subrecipient) to pay for them. It includes all types of commitments that obligate the subrecipient to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. All contracts utilizing CDBG-MIT funds MUST contain liquidated damages provision.

Conflict of Interest: Arises when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. A conflict of interest exists when a situation arises that can undermine a person's involvement in an activity due to self-interest and public interest.

Consultant: A person or company that possesses unique qualifications that allow them to perform specialized advisory services, usually for a fee.

Contractor: A third-party firm procured by subgrantee or subrecipient and paid with CDBG-MIT funds in return for a specific service (e.g., construction or professional services).

Contracting Unit: Sub grantee or subrecipient (Owner).

Independent Cost/Price Analysis: Federal procurement regulations require the performance of a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

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 Analysis.** The process of verifying proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits to verify cost reasonableness. Cost analysis is not only required on the basic non-competitive award but also on amendments or modifications of the proposed agreement. The City will negotiate profit as a separate element of the price if no price competition exists.
>
> **Price Analysis.** The process of examining and evaluating a prospective price without performing cost analysis; that is, without evaluating the separate cost elements and profit of the offeror included in that price. The end result of price analysis is to ensure fair and reasonable pricing of a product or service. Price analysis may include a variety of techniques such as comparing proposed prices with prices of same or comparable items obtained through market research. (Nash, Schooner, O'Brien, 1998).

Offer: A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids"' or "sealed bids;" responses to requests for proposals (negotiation) are offers called "proposals."

Owner: Sub grantee or subrecipient (unit of city government) or private entity that receives CDBG-MIT MIT funds.

Project: The project activities described in the executed Intergovernmental or Subrecipient Agreement, which are to be carried out to meet the objectives of the CDBG-MIT MIT Program.

Professional Services: The professional landscape, architectural, engineering, and land surveying services, including planning, environmental, and construction inspection services required for the development and construction of projects, as defined by the laws of the State or those performed by an architect, landscape architect, professional engineer or professional land surveyor in connection with his or her professional employment practice.

Requests for Proposals (RFPs): A document that outlines the bidding process, scope of work, and contract terms, and provides guidance on how the bid should be formatted and presented. An RFP is typically open to a wide range of bidders, creating open competition between vendors.

Request for Qualifications (RFQus): A document, which is issued by a procurement entity to obtain statements of the qualifications of potential responders (development teams or consultants) to gauge potential competition in the marketplace, prior to issuing the solicitation (*Institute for Public Procurement)*

Sealed Bidding: A method of contracting that employs competitive bids, public opening of bids, and awards.

Section 3: Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (as amended), requires that economic new employment opportunities generated by certain HUD financial assistance for construction and related activities for housing (including Public and Indian Housing), infrastructure and community development programs shall, to the greatest extent feasible, be given to low and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons. The requirements of Section 3 apply to recipients of HUD Community Planning and Development funding exceeding $200,000. Section 3 covered projects are those in which a combined (or aggregate) amount of covered funding exceeding $200,000, is invested into activities involving housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc. Contractors or subcontractors that receive contracts in excess of $100,000 for Section 3 covered projects/activities are required to comply with the Section 3 regulations in the same manner as direct recipients. If the recipient agency receives Section 3 covered funding and invests these funds into covered projects/activities, but no individual contract exceeds $100,000, responsibility for complying with Section 3 only applies to the recipient. Any recipient of CDBG-MIT funds to be used for construction related activities is required to submit Section 3 reports to the granting agency on a quarterly basis. (See specific contract language in Chapter 6.)

Solicitation: Any request to submit offers or quotations to the sub grantee or subrecipient. Solicitations under sealed bid procedures are called "invitations for bids." Solicitations under negotiated procedures are called "requests for proposals''.

Subconsultant: Any person, firm, partnership, corporation, association or other organization, or a combination of any of them, that has a direct contract with a design professional or another subconsultant to perform a portion of the work under a design professional service contract.(www.lawinsider.com)

Subcontract: Any contract as defined above "Contract" entered by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract.

Subcontractor: Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Sub grantee/ Subrecipient (Owner): The city department or nonprofit organization selected to administer this Project on behalf of the City of Columbia, Office of Community Development (OCD)

4.2 Methods of Procurement

Procurement by micro purchases. Procurement by micro purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro purchase

threshold (§200.67 Micro purchase), currently $10,000. To the extent practicable, the non-Federal entity must distribute micro purchases equitably among qualified suppliers. Micro purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

Procurement by small purchase procedures. Small purchase procedures are those simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (currently $250,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction if the following conditions apply. In order for sealed bidding to be feasible, the following conditions should be present:

- 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.

If sealed bids are used, the following requirements apply:

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

Procurement by competitive proposals. The technique of 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 used when conditions are not appropriate for the use of sealed bids.

If this method is used, the following requirements apply:

- Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- Proposals must be solicited from an adequate number of qualified sources.
- The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

Sole Source Acquisition/Procurement by Non-competitive Proposals: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- The item is available only from a sole source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
- The Federal awarding agency or passthrough 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.

4.3 MBE/WBE/VB/SB Utilization

Subrecipients and their bidders must fully comply with the requirements, terms and conditions of the federal and city policy to award a fair share of sub agreements to minority and women's businesses. The bidder commits itself to taking affirmative actions contained herein, prior to submission of bids or proposals. Subrecipients and contractors must certify affirmative action/EEO/Section 3/Prevailing wage SWMVBE's addendum to construction contract and bid documents.

The subrecipient and its bidders will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
Affirmative steps shall include:

A. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.

B. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
C. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
D. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.
E. Using the services and assistance of the Office of Business Opportunity; and
F. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in items (a) through (f) of this section.

4.3 Federal Standard Labor Provisions

All construction funded using CDBG-MIT funding by the City of Columbia must comply with the provisions summarized in HUD 4010 "Federal Labor Standard Provisions". Nothing, however, shall prohibit the payment of more than the prevailing wage rate to any construction worker employed on the construction project**.** Notification that the project is governed by Federal Labor Standards (Davis Bacon) provisions, along with applicable wage rate determinations must be included in all bid specifications and contracts. Wage determinations must be included in any procurement involving construction. (See Chapter 6 for additional detail.)

4.4 Section 3 Provisions

All construction funded using CDBG-MIT funding by the City of Columbia that exceed a threshold of $200,000 must comply with Section 3 requirements for hiring and tracking labor hours for Section 3 and Targeted Section 3 workers. The waiver granted for the CDBG-MIT allocation defines a Section 3 worker as an employee who's annualized wages/salary does not exceed that of a one-person household at 80% of Area Median Income at the time of hire, or commencement of construction. The requirement applies to both direct construction and construction -related jobs. (See Chapter 7 for additional detail.)

4.5 Bonding Requirements

In carrying out CDBG-MIT activities (except professional services contracts), **CDBG-MIT subrecipients must establish bonding and insurance requirements that ensure completion of CDBG-MIT funded construction contracts in the event of contractor or subcontractor default.** Subrecipients are free to use their requirements relating to bid guarantees, performance bonds, and payment bonds for contracts of $100,000 or less in value. For contracts above the $100,000, the minimum requirements shall be as follows:

4.5.1 Bid Guarantee

A bid guarantee is used to ensure that a bidder, if awarded a contract within the time stipulated, will enter a contract and furnish the performance bond, payment bond and the maintenance bond (if required).

Bidders shall submit with the bid a certified check, cashier's check or bid bond in the amount of 5% of the total price bid, but not in excess of $20,000, payable unconditionally to the owner. When submitting a Bid Bond, it shall contain Power of Attorney for full amount of Bid Bond from a surety company authorized to do business in the City of Columbia and acceptable to the owner. The check or bond of the unsuccessful bidder(s) shall be returned pursuant to N.J.S.A. 40A:11-24a. The check or bond of the bidder to whom the contract is awarded shall be retained until a contract is executed and the required performance bond or other security is submitted. The check or bond of the successful bidder shall be forfeited if the bidder fails to enter into a contract pursuant to N.J.S.A. 40A:11-21.

Failure to submit a bid guarantee shall result in rejection of the bid.

4.6 Cost/Price Verification

In advance of any procurement for construction or related services, the Office of Community Development will ensure that a cost analysis of the items and services to be procured has been secured. This will be done by either a qualified City staff or an independent third-party architect, construction manager or other appropriate professional. This ensures that the City as a "cost reasonableness" determination prior to procurement and that costs are necessary and reasonable based on current market costs at the time of construction.

4.7 Public Bid Opening

All construction bid openings must be conducted according to City of Columbia procurement policies, procedures and/or regulations.

The following provides general guidance:

A. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening.

B. Bids must also be reviewed for technical, financial and legal responsiveness of bids. The contract must be awarded to the **lowest, responsible and responsive bidder**.

C. The bidders must be evaluated as having the capacity to furnish products and/or services required.

D. Complete electronic and hard copy representation of the entire procurement process, including the RFP, tabulation of bids, award notifications, Notice to Proceed and all related procurement documents must be sent to the City of Columbia Office of Community Development by the Office of Procurement and Contracts at the conclusion of each procurement.

E. The procuring agency must submit the following documentation to the Office of Community Development for the project file:
   1. Bid Advertisement with date and method of publication shown.
   2. A copy of the bid package, including specifications and drawings provided.
   3. Copies of all bids received and bid tabulation sheet.
   4. Resolution(s) to enter into contract and/or any resolutions pertaining to the construction procurement process.
   5. A copy of the contract(s) entered into; and
   6. A statement from the purchasing official stating their determination of how the contract meets City procurement law and requirements.

F. Office of Community Development Authorizes Award of Contract

After the bid opening, the subrecipient must take action to award the contract or reject all bids within such time as may be specified in the invitation to bid, but in no case more than 60 days. The subrecipient and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days.

Chapter 5: Contract Management

5.1 Introduction

As stated in the Procurement Chapter, the City will procure a broad range of materials and services to successfully complete their project activities. Following proper procurement and selection, each of these services will require the execution of a formal and binding contract. This chapter will suggest avenues that the subrecipient may employ to successfully manage their contracts.

In accordance with the CDBG-MIT Mitigation Action Plan (approved by HUD June 29, 2020), the City of Columbia has opted to follow the City of Columbia regulations pertaining to contract management. The subrecipient shall comply with City of Columbia regulations and requirements regarding contracting with service professional and contractors.

5.2 Definition of Terms

Executed Contract Form:	The binding agreement with appropriate signatures of all parties attested and dated.
Certificate of Owner's Attorney:	A record of the local attorney review and acceptance of the terms of the contract.

Or Equal Clause:	Language that tells the bidder that any references to brand names are solely for explanation/clarification and that any and all equals are allowed.
Required Levels of Insurance:	information for the bidder listing all necessary types and levels of insurance: worker's compensation, public liability and property damage, vehicle liability, special hazards, builder's risk, etc.
Subcontracting:	A statement of the terms under which any part of the contract may be subcontracted.
Architects/Engineers Authority:	Provides information to the contractor that the owner has retained decision making authority regarding specifications relative to the contract and that the engineer or architect serves in an advisory capacity to the Owner.
Conflicting Conditions:	When contract documents are found to have two statements in conflict.
Anti-Lobbying:	The form preventing the contracted agent from using any of the CDBG-MIT funds to lobby a member of Congress.
Contract Amount:	Dollar value of contract, with any contingencies noted.
Specifications:	The exact detail of the work to be completed.
Period of Service:	The time for which the contract is valid and the date that the work is to be completed.

Scope of Services:	The detailed activities that the contracted agent is expected to perform for payment under the terms of the contract.
Bond Requirements:	Pursuant to 2 CFR 20.325 and City of Columbia regulations, bond requirements for the project (typically 5%) must be included in contract provisions for all construction contracts.
Address of The Work Sites:	The exact project site location(s).
Schedule of Payment:	The allowed drawdown of funds to be paid under the contract (often coincides with the milestones).
Applicable Retainage:	The amount held by the subrecipient until the project is 100% complete, used as a control device.
Final Inspection:	The act of the responsible party(ies), usually the engineer, to inspect the work completed and recommend final payment.
Engineer/Consultant's Certification for Acceptance and Final Payment:	To be completed by the project engineer once final inspection of all work under the contract documents has been completed in accordance with the drawings and specification and is functioning properly. Recommendation for final payment.
Termination:	The circumstances under which designated parties may terminate the contract, usually described for cause or convenience.

Completion Time/Liquidated Damage:	Completion date expectations for work and prescribes level of daily monetary penalty to contractor for days beyond prescribed date.
Termination for Cause/Liquidated Damages:	Penalties for unsatisfactory performance other than those addressed above related to completion time/deadlines.
Records and Audits:	The maintenance of records (personnel, property, and financial) to ensure proper accounting, and the conditions under which they are to be made available.

5.3 Common Rules Regarding Contracting (with CDBG-MIT monies)

1. All services, professional, or construction, paid in whole or in part with CDBG-MIT funds, require the **execution of a formal contract**.

2. The use of CDBG-MIT dollars, regardless of the amount, for payment of any service under contract in a grant, initiates the contracting requirements described in this chapter. The total amount of the contract will often indicate the proper documentation to be included in the contract, and the method required for procurement.

3. All contracts should contain a clear, concise, and detailed description of the:
   a. scope of work
   b. total cost
   c. duration or life of the contract
   d. compliance requirements
   e. reporting responsibilities
   f. penalty clauses for unsatisfactory performance.

4. All contracts requesting payment for activities not clearly defined in the scope of services may be denied CDBG-MIT funding.

5. It is the responsibility of the subrecipient to manage all contracts executed for CDBG-MIT funded projects.

6. All contracts using CDBG-MIT funds for payment must pass a cost reasonableness test.

7. Before the subrecipient can sign a contract with a proposed contractor or professional service provider, the subrecipient must ensure that the parties are not on the Federal listing of excluded parties for a federally funded project. See Chapter 2, item 10 for more information on debarment checks.

8. All professional service contracts and construction contracts paid for with CDBG-MIT funds must use firms/businesses that are licensed to operate in the City of Columbia and the State of South Carolina, as well as all other applicable licensing and regulatory agencies. No grant funds will be released to pay businesses that do not hold this license.

9. All licensed businesses must be in good standing with the Secretary of State's office if they are to be paid with CDBG-MIT funds.

10. The bonding company used by the contractor to provide payment and performance bonds must be listed with the Department of the Treasury's Listing of Approved Sureties.

5.4 Forms of Contract

5.4.1 Professional Services Contracts

The non-Federal entity may use competitive proposal procedures for qualifications based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. (2 CFR 200.320)

Architectural/ Engineering fees must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the City of Columbia Office of Community Development (OCD) is not adequate.

If, after a project has been funded, any of the following occur:

- the original approved scope of work,
- change the contract price, or
- cause changes in the construction schedule

the Department of Community Development must be advised immediately.

All change orders **MUST** be approved by the City of Columbia OCD prior to the execution of the change order or completion of the work proposed. If the change order results in an increase in the contract price, then written verification must be placed in the file affirming that the Subrecipient or OCD has reviewed the change order and documented the cost increase to be "necessary and reasonable."

If the change is substantial (increase of more than 5% in original contract price), a third-party cost verification must be secured prior to approval, and should be retained in the project file. Change orders must meet the same standards as those of the original procurement in that they must be consistent with market costs at the time and place of construction as well as being justified based on documented change in circumstances or conditions.

For professional services contracts for any activities involving housing construction, demolition, rehabilitation, or other public construction—i.e., roads, sewers, community centers, etc., of at least $100,000 with any amount of - CDBG-MIT funding involved, Section 3 does apply. (See CHAPTER 6: Section 3)

5.4.2 Construction Contracts

The subrecipient may use a generic construction contract but must include City of Columbia Standard Terms and Conditions, and the Statement of Assurance. Firm-fixed-price contracts used to acquire construction services must be priced on a lump-sum basis with itemized costs per unit. The City of Columbia requires itemized costs per unit. When contract changes are made, the unit cost prevails. Cost plus a percentage of cost and percentage of construction cost methods are prohibited.

5.4.3 Contract Requirements (for Professional Services and Construction, or as noted)

5.4.3.1 Bonding Requirements (Construction Contracts Only)

A. Performance Bond

Bidder shall be prepared to simultaneously, with the delivery of the executed contract, submit an executed bond in the amount of 100% of the acceptable bid as security for the faithful performance of this contract.

The performance bond provided shall not be released until final acceptance of the whole work and then only if any liens or claims have been satisfied. The surety on such bond or bonds shall be a duly authorized surety company authorized to do business in the City of Columbia.

Failure to submit this with the executed contract shall be cause for declaring the contract null and void.

B. Payment Bond

Bidder shall be prepared to simultaneously with the delivery of the executed contract, submit Payment and Performance Bond totaling 100% of the contract price. Bidder shall with the delivery of the performance bond submit an executed payment bond to guarantee payment to laborers and suppliers for the labor and material used in the work performed under the contract.

Failure to submit a labor and material bond with the performance bond shall be cause for declaring the contract null and void.

5.4.3.2 Insurance and Indemnification

Construction Coverage Requirements: The contractor shall procure and maintain at its own expense, throughout the term of the contract and any extensions thereto, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and approved to do business in the City of Columbia. The Vendor shall obtain this coverage from A-VII or better-rated companies, as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis, with the exception of the professional liability coverage.

The types and minimum amounts of insurance required are as follows:

a. **Commercial General Liability Insurance** - The minimum limits of liability for this insurance shall be $1 Million per occurrence and $2 Million in the aggregate and cover liability based on property damage, death and bodily injury.

   The Commercial General Liability Insurance policy shall provide coverage least as broad as the standard, basic, unamended and unendorsed commercial general liability policy and shall include contractual liability coverage. The policy shall name the City of Columbia and its agencies, employees and officers as an additional insured.

b. **Commercial Automobile Liability Insurance -** The Commercial Automobile Liability policy shall cover any owned, hired or non-owned automobile/vehicle used by the insured with minimum limits for liability for bodily injury and property damage shall not be less than $500,000 per occurrence as a combined single limit.

c. **Workers' Compensation -** Workers' Compensation Insurance shall be maintained in full force during the life of the contract, covering all employees engaged in the performance of the contract.

d. **Professional Liability Insurance:** The vendor shall carry errors and omissions and/or professional liability Insurance sufficient to protect the vendor from any liability arising out of professional obligations performed pursuant to this contract. The insurance shall be in the amount of $1 million per occurrence and $2 million aggregate and in such policy, form as shall be approved by the City. The policy shall name the City of Columbia and its agencies, employees and officers as an additional insured.

Certificates of the required Insurance: *Certificates of Insurance* for those policies required above shall be submitted with the contract. Such coverage shall be with an insurance company authorized to do business in the City of Columbia and shall name the owner as an additional insured.

Self-insured contractors shall submit an affidavit attesting to their self-insured coverage and shall name the owner as an additional insured.

Indemnification: Bidder shall indemnify and hold harmless the owner from all claims, suits or actions, and damages or costs of every name and description to which the owner may be subjected or put by reason of injury to the person or property of another, or the property of the owner, resulting from negligent acts or omissions on the part of the contractor, the contractor's agents, servants or subcontractors in the delivery of goods and services, or in the performance of the work under the contract.

5.4 Termination of Contract

If, through any cause, the contractor shall fail to fulfill in a timely and proper manner obligations under the contract or if the contractor shall violate any of the requirements of the contract, the owner shall there upon have the right to terminate the contract by giving written notice to the contractor of such termination and specifying the effective date of termination. Such termination shall relieve the owner of any obligation for balances to the contractor of any sum or sums set forth in the contract. Owner will pay only for goods and services accepted prior to termination.

Notwithstanding the above, the contractor shall not be relieved of liability to the owner for damages sustained by the owner by virtue of any breach of the contract by the contractor and the owner may withhold any payments to the contractor for the purpose of compensation until such time as the exact amount of the damage due the owner from the contractor is determined.

The contractor agrees to indemnify and hold the owner harmless from any liability to subcontractors/suppliers concerning payment for work performed or goods supplied arising out of the lawful termination of the contract by the owner under this provision.

In case of default by the contractor, the owner may procure the goods or services from other sources and hold the contractor responsible for any excess cost.

Continuation of the terms of the contract beyond the fiscal year is contingent on availability of funds in the following year's budget. In the event of unavailability of such funds, the owner reserves the right to cancel the contract.

Acquisition, merger, sale and/or transfer of business, etc.: It is understood by all parties that if, during the life of the contract, the contractor disposes of his/her business concern by acquisition, merger, sale and or/transfer or by any means convey his/her interest(s) to another party, all obligations are transferred to that new party. In this event, the new owner(s) will be required to submit all documentation/legal instruments that were required in the original bid/contract. The Owner shall approve any change.

The contractor will not assign any interest in the contract and shall not transfer any interest in the same without the prior written consent of the owner.

The owner may terminate the contract for convenience by providing sixty (60) calendar days advanced notice to the contractor.

5.5 Mandatory Contract Language

Inclusion of the following mandatory contract language in **every goods and services contract and construction contract**.

5.5.1 MBE/DBE/WBE/VBE/SBE:

"Subrecipient and/or borrower agree to use its best efforts to afford small businesses, minority business enterprises, women's business enterprises (including Section 3 businesses) and veteran –owned businesses the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least 51% owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans and Native Americans. The Subrecipient and/or borrower may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation."

And:

"The contractor must demonstrate to the City of Columbia OCD's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the City of Columbia OCD's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

A. *The contractor shall recruit prospective employees through the State Job bank website, or local workforce agency.*
B. *The contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women.*
C. *The contractor shall actively solicit and shall provide the City of Columbia OCD with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and*
D. *The contractor shall provide evidence of efforts described at B. above to the City of Columbia OCD no less frequently than once every 12 months."*

5.5.2 Section 3:

The City, its subrecipients, other funded entities and covered contractors are required to notify potential contractors/subcontractors of the Section 3 requirements and must incorporate the Section 3 clause in all solicitations and contracts. Further, for covered contracts exceeding $200,000 the State, its subrecipients and/or those contractors contracting directly with an agency or authority of the state must obtain the certification of bidder.

The following clause must be included in all Section 3 covered contracts in its entirety:

A. *The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*

B. *The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 75which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR Part 75 regulations and reporting requirements.*

C. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*

D. *The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 75 or has failed to comply with Section 3 reporting requirements.*

E. *The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is*

executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

F. Noncompliance with HUD's regulations in 24 CFR Part 75may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

5.5.3 Summary of Civil Rights Laws, Executive Orders, and Regulation

CDBG-MIT grantees and subrecipients must assure that all project activities will be administered in compliance with civil rights laws and regulations. (See also Chapter 6: Labor Standards, Chapter 7: Section 3, and Chapter 8: Equal Opportunity.)

Chapter 6: Labor Standards

6.1 Purpose

The purpose of labor standards monitoring is to determine whether the contractors, subcontractors, borrower, and/or sub-recipients have complied with the following applicable statutes:

A. **Davis Bacon and Related Act and City of Columbia Prevailing Wage Act.** All laborers and mechanics employed by construction contractors or sub-contractors under contract in excess of $2,000 financed in whole or in part with grants or loans under the CDBG-MIT Program shall be paid wages at rates not less than those prevailing on similar construction. The Davis-Bacon Act as amended (40 U.C.S. 276(a) - et seq) applies to all infrastructure and public facilities construction, and to the reconstruction and/or rehabilitation of residential property only if such property equals or exceeds eight units.

B. **Copeland Act.** The Copeland Act, known as the "anti-kickback" prohibition, is applicable to work performed by laborers and mechanics. Implementing Department of Labor regulations provide that all laborers and mechanics shall be paid unconditionally and not less often than once a week and without subsequent deduction or rebate except "permissible" salary deductions. Contractors and sub-contractors are required to submit appropriate weekly compliance statements and payrolls to the contractors, subcontractors, borrower, and/or sub-recipients.

C. **Contract Work Hours and Safety Standards Act.** The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) provides that laborers or mechanics shall receive compensation at a rate not less than one- and one-half times their basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any work week. In the event of violations, the contractor or sub-contractor shall be liable to any affected employee for his unpaid wages.

All contractors, subcontractors, borrower, and/or sub-recipients are required to administer and enforce the labor standards requirements set forth in Section 570.603 of the regulations of the Housing and Community Development Act of 1974, and Department of Labor at 29 CFR Part 5. (See Appendix C for Labor Standards Provisions.)

6.2 Meeting Labor Standards Contract Requirements

A checklist has been prepared to assist contractors and subcontractors in meeting contractual labor standards responsibilities. All major administrative and procedural activities have been covered in the sequence they will occur as the construction project proceeds. Careful attention to and use of the checklist should result in a minimum of labor standards problems.

6.2.1 Explanatory Notes

The word "employer" as used below refers to the project contractor, each sub-contractor, or each lower-tier sub-contractor. "Recipient" refers to the subrecipient managing the project (OCD or unit of local government). Payrolls and other documentary evidence of compliance are required to be sent to the recipient for review (all to be submitted through the project contractor). Contractors and sub-contractors are required to use the US Department of Labor payroll reporting form for all certified payrolls. (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf) The delivery procedures are as follows:

a. Each lower-tier subcontractor, after careful review, submits required documents to the respective sub-contractor.

b. Each subcontractor, after checking his/her own and those of each lower-tier sub-contractor he/she may have, submits required documentation to the contractor.

c. The contractor, after reviewing all payrolls and other documentation, including his/her own, and correcting violations where necessary, submits all to the recipient.

OCD and its subrecipient will designate a Labor Standards Compliance Specialist to ensure compliance with all applicable labor standard requirements. The Labor Standards Compliance Officer will be appointed prior to the start of any construction activity and his/her name specified in Subrecipient and other Funded Entity program guidelines, policy and procedures and contracts, agreements or memorandum of understandings for use of CDBG-MIT funds.

Note: Laborers and mechanics employed by a Subrecipient will not be considered laborers and mechanics employed by a contractor or sub-contractor when performing construction work financed by the CDBG-MIT Program and shall not be subject to prevailing wage requirements which are otherwise applicable.

All employers should ensure each of the following statements are true. If any statement is not true, the contractor or his/her representative should contact the recipient for special guidance.

A. **Before construction begins each employer has:**

1. Not been debarred or otherwise made ineligible to participate in any federal or federally assisted project.

2. Received appropriate contract provisions covering labor standards requirements.

3. Reviewed and understands all labor standards contract provisions.

4. Received the wage decision as part of the contract.

5. Requested through the recipient and received the minimum wage for each classification to be worked on the project not included on the wage decision by the additional classification process and before allowing any such trades(s) to work on the project.

6. Requested and received certification of his/her apprenticeship program from the Federal Bureau of Apprenticeships and submitted a copy of an Apprenticeship Standards/Apprenticeship Joint Approval form to the recipient prior to employment.

B. **At the construction start the contractor has:**

1. Notified recipient of construction start date in writing. Recipient is required to notify the Office of Community Development; Labor Compliance Specialist of construction start.

2. Has placed each of the following on a bulletin board prominently located on the project site which can be seen easily by the workers (and replaced if lost or unreadable any time during construction):

   i. Wage Determinations (State and Federal)
   ii. Notices to Employees (WH1321) Employee Rights under Davis-Bacon Act signage
   iii. Safety & Health Protection on the Job (Department of Labor)

3. Before assigning each project worker to work, has obtained worker's name, best mailing address, and Social Security Number.

4. Has obtained a copy of each apprentice's certificate with the apprentice's registration number and his/her year of apprenticeship.

5. Has informed each worker of:
   i. His/her work classification (journeyman or job title) as it will appear on the payroll.

   ii. His/her duties of work.

   iii. The US Department of Labor's (DOL's) requirement on this project that he/she is either a journeyman, apprentice, or laborer

   iv. If journeyman, he/she is to be paid journeyman's minimum wage rate or more.

v. If apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his/her year of apprenticeship; or

vi. If laborer, he/she is to do laborer's work only - not use any tool or tools of the trade –

vii. And not perform any part of a journeyman's work and is to be paid the laborer's minimum wage rate or more.

6. Understands the requirements that each laborer or mechanic who performs work on the project in more than one classification and paid at the highest wage rate applicable to any of the work which he/she performs unless the following requirements are met:

    i. Accurate daily time records shall be maintained. These records must show the time worked in each classification and the rate of pay for each classification and must be signed by the worker.
    ii. The payroll shall show the hours worked in each classification and the wage rate paid for each classification.
    iii. The payroll shall be signed by the workers, or a signed copy of the daily time record shall be attached thereto.

7. Informed each worker of his/her hourly wages (not less than the minimum wage rate for his/her work as stated in the wage decision).

    i. Time and a half for all work over 8 hours in any day or over 40 Hours in any work week (See Contract Work Hours Safety Standards Act).
    ii. Fringe Benefits, if any (See Wage Decision for any required).
    iii. Deductions from pay.

8. Has informed each worker that he/she is subject to being interviewed on the job by the recipient, City of Columbia OCD, US Department of Labor, or US Government Inspector, to confirm that his/her employer is complying with all labor requirements.

9. Has informed each journeyman and each apprentice that a journeyman must be on the job at all times when an apprentice is working.

C. **During Construction**

1. Each Employer:

   i. Has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off, nor dismissed any project worker because of race, color, religion, sex, or national origin.

   ii. Has employed all registered apprentices referred to him/her through normal channels up to the ratio of apprentice to journeyman in each trade used by the employer.

   iii. Will maintain basic employment records accessible to inspection by the recipient, City of Columbia OCD, US Department of Labor, or US Government Inspector.

   iv. Is complying with all health and safety standards.

   v. Has paid all workers weekly.

   vi. Has submitted weekly payrolls, prepared on recommended Form WH-347 or comparable form.

Some employers place all project workers on Payroll Form WH-347 (https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf). The recipient does not review those project workers listed on the payroll who perform work which is descriptive of any of the following job titles which are exempt from labor requirements:

1. Project Superintendent
2. Project Engineer
3. Supervisory Foreman (Less than 20% of time as a working supervisor)
4. Messenger
5. Clerical Workers
6. Timekeepers
7. Payroll Clerks
8. Bookkeepers

Any alternate payroll form should be cleared with City of Columbia OCD before employer starts work on the project. A project printout by computer, for example, is acceptable provided all data shown and required on the front and back of Payroll Form WH-347 is on, or included with, payroll submitted to recipient.

3. **Apprentice** If the worker is an apprentice, his/her registration number and year of apprenticeship is included in this column the first time the apprentice's name appears on the payroll.

4. **Split Classification** If the worker has performed more than one class of work during the work week, such as carpenter and laborer; the division of work will be shown on separate lines of the payroll.

5. Accurate daily time records show the exact hours of work performed daily in each class of work and are signed by the affected worker.

6. **Average Pay of Two Classes of Work Not Accepted** The employer shall not pay a "semi-journeyman" or semi-skilled laborer the average of journeyman's and laborer's rates. The actual hours each worker uses tools of trade (journeyman) and each hour he/she does not use tools of trade (laborer) must be recorded on the payroll.

7. **Helper** The work classification of "helper" is not accepted by the City of Columbia OCD, unless included in the wage decision issued by the DOL for the project. Any employee listed as "helper" in absence of such classification in the wage decision must be paid the journeyman's rate for hours he/she uses tools of the trade.

8. **Apprentices** If a copy of the apprentice's registration certificate has not been submitted to recipient by employer (through contractor), apprentice must be paid journeyman's rate.

9. **Weekly Payroll Review** Each employer has promptly reviewed the weekly payroll for compliance with all labor requirements (using this check list) and made necessary corrections.

10. Each Lower-Tier Sub-contractor has submitted his weekly payroll or "no work" letter to the respective sub-contractor for the sub-contractor to have received within 3 calendar days from the last date of the work week. Each sub-contractor has received a payroll or "no work" letter from each and his/her own payroll, required necessary corrections, and submitted all of such payrolls to the contractor within 5 calendar days from the last date of the workweek.

11. Contractor has received a payroll or "no work" letter from each sub-contractor, monitored each including his/her own payroll, required necessary corrections, and collectively submitted them to the recipient within 7 workdays of the last date of the respective work week. Must be original blue-ink signatures for submission to the City of Columbia OCD to comply.

D. After Project Completion

Each Employer will keep all weekly payrolls on the project for 3 years after the contractor's project completion date.

Chapter 7: Section 3

7.1 Section 3 Compliance

Section 3 of the Housing and Urban Development (HUD) Act of 1968, mandates that, to the greatest extent feasible, recipients of HUD financial assistance ensure that employment and other economic and business opportunities are directed to public housing residents and other low-income persons, particularly recipients of government housing assistance, and business concerns that provide economic opportunities to low- and very-low-income persons.

The City of Columbia has developed the following Section 3 policies and procedures to ensure that all parties - residents, businesses, contractors, and subcontractors - comply with Title 24 CFR Part 75– Economic Opportunities for Low- and Very Low-Income Persons. Low- and very low- income persons are those whose total household income does not exceed 80 percent and 50 percent respectively of the area median income.

Rather than tracking new hires, the new Section 3 Rule requires grantees, subrecipients and contractors to track labor hours for three categories:

- Labor hours for the entire project
- Section 3 labor hours
- Targeted Section 3 labor hours

Section 3 requirements are triggered for federally funded projects involving the construction or rehabilitation of housing, or other public construction projects, valued at $200,000 or more. Section 3 regulations apply to construction and professional services contracts alike and cover the entire project regardless of whether HUD fully or partially funds it.

The City of Columbia requires its contractors to provide equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability, veteran's or marital status, or economic status and to take affirmative action to ensure that both job applicants and existing employees are given fair and equal treatment. The City implements this policy by awarding contracts to contractors, vendors, and suppliers who create employment and business opportunities for qualified low and very low-income residents.

7.2 Section 3 Definitions

The terms "Section 3 worker" and Targeted Section 3 worker are further defined as follows:

Section 3 Worker:

- Low or very low-income worker whose salary or wages are equal to or less than that of a one-person household at 80% of Area Median Income for Columbia at the time of project initiation or worker hire.
- Worker employed by Section 3 business concern
- Youthbuild participant

Targeted Section 3 Worker:

- Low or very low-income worker whose salary or wages are equal to or less than that of a one-person household at 80% of Area Median Income for Columbia at the time of project initiation or worker hire AND
    - Worker employed by Section 3 business concern OR
    - Or living within the service area or neighborhood of the project (considered to be within a one-mile radius of the project site) OR
    - Youthbuild participant

- Section 3 Business Concern (defined by 24 CRF 75.5 as meeting at least one of the following criteria): At least 51% owned and controlled by low or very low-income persons;
- More than 75% of the labor hours performed for the business over the previous 3-month period were performed by Section 3 workers;
- At least 51% owned and controlled by current residents of public housing or Section 8 assisted housing.

7.3 Section 3 Benchmarks

The City of Columbia has incorporated Section 3 requirements into its CDBG Mitigation Procurement Policy and requires a Section 3 clause be included in all procurements generated for use with HUD funding. This policy establishes employment and training goals that contractors and subcontractors should meet to comply with Section 3 requirements. The numerical goal is:

25% of total labor hours to be worked by Section 3 workers
5% of all labor hours to be worked by Targeted Section 3 workers

It is the responsibility of contractors, vendors and suppliers to implement progressive efforts to attain Section 3 compliance. Any contractor that does not meet the Section 3 numerical goals must demonstrate why meeting the goals were not feasible. The CDBG Mitigation Compliance Specialist will actively ensure contractor and subcontractor compliance with Section 3 goals and responsibilities as follows:

(a) The Section 3 clause will appear in all applicable advertisements for bids and Requests for Qualifications and Proposals.

(b) The Section 3 clause and requirements will be included in all applicable construction specifications and final contracts.

(c) Contractor eligibility and lack of debarment will be verified before a Notice of Award is issued.

(d) A discussion of Section 3 requirements will be part of the agenda for all pre-construction conferences.

(e) Contractors will include the Section 3 clause in every subcontract of projects totaling $200,000 or more and will refrain from contracting with any firm known to be in violation of Section 3 requirements.

(f) Contractors and subcontractors will demonstrate and document good faith efforts to meet the numerical goals established by this Section 3 Plan.

(g) Contractor compliance with Section 3 will be monitored and documented.

The CDBG Mitigation Compliance Specialist will assist contractors with little or no experience in achieving Section 3 benchmarks by:

- Asking the contractor to present a list of the number of subcontracting and/or employment opportunities expected to be generated from the initial contract.

- Providing the contractor with a list of Section 3 business concerns interested and qualified for construction projects. Providing the contractor with a list of Section 3 business concerns interested and qualified for construction projects. (See Subcontractor Outreach Program, Juliet Nelly, Program Compliance Administrator, 803-545-4185 or Juliet.Nelly@columbiasc.net, Office of Business Opportunities)

- Informing the contractor of known issues that might affect Section 3 residents from performing job related duties.

- Reviewing the reporting requirements with contractors and subcontractors to ensure the requirement is understood. It is not intended for contractors and subcontractors to terminate existing employees, but to make every feasible effort to employ Section 3 program participants before others when hiring employees needed to complete proposed work to be performed with HUD (federal) funds.

Before submitting bids or proposals all contractors/businesses seeking Section 3 business designation must complete certifications acknowledging the Section 3 contracting and employment provisions required by this section. Such certifications shall be supported with appropriate documentation.

Any business seeking designation as a Section 3 business concern in the award of contracts or purchase agreements with the City of Columbia must complete the Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability form, which can be obtained from the CDBG Mitigation Compliance Specialist. The business must be able to provide adequate documentation as evidence of eligibility for Section 3 preference.

Certifications for Section 3 designation for business concerns must be submitted to the Office of Community Development (OCD) prior to the submission of bids for approval. If OCD previously approved the business concern to be Section 3 certified, then the certification can be submitted along with the bid.

OCD will use the following methods to notify and contract with Section 3 business concerns when opportunities exist:

- Advertise contracting opportunities via newspaper, mailings, and posting notices that provide general information about the work to be contracted and where to obtain additional information.

- Provide written notice of contracting opportunities to all known Section 3 business concerns. The written notice will be provided in sufficient time to enable business concerns the opportunity to respond to the bid invitation.

- Coordinate pre-bid meetings at which the Section 3 business concerns will be informed of upcoming contracting opportunities.

- Conduct workshops on contracting procedures including bonding, insurance, and other pertinent requirements, in a timely manner to allow Section 3 business concerns the opportunity to take advantage of any upcoming contracting opportunities.

- Contact business assistance agencies, Minority and Women's Business Enterprise (M/WBE) associations and community organizations informing them of contracting opportunities and requesting their assistance in identifying Section 3 businesses.

- Establishing relationships with the Small Business Administration (SBA), Minority and Women's Business Enterprise (M/WBE) associations, Community Development Corporations, and other sources to assist OBO in educating and mentoring residents with a desire to start their own businesses.

- Seek referral sources to ensure job readiness for public housing residents through on the job training (OJT) and mentoring to obtain skills that will transfer to the external labor market.

The City will develop resources to provide training and employment opportunities to Section 3 program participants by implementing the following:

- Training opportunities will be advertised by distributing flyers via mass mailings and posting in common areas and management offices of public housing developments.

- The resident councils and management corporations, as well as neighborhood community organizations, will be contacted to request their assistance in notifying residents of available training and employment opportunities.

- A database will be developed of certified Section 3 public housing and other Section 3 residents; to maintain a skill assessment of all Section 3 public housing residents and other Section 3 residents; and of certified Section 3 Business concerns to contact concerning the availability of contract opportunities.

- Relationships will be developed with local employers to solicit job vacancies, determine the skills needed in their workforce, and train residents to develop skills that will transfer to the external labor market.

- A provision setting a goal for a specific percentage of public housing or Section 3 program participants to be trained or employed by the contractor will be incorporated into the contract.

Contractors must notify OCD of their interests in employing Section 3 participants before hiring. OCD will ensure that the participant is Section 3 eligible. After the contract award the contractor must, before beginning work, provide the following:

- Names of the Section 3 business concerns to be utilized.

- Estimates of the number of employees to be utilized for the contract.

- Projected number of available positions, including job descriptions and wage rates (construction wages consistent with Davis Bacon); and

- Efforts that will be made to seek Section 3 participants.

- Submit a list of core employees (including administrative, clerical, planning and other positions pertinent to the construction trades) at the time of contact award.

- Document the performance of Section 3 participants regarding punctuality, attendance, etc., and provide this information to the Section 3 Coordinator.

- Immediately notify the Section 3 Coordinator if a participant quits, walks off, or is terminated for any reason. The contractor must document in writing all such incidents to determine if an investigation is warranted.

In an effort to resolve complaints of non-compliance through an internal process, the City of Columbia encourages submittal of such complaints to the OCD as follows:

- Complaints of non-compliance should be filed in writing and must contain the name of the complainant and a brief description of the alleged violation of 24 CFR 75.

- Complaints must be filed within thirty (30) calendar days after the complainant becomes aware of the alleged violation.

- If the complaint is valid will conduct an informal, thorough investigation affording all interested parties an opportunity to submit pertinent testimony or evidence.

- OCD will provide written documentation detailing the findings of the investigation. The Equal Opportunity Officer will review the findings before it is released to complainants, no later than thirty (30) days after filing of the complaint.

If complainants wish to have their concerns considered outside of the City of Columbia, a complaint may be filed with:

Assistant Secretary for Fair Housing and Equal Opportunity
United States Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

The complaint must be received no later than 180 days from the date of the action or omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause.

The City of Columbia OCD recognizes the importance of making sure that low- and very-low-income residents benefit from any and all HUD sourced projects built in their communities, particularly those who are recipients of government assistance for housing and businesses that provide economic opportunities to low-and very low-income persons to achieve these objectives. Contractors, subcontractors, and/or sub-recipients are likewise expected by City of Columbia OCD to demonstrate that Section 3 eligible residents are provided with work opportunities resulting from investment of federal dollars.
All employment opportunities resulting from Section 3 eligible project awards must be published and posted in order to make Section 3 residents aware of the opportunities. Under City of Columbia OCD's Section 3 Hiring Policy funded contractors, subcontractors, and sub-recipients must:

1. Conduct employment outreach to a number of community-based agencies for all new hires.

2. Accept and/or give preferential employment consideration to referred Section 3 eligible residents.

3. Provide appropriate employment outreach signage at the project site and throughout the project area to inform low- and very low-income neighborhood residents of employment opportunities.

4. Distribute employment outreach flyers throughout the project community and with community-based organizations regarding employment opportunities.

7.4 Verification of Section 3 Workers

To verify Section 3 Worker status, the contractor or subcontractor may count the Section 3 worker's labor hours for five years from when their Section 3 status is established; or the worker can be certified for five years at the time of hire.

A worker may self-certify that their income is below HUD's income limit from the prior year or can self-certify participation in a means-based program (Section 8 or public housing). In addition, a public housing authority or owner of Section 8 property can certify worker is a participant in one of those programs.

Employers can certify that the income from the position is below HUD's income limit when annualized on a full-time basis.

Employer can certify the worker is employed by a Section 3 business.

If the worker is to be defined as a "targeted Section 3 worker," as a result of residency within the neighborhood or service area of the project, then the employer must confirm that either:

- The worker's residence is within a one-mile radius of the worksite OR
- If fewer than 5,000 people live within one mile of the worksite, then within a circle centered on the worksite that encompasses a population of 5,000 people according to the most recent census may be used.
- Proof of residency must be provided with the initial certification.

Low- and very-low-household income limits are determined annually by HUD. These limits are typically established at 80% and 50% of the median income for each locality by household size or the number of people residing in one house however, for OCD HUD's Section 3 Waiver allows grantees to document the low/moderate national objective based on the income of an employee (rather than the employee's family). Low- and very-low-household income limits can be found at:

http://www.huduser.org/portal/datasets/il.html

7.5 Section 3 Reporting

Contractors are required to provide initial estimates of the total labors hours required for the contracted project. As a subset of this projection, the benchmarks for Section 3 workers and Targeted

Section 3 workers will be established. Grantees are required to enter this information in DRGR at the time of project set up:

Labor hours of Section 3 workers/total labor hours = 25%
Labor hours of Targeted Section 3 workers/total labor hours = 5%

On a reporting schedule to be determined by the City of Columbia, but no less than quarterly, contractors will report total labor hours to date, total Section 3 labor hours, and total Targeted Section 3 labor hours. Failure to comply with Section 3 reporting requirements, can result in sanctions by the City, up to and including termination of the contract.

Chapter 8: Equal Opportunity Requirements

8.1 Purpose

To outline the policies and procedures for the City of Columbia OCD and contractors engaging in construction on OCD federally funded projects, and to summarize compliance with a range of Equal Employment Opportunity (EEO) requirements, including but not limited to:

- The affordance of equal opportunities to all persons.
- The prohibition against person being excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age or disability.
- The inclusion of and outreach to small, minority, women and veteran-owned businesses; and
- Section 3 resident and business employment, training, and contracting opportunities (applicable to City of Columbia OCD's Neighborhood Community Revitalization (NCR) Programs, but not applicable to City of Columbia OCD's Loans to Small Businesses Program).

8.2 City of Columbia OCD EEO Policy Statement

In general, no person shall on the grounds of race, color, national origin, religion or sex be excluded, denied benefits or subjected to discrimination under any program funded in whole or in part by HUD funds. During program design and project implementation, the -grantee City of Columbia OCD must take measures to ensure non-discriminatory treatment, outreach and access to program resources.

8.3 Applicable Laws and Requirements

The following list of federal laws and executive orders that apply to all CDBG-MIT funded contracts. Copies of these laws and their implementing regulations can be found online at:

http://www.hudclips.org.

Some requirements such as Section 3 (where applicable) and the requirement to utilize good faith efforts to utilize minority, women and veteran-owned businesses are covered in other Chapters within this manual.

8.3.1 Equal Opportunity

Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d.)
This Act states that no person may be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the bases of race, color, or national origin.
Regulation citation: 24 CFR Part 1.

Title VIII of the Civil Rights Act of 1968, as amended
This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status or handicap.
Regulation citation: 24 CFR Parts: 105,108,109,110 and 115; Part 200 subpart M.

Section 109 of the Housing and Urban Development Act of 1974, as amended
This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG-MIT Program on the basis of race, color, age, disability, religion, national origin or sex.
Regulation citation: 24 CFR 570.602

Age Discrimination Act of 1975, as amended
This Act states that programs receiving federal assistance may not discriminate on the basis of age unless an age distinction is necessary to accomplish the objective of the program.
Regulation citation: 45 CFR Part 91

Section 504 of the Rehabilitation Act of 1973, as amended
This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.
Regulation citation: 24 CFR Part 8. Section 104 of the Housing and Community Development Act of 1974, as amended.

8.3.2 Handicapped Accessibility

Section 504 of the Rehabilitation Act of 1973, as amended
This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.
Regulation citation: 24 CFR Part 8.

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157)
This Act requires that certain federally funded buildings or facilities be designed, constructed or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated funds after December 11, 1995, that meet the definition of "residential structure" (as defined in 24 CFR 40.2) or the definition of "building" [as defined in 41 CFR 101-19.602(a)] are subject to the Architectural Barriers Act and must comply with the Uniform Federal l Accessibility Standards.
Regulation citation: Appendix A to 24 CFR Part 40 for "residential structures" and Appendix A to 41 CFR Part 101-19 for "general buildings".

Americans with Disabilities Act ("ADA")
This Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities (built for occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural

in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be conducted without much difficulty or expense.

Regulation citation: 42 U.S.C. 12131; 47 U.S.C. 155,201,218 and 225. Title II of the ADA, 28 CFR 102-104, extends the prohibitions of discrimination on the basis of disability established by Section 504 of the Rehabilitation Act of 1973 to include all activities of state and local governments whether or not they receive federal funds.

8.3.3 Employment Contracting

Equal Employment Opportunity, Executive Order 11246, as amended

This Executive Order prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding $10,000.
Regulation citation: 41 CFR Part 60

Section 3 of the Housing and Urban Development Act of 1968, as amended

This Section provides for training and employment opportunities, to the extent possible, to lower-income residents of the project area and to provide contracts associated with CDBG-MIT funded projects to businesses located in the project area; or, to businesses owned, in substantial part, by residents of the project area.

Section 109 of the Housing and Urban Development Act of 1974, as amended.

This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG-MIT programs on the basis of race, color, age, disability, religion, national origin or sex.
Regulation citation: 24 CFR 570.602

Section 504 of the Rehabilitation Act of 1973, as amended

This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance.
Regulation citation: 24 CFR Part 8.

8.3.4 Excessive Force

24 CFR Part 91, Section 225 (b) 5

The Consolidated Plan for Community Planning and Development Programs require that in order for a state or local government to receive CDBG-MIT funds, it must certify that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engage in non-violent civil rights demonstrations. In addition, the local government also must certify that it has adopted and is enforcing a policy 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.

8.3.5 City of Columbia Civil Rights Requirements – Overview

Various chapters of the Office of Community Development's Administrative Manual provide references to other civil rights and equal employment opportunity requirements of the CDBG-MIT specific to City of Columbia.

Instructions for complying with requirements to include small, women, minority and veteran owned businesses enterprises in the contract bidding process are directed to the specific chapter dedicated to this requirement.

8.3.6 Federal Minority & Women Business Enterprise Requirements

CDBG-MIT grantees and subrecipients are required to take all necessary steps to assure that minority owned firms and women's business enterprises are used to perform CDBG-MIT funded activities whenever possible. Federal Executive Orders 11625, 12432, 12138 and regulations contained in 24 CFR 85.36(e) mandate that such affirmative efforts be made.

Required Affirmative Contracting Efforts

- Placing qualified minority and women owned business enterprises on a solicitation list for CDBG-MIT contracts.
- Assuring that these firms are solicited whenever there are potential sources.
- Dividing total requirements, whenever feasible, into smaller units, to encourage participation of minority and women owned firms.
- Establishing delivery schedules, whenever possible, that encourage minority and women owned businesses to participate.
- Requiring the prime contractor, if subcontracts are to be let out, to take the affirmative steps listed here.

Small, Women, Minority and Veteran Owned Businesses

- Documentation of all efforts made to inform and contract with small, women, minority and veteran-owned businesses (e.g., copy of advertisements, list of small, women, minority and veteran –owned businesses)

8.3.7 Equal Employment Requirements Applicable to Contractors

CDBG-MIT contractors are required to comply with Federal Executive Orders which mandate that "no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts." Further, contractors and subcontractor are required to "take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment and recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship."

Regulation citation: Executive Orders 11246 and 12086.

Chapter 9: Acquisition and Uniform Relocation Act (URA)

9.1 Limitation on use of funds for eminent domain.

No CDBG–MIT funds may be used to support any Federal, State, or local projects that seek to use the power of eminent domain unless eminent domain is employed only for a public use. For purposes of this paragraph, public use shall not be construed to include economic development that primarily benefits private entities. Any use of funds for mass transit, railroad, airport, seaport or highway projects, as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water related and wastewater-related infrastructure), other structures designated for use by the general public, or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) shall be considered a public use for purposes of eminent domain.

9.2 Voluntary Acquisition

In the event that temporary relocation of a homeowner is required to implement the program the following procedures will be followed.

The program assigned inspector, in conjunction with the construction manager, will review the scope of work (and any subsequent change orders) to determine if the rehabilitation work can be safely performed while the owner occupies the unit. If it is determined that the occupant must be temporarily displaced, the Construction Manager will determine the duration of the displacement. This information will be provided to the Case Manager who will initiate the temporary relocation process. The following guidelines will be used by the construction manager in determining the need for temporary displacement of owner occupants during the rehabilitation process:

- The contractor must be able to restore the occupant's home to a livable standard at the end of each workday. A livable standard means that occupants must have the use of a kitchen, bathroom, electricity, natural gas and running water.
- At all times, the contractor must be able to implement safe work practices in compliance with federal and state requirements to protect occupants from environmental hazards resulting from remediation work, such as asbestos and lead based paint removal.

At the completion of hazard remediation work, the contractor must obtain certified clearance that the property is free from environmental hazards. This must be completed before occupants are allowed to reoccupy their unit. Owner-occupants shall be required to temporarily relocate if any of these conditions cannot be met by the contractor during the course of rehabilitation work. All temporary relocation of owner occupants must be carefully coordinated between the construction and case managers in order to minimize the timeframes for displacement and inconvenience to the occupant. Notification of Temporary Relocation Assistance Homeowners that require temporary relocation assistance to offset existing costs will be notified in writing if they are eligible for optional relocation assistance. If they must be temporarily relocated, these notices demonstrate that they

were informed of their rights and the availability of relocation assistance. Occupants will receive a Notice for Temporary Relocation Assistance will be provided at the pre-bid meeting. This notice identifies the amount of the relocation assistance and the estimated construction timeframe as determined by the scope of work and contractor availability. It also informs the owner of the date they must vacate the premises for construction to begin, a minimum of 30 days in advance. Signature of receipt is required. Documentation of this notice establishes the eligibility date for incurring temporary relocation costs and a date by which to monitor project progress. If applicable, the homeowner may receive an advance of up to two month's assistance at the time the Grant Agreement is executed with the City of Columbia. All temporary replacement housing must be inspected to ensure it is decent, safe, and sanitary before any housing assistance payments are made. The monthly Homeowner housing allowance will be based on the HUD Fair Market Rent.

9.3 Uniform Relocation Act Requirements

Relocation payments and other relocation assistance are provided under the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended** (URA) to most homeowners whose home is acquired by a public agency for a Federal project or a project in which Federal funds are used or to the tenants of a dwelling if the owner elects to accept federal assistance that will result in the tenant being temporarily or permanently displaced.
If individuals are notified that their home will be acquired and they will be displaced, it is important that they do not move before learning what they must do to receive the relocation payments and other assistance to which they are entitled.

Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child as defined at 49 CFR 24.208(h). All persons seeking relocation assistance will be required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.

Questions should be directed to the Office of Community Development.

Relocation assistance may include the following:

- **Advisory Services.** This includes referrals to comparable replacement homes, the inspection of replacement housing to ensure that it meets established standards, help in preparing claim forms for relocation payments and other assistance to minimize the impact of the move.
- **Payment for Moving Expenses.** Which may include either:
  - Payment for Actual Reasonable Moving and Related Expenses, or
  - A Fixed Moving Payment, or
  - A combination of both, based on circumstances.
- **Replacement Housing Payment.** To enable the individual to buy or, if you prefer, rent a comparable replacement home, they may choose either:
  - Purchase Assistance, or
  - Rental Assistance.

If there is disagreement with the Office of Community Development's decision as to the relocation assistance for which and individual is eligible, the decision may be appealed.

For additional detail on the URA process, see: https://dr.columbiasc.gov/wp-content/uploads/2020/04/202004114-URA-Policies-Draft-CLEAN-VERSION.pdf

Chapter 10: Construction Management

10.1 Introduction

Throughout the construction period, the subrecipient, the project engineer (or architect) (if any), and the contractor(s) have certain responsibilities. These responsibilities should be clearly defined in the contracts between the subrecipients and the engineer/architect, and the contractor.

10.2 Responsibilities of the Subrecipient

As the "Owner" of the project, the subrecipient has specific responsibilities to the project engineer, the contractor, and the City of Columbia OCD, and to state or federal funding agencies that may be involved in funding the project.

a. **Subrecipients Responsibilities to the Contractor:**
   i. The subrecipient is responsible for providing all lands, easements, and right-of-way that are designated as part of the project for use of the contractor.
   ii. The subrecipient must provide the contractor with any engineering surveys (in the proper electronic format) performed to establish construction reference points that the project engineer considers necessary to proceed with the project. The subrecipient should also make available to the contractor copies of reports of site explorations and subsurface conditions that were used by the engineer in preparing the project plans and specifications.
   iii. Unless otherwise specified, the costs of all inspections, tests, and or approvals required by the laws or regulations must be paid for by the subrecipient.

b. City of Columbia OCD Responsibilities
OCD's responsibilities are clearly defined in the Memorandum of Understanding executed at the time of the CDBG-MIT funding award.

10.3 Responsibilities of the Project Engineer or Owner's Representative

The project engineer, if hired, will be the "owners (subrecipient's) representative" during the construction period. The scope of the project engineer's authority should be defined in the contract documents and should not be extended without written agreement between the subrecipient and the project engineer. The project engineer will work under the supervision of the City of Columbia Engineering Department, Division of Construction Management.

a. The project engineer or owner's representative will visit the project at appropriate intervals during the various stages of the construction to observe the progress and quality of the work and to determine that work is proceeding in accordance with the contract documents. **Construction inspection intervals and/or the number of inspections shall be established by the subrecipient prior to the start of construction.** Presence on the job by the project engineer is intended to provide a greater degree of confidence in the

suitability of construction, and to allow an accurate determination of the completed work for purposes of payment. The project engineer will not be on site full time so construction observation will be limited. The project engineer should keep the subrecipient informed of work progress and will help protect the subrecipient against defects and work deficiencies. However, the project engineer is not responsible for the contractor's:

- means, methods, techniques or procedures of construction,
- safety precautions and programs, or
- Failure to perform or furnish the work specified in the contract documents.

Also, the project engineer is not responsible for the acts or omissions of the contractor or any subcontractor, supplier or any other person or organization performing or furnishing any of the work. However, even though the project engineer is not directly accountable for the responsibilities of the contractor, the project engineer is the subrecipients' "eyes and ears." The project engineer should keep the subrecipient informed of anything that does not appear to be proper or proceeding as specified so that the subrecipient can act if necessary.

b. The project engineer serves as the initial interpreter of requirements of the contract documents and judge of the acceptability of the project work. Requests for clarification or interpretation of the contract drawings or specifications are often referred to as RFI's or requests for information. An RFI is a written request from the contractor to the project engineer and will be answered in writing by the project engineer. RFI's shall be maintained by the project engineer in the project file. Each RFI should be number sequentially so that they can be accurately tracked and referenced.

c. All claims, disputes or other matters relating to such interpretation and/or acceptability must initially be referred to the project engineer in writing. This written requirement also applies to claims with respect to changes in the contract price or contract time. The project engineer, upon approval of City Engineering, will render a formal written clarification, interpretation or decision within a reasonable time. The project engineer may issue such written clarifications or interpretations of the requirements of the contract documents as may be necessary and which must be consistent with or inferable from the overall intent of the contract documents.

d. The project engineer may authorize minor variations in the work provided they do not involve an adjustment in the contract price or contract time and are consistent with the overall intent of the contract documents. Such variations may be accomplished by "field orders" and will be binding on the contractor. The contractor may claim that a field order justifies an increase in the contract price or an extension of the contract time. The project engineer should first obtain approval from the subrecipient if the issuance of a field order or Work Directive will result in a change in either the contract price or contract time. If there is a change in either the contract time or contract price, a written change order must be completed and approved by the Subrecipient. Should the change order increase the amount of CDBG-MIT funding required, the Subrecipient must submit the request to OCD for written

authorization to proceed. Refer to the change order section of this chapter for further instructions on change orders.

e. The project engineer has the authority to disapprove or reject work that he or she believes to be defective. The project engineer, upon consultation with Construction Management, also has the authority to require special inspection or testing of the work even when the work is fabricated, installed or completed.

f. With reasonable promptness, the project engineer will review and approve shop drawings and samples submitted by the contractor. Such review and approval are only for conformance with the project design concept and compliance with the information given in the contract documents. The project engineer may require the contractor to submit corrections to shop drawings or samples.

g. The project engineer will accept and review the contractor's applications for progress payment, AIA G702 or similar. After reviewing the application, the project Engineer will either recommend payment and present the application to the subrecipient or return the application to the contractor stating in writing why the application is being refused. A recommendation for payment will be based on the project engineer's on-site observations of the work in progress and accompanying information that the work has progressed to the point indicated. Additional instruction on applications for progress payment shall be found later in this chapter.

h. The project engineer is responsible for checking the actual quantities or percentage complete and classifications of unit price work performed by the contractor. Following a review of his or her preliminary decisions with the contractor, the project engineer will provide a written decision (as an application for payment or otherwise). Such written decisions are binding on the contractor unless either party delivers a written notice to appeal such decision to all parties.

i. Upon written notice from the contractor that the entire project (or an agreed portion) is complete, the project engineer must make a final inspection with the subrecipient and the contractor. If the project engineer determines that the work is incomplete or defective, he or she must so notify the contractor in writing.

j. When the project engineer is satisfied the work is complete, he or she will accept and review the contractor's application for final payment. The project engineer must decide whether or not to make final acceptance within 30 days after receiving the contractor's application for final payment. Final acceptance means that the project engineer has certified that the "project" been constructed in accordance with the terms and conditions of the contract documents**.** The project engineer must give written notice to the subrecipient and the contractor that the work is acceptable. To receive final payment the contractor must provide lien waivers from all material suppliers and subcontractors.

k. Subrecipient will verify that there have been no liens filed on the project. Assuming that no liens are found, within 30 days after final acceptance by the project engineer, unless otherwise specified in the contract, the subrecipient must make the final payment of the contract price specified in the contract for all completed work to the contractor.

l. The project engineer will be responsible for closing out all construction permits. To include obtaining the Permit to Operate (PTO) for new water and/or sewer mains and Notice of Termination (NOT) for land disturbance permits. The project engineer/architect will provide signed and sealed certification that the record drawings are accurate and correct.

10.4 Responsibilities of the Contractor

It is the responsibility of the contractor to complete the project in accordance with the plans and specifications and to comply with applicable safety, labor, and environmental protection laws and regulations. The scope of the contractor's work as well as responsibilities should be defined in the contract documents and should not be extended without written agreement between the subrecipient and the contractor.

a. **Subcontractors –** the contractor is fully responsible for all acts and omissions of subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with the contractor. **The contractor is also responsible for obtaining lien waivers from all subcontractors and obtaining all subcontractors required W-9 and Workman's Compensation and General Liability Insurance information, as well as DUNS number and NAICS code.**
b. **Project (Construction) Superintendent-** During the project, it is best practice that the contractor keeps a competent project superintendent (also frequently called the "general superintendent") on the site who will supervise and direct the construction work required in the contract documents. The project engineer communicates with the contractor through the City Construction Management Coordinator. All communications from the contractor will be through the City Construction Management Coordinator. Official communications regarding the work should only be made to the contractor's project superintendent and not laborers or worker on the project, as they do not have the authority to direct other members of the contractor's work force.
c. **Site Conditions-** During the progress of the work, the contractor must keep the project site free from waste materials, rubbish and other debris generated by the work. The contractor must remove all waste materials, equipment, surplus materials, tools and appliances from the premises at the completion of the project and leave the site clean and ready for occupancy. The contractor must restore any property to its original condition that is not designated for alteration. The contractor shall also be responsible for complying with all construction permits issued for the project.
d. **Record Keeping-** The contractor must maintain at the project site at least one record copy of all drawings, specifications, addenda, written amendments, change orders, work directive changes, field orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record

documents are to be available to the project engineer and City of Columbia OCD personnel for reference.

10.5 Mandatory Pre-Construction Meeting

The City of Columbia OCD pre-construction meeting shall be held once the construction contract is executed and prior to commencement of work. During the pre-construction meeting, project responsibilities are defined, key players are introduced, and the contractor's proposed schedule is presented. This meeting is also intended to review with the contractor all federal and City of Columbia requirements such as the Labor Standards Provisions, Equal Employment Opportunity requirements, and Section 3. In this meeting OCD staff and appropriate sub grantee staff will clarify expectations regarding these requirements and explain in detail how these regulations are to be implemented and monitored. Attendance is required by the subrecipient and/or their representative (Project A/E) and the prime contractor. City of Columbia Office of Community Development (OCD) will facilitate this meeting. The subrecipient and prime contractor should include all Subcontractors to ensure that they are aware that they must comply with federal labor standards and civil rights provisions.

The meeting provides the participants with instructions for activities required for the use of CDBG-MIT funds during construction. These instructions will include a review of:

a. The project schedule (see section below)
b. The payment processes
c. Change orders
d. Site visits/project meetings
e. Construction close-out
f. Labor Standards
g. Other State and local provision
h. Technical job requirements
i. Equal Opportunity
j. Section 3 implementation
k. Any equal opportunity deficiencies should be corrected, such as Section 3 of the HUD Act of 1968 compliance plans, certificates of compliance, et cetera that have not been submitted by prime contractors and subcontractors.
l. Contractor and subcontractor responsibilities regarding equal opportunity should be explained using the list of commonly asked equal opportunity questions as a guide.
m. The requirements for the equal opportunity monitoring as well as on-site interviews with laborers for Davis Bacon compliance, during site visits should be explained.

Additional items as required by the subrecipient or the project engineer may be included in this meeting. Minutes of the pre-construction meeting will be recorded to document the subject(s) discussed and placed in the file.

10.6 Notice to Proceed

Once the Environmental Review requirements have been met and an Authorization for the Use Grant Funds (AUGF) has been received from OCD, then upon execution of the construction contract and holding of the pre-construction meeting, the subrecipient may provide the prime contractor(s) with a written *Notice to Proceed*. This notice established the construction starting date and the estimated date of completion. No physical work being paid for with CDBG-MIT funds shall commence prior to issuance of the Notice to Proceed. A copy of the Notice to Proceed must also be sent to the City of Columbia OCD, at the time the notice is sent to the contractor. OCD is required to forward a copy of this notice to Programs and Compliance Division (PAC).

10.7 Contractor's Schedule

The subrecipient will obtain a construction project schedule of the proposed activities from the prime contractor at the start of construction. The schedule may be in the form of a progress chart of suitable scale to indicate appropriately the % of work scheduled for completion by any given date during the period. An update is required, at a minimum, when work falls more than 10% behind schedule. A current construction progress schedule shall be submitted with the monthly application for payment.

10.8 Progress Payments

The contractor shall submit on a monthly basis to the subrecipient, a payment requisition. The AIA G702, "Application and Certificate for Payment", and the AIA G703," Continuation sheet for G702", or similar are the approved forms for use. The construction contract should set forth the time allowed between the submission of an application for payment and the time the contractor is paid. Typically, the contractor payment is due within 30 days of receipt and upon the subrecipient's approval (based on the project engineer's recommendations and execution) of the application for payment, unless a longer period for payment has been agreed to, or claims have been made against the subrecipient due to the contractor's performance, or there are other items entitling the subrecipient to offsets against the amount recommended.

The subrecipient shall have in its possession all partial Release of Liens (AIA G706A) or similar, as required, for the general contractor, all subcontractors, suppliers, and others who may have lien rights against the subrecipient's property. The subrecipient shall provide copies of all lien releases to the City of Columbia OCD with each Progress Payment request.

The City of Columbia OCD will pay and/or reimburse the subrecipient for eligible costs of the project up to a maximum as specified in the respective subrecipient agreement or Memorandum of Agreement. The grant funds will be disbursed based on satisfactory review of payment requisitions, invoices, bills, receipts, lien releases, and payroll records submitted to the Office of Community Development for disbursement. To the extent practicable, grant funds will be disbursed on a pro rata basis with any other funding provided to the project. Subrecipient shall promptly pay appropriate vendors and provide satisfactory documentation to the authority evidencing payment to said vendors ("payment confirmation"). The authority will not process any future request for

disbursement unless the payment confirmation is received by the authority and is satisfactory in its sole discretion.

For paid contractor or A/E invoices, an ACH transfer to the subrecipient will be issued if the invoice has been paid in full and the following has been submitted and approved by the authority: (i) receipt of a statement, bill or invoice marked paid, showing completed work for the project, together with proof of payment; and (ii) an application and certification for payment, AIA G702 or similar, signed and sealed by the subrecipient's project A/E stating the amount to be paid.

10.9 S/W/M/VBE Compliance Reporting

The general contractor or construction manager is required to complete and submit the **"SWMVBE Monthly Contract and Subcontract Activity Report"** as an attachment to each requisition submitted to City of Columbia OCD requesting disbursement of CDBG-MIT funds.

The City of Columbia Office of Business Opportunity has specific oversight of the small business set-aside programs. The Office of Business Opportunity has specific oversight of the minority and women business programs.

10.10 Retainage

"Retainage" is an amount of money, usually 10% of the total amount due to the contractor that is held by the subrecipient as additional insurance that the contractor will properly complete the construction work. The retainage may not exceed 10% if the contractor is performing by the terms of the contract. The retainage is held pending the final inspection and acceptance of work. The actual amounts retained may vary, depending on the total amount of the contract, progress of construction, and other specific instructions in the contract.

10.11 Construction Monitoring and Progress Meetings

The project must be monitored throughout the construction period to ensure that the contractor is performing in accordance with the technical specifications and that compliance is maintained with all federal, state, and local standards and the terms of the contract. To be an effective tool for avoiding problems and improving performance, monitoring must involve an on-going process of planning, implementation, communication, and follow-up.

10.11.1 Monitoring Frequency-

City of Columbia OCD will perform monitoring visits to review construction related items, for review of compliance items. Visits frequency by the OCD-EAC shall depend on the project size and duration.

The subrecipient's project engineer shall also schedule monitoring visits at appropriate intervals during the various stages of the construction to observe the progress and quality of the work and to determine that work is proceeding in accordance with the Contract Documents.

10.11.2 The Monitoring Visit

There are five basic steps that may occur in the monitoring visit. Any step may be adjusted or omitted if deemed appropriate by the City of Columbia OCD Programs and Compliance Division.

1. Notification
2. Construction Progress Meeting
3. Documentation, Data Acquisition and Analysis
4. Exit Conference
5. Follow-up Monitoring Letter

10.11.2.1 Notification:

The City of Columbia OCD Programs and Compliance Division will reach out to the subrecipient and /or project engineer with a telephone call to explain the purpose of the monitoring and to specify date(s) for the visit(s). A follow-up email/meeting invitation will be sent prior to the scheduled visit to:

a. Confirm the date and the scope of the monitoring.
b. Provide a description of the information you want to review during your visit; and
c. Specify the expected duration of the monitoring, which of your staff will be involved, what office space will be required, and what members of the subrecipient's staff will be interviewed.

10.11.2.2 Construction Progress Meeting:

An on-site meeting with the subrecipient's and its representative (project A/E) and appropriate general contractor staff will be conducted prior to beginning the on-site construction review. Items to be reviewed include contractor requisition for payment, change orders, progress schedule, corrective action items identified during previous visits, as well as any other concerns from involved parties.

10.11.2.3 Documentation, Data Acquisition and Analysis:

A clear written record of the steps followed, and the information reviewed during the visit will be kept. Any conversations held with subrecipient staff (or their representatives) will be documented. A thorough review of contractor requisition for payment will be conducted to verify all work items requesting payment. Photo documentation is required. Work in place **must** match design document submittals.

10.11.2.4 Exit Conference:

At the end of the site visit, the monitoring officer will meet again with key representatives of the subrecipient organization to present the tentative conclusions from the monitoring. This exit conference has four objectives:

a. To present preliminary results of the monitoring visit.
b. To provide an opportunity for the subrecipient to correct any misconceptions or misunderstandings on Officer’s part.

c. To secure additional information from subrecipient staff to clarify or support their position; and
d. To provide an opportunity for subrecipient staff to report on steps they are already taking to correct any deficiencies cited by the monitoring officer.

Again, careful notes on the exit conference will be taken in order to document what the officer told the subrecipient and whether the subrecipient agreed with the tentative findings. At the end of the conference, there should be a clear understanding of the areas of agreement and disagreement about the monitoring results.

10.11.2.5 Follow-up Monitoring Letter:

The monitoring letter is used to create a permanent written record of what was found during the monitoring review. It will include meeting documentation and any relevant site documentation.

The monitoring letter will identify fully every finding and concern. A finding is issued for non-compliance with the rules and regulations of the CDBG-MIT program. For each finding, specific corrective actions the subrecipient must take will be identified.

Concerns are presented in the monitoring letter as instances where the deficiency is not a finding, or where non-compliance may occur in the future because of weaknesses in the subrecipient's operations. For each concern, specific recommendations for improvement will be included.

Deadlines will be set in the monitoring letter for:

a. Providing a written response to the monitoring letter that describes how the subrecipient will resolve any finding(s); and
b. Correcting each deficiency identified in the letter.

10.12 Change Orders

As previously stated in this chapter, the project engineer may authorize minor variations in the work provided they do not involve an adjustment in the contract price, contract scope, or contract performance period and are consistent with the overall intent of the contract documents. The approved form for use is the AIA G701or similar.

The subrecipient is required to execute change orders (written amendments to the contract with the contractor), which cover the following:

a. Changes in work ordered by the subrecipient.
b. Changes in work required because of acceptance or correction of defective work.
c. Changes in work agreed to by the subrecipient and contractor.
d. Changes in the contract price or time agreed to by the parties; or
e. Those changes in the contract price or schedule that incorporates certain written decisions rendered by the project engineer.

Change orders that change:

- the original approved scope of work,
- change the contract price, or
- cause changes in the construction schedule

MUST be approved by the City of Columbia OCD prior to the execution of the change order or completion of the work proposed. If the change order results in an increase in the contract price, then written verification must be placed in the file affirming that OCD has reviewed the change order and documented the cost increase to be "necessary and reasonable."

If the change is substantial (increase of more than 5% in original contract price), a third-party cost verification must be secured prior to approval, and should be retained in the project file. Change orders must meet the same standards as those of the original procurement in that they must be consistent with market costs at the time and place of construction as well as being justified based on documented change in circumstances or conditions.

10.13 Record Drawings

Record drawings, in accordance with the City of Columbia regulations, will be submitted for review prior to payment of the final invoice.

Chapter 11: Construction Close Out

11.1 Introduction

This section deals with those actions that should be taken when the construction phase of the project is close to being completed. There are specific actions that should be accomplished to finish the project, and once the project is completed the warranty period begins.

11.2 Final Inspection and Punch List

Prior to recommending to the subrecipient and the OCD that the project is complete and ready to be reviewed by the subrecipient, the project engineer should prepare a list of project deficiencies or work remaining to be completed and presents this list to both the contractor and the subrecipient. This list of project deficiencies is known as a "punch list."

When the contractor is confident that the project has been satisfactorily completed and any punch list items complied with, the contractor will request the project engineer inform the subrecipient and the OCD that the project is ready for final inspection.

The final inspection is designed to walk all parties through the entire project, pointing out the work completed by the contractor. The subrecipient and City of Columbia OCD officials may question some of the contractor's work or clean up and request that these items be taken care of before the subrecipient will take possession of the project. In this case, the project engineer should prepare a final punch list and present it to the contractor. If the number of items on the final punch list is small, the project engineer may recommend to the subrecipient that a Certificate of Substantial Completion (AIA G704) be prepared.

11.3 Certificate of Substantial Completion (AIA G704)

When the project engineer recommends that the work is substantially complete, he or she will issue a "Certificate of Substantial Completion." The issue date of the certificate sets the warranty dates, and most important to the contractor, it releases the contractor's surety company's obligation to complete the work in the event the contractor does not or cannot. Therefore, the subrecipient should only sign the Certificate of Substantial Completion when they have accepted the project, and when the project engineer recommends that the work is substantially complete.

The Certificate of Substantial Completion contains an area for the project engineer and the subrecipient to list minor items that remain to be completed under terms of the contract. The project engineer will recommend that the subrecipient retain sufficient funds from the contractor's payment requisition to ensure that the work is completed by the contractor. The payment requisition for the work completed and recommended by the project engineer up to the date of the *Certificate of Substantial Completion* should be labeled "SEMIFINAL" if any work or punch list items remain to be completed, and the conditions stipulated in the Certificate of Substantial Completion should be attached to the payment requisition.

After Substantial Completion is accepted the project engineering shall file a Notice of Termination (NOT) with the subgrantee, and the Office of Community Development. The NOT closes out the land disturbance permit with the State. If the disturbance exceeds 5,000 square feet, then a Notice of Intent (NOI) is required as well.

11.4 Engineer's Certificate of Completed Work

A copy of the Certificate for Acceptance and Final Payment, signed by the project engineer/architect, must be submitted to City of Columbia OCD prior to project closeout. This certificate must cover all work included in the project (regardless of funding source), including subrecipient cash and in-kind. The certificate must state that work has been completed in accordance with drawings and specifications and is functioning properly with the recommendation for final payment.

11.5 Certificate of Approval

Permits obtained for all approved work must be properly closed out per local authority requirements.

11.6 Contractor Release of Liens (AIA G706A) and Consent of Surety (AIA G707)

The subrecipient shall have in its possession the contractor's *Affidavit of Release of Lien*s (AIA G706A) along with copies of signed and notarized releases or waivers of liens for the general contractor, all subcontractors, suppliers, and others who may have lien rights against the subrecipient's property before final payment is made.

The AIA Document G707 *Consent of Surety to Final Payment* Form is intended for use on construction projects where the contractor is required to furnish a bond. By obtaining the surety's approval of final payment to the contractor and its agreement that final payment will not relieve the surety of any of its obligations, the owner may preserve its rights under the bond.

11.7 Warrantees/Guarantees

Once the subrecipient and the project engineer have signed the *Certificate of Substantial Completion*, the clock starts running on the warranty/guarantee period. The warranty/guarantee period shall extend for a minimum of one (1) year. The warranty/guarantee period should be clearly defined in the contract between the subrecipient and the contractor and should be specific to begin from the date of substantial completion that the contractor will repair or replace any defective equipment or workmanship at no cost to the subrecipient.

11.8 Final Payment

When the contractor has completed all of the work required under the contract agreement and all compliance requirements have been met, they are entitled to final payment. Final payment releases

all of the retainage previously withheld from the contractor during the course of the project and represents the final reconciliation between the subrecipient and the contractor for services rendered. The final payment requisition looks no different from any other payment requisition that the subrecipient has processed in the course of the project with the exception that it should clearly state that it is the "Final" requisition.

11.9 Project Close Out Procedures with OCD

The OCD Administrator initiates the close-out process for a project when the anticipated project has reached completion; all funds to be paid with CDBG-MIT funds have been incurred, with the exception of monitoring costs that are tracked separately; the work, wholly or partially financed with CDBG-MIT is completed; and all other responsibilities of the grantee or subrecipient as outlined in the Memorandum of Agreement between OCD and the subgrantee have been met.

The Program Administrator must submit the **Project Notification for Close-Out (Form 1**) to initiate the Close-out process. If there are multiple projects, then each project can be closed out separately at the time of completion. The forms listed below are optional depending on which are applicable to each specific Project. The **Project Notification for Close-Out Form** plus any applicable forms below constitute the **Project Close-out Packet**.

#	**Project Close-out Form**	**Description**
1	Notification for Close-Out	Summarizes final project or program details that is ready for close out.
2	Project Source of Funds	Amount, source and status of all funds utilized on that project.
3	Program Income Information Form	Details the amount and use of Program Income if any was received.
4	CDBG Equipment Inventory Form	A final report for all equipment purchased with CDBG-MIT funds.
5	Civil Rights Compliance – Displacement of Low- and Moderate-Income Households	Displacement impact of the project being closed out (by income levels and racial category).
6	Section 3 Summary Report	Section 3 information for the project being closed out.
7	Final Wage Compliance Report	Contractor wage information for the project being closed out.

In completing the forms, the OCD Administrator should:

1. Identify activities on the forms exactly as they are identified in the Action Plan (or subsequent Amendments) and in DRGR.

2. Provide current data on obligated and expended amounts by activity.

3. On all tables, make sure that the rows and columns of figures subtotal accurately.

4. Identify methods used to determine beneficiaries. For example, for business grant programs, it is the number of jobs created or retained based on job reports from the business.

11.10 Reviewing and Executing Close-Out Documentation

The OCD Program Coordinator reviews all submitted documentation for completeness and accuracy working Finance to ensure that the information submitted matches the latest information and reports submitted via DRGR.

The OCD Program Manager makes any necessary changes to the project **Close-out Packet**. Once the OCD Program Manager determines that all information in the **Close-out Packet** is correct, the forms are signed as applicable by the appropriate designated representatives.

The acceptance of the **Close-Out Packet** launches the required OCD reviews.

OCD Staff Responsibility	Purpose of Review
FINANCE & REPORTING	Review of Budget and all invoices are paid. Confirm any remaining funds. Confirm the shift of funds.
MONITORING & COMPLIANCE	Review of outstanding Monitoring Report – ensure all observations, concerns or findings are closed. Also coordinates with Audit to ensure all confirming all audits and reports are completed such as FFATA, contract, Section 3, etc.
LEGAL & PROCUREMENT	Review of contracts, Subrecipient Agreements to ensure they are closed.
FISCAL	Confirmation of closure of all purchase orders that may be associated. Shift of remaining funds.

A checklist is maintained with the list of requirements that describes the review that is done, documentation reviewed and sign-off when review is complete, indicating that the project can move to final Close-out.

11.10.1 Conditional Close Out

Upon execution and acceptance of the **Project Close-Out Packet** the project is considered to be 'conditionally closed out.'

11.10.2 Final Close-out

The Office of Community Development issues a **Final close-out letter** to the Partner Agency lead or their designee upon receipt and approval of all from the SRD Divisions in the Close-out process.

The Office of Community Development marks the activity(s) associated with the Project as "Closed" in DRGR. Upon final project close-out OCD ensures any de-obligated funds are no longer available from activity(s) in DRGR and shifts are made according to the plan approved by the OCD Director (and any Action Plan Amendments as may have been required).

Appendix A: Sample File Checklist

Implementation Readiness and File Checklist – CDBG-MIT Infrastructure Projects	
This checklist is intended for use by Program Managers to ensure that all steps are followed in the proper sequence to demonstrate programmatic and regulatory compliance prior to initiation of construction activities.	
Pre-Memorandum of Agreement (or Subrecipient Agreement if not a unit of grantee government)	
	Most recent audit
	If findings, must have plan to resolve
	Excluded parties review
	Grantee Capacity Assessment of Implementing Agency
	DUNS number
Prior to Authorization to Use Grant Funds (AUGF)	
	Executed Memorandum of Understanding (or Subrecipient Agreement), must include subrogation agreement
	Documentation of eligible activity
	Verification of tie to storm (CDBG-DR only)
	Preliminary project budget including:
	Sources and uses
	Preliminary duplication of benefits analysis
	For all projects using LMA rather than UN - project scope of work must include:
	Map of project service area
	Justification of service area
	Census tract and LMI (if claiming as LMA)
Environmental Review	
	Level of environmental review required
	If acquisition involved, option letter or conditional purchase agreement
	Determination of URA to be triggered (acquisition), if yes, documentation of voluntary acquisition and verification regarding tenants
	Engineering & scope sufficient for environment review
	Identification of mitigation required to be included in scope if project in floodplain
	Completed environmental review (signed by CEO)
	Publication of FONSI RROF (with verification)
	Request for Release of Funds to HUD
	Authorization to use grant funds (AUGF) received from HUD

Contractor Selection	
	Detailed scope of work
	Project budget (proposed)
	Cost /price analysis
	Project milestones (specific)
	Procurement documentation
	Meets Grantee/CDBG-DR procurement policy and procedures
	Inclusion of required clauses - Section 3, labor standards, wage determination (if applicable), etc.
	Request for Proposals/Qualifications
	Bid publication verification
	Bid responses
	Bid opening documentation
	Bid tabulations
	Excluded parties check & documentation (prime + subs)
	Award letter
	Notification to non-winning bids
	Contractor documents
	Construction contract
	Wage determination
	Licenses
	Insurance documents
	Bond requirements (if applicable)
	Duplication of benefits review
Pre-construction Conference	
	Documentation of inclusion of mitigation and resilience planning into project scope
	Documentation of green infrastructure and sustainable design
	Compliance with grantee infrastructure standards
	If in floodplain, compliance with federal and territorial requirements
	Review of Davis Bacon requirements, including submission of certified payrolls & statement of compliance
	Section 3 requirements (reporting)
	FFATA requirements
	DBE/MBE/WBE contracting requirements
	Excluded parties review of contractors & subcontractors
Construction Draw	
	Trade payment breakdown
	Documentation of costs (payrolls, invoices)
	Unconditional release of lien(s)
	Davis-Bacon payrolls/statements of compliance up to date
	Inspection report

	Documentation of payment (date down endorsement by title company?)
File Closeout	
	Documentation of project completion
	Final inspection
	Final payment request (to include retainage if applicable)
	Unconditional release of all liens
	Final duplication of benefits (DoB) review
	Documentation of national objective
	All labor standards documentation received, and issues addressed
	Final Section 3 report
	Other reporting (TBD)

Note: If the project meets the "covered project" threshold found in Federal Register Notices published November 18, 2013, and June3, 2014 then other requirements must be met.

Special Flood Hazard Areas (SFHAs) are areas designated by FEMA as having a heightened risk of flooding. 100-Year Floodplains (or 1 Percent Annual Chance Floodplains) are areas near lakes, rivers, streams, or other bodies of water with at least a 1% chance of flood occurrence in any given year. HUD projects within a 100-Year Floodplain must complete the 8-Step Decision-making Process to determine whether there are practicable alternatives to locating the project in the floodplain unless an exception in section 55.12 applies. A Regulatory Floodway comprises the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. This is the segment of the floodplain that will carry flow of flood waters during a flood and is typically the area of greatest risk to structures in the floodplain. HUD financial assistance is prohibited in floodways unless an exception in section 55.12(c) applies or the project is a functionally dependent use (e.g., dams, marinas, and port facilities) or a floodplain function restoration activity. Coastal High Hazard Areas (or V Zones) are areas along the coasts subject to inundation by the 1% annual chance flood event with additional hazards associated with storm or tidal induced waves... Because of the increased risks associated with V Zones, Part 55 prohibits critical actions and new construction in these areas unless an exception in section 55.12(c) applies or the project is a functionally dependent use, and otherwise requires the action to be designed for location in a Coastal High Hazard Area.

Appendix B: Procurement Check List

This checklist addresses the requirements for CDBG-MIT (HUD) grants as stated in 2 CFR Part 200.318-326 and 44 CFR Part 13.

Document your file and be prepared to validate that you have completed the following:

SOLICITATION

	Is the solicitation (competitive invitation to bid (IFB), request for proposal (RFP) or Request for Qualification (RFQ) included in the file?	2 *Code of Federal Regulations* (CFR) 200.320(c)(d)(f)
	Were prospective respondents allowing a reasonable of time to respond? If so, how many days?	44 CFR 13.36(d)(2)(ii)(A)
	Does the solicitation contain a clear and accurate description? of the technical requirements for the material, product or services, scope of work (SOW)?	2 CFR 200.319(c) (1-2)
	Specifications may not contain features that unduly restrict competition	2 CFR 200.319(c) (1-2)
	Are there unreasonable requirements or unnecessary experience or excessive bonding requirements?	2 CFR 200.319(a)(2)
	Are there any "brand name" products specified without also listing "or equal"?	2 CFR 200.319(a)(6)
	Does the solicitation file evidence the following?	
	Positive efforts in hiring small-business enterprises to the extent practical?	2 CFR 200.321 (a)
	Positive efforts in hiring minority-owned business enterprises to the extent practical?	2 CFR 200.321 (a)
	Positive efforts in hiring women-owned business enterprises to the extent practical?	2 CFR 200.321 (a)
	Positive efforts in the utilization of labor surplus firms?	2 CFR 200.321 (a)
	Is the advertisement (city website, Bid Online, SCBO or the State Paper) included in the file? At least two outlets should be used.	
	Is a record of respondents that were rejected as not responsible/responsive and rejection reasoning included in the file?	2 CFR 200.318(i)
	Are there an adequate number of responses documented in the file (two or more for large purchases and three or more for small purchases)? Keep records of responses in your file.	2 CFR 200.320 (c)(1)(ii)

	Are copies of all proposals, to include methodology of evaluation and selection process (e.g., bid summary, tabulation sheet, scoring sheet, cost analysis if needed) included in the file?	2 CFR 200.320(d)(1)
	Are there any potential conflicts of interest?	2 CFR 200.318 (c)
WHAT IS THE PROCUREMENT METHOD?		
	Procurement by micro-purchase <$10,000 (or <$2,000 of acquisitions for construction subject to the Davis Bacon Act)	2 CFR 200.320(a)
	Procurement by small purchases $10,000.01- *$250,000.00	
	Procurement by sealed bids (preferred method for construction contracts). Contract awarded to the lowest responsive, responsible bidder with a firm-fixed price contract (lump sum or unit price)	2 CFR 200.320 (c)
	Procurement by competitive proposal	2 CFR 200.320 (d)
	(a) If solicitation was for other than "A/E" professional services, was price included as a selection criterion?	2 CFR 200.320 (d)
	• If solicitation was for A/E services, is a cost analysis included in your file (see COST ANALYSIS REQUIRED)?	2 CFR 200.320 (d)
	• Does the solicitation clearly outline the scoring criteria and associated weights used for selection?	2 CFR 200.320 (d)(1)(5)
	Procurement by noncompetitive proposals	2 CFR 200.320(f)
	Is there a justification for the use of this method of procurement included in the file? Is the price fair and? reasonable and documented in the file?	2 CFR 200.320(f)
	Are intergovernmental agreements and Federal surplus property (if applicable) included in the file?	2 CFR 200.318(e)
COST ANALYSIS REQUIRED		
	Was A/E or other professional services procured?	2 CFR 200.323 (b)
	Is the contract a noncompetitive proposal?	2 CFR 200.323(b)
	Does the contract contain modifications and/or change orders?	2 CFR 200.323(a)
	Competitively procured contracts (small and large); Documentation demonstrating competitive procurement serves as a cost analysis	2 CFR 200.323(a)
BONDINGREQUIREMENTS		
	Is this a construction or facilities improvement contract that exceeds $250,000.00? If so:	2 CFR 200.325
	• Did the bid response include a 5% bid bond?	2 CFR 200.325(a); LRS 38:2218
	• Did the award contractor execute a performance bond for 100% of the contract?	2 CFR 200.325(b); LRS 38:2219

REQUIRED CONTRACT PROVISIONS		
	Does the contract (>*$250,000) contain a provision for administrative and legal remedies for violation or breach of contract?	Appendix II to Part 200(A)- Contract Provisions
	Does the contract (>$10,000) contain a provision for termination of contract for cause or convenience?	Appendix II to Part 200(B)- Contract Provisions
	Does the contract (>$10,000) contain a provision to comply with Executive Order (EO) 11246, Equal Employment Opportunity (EEO)?	Appendix II to Part 200(C)- Contract Provisions
	Does the contract (applies to all construction or repair contracts or subcontracts) contain a provision to comply with the Copeland Anti-Kickback Act?	Appendix II to Part 200(D)- Contract Provisions
	Compliance with Davis Bacon Act: Construction contracts in excess of $2,000 by non-Federal entity must include this provision.	Appendix II to Part 200(D)- Contract Provisions
	Is the contract (>*$100,000) required to comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)?	Appendix II to Part 200(E)- Contract Provisions
	Does the contract (applies to contract, subcontracts and grants >$25,000) contain a provision to comply with the Clean Air Act (42 U.S.C 7401-7971q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387)?	Appendix II to Part 200(G)- Contract Provisions
	Does the contract contain a provision stating record retention and access requirements to all records? All records, supporting documents and all material pertinent to the award must be retained at least three years.	2 CFR 200.333
TYPES OF CONTRACTS FOR REIMBURSEMENT		
	Lump Sum	Public Assistance Guide- CDBG December 2019, page 17
	Unit Price	Public Assistance Guide- CDBG December 2019, page 17
	Cost Plus Fixed Fee	Public Assistance Guide- CDBG December 2019, page 17
	Time and Materials Contracts Does it meet all the requirements?	Public Assistance Guide- CDBG December 2019, page 17

PROHIBITED CONTRACTS		
	Cost Plus a Percentage of Cost	2 CFR 200.323(d)
	Percentage of Construction Cost	2 CFR 200.323(d)
	Piggyback	DOLR, Version 2.0 pages 5-128: Public Assistance Policy Digest- FEMA 321/Jan. 2008, page 23
	• Did the award contractor execute a payment bond for the 100% of the contract?	2 CFR 200.325(c); LRS 38:2219

Appendix C: Labor Standards

Federal Labor Standards Provisions

U.S. Department of Housing and Urban Development
Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant ',to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

(3) The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

Appendix D: Section 3 – CPD-21-09

Special Attention of:
All CPD Division Directors
Grantees and Program Managers of the following Community Planning and Development (CPD) programs: Formula Community Development Block Grant (Entitlement CDBG, State CDBG, Non entitlement CDBG Grants in Hawaii, and Insular Area CDBG); Community Development Block Grant CARES Act (CDBG-CV); CDBG Disaster Recovery (CDBG-DR); CDBG Mitigation (CDBG-MIT); Neighborhood Stabilization Program (NSP); Recovery Housing Program (RHP); Section 108 Loan Guarantee Program (Section 108)

Notice: CPD-21-09
Issued: August 24, 2021

Expires: **This NOTICE is effective until it is amended, superseded, or rescinded.**
Cross Reference: 24 CFR part 75
Subject: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP projects.

Table of Contents

I. PURPOSE

This notice provides guidance to Community Development Block Grant (CDBG), Community Development Block Grant CARES Act (CDBG-CV), CDBG Disaster Recovery (CDBG-DR), CDBG Mitigation (CDBG-MIT), Neighborhood Stabilization Program (NSP), and Recovery Housing Program (RHP) grantees and Section 108 Loan Guarantee Program (Section 108) borrowers (collectively, "grantees") on the requirements for Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3). These requirements apply to CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP-assisted housing rehabilitation, housing construction and other public construction projects. This notice outlines the key changes made by the notice entitled, "Enhancing and Streamlining the Implementation of Section 3 Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses," (85 FR 61524) ("Final Rule") published in the *Federal Register* on September 29, 2020 (codified at 24 CFR part 75) and provides guidance for tracking and reporting compliance with the new requirements. Refer to 24 CFR 75 for any further updates on Section 3 requirements after the publication of this notice.

BACKGROUND

Section 3 contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible and consistent with existing Federal, state, and local laws and regulations, directed toward low- and very low-income persons. Section 3 applies to training or employment arising in connection with HUD-funded housing rehabilitation, housing construction, or other public construction projects, and any contracting opportunities arising in connection with both public housing and other Section 3 projects. These opportunities are, to the greatest extent feasible, required to be given to low- and very low-income persons and business concerns that provide economic opportunities to low- or very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

On September 29, 2020, HUD published the Final Rule and a companion notice, entitled "Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses," (85 FR 60907) ("Benchmark Notice"), in the *Federal Register*. Prior to the publication of the Final Rule and Benchmark Notice, HUD operated under regulations (found at 24 CFR part 135) ("former regulation") provided by the Section 3 interim rule, which HUD published in 1994.

The regulation, provided by the Section 3 Final Rule, became effective on November 30, 2020 and is codified at 24 CFR part 75. The regulation simplifies the Section 3 requirements and establishes that Section 3 requirements apply to housing rehabilitation, housing construction, and

other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a minimum funding threshold. The regulation also improves alignment with current business practices by requiring the reporting of labor hours rather than new hires. Additionally, the regulation streamlines the reporting process and establishes HUD program office oversight to reduce administrative burden and make the rule more effective. The Benchmark Notice establishes the current numeric goals for compliance with Section 3 requirements. Pursuant to the regulation at 24 CFR 75.23(b)(1) and (b)(2), HUD may adjust funding thresholds or establish new benchmarks (either a single nationwide benchmark or multiple benchmarks based on geography, type of assistance, or other variables) periodically as added information becomes available. HUD must publish all updates in the *Federal Register* and all updates are subject to public comment.

APPLICABILITY

(1) FUNDING THRESHOLD

The regulation established an applicability threshold of $200,000 for housing rehabilitation, housing construction, and other public construction (e.g., public facilities and improvements) projects assisted with housing and community development financial assistance. Housing and community development financial assistance includes, but is not limited to, CDBG, CDBG-DR, CDBG-MIT, NSP, Section 108, RHP, HOME Investment Partnership (HOME), Housing Trust Fund (HTF), Emergency Solutions Grants (ESG), Housing Opportunities for Persons with AIDS (HOPWA), Section 202 Direct Loan Program for Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, Lead Abatement Grants, and other HUD Notice of Funding Opportunities (NOFO) grants.

Per 24 CFR 75.3, the Section 3 requirements apply based on the amount of housing and community development funding provided by one or a combination of two or more different applicable HUD programs exceeding the $200,000 threshold. For example, if a project is funded with $101,000 of HOME funds and $100,000 of CDBG funds, then it exceeds the applicability threshold of $200,000 and the Section 3 requirements apply.

Per 24 CFR 75.3(a)(iii), Section 3 requirements apply to the entire project, not just the HUD-financed portion. If a housing rehabilitation, housing construction, or other public construction project receives more than $200,000 of HUD funding, then Section 3 requirements are triggered and apply to all employment and training opportunities and contracts for work arising in connection with the project (subject to section III.B. below), including efforts that are financed by other, non-HUD sources of funds. Grantees must make all recipients, contractors, and subcontractors aware of the need to comply with Section 3 requirements.

The Section 3 requirements also apply when a project receives less than $200,000 in HUD housing and community development financial assistance but receives public housing financial assistance, as defined in 24 CFR 75.3(a)(1), or more than $100,000 of Lead Hazard Control and Healthy Homes program funding, as defined in 24 CFR 75.3(a)(2)(i)). For example, if a project is funded with $75,000 of CDBG funds and $10,000 of public housing financial assistance funds, then Section 3 requirements apply because public housing financial

assistance is provided. See 24 CFR part 75 Subpart D for requirements that apply to projects with multiple funding sources. Also see Section V.B. below.

B. PROJECT AND ACTIVITY TYPES

Section 3 requirements apply to a housing rehabilitation, housing construction or other public construction project no matter which portion of the project receives the CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108 guaranteed loan funds, or RHP financial assistance. The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing (e.g., CDBG funds used to rehabilitate 20 units in one building as part of an effort to rehabilitate 40 units in two buildings on a single property. The "Section 3 project" includes the rehabilitation of all 40 units.).
Once the project is complete, the Section 3 requirements no longer apply to subsequent contracts.

Section 3 requirements do not apply to projects assisted with housing and community development financial assistance that do not include housing rehabilitation, housing construction or other public construction (e.g., funds used for direct homebuyer assistance or tenant-based rental assistance). Pursuant to 24 CFR 75.3(b), Section 3 requirements also do not apply to materials-only contracts or contracts that do not require any labor. For example, Section 3 would not apply to contracts for office or janitorial supplies because these are materials-only contracts.

CDBG, Section 108, and CDBG-CV grantees must report Section 3 data in HUD's Integrated

Disbursement and Information System (IDIS). CDBG-DR, CDBG-MIT, NSP, and RHP grantees must report Section 3 data in HUD's Disaster Recovery Grant Reporting (DRGR) system. Grantees are cautioned to not include multiple Section 3 projects under a single activity in IDIS or DRGR; this would cause a distortion in the calculation of the benchmarks, particularly if the benchmarks were not met for one of the included projects. Instead, to properly report Section 3 projects in IDIS or DRGR, each project must be established as a distinct activity.
CDBG regulations use the term "activity" which is the same as "project" for the purposes of this notice.

C. TIMING

Section 3 requirements apply to new grants, commitments, contracts, or projects funded on or after the November 30, 2020, effective date. For Section 3 Projects, this means that requirements apply if a grantee or a recipient of HUD funds executes a legally binding written agreement or contract on or after November 30, 2020. For example:

- an executed subrecipient agreement, including any subsequent contracts or agreements, which has project- or activity-level details with respective budgets, schedules and/or secured financing
- an executed homeowner rehabilitation loan or grant agreement, and any subsequent procured contracts
- an agreement or contract, which includes secured financing, with a developer or for-profit entity to complete a multifamily rehabilitation project

Grantees and recipients of HUD funding should keep in mind that existing projects may trigger Section 3 compliance, even after the initial commitment date, if the project includes other HUD funding or additional HUD funding is added to the project. For example, funding provided in phases such as a multifamily housing rehabilitation activity initially receiving $150,000 of CDBG assistance would trigger Section 3 requirements if it received an additional amount exceeding $50,000 in housing and community development financial assistance. These requirements apply to specific Section 3 projects; a program is not a project. The former regulation and its requirements still apply to agreements entered prior to November 30, 2020, and their subsequent contracts or agreements. See Section IV for details on implementation timelines and reporting requirements.

• TIMELINE FOR IMPLEMENTATION

• EFFECTIVE DATE

The regulation became effective on November 30, 2020. As of November 30, 2020, the requirements of 24 CFR part 135 no longer apply. Section 3 projects with CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP commitments made on or after November 30, 2020 must comply with 24 CFR part 75. Section 3 projects with CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP commitments made before November 30, 2020, must continue to comply with the requirements of 24 CFR part 135.

• REPORTING TRANSITION

While the regulation's effective date was November 30, 2020, HUD expected grantees to transition to the updated 24 CFR part 75 requirements, revise their policies and procedures and systems to comply with the requirements, and make necessary changes in IDIS and DRGR by July 1, 2021. Therefore, HUD will not enforce compliance with the regulation's reporting requirements until July 1, 2021. Grantees are not required to report Section 3 data in IDIS or DRGR for any project to which CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP funds were committed before November 30, 2020, or any project that was completed before July 1, 2021. As described in the table below, grantees must keep all files associated with Section 3 projects with commitments made before November 30, 2020, or between November 30, 2020, and July 1, 2021, to demonstrate that the projects comply with the requirements of 24 CFR part 135 or part 75, depending on the commitment date.

Commitment Date	Before 11/30/2020	On or After 11/30/2020 but before 7/1/2021	On or After 7/1/2021
Applicable Regulations	24 CFR part 135	24 CFR part 75	24 CFR part 75

Reporting Requirement	Grantee must retain documentation demonstrating compliance with interim rule in project file.	Grantees must retain documentation demonstrating compliance with Final Rule in project file. Grantee will report in IDIS or DRGR for open activities starting July 1, 2021. If the IDIS or DRGR activity was set up prior to the system update, grantees will need to modify the IDIS or DRGR activity to generate the appropriate Section 3 compliance screen(s).	Grantee will report compliance data in IDIS or DRGR within the applicable reporting cycles beginning on or after July 1, 2021.

V. LABOR HOURS

The regulation introduces several new concepts and definitions to align the regulations more closely with the statutory priorities for hiring and contracting and with grantee current practices. The most notable change is the switch from tracking and reporting new hires and contracts to tracking and reporting labor hours. "Labor hours" means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance (24 CFR 75.5). The Final Rule's focus on labor hours seeks to measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the change to tracking labor hours captures continued and long- term employment. The focus on labor hours creates an incentive for employers to invest in and retain their newly hired workers.

24 CFR 75.25 requires grantees to report the total labor hours for three categories of workers on the project: all workers, Section 3 workers, and Targeted Section 3 workers. The definitions in 24 CFR 75.5 for a "Section 3 worker," "Targeted Section 3 worker," and "Section 3 business concern" simplify grantee reporting and better align with statutory priorities. Benchmarks that apply to each of these categories of workers will serve as safe harbors for compliance, as discussed in Section VI of this notice.

Pursuant to 24 CFR 75.27, grantees must include language applying Section 3 requirements in any agreement or contract for a Section 3 project and must require contractors and subcontractors to meet the regulation's requirements, regardless of whether their agreements or contracts include Section 3 language.

A. SECTION 3 WORKER

The new definition of Section 3 worker, at 24 CFR 75.5, implements the statutory requirement that grantees ensure that job and contracting opportunities arising in connection with a HUD-

funded housing rehabilitation, housing construction, or other public construction project are provided to Section 3 workers or Section 3 business concerns to the greatest extent feasible. In accordance with the regulation, a Section 3 worker is a worker who currently fits or when hired within the past five years fits at least one of the following categories:

1. Is a low- or very low-income worker that fell below HUD income limits for the previous or annualized calendar year. Low- and very-low-household income limits may be obtained from: http://www.huduser.org/portal/datasets/il.html
2. Is employed by a Section 3 business concern (defined in Section C).
3. Is a YouthBuild participant. YouthBuild is a community-based pre-apprenticeship program administered by the U.S. Department of Labor that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

Grantees may count Section 3 workers' labor hours for five years from when their status as a Section 3 worker is established, pursuant to 24 CFR 75.31. For purposes of reporting the labor hours for Section 3 workers, an employer may choose whether to define the workers as Section 3 workers for a five-year period at the time of the workers' hire, or when the workers are first certified as meeting the Section 3 worker definition. The five-year period for a worker cannot begin before November 30, 2020; therefore, Section 3 workers hired prior to November 30, 2020, may be certified for a five-year period beginning November 30, 2020.

Pursuant to 24 CFR 75.5, a prior arrest or conviction cannot negatively affect the status of a Section 3 worker. Furthermore, Section 3 workers are not exempt from meeting position qualification requirements nor do the regulations require the employment of an individual meeting the definition of a Section 3 worker.

A worker may qualify as a Section 3 worker through one of the following certifications, in accordance with 24 CFR 75.31:

- A worker's self-certification that their income is below HUD's income limit from the prior calendar year.
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing.
- Certification from a public housing authority (PHA), or an owner or property manager of project-based Section 8-assisted housing, or an administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs.
- An employer's certification that a worker's income from that employer is below HUD's income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis.
- An employer's certification that the worker is employed by a Section 3 business concern.

Pursuant to 24 CFR 75.31, for a worker to qualify as a Section 3 worker, the grantee must maintain (or ensure that the subrecipient, contractor, or subcontractor that employs the worker maintains) one of the listed records above from the time the worker is certified as meeting the

Section 3 worker definition for the five-year period or from the time of hire (if hired within the last five years). Pursuant to 24 CFR 75.31(c), the documentation described above must be maintained for the time period required for record retention in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

Special Case: Professional Services

Professional service jobs are defined in 24 CFR 75.5 as "non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services." These jobs are excluded from the reporting requirement for Section 3 and Targeted Section 3 workers because it is difficult for grantees and contractors to recruit and hire eligible persons for these roles due to the higher wages/salaries earned for these types of jobs. Grantees should not include the labor hours worked for professional services jobs in the total labor hours worked on the project (pursuant to 24 CFR 75.25(a)(4)) and HUD did not consider such jobs when developing the benchmarks. However, if employees in professional services roles meet the definition of a Section 3 worker or Targeted Section 3 worker, grantees can report their labor hours in the applicable worker hour category. By structuring the requirements in this way, the regulation incentivizes grantees and contractors to hire Section 3 or Targeted Section 3 workers for professional services jobs without creating undue burden if qualified Section 3 workers are not available to fill these roles.

B. TARGETED SECTION 3 WORKER

The Section 3 statute requires certain recipients to prioritize their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. The new definition of Targeted Section 3 worker reflects both statutory and policy priorities that HUD wishes to specifically track. Pursuant to 24 CFR 75.21, a Targeted Section 3 worker for housing and community development financial assistance is a worker who meets the definition of a Section 3 worker, plus one of the following:

- A worker employed by a Section 3 business concern (defined below), or
- A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
- Living within the service area or the neighborhood of the project (defined below).
- A YouthBuild participant.

The regulation defines the service area or the neighborhood of the project in 24 CFR 75.5 as "an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census."

For a worker to qualify as a Targeted Section 3 worker under housing and community development assisted Section 3 projects (pursuant to 24 CFR 75 Subpart C), the grantee and/or

its recipients must maintain source documentation that the worker meets the definition of a Section 3 worker and at least one of the following (per 24 CFR 75.31(b)(2)(ii)):

- An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census,
- An employer's certification that the worker is employed by a Section 3 business concern, or
- A worker's self-certification that the worker is a YouthBuild participant.

(HUD's Office of Policy Development and Research (PD&R) is coordinating the development of a webtool that will assist in determining employee eligibility under the Section 3 requirements. Using project site locations specified by the user, the tool will analyze surrounding geographies to verify that an individual employee's address aligns with the eligibility criteria outlined under the rule. PD&R anticipates releasing the tool in 2021.)

However, per 24 CFR 75.29, if a CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, or RHP-assisted Section 3 project receives also public housing financial assistance, the grantee may instead choose to follow the public housing definition of Targeted Section 3 worker at 24 CFR 75.11 to simplify project reporting.

Per 24 CFR 75.11, a Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

1. A worker employed by a Section 3 business concern, or
2. A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
    a. A resident of public housing or Section 8-assisted housing.
    b. A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance.
    c. A YouthBuild participant.

For a worker to qualify as a Targeted Section 3 worker under the public housing financial assistance definition, the grantee and/or its recipients must maintain documentation that the worker meets at least one of the categories in the definition. Therefore, in addition to the documentation certifying that the worker meets the definitions of a Section 3 worker, a grantee and/or its recipients must maintain documentation for at least one of the following (per 24 CFR 75.31(b)(2)(i)):

1. A worker's self-certification of participation in public housing or Section 8-assisted housing programs,
2. A certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs,
3. An employer's certification that the worker is employed by a Section 3 business concern, or

4. A worker's self-certification that the worker is a YouthBuild participant.

In accordance with 24 CFR 75.29, for projects with multiple sources of funding, the recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.

In all cases, as with a Section 3 worker, a prior arrest of conviction cannot negatively affect the status of a Targeted Section 3 worker (24 CFR 75.5). Additionally, grantees must certify that they are making efforts to prioritize training and opportunities for Targeted Section 3 workers (see Subsection D below).

C. SECTION 3 BUSINESS CONCERN

The statute creates a contracting priority for businesses that provide economic opportunities for low- and very low-income workers. To implement this priority, the regulation includes labor hours worked by Section 3 business concern employees to count towards benchmarks for Section 3 workers and Targeted Section 3 workers. HUD also created a new Section 3 business concern definition that incorporates the change to labor hours and increases the threshold of work performed by a business by low- and very low-income workers. Grantees must certify that they are making efforts to prioritize contracting with Section 3 business concerns (see Subsection D below) and are responsible for verifying that businesses meet the definition of a Section 3 business concern.

A Section 3 business concern is defined in 24 CFR 75.5 as a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons,
2. More than 75 percent of the labor hours performed for the business over the previous 3-month period are performed by Section 3 workers, or
3. At least 51 percent owned and controlled by current residents of public housing or Section 8-assisted housing.

Additionally, pursuant to 24 CFR 75.5, the status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees. Furthermore, Section 3 business concerns are not exempt from meeting contract specifications nor do the regulations require the contracting or subcontracting of a Section 3 business concern.

HUD's Section 3 Business Registry is a searchable online database of firms that have self-certified that they meet one of the regulatory definitions of a Section 3 business concern. Agencies that receive HUD funds, developers, contractors, and others can use this registry to facilitate the award of certain HUD-funded contracts. While the Department maintains the Business Registry database, it has not verified the information submitted by the businesses and does not endorse the services they provide. Accordingly, grantees must verify that each business meets the definition of a Section 3 business concern before awarding contracts to any firm that has self-certified on this registry.

D. EMPLOYMENT, TRAINING, AND CONTRACTING PRIORITIZATION

Pursuant to 24 CFR 75.19(a), grantees must, to the greatest extent feasible, ensure Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Section 3 project is located are provided with employment and training opportunities arising in connection with the project. Where feasible, a grantee and its recipients should give priority for opportunities and training to:

1. Section 3 workers residing within the service area or the neighborhood of the project, and
2. Participants in YouthBuild programs.

Pursuant to 24 CFR 75.19(b), grantees must, to the greatest extent feasible, ensure business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Section 3 projects are located are provided with contracts for work awarded in connection with Section 3 projects. Where feasible, a grantee and its recipients should give priority for contracting opportunities to:

1. Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
2. YouthBuild programs.

All employment and training opportunities, and contracting awards provided in accordance with 24 CFR 75.19 must be consistent with Federal, state, and local laws and regulations. In addition to meeting prescribed benchmarks, grantees and recipients will need to certify that they have followed the prioritization of effort in 24 CFR 75.19 to demonstrate compliance (see Section VI).

VI. DOCUMENTING COMPLIANCE

Grantees must maintain or ensure that a subrecipient, contractor, or subcontractor maintains adequate records demonstrating Section 3 compliance. The regulation requires HUD to establish Section 3 benchmarks by publishing a notification, subject to public comment, in the *Federal Register* (see 24 CFR 75.23(b)). The notice must include proposed benchmarks and the methodology for determining the benchmarks. These benchmarks provide grantees a "safe harbor" by defining the percentage of labor hours worked by Section 3 workers and Targeted

Section 3 workers on a project to comply with Section 3 requirements.

HUD will consider the grantee to have complied with the requirements in the regulation, by meeting the safe harbor, in the absence of evidence to the contrary, if a grantee certifies to the prioritization of effort in 24 CFR 75.19 and meets or exceeds the applicable Section 3 benchmarks referenced in 24 CFR 75.23(b). This "Section 3 Safe Harbor" is codified at 24 CFR 75.23. If a grantee does not meet requirements of 24 CFR 75.23's Section 3 safe harbor, HUD will require additional qualitative reporting to demonstrate compliance with the regulation (see Subsection C below).

A. LABOR HOURS AND BENCHMARKS

The regulation requires grantees to track and report the labor hours worked on Section 3 projects (see 24 CFR 75.25). In accordance with 24 CFR 75.23(b), HUD published the Benchmark Notice to establish initial numeric goals, or benchmarks, to measure grantee compliance with the regulation. Publishing the numeric benchmarks in a separate notice from the regulation provides HUD with the flexibility to update the goals as needed. HUD plans to review and update the benchmarks at least once every three years through notice in the *Federal Register*.

In accordance with 24 CFR 75.25(a), grantees must report the following labor hours (including total hours worked by all contractors and subcontractors) for Section 3 projects:

1. The total number of labor hours worked by all workers,
2. The total number of labor hours worked by Section 3 workers, and
3. The total number of labor hours worked by Targeted Section 3 workers.

If the project does not require time and attendance reporting, grantees may report to HUD using a good faith assessment. Grantees can report their own labor hours or that of a subrecipient, contractor or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee, informed by the employer's existing salary or time and attendance-based payroll systems.

Per the Benchmark Notice, the current benchmarks that apply for a Section 3 project (assisted under HUD programs that provide housing and community development financial assistance where the amount of assistance to the project exceeds a threshold of $200,000) are:

a. Benchmark 1: Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Section 3 workers

   Section 3 Labor Hours/Total Labor Hours = 25%

   and

b. Benchmark 2: Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project must be done by Targeted Section 3 workers

   Targeted Section 3 Labor Hours/Total Labor Hours = 5%

Example

Springfield commits $300,000 of CDBG funds to ABC Developers to rehabilitate a multifamily rental building. By committing an amount above the $200,000 threshold, the Section 3 requirements apply to this project. To comply with 24 CFR 75.25(a), Springfield must require ABC Developers to report the following accomplishments to Springfield within the applicable reporting cycles: (1) the total *Labor Hours*, (2) the total *Section 3 Labor Hours*, and (3) the total *Targeted Section 3 Labor Hours* on the Section 3 project.

Springfield is responsible for reporting labor hour data from all contractors and subcontractors hired by ABC Developers to rehabilitate the multifamily rental building. During the first quarter (July – September), ABC Developers reports to Springfield a total of 5,000 labor hours worked on the project. Of that total, 1,300 were worked by employees who self-certified as Section 3 workers. Additionally, 300 of those 1,300 hours were performed by workers who lived within a one-mile radius of the work site. Springfield has met the project-level Section 3 Benchmarks and reports the following data in DRGR at the next reporting cycle:

Total Labor Hours	5,000	
Section 3 Labor Hours	1,300	26%
Targeted Section 3 Labor Hours	300	6%

As stated above, per 24 CFR 75.23, HUD will consider grantees to have complied with Section 3 benchmarks, in the absence of evidence to the contrary if they certify to the prioritization of effort in 24 CFR 75.19 and meet or exceed the applicable Section 3 benchmarks. See Section C. below for details on how to report qualitative efforts if the benchmarks are not met.

B. REPORTING

HUD will no longer require grantees to report Section 3 compliance data annually in the Section 3 Performance Evaluation and Reporting System (SPEARS) for Section 3 projects. HUD will decommission the previous reporting modules in SPEARS in 2021. The regulation requires each grantee to report on Section 3 compliance per the reporting requirements for each applicable program. Grantees will report project or activity level data in IDIS and DRGR. This also means that grantees will report Section 3 data for each applicable HUD program in IDIS and DRGR instead of into one SPEARS annual report that measures grantees efforts across all HUD programs. In instances where there are multiple funding sources, grantees must collect and report the same data across programs for consistency.

IDIS

The Section 3 reporting data fields are available on the IDIS activity setup and accomplishment screens for CDBG, Section 108, and CDBG-CV activities and will be available in the Consolidated Annual Performance and Evaluation Report (CAPER). Beginning July 1, 2021, grantees must enter Section 3 applicability and data before they can mark a CDBG, Section 108 or CDBG-CV rehabilitation or construction activity complete in IDIS. The data reported at the activity level in IDIS will be populated into the CAPER and a Section 3 MicroStrategy report (available through IDIS), eliminating the need for a separate annual Section 3 reporting system. When grantees submit their CAPER, they will fulfill the requirement for annual reporting. Grantees can also use the Section 3 MicroStrategy report to track compliance at the project level.

For CDBG, CDBG-CV, and Section 108 activities that are funded on or after November 30, 2020, and have “Open” status on or after July 1, 2021, the grantee must indicate whether the activity is subject to Section 3. Failure to indicate Section 3 applicability at activity set-up in IDIS may result in reporting noncompliance with Section 3 and program requirements in the future. If a grantee indicates that the activity is subject to Section 3 requirements, IDIS will generate Section

3 reporting fields on the activity accomplishments screen (CDBG Accomplishment Detail Page 1). The grantee shall report Section 3 labor hours (even it is 0) for every program year the activity remains open. The Section 3 reporting fields include total labor hours worked, Section 3 labor hours worked, and Targeted Section 3 labor hours worked. When a grantee enters labor hour data, IDIS will calculate the percentage of Section 3 labor hours worked and the percentage of Targeted Section 3 labor hours worked out of all labor hours worked. IDIS will also indicate whether the activity met the established benchmarks (25% Section 3 worker hours, 5% Targeted Section 3 worker hours).

Example

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	25	25%	Yes
Targeted Section 3 Worker Hours	5	5%	Yes

		Calculated Percentage	Safe Harbor Benchmark Met
Total Labor Hours	100		
Section 3 Worker Hours	20	20%	No
Targeted Section 3 Worker Hours	1	1%	No

If the activity meets both benchmarks, HUD will consider the activity to be in full compliance with Section 3, in the absence of evidence to the contrary, and require no further reporting on that activity. If the activity does not meet one of the Section 3 benchmarks, IDIS will require further reporting on the qualitative efforts that the grantee made to try to reach the benchmarks (see Section C).

DRGR

The Section 3 reporting data fields for CDBG-DR, CDBG-MIT, NSP and RHP activities in DRGR are available to be entered as projected accomplishments when setting up activities with applicable Section 3 activity types in the DRGR Action Plan using the Activity 'Measures' tab. The Section 3 reporting fields in DRGR include the number of total labor hours, number of labor hours worked by Section 3 workers, and number of labor hours worked by Targeted Section 3 workers. Whether a grantee reports quarterly or annually in DRGR is determined by the grant's rules and requirements concerning reporting. RHP grantees report in DRGR annually while CDBG-DR, CDBG-MIT, and NSP grantees report quarterly. Grantees should continue to follow these required reporting cycles for Section 3 activities.

Beginning July 1, 2021, if an activity type is selected in the DRGR Action Plan where Section 3 compliance is required, grantees will have the option to propose accomplishments for each Section 3 performance measure where appropriate. In instances where projections are unavailable at the

time of activity type selection, a grantee may enter "0" as a placeholder until projections are available for entry. Grantees must also indicate that the activity is subject to Section 3 requirements by selecting the "Subject to Section 3 Requirements" field under the DRGR Action Plan – Activity 'Details' tab. Grantees shall report actual Section 3 labor hours worked (even if it is 0 hours) for each reporting cycle the activity remains open in the DRGR Performance Report. To report actuals on these proposed Section 3 accomplishments, a grantee must access the DRGR Performance Report Activity 'Measures' tab to enter actual accomplishments in the Performance Report. Grantees can review proposed measures entered in the DRGR Action Plan for each applicable Section 3 activity in the Performance Report when entering actual accomplishments as a tool for grantees to track benchmark requirements and Section 3 compliance. The data reported at the activity level in the DRGR Action Plan and DRGR Performance Report will be populated on those applicable system screens and in a Section 3 MicroStrategy report (available through the DRGR Reports Module as another option to track compliance), eliminating the need for a separate annual Section 3 reporting system.

C. QUALITATIVE EFFORTS

If an activity does not meet the benchmarks, but the grantee can provide evidence that it has made qualitative efforts to provide low- and very low-income persons with employment and training opportunities, then HUD will consider the grantee compliant with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

IDIS

The Section 3 regulations at 24 CFR 75.25 provide a list of qualitative efforts that demonstrate what HUD considers to be efforts to comply with the Section 3 benchmarks. If a grantee did not meet benchmarks for a CDBG, Section 108, or CDBG-CV activity, IDIS will display a checklist of the qualitative efforts from 24 CFR 75.25 on the activity accomplishment screen (CDBG Accomplishment Detail Page 1). The grantee must select at least one option from the list that best describes their efforts, and/or describe their efforts in a box labeled "other" to proceed to the next activity completion screen. Grantees and/or its recipients must also maintain records in their project files to document the efforts reported in IDIS.

The checklist displayed in IDIS for qualitative efforts includes the following options:

- Outreach efforts to generate job applicants who are Public Housing Targeted Workers.
- Outreach efforts to generate job applicants who are Other Funding Targeted Workers.
- Direct, on-the job training (including apprenticeships).
- Indirect training such as arranging for, contracting for, or paying tuition for, off-site training.
- Technical training such as arranging for, contracting for, or paying tuition for, off-site training.
- Outreach efforts to identify and secure bids from Section 3 business concerns.
- Technical assistance to help Section 3 business concerns understand and bid on contracts.
- Division of contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided or connected residents with assistance in seeking employment, including drafting resumes, preparing for interviews, finding job opportunities, connecting residents to job placement services.
- Held one or more job fairs.
- Provided or connected residents with supportive services that can provide direct services or referrals.
- Provided or connected residents with supportive services that provide one or more of the following: work readiness health screenings, interview clothing, uniforms, test fees, transportation.
- Assisted residents with finding childcare.
- Assisted residents to apply for/or attend community college or a four-year educational institution.
- Assisted residents to apply for or attend vocational/technical training.
- Assisted residents to obtain financial literacy training and/or coaching.
- Bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Provided or connected residents with training on computer use or online technologies.
- Other. Specify:

IDIS provides an empty text box next to "Other" to give grantees the option of entering a description about efforts taken that are not included in the list of qualitative efforts provided. Examples of qualitative efforts not included in the checklist displayed in IDIS are:

- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

- Promoted the use of a business registry designed to create opportunities for disadvantaged and small business.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

DRGR

The Section 3 benchmarks are minimum targets grantees must reach in order to meet the safe harbor. Grantees must, to the greatest extent feasible, work to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers.

If a grantee did not meet numeric benchmarks for a CDBG-DR, CDBG-MIT, NSP or RHP activity, grantees should enter at least one of the qualitative efforts listed in 24 CFR 75.25 within the DRGR Performance Report at the activity level. The grantee must clearly identify (enter) at least one option from the list that best describes their efforts or enter "Other:" followed by narrative describing efforts not included in the list of qualitative efforts.

The qualitative efforts listed at 24 CFR 75.25 are the same for grantees reporting in DRGR.

A Section 3 MicroStrategy report (available through the DRGR Reports Module) will include all reported qualitative efforts at the activity level for the grantee and HUD to review. Grantees and their recipients should also maintain records in their project files to document the qualitative efforts reported in DRGR.

VII. HUD MONITORING

The regulation establishes that the HUD program offices providing the financial assistance will perform Section 3 oversight. As part of this new oversight responsibility, Community Planning and Development (CPD) representatives and other grant managers in HUD field offices and HUD Headquarters will monitor Section 3 compliance as part of the existing CPD onsite or remote monitoring process using exhibits in the CPD Monitoring Handbook. HUD may make findings and impose appropriate remedies and sanctions in accordance with the programs' regulations.

To prepare for potential monitoring, grantees must keep records demonstrating compliance with Section 3 requirements on a project-level basis. Grantees must establish and maintain (or ensure that a subrecipient, contractor, or subcontractor maintains) documentation to demonstrate that workers on Section 3 projects meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. This includes requiring written reports from developers or contractors summarizing the totals for labor hours, including Section 3 worker and Targeted Section 3 worker labor hours, and documentation from employees or employers certifying that the employee met the requirements to receive Section 3 worker status (see Section V). Any information that a grantee enters in IDIS or DRGR must have supporting documentation demonstrating the accuracy of the data. Additionally, grantees must retain documentation

that ensures that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period. Grantees must maintain documentation in accordance with applicable program requirements for recordkeeping and record retention.

Appendix E: Sample Memorandum of Understanding