



# CDBG Project Management Guide

2019 Update



# CDBG PROJECT MANAGEMENT GUIDE

## NOTES

- Web links will not work in Internet Explorer. Firefox and Google Chrome web browsers work best for the web links in this document.
- The attachments and forms will need to be opened, choose “file save as” for accessibility to complete and save for uploads.

## RECENT ADDITIONS AND REVISIONS

### MAY 2019

- Page Numbers added
- Oklahoma State Statutes corrected
- Acquisition Information (Samples and Flow Charts” can be located in Attachments 1-19
- Required supporting documentation for Request for Payments & Monthly Expenditures added
- New - CDBG Closeout Beneficiary Form
- Deleted previous CDBG Beneficiary form
- New - CDBG Closeout Checklist Form
- Revised Staff Composition Form

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# REQUIREMENT NO. 401

## PROGRAM MANAGEMENT

### 1. CONTRACTUAL REQUIREMENTS

- 1.1. Community Development Block Grant (CDBG) Grant Recipients shall not obligate or expend funds for any activity including matching/leveraged funds specifically conditioned in the contract until such condition is removed by the Oklahoma Department of Commerce, Community Development (ODOC/CD).

**The announcement and subsequent award of CDBG contract does not authorize the Grant Recipient to incur costs or obligate the expenditure of funds whether paid with grant or leverage/matching funds.**

- 1.2. Obligating or expending funds for a conditioned activity that has not yet been cleared by ODOC is an ineligible use of contract funds and the CDBG contract will be de-obligated. FUNDS CANNOT BE USED TO REIMBURSE THE GRANT RECIPIENT FOR COSTS INCURRED PRIOR TO THE BEGINNING DATE OF THE CONTRACT. **[See Requirement #405-2 Section II for the only exception to this rule.]**

### 2. REMOVING CONTRACT CONDITIONS

Every contract has two basic sets of conditions, i.e., standard and special. Some of the standard conditions are applicable throughout the life of the project. Examples of these include but are clearly not limited to:

- 2.1. Procurement standards and procedures
- 2.2. Affirmative action
- 2.3. Financial management practices and procedures
- 2.4. Contract management
- 2.5. Reporting
- 2.6. Engineer Acknowledgement Document
  - 2.6.1. Some standard conditions and at times special conditions must be satisfied or cleared before the project funds can be requested. The Grant Recipient is required to take the actions necessary to satisfy these conditions and, after the actions are completed, submit the Request for Authority to Use Grant Funds using OKGrants.
- 2.7. Environmental Review:
  - 2.7.1. Every activity is subject to one of five levels of environmental review:
    - 2.7.1.1. Exempt
    - 2.7.1.2. Categorically excluded not subject to CFR 24-58.5
    - 2.7.1.3. Categorically excluded subject to CFR 24-58.5
    - 2.7.1.4. Environmental Assessment 58
    - 2.7.1.5. Environmental Impact Statement (Rare instances)
      - 2.7.1.5.1. **The Release of Funds Checklist must be uploaded with your Environmental Review. This form is very helpful in making sure you have the right documents for your Environmental Review Record (ERR).**
  - 2.7.2. Each activity must be cleared separately, using specific procedures and forms designed for that purpose. The Grant Recipient may draw down funds to carry out various project activities after appropriate reviews have been conducted and cleared and a Notice of Removal of Contract Conditions and Authority to Use Grant Funds is received from ODOC. **[See Requirement 403 for further detailed guidance.]**
- 2.8. Insurance and Bonding: The Grant Recipient shall submit evidence of:
  - 2.8.1. The grantee's current policy showing general liability insurance covering the funded activities; and
  - 2.8.2. Bonding of all officials who are responsible for financial transactions relating to this contract
- 2.9. Anti-Displacement Plan:

2.9.1. All Grant Recipients must have a current anti-displacement plan adopted by council resolution on Grant Recipient's letterhead. **[See Requirement 402]**

2.10. Special Conditions:

2.10.1. Any special conditions are identified in Part II of the contract between ODOC and the Grant Recipient.

### 3. UPDATED DISCLOSURE REPORT

3.1. Prior to signing the contract agreement, there should be a completed initial Disclosure Report. Submit a partial or full Report, depending on several factors. You are required to submit an updated Report if:

3.1.1. Omissions were made in the initial Disclosure Report;

3.1.2. Additional persons can be identified as interested parties who were not identified in the initial Disclosure Report;

3.1.3. There is an increase in the amount of pecuniary interest of a person or entity identified in the last report, if the total interest is more than \$50,000 or 10% of the contract amount, whichever is lower;

3.1.4. There is a change in the other governmental assistance previously reported by more than \$250,000 or 10%, whichever is lower; or

3.1.5. There is a change in the sources or uses of funds since the last report that exceeds the amount of all previously disclosed sources and uses of funds by more than \$250,000 or 10%, whichever is lower.

3.2. Updates must be submitted to ODOC within **thirty (30) days** of the occurrence of any of these circumstances and as frequently as they occur throughout the life of the contract.

### 4. PROJECT AND BUDGET MODIFICATIONS

4.1. **NOTE:** Project and budget modifications will be done in OKGrants. Please contact your project manager or review the My Training Materials tab in OKGrants for instructions. The information described below will be necessary for any contract changes.

4.1.1. Changes to the scope, budget or completion date of the project are accomplished by a modification.

4.1.2. A modification is a change from the original project description as a result of:

4.1.2.1. New or additional activities; and/or

4.1.2.2. Changes in the proposed scope of services or beneficiaries; and/or

4.1.2.3. Changes in the project location or target area; and/or

4.1.2.4. Extensions of the contract ending date; and/or

4.1.2.5. Changes in the amount of any budget line item (or total budget).

4.1.3. When revision of a budget line item is necessary, the Grant Recipient must Contact the ODOC Project Manager for instructions or review the My Training Materials tab in OKGrants for instructions. All modifications must be submitted on OKGrants.

4.1.4. Project expansion: During the course of implementation of the grant project, there are occasions when project costs are less than anticipated. During these occasions, the Grant Recipients may be able to undertake additional work that is the same scope of the original project. The Grant Recipient is required to consult with an ODOC Project Manager for approval.

4.1.4.1. Examples are listed below:

4.1.4.1.1. A Grant Recipient has a grant for street resurfacing. At the completion of the project the overall cost of the project was less than projected. The Grant Recipient has available funds to do additional street resurfacing. This is not considered a change of scope. The Grant Recipient may use remaining funds to resurface additional streets as long the individuals benefiting from the street resurfacing meet the requirement of being at least 51% low to moderate income.

4.1.4.1.2. Example #2: A Grant Recipient has a grant for installation of sewer lines. Upon completion of the project as described in the application the Grant Recipient has funds remaining. The Grant

Recipient desires to utilize the remaining funds to install a new lift station. This would be an example of a change of scope. **Regardless of whether the project is simply a project expansion or Change of Scope, the additional work must have been achieved for Environmental clearance.**

- 4.1.5. For All Projects: Requests for a program modification (Change of Scope) must provide the following documentation:
- 4.1.5.1. Narrative explanation of reasons, including:
    - 4.1.5.1.1. A detailed description of the new or significantly altered activities, existing activities being altered or eliminated (if any) and why these changes are being proposed. Submit a revised Project Description, along with a technical/engineering justification, cost estimates, maps; and
    - 4.1.5.1.2. A detailed description of any changes in the number, percentages or scope of services that are to be provided to low and moderate income persons and/or other project beneficiaries. This may require revisions to existing or new beneficiary documentation (income surveys, census data, etc., as appropriate).
  - 4.1.5.2. If the proposed modification involves reduced and/or substantially altered activities from the original contract:
    - 4.1.5.2.1. Documentation confirming the public notice and conduct of a public hearing or posting consistent with the Grant Recipient's Citizen Participation Plan is required;
    - 4.1.5.2.2. The Grant Recipient's legislative body must adopt a resolution supporting the modifications and submit;
      - 4.1.5.2.2.1. Either a Certification of Continued Environmental Compliance or, if appropriate, documentation of a different level of environmental review; **[See Requirement 403]**
      - 4.1.5.2.2.2. Documentation of permits or regulatory approvals from appropriate agencies such as DEQ, if applicable;
      - 4.1.5.2.2.3. Determination of whether an Updated Disclosure Report must be submitted. If the modification causes any changes from the Initial Disclosure Report, the Updated Report must be submitted with the modification request.
  - 4.1.6. ODOC will evaluate the proposed modification against the following criteria:
    - 4.1.6.1. **Eligibility**: Will the proposed changes still be eligible for CDBG funding?
    - 4.1.6.2. **Ratability**: Would the proposed changes have caused a lower scoring on the original application? Would this lower score have meant that the application would not have been competitive and, subsequently, not have been authorized to enter into a contract agreement? If the answer to this question is "yes", the modification will not be approved.
    - 4.1.6.3. **Note**: No increases above the maximum established by ODOC in either the administrative or engineering line items will be approved.
  - 4.1.7. The project modification may trigger the need for a budget modification. If the existing budget is modified, a Request for Budget Modification must be submitted with a detailed letter of justification and CDBG Certification of Leverage form. The form and letter are required even if the revised budget is not a result of any project modification.
  - 4.1.8. Any modification will be completed on OKGrants. Contact your Project Manager for specifics on how to enter the information, or review the My Training Materials tab in OKGrants for instructions.

## 5. ADMINISTERING THE PROGRAM

- 5.1. The chief elected official is ultimately responsible for contract performance. Grant Recipients have two options in managing the daily activities of a CDBG-funded project:
  - 5.1.1. Assign the responsibility to someone on the Grant Recipient's staff; or



- 5.1.2. Utilize the services of a certified CDBG Administrator (whether for-profit or non-profit). **[See Requirement 405 for procurement procedures.]** The Certified Grants Administrators list can be found on the OkCommerce.gov website.
- 5.2. Consultants assisting the Grant Recipient must be certified by ODOC as a CDBG administrator. Beyond this minimum expectation and given the complexities of most projects, utilization of an experienced, certified CDBG administrator to assist with some or all of your project activities is preferred.
- 5.3. The decision to employ a certified CDBG administrator is influenced by the following factors:
  - 5.3.1. The size of the municipality and, more importantly, the number of municipal employees who can devote some significant time to routine contract administrative requirements; and
- 5.4. ODOC will not recommend any individual or firm for providing these services. ODOC will, however, provide the following:
  - 5.4.1. A list of all firms or individuals currently certified to administer CDBG grants;
  - 5.4.2. A referral to other similar communities with similar projects.
- 5.5. If the services of an administrator are retained, you must understand the CDBG process and its requirements well enough to evaluate your administrator's work and progress. Even if a grant administrator has been certified, it is necessary for you to make sure your grant administrator stays on track with the project to avoid delays and possible de-obligation of the contract. Remember, the chief elected official is ultimately responsible for contract performance.
- 5.6. Requirements for the CDBG Certification Program, disciplinary action, complaint process, penalties and the process to impose penalties as set forth in Title 150 of the Oklahoma Administrative Code, Chapter 15, Subchapter 9, can be located at: <http://www.oar.state.ok.us>.
- 5.7. Mentorship: In the event an individual wishes to act as an administrator, and the individual has not previously been tested and failed, and individual can act as an interim CDBG administrator upon the completion of the following:
  - 5.7.1. The individual must provide written notice to the Oklahoma Department of Commerce of the interim CDBG administrator's name, address, telephone number; and the name of the certified CDBG administrator that has agreed to be the mentor and supervise the interim CDBG administrator.
  - 5.7.2. A statement that the interim CDBG administrator understands that he/she is subject to all of the same rules and standards as if they were a certified CDBG administrator, and is also subject to discipline.
    - 5.7.2.1. Interim certification is effective only until the next certification class and examination.
    - 5.7.2.2. The mentor must be a certified CDBG administrator in good standing and will cosign all forms, applications, and other documents with the interim CDBG administrator. In the event that a grievance or request for investigation is filed against the interim CDBG administrator, an automatic investigation will be instituted against the mentor to determine if the mentor properly supervised the interim CDBG administrator. The mentor may be subject to discipline for failure to properly supervise an interim CDBG administrator.

## 6. RECORDS

- 6.1. It is recommended that original documents are maintained with the grant records until the contract is formally closed.
  - 6.1.1. If there is an iron law of Federal grant administration, it is "document, document and document some more". The reason for this is: (1) these are public funds and they demand a high level of accountability. (2) The only way to confirm what you have done is to have it in writing.
- 6.2. It is the responsibility of the Grant Recipient to maintain all official grant related records and documents at the City/Town Hall. Grant records and documents should be kept in a metal filing cabinet. Grant Recipients should take reasonable caution to protect the records and documents from destruction such as flood damage. The grant

administrator is encouraged to maintain a duplicate copy of the grant records and documents; however the official copy must be maintained by the Grant Recipient. ODOC will not keep a hard copy of any documents.

6.2.1. Organization and Content:

6.2.1.1. Grant Recipients are required to maintain records sufficient to document compliance with all CDBG program requirements. Administrators may only retain copies of files.

6.2.1.2. While ODOC does not specifically mandate the exact structure of a Grant Recipient's filing system, Grant Recipients are encouraged to utilize the instructions provided.

6.2.2. Record Retention: Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant to the state, or the period required by other applicable laws and regulations as described in §570.487 and §570.488. The three-year rule can be extended under extenuating circumstances.

6.2.2.1. Any litigation, claim or audit is started before the expiration of the three-year period. In this instance, the records will be retained until all actions involving the records have been resolved; or

6.2.2.2. The records pertain to non-expendable property acquired with CDBG funds. Such records must be retained for five years after the final disposition of such property; or

6.2.2.3. ODOC transfers records to its custody or to HUD's when ODOC determines that the records possess long-term retention value.

6.2.3. Access to Records: Except for confidential records, all documents required to be maintained by, or reasonably considered as pertinent to, the contract agreement must be available for viewing and/or examination by:

6.2.3.1. Any citizen, pursuant to the requirements of State law and local ordinance; and

6.2.3.2. Representatives of ODOC, HUD, the Inspector General, the Attorney General, the General Accounting Office, the Comptroller General of the United States or the State Auditor's office.

6.2.3.3. Confidential Records: Grant Recipients may receive confidential information. In some cases, an individual's right to privacy protection will necessitate that confidential records be maintained. In other circumstances, the individual's job security and safety require that information be kept confidential. The latter is particularly true where worker provided information results in a finding that labor standards are being violated. Confidential records include but are not limited to: Staff personnel files, labor and civil rights complaints and the incomes of project beneficiaries.

Access to confidential records is strictly limited. They are to be kept in a locked file cabinet separate from other records accessible only to the CDBG Administrator. If a Grant Recipient delegates the responsibility to an administrator or sub recipients for tasks, which may yield confidential records, very specific controls must be established in the contract to assure that the Grant Recipient understands the responsibility for maintaining confidential records. The Grant Recipient is responsible for protecting these records. Any violations of confidentiality requirements, including a determination by State monitors that proper records management procedures are not being employed, could result in a serious finding of deficiency and adversely affect the Grant Recipient's right to apply for funds.

## 7. CITIZEN PARTICIPATION

7.1. The Grant Recipient is required to conduct at least one public hearing during the application phase of the project. The purpose of this public hearing is to advise citizens of the proposed project

7.2. The requirements for all other public hearings are essentially the same as for the hearing conducted prior to the original submission of an application for funding. These requirements include:

7.2.1. Reasonable advance notice, as stated in the Citizens Participation Plan, prior to conducting the meeting, not including the date of notice or posting of the day of the hearing;

- 7.2.2. Publication of a notice specifying the purpose, date, time and location of the hearing in a newspaper of general circulation in the municipality or posting of a legal notice in at least three public places within the municipality;
- 7.2.3. Holding the hearing at a location that is convenient to the low- and moderate-income persons who are affected by the project;
- 7.2.4. Conducting the meeting in a manner that accommodates the disabled and meets the needs of non-English speaking residents who might be expected to participate;
- 7.2.5. Providing citizens with the address, phone number and times for submitting complaints and grievances; and
- 7.2.6. Providing written answers to written complaints and grievances within **15 working days**, where applicable.
- 7.3. The Grant Recipient must take thorough minutes of the hearing. The project files must contain:
  - 7.3.1. Signed minutes of the hearing;
  - 7.3.2. An attendance roster; (sign-in sheet)
  - 7.3.3. Written complaints, if any;
  - 7.3.4. Responses to those complaints;
  - 7.3.5. A copy of the legal notice with a notation of where and when the three notices were posted (three different addresses); and
  - 7.3.6. Proof of publication from the newspapers.

## 8. SECTION 3 REPORTING

- 8.1. Section 3, which provides that, to the greatest extent feasible, training and employment opportunities shall be made available to lower-income residents of the unit of local government or metropolitan area (or non-metropolitan county) in which the project is located and that contracts be awarded to small businesses located within or owned in substantial part by residents of the same metropolitan area (or non-metropolitan county) as the project.

For compliance with HUD regulations, ODOC will require the Grant Recipient to submit semi-annual reports for Section 3. Reports will be due on January 31st and September 30th of each year as well as at Closeout of project for any construction contracts over \$100,000.

Section 3 Reports can be submitted by utilizing the fillable form found in the forms section of the CDBG Program Management Guide.

# REQUIREMENT NO. 402

## PROPERTY ACQUISITION & RELOCATION

### 1. PROPERTY ACQUISITION

- 1.1. Many projects funded by CDBG involve some form of property acquisition. The acquisition may be temporary, such as a construction easement, or it may be permanent. Permanent property acquisition may range from "partial", such as securing an easement, to outright purchase and transfer of ownership. Whichever the case, there are very specific procedural requirements imposed on Grant Recipients when they must acquire private property in order to carry out their community development programs. The guiding principle in these procedures is the fundamental rights of property owners to receive "just compensation" when their property is needed or desired to achieve public purposes. **[Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC 4601, et seq.) 49 CFR 24, Subpart B] The Final Rule of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and updated Booklets that provide guidance on acquisition and relocation procedures are located at the end of this requirement.**
- 1.2. These procedures may apply even if the property was acquired prior to submission of the grant application and even if CDBG funds are not involved in the actual acquisition costs. If the property was or is acquired with the express intent of using it for the activities for which CDBG funds are requested, that acquisition must have been and/or be conducted in conformance with the requirements spelled out in this Requirement. [HUD Handbook 1378]  
[https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/13780](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780)
- 1.3. Property acquisition procedures fall into two distinct areas: Voluntary and non-voluntary. In order to determine which procedures must be followed, the Grant Recipient must answer the following questions:
  - 1.3.1. Does the entity which is carrying out project activities and which will be acquiring the property have the power of eminent domain?
  - 1.3.2. If the entity has the power of eminent domain, will it use this power, if necessary, to secure the property needed to carry out the project?

Answering "yes" to both these questions requires the Grant Recipient to follow the non-voluntary procedures.

- 1.4. The rest of this Requirement provides specific guidance for meeting the procedural requirements of these two methods of property acquisition.
- 1.5. Voluntary Acquisition
  - 1.5.1. In a voluntary acquisition, the Grant Recipient notifies the property owner of an interest in acquiring the property, with a clear statement that it cannot or will not condemn the property in order to obtain it for the project. **[Attachment 1]** The purpose of notification is to determine if the property owner is interested in negotiating the sale of the property. If the owner is not interested, the Grant Recipient must determine if the project can proceed at any alternative location. If it cannot, the project may not proceed further and the grant will be de-obligated.
    - 1.5.1.1. If the Grant Recipient opts to go the voluntary route in a site-specific project and fails to find a willing seller, it may not start over with the non-voluntary approach. This would amount to after-the-fact coercion against a property owner. If the property is crucial to the project, the Grant Recipient should think long and hard about the method used to acquire it.
    - 1.5.1.2. If the project does not require a very specific parcel, i.e., it can be undertaken on any site within a given geographic area, the Grant Recipient sends a notice to a limited number of property owners in the area. The purpose of this notice is to determine if there are any owners who are actively

interested in selling their property. If the Grant Recipient receives an expression of willingness from one or more owners, it should develop a priority list of such properties based on the characteristics (location, likely cost, etc.) which are most advantageous to it. **[Attachment 2]**

- 1.5.1.3. All notices must be personally served to owners and occupants or sent by registered first-class mail, return receipt requested.
- 1.5.2. Assuming there is at least one willing owner or that the site-specific property owner is willing to consider a voluntary transaction, the next step is to determine if there are any tenants involved, excluding the owner. If there are, the Grant Recipient must notify each tenant and advise him/her that it is considering acquiring the property on which they reside for the purposes of carrying out a project. The notice must also alert all tenants that they will not be eligible for any relocation assistance if they move out at this time. **[Attachment 3 or 4]**
- 1.5.3. Following tenant notification, the Grant Recipient must make a preliminary estimate of property value and use. The purpose of this estimate is to determine if a formal appraisal will be necessary. An appraisal is not required if:
  - 1.5.3.1. The owner is donating the property and releases the Grant Recipient from its obligation to appraise the property; or
  - 1.5.3.2. The Grant Recipient determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less, based on a review of available data. When an appraisal is determined to be unnecessary, the Grant Recipient shall prepare a waiver valuation. A waiver valuation is the valuation process used and the product produced when the Grant Recipient determines that an appraisal is not required, pursuant to appraisal waiver provisions in 24 CFR 24.102(2). The person performing the waiver valuation must have sufficient understanding of the local real estate market to be qualified to make the waiver valuation.

**[When hiring an appraiser, refer to HUD Handbook 1378, Appendix 20: Agreement for Appraisal Services.]**
- 1.5.4. If an appraisal is not required, skip to step 5. If an appraisal is required, the appraiser must notify the property owner of the date the appraisal is going to be conducted and invite the owner to accompany the appraiser **[Attachment 5]**. The Grant Recipient is responsible to ensure that the appraisals meet appraisal requirements as listed in 49 CFR 24.103(a).
- 1.5.5. When the appraisal and review appraisal, if applicable, have been conducted and fair market value established. **[Review appraisals are required in all non-voluntary acquisitions. See 49 CFR 24.104.]**
  - 1.5.5.1. The Grant Recipient must submit a written offer to purchase the property. **[Attachment 6 (Insert Option A) the Fair Market Value (FMV) established by the Grant Recipient must be based on the appraised value. Other considerations may include the timing of the sale and length of time the property is off the market.]**
  - 1.5.5.2. The offer may not be more than the appraised FMV; however, the sale price may be less than the appraised value.
  - 1.5.5.3. At this point, negotiation begins. The owner has the option of accepting the offer, making a counteroffer or rejecting the offer outright. If, at any point in this process, the Grant Recipient decides it does not wish to acquire the property, regardless of the reason, it must notify the property owner of this fact.
- 1.5.6. The Grant Recipient must submit a copy of the appraisal, review appraisal (if appropriate) and any other documentation for the established FMV to ODOC for review and approval, regardless of whether CDBG funds will be used to pay for the acquisition. If CDBG funds are to be used, this documentation must be

submitted with the request for payment. Unjustified payments in excess of the appraised value may be disallowed at ODOC's discretion.

- 1.5.7. Complete the acquisition by preparing and executing the appropriate legal documentation (contract for sale, deeds, etc.). If applicable, the property owner and/or tenant is provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.
  - 1.5.8. **Note:** Grant Recipients are strongly encouraged not to execute any binding documents for purchase of property prior to ODOC approval. If ODOC determines that the process fails to comply with any requirements, the Grant Recipient will not be allowed to use any CDBG funds for acquisition, leaving the Grant Recipient financially liable. If some form of offer and acceptance is crucial prior to ODOC approval, it should be contingent upon formal ODOC approval.
- 1.6. Non-Voluntary Acquisition: Whenever the Grant Recipient undertaking the CDBG-funded project has the power of eminent domain and will use it, if necessary, to acquire specific parcels of property in order to carry out project activities, it must follow the non-voluntary procedures of acquisition.

**[Refer to HUD Handbook 1378, Chapter 5, for detailed guidance. Grant Recipients are strongly encouraged to contact ODOC for technical assistance as soon as the contract is executed.] This procedure is very similar to the voluntary procedure. [Attachment 9]**

- 1.6.1. Since going through this process assumes the individual parcels needed to undertake the project are or will be known, the first step is to identify each parcel and confirm the ownership of that parcel. A file should be set up for each parcel. **[Enclose the publication "When a Public Agency Acquires Your Property".]**
- 1.6.2. The next step is to determine if an appraisal is required.
- 1.6.3. After the specific parcel(s) and ownership have been confirmed and the need for an appraisal tentatively con-firmed, the property owner is to be notified in writing of the Grant Recipient's intent to acquire the property. This notification specifically advises the property owner of his/her rights and gives him/her the option of waiving his/her right to fair compensation (donation) and/or his/her right to have an appraisal conducted, whether they are donating or not. **[Attachment 9]**
  - 1.6.3.1. If the property owner requests an appraisal, the Grant Recipient must conduct it, even if the estimated FMV is less than \$10,000. If the appraisal is neither required nor requested, skip to step 5.
  - 1.6.3.2. If the property owner waives his/her right to an appraisal, a release to this effect must be executed.
- 1.6.4. If an appraisal is required or requested, the next step is to conduct the appraisal. The appraiser must advise the property owner of the date the appraisal will be conducted and invite the property owner to accompany the appraiser. The same steps are followed for the conduct of a second, or review, appraisal. **[Attachment 5]**
- 1.6.5. When the appraisal and review appraisal have been finished **[Review appraisals are required in all non-voluntary acquisitions. See 49 CFR 24.104.]:**
  - 1.6.5.1. If the property owner had previously indicated a willingness to donate the property but requested an appraisal prior to doing so, a copy of the appraisal report must be provided to the owner. At this time, the waiver of rights release must be executed, if not done previously. Skip to step 8.
  - 1.6.5.2. If the property owner had not indicated a willingness to donate the property, the Grant Recipient prepares a written statement basis for just compensation. The dollar value of this statement may not be less than the FMV established by the appraisal/ review appraisal.
  - 1.6.5.3. **Note:** Donation of property most commonly occurs when the Grant Recipient is asking for easement rights. The property owner will usually be receiving a new or improved service (water, sewer, etc.) in exchange for donating a partial use of his/her property to locate the service. The property owner may waive his/her right to an appraisal if they believe that the FMV is apt to be zero, i.e., the loss in value due to damage or partial interest is offset by the value of the improvements.

- 1.6.6. The Grant Recipient must submit an offer of just compensation with attached statement of basis.  
**[Attachment 6 (insert Option B)]**
- 1.6.7. If the property owner accepts the offer of just compensation, either immediately or after a period of successful negotiation, the Grant Recipient must prepare and submit a statement of settlement costs.  
**[Attachment 13]** This statement reflects the price agreed upon plus incidental costs associated with transfer of title, e.g., recording fees, transfer taxes, etc. If the Grant Recipient pays in excess of the FMV, this is called an administrative settlement and the file must contain a written justification of the excess costs. Unjustified payments in excess of the FMV may be disallowed at ODOC's discretion.
- 1.6.8. Submit a copy of the appraisal, review appraisal, basis of cost, offer of just compensation and summary of settlement costs to ODOC for review and approval. This must be done prior to or along with the acquisition cost request for payment if CDBG funds are to be used to cover these costs.
- 1.6.9. If the Grant Recipient and property owner are unable to negotiate a settlement, the Grant Recipient must decide which of two options to pursue:
- 1.6.9.1. A decision not to acquire the property. If this decision is made, the Grant Recipient must notify the property owner of this decision in writing **[Attachment 7]**; or
- 1.6.9.2. A decision to initiate condemnation proceedings.
- 1.6.10. Complete the acquisition by preparing and executing the appropriate legal documentation (contract for sale, deeds, etc.). If applicable, the property owner and/or tenant are provided a ninety-day (90-day) advance written notice to vacate and remove any personal belongings from the property acquired.
- 1.6.11. Note on Condemnations:
- 1.6.11.1. Exercising the power of eminent domain by condemning private property for a public purpose is absolutely the final step in the acquisition process. It is a step which should be taken only after all other alternatives have been exhausted and the Grant Recipient determines that the property in question is so crucial to an important public purpose that no other alternative is possible.
- 1.6.11.2. While ODOC recognizes that this action is sometimes inevitable, it is not bound by either the delays that might occur or the compensation the court determines. Grant Recipients should be mindful when proceeding with a condemnation that a prolonged legal fight may jeopardize the ability of the Grant Recipient to implement the project within the contract time period. Further, ODOC will not increase the grant award if the court decision exceeds the amount budgeted in the grant for acquisition and no other savings can be realized in other grant line items.
- 1.6.12. Points to Keep in Mind:
- 1.6.12.1. If the acquisition of only a portion of a property would leave the owner with a remnant that was not economic (not large enough for any reasonable use), the Grant Recipient must offer to purchase this remnant along with the portion needed for the project.
- 1.6.12.2. If the owner, in response to the offer, provides additional information that indicates the need for a new appraisal or if there has been a significant delay since the appraisal was conducted, an updated or new appraisal must be conducted and the acquiring Grant Recipient must re-establish its offer.
- 1.6.12.3. The Grant Recipient or sub-recipient (whichever is acquiring the property) must guard against both the existence and appearance of a conflict of interest in using CDBG funds to acquire property. Special measures must be taken if an officer or employee of the acquiring Grant Recipient sells property to the Grant Recipient.
- 1.7. Qualifications of Appraisers and Review Appraisers:
- 1.7.1. The Grant Recipient shall establish criteria for determining the minimum qualifications and competency of appraisers and review appraisers. Qualification should be consistent with the scope of work for the assignment. The Grant Recipient shall review the experience, education, training, certification/licensing, designation(s), and other qualifications of appraisers and use only those determined to be qualified. If

contracting with an appraiser for a fee, such appraiser shall be State licensed or certified in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12.U.S.C. 3331 et seq).

The review appraiser is responsible for examining the analysis and presentation of data, assuring that all appraisal requirements are met, and that the appraisal meets the requirements as listed in 49 CFR 24.103(a). The review appraiser can accept the appraisal as recommended and that complies with all requirements. During the review, the review appraiser shall consult with the appraiser(s) to clarify report conclusions. If the review appraiser prepares an independent valuation, it must meet 49 CFR 24.103 appraisal requirements. The review appraiser must prepare a written report on the results of the review, and if appraisal is not accepted, such person must include the reason for not accepting.

In accordance with 49 CFR 24.102(n), appraisers, review appraisers, and waiver valuation preparers shall not have any interest in the property, shall not be subject to influence or coercion regarding the valuation, and may be authorized to act as negotiator where valuation role is for acquisition less than \$10,000.

## 2. RELOCATION

[www.hud.gov/relocation](http://www.hud.gov/relocation)

- 2.1. If the property owner or tenant is forced to move, either temporarily or permanently, as a result of CDBG-funded activities, that person or household is considered to be displaced. A displaced person is entitled to certain services, including counseling, payments for relocation and, in certain circumstances, assistance in obtaining replacement housing. The provision of this assistance is never optional for the Grant Recipient or its sub recipient and the burden of proof for demonstrating compliance falls squarely on the Grant Recipient.
- 2.2. The Grant Recipient must determine who might be affected if displaced, make reasonable efforts to provide the required assistance and document that the process has been followed. This is an involved and detailed process. For that reason, it will not be repeated in this Manual. A separate Handbook is available to Grant Recipients and will be provided by ODOC, upon request. [HUD Handbook 1378, Tenant Assistance and Real Property Acquisition]
- 2.3. While the specific procedural and record-keeping requirements are detailed, the basic outline of the process is as follows:
  - 2.3.1. Determine which persons or households may have to be displaced and whether the displacement is permanent or temporary;
  - 2.3.2. Make certain that affected persons or households receive notice not to relocate (move) before they are eligible to receive assistance and that they understand their rights for assistance;
  - 2.3.3. Provide the assistance to which displaced persons or households are entitled, not more or less [**Under 49 CFR 24 (URA) and 24 CFR 570.104**];
  - 2.3.4. Keep outstanding, detailed records on every aspect of the process.
  - 2.3.5. Note: These requirements apply only to a non-voluntary property acquisition.
- 2.4. Note: The single most common mistake made by Grant Recipients in the acquisition or relocation process is failure to provide required notices in a timely fashion, especially to tenants. Provide proper notices at the right times. Failure to do so exposes the Grant Recipient to legal challenges and additional expenses.

## 3. REPLACEMENT OF LOW TO MODERATE INCOME HOUSING UNITS

- 3.1. Section 104(d) of the Housing and Community Development Act (the "Barney Frank Amendment") imposes specific obligations on Grant Recipients with respect to the replacement of low- and moderate-income housing



units and for the provision of relocation assistance to displaced low- and moderate-income families or persons.

**[See 24 CFR 570.4488(c) and HUD Handbook 1378, Chapter 7.]**

- 3.2. In brief, these special provisions are triggered when any CDBG-funded activity causes the conversion of low- to moderate-income housing (including vacant occupiable units) into **[24 CFR 570.488(c)]**;
  - 3.2.1. Non-housing, i.e., demolition of housing units to make room available for some other purpose such as a shopping center or community center; or
  - 3.2.2. A smaller number of units, i.e., conversion of a multi-family unit to fewer units and/or to fewer net bedrooms; or
  - 3.2.3. Non-low- to moderate-income housing, i.e., upgrading a low-rent apartment building into an upscale condominium.
- 3.3. Any CDBG-funded activity, which causes a reduction in the number of residential units/bedrooms available to and occupied by low- and moderate-income persons in the Grant Recipient's jurisdiction must be offset by an equal replacement of the lost units. In addition, displaced low- and moderate-income families are eligible to receive either the normal URA relocation assistance or, potentially, more generous benefits available under HUD regulation. The choice of benefits is the displaced persons.
- 3.4. Replacement housing must meet the following criteria [Some exemptions from these criteria are possible]:
  - 3.4.1. It must be located within the Grant Recipient's jurisdiction and, preferably, within the same neighborhood as the units replaced;
  - 3.4.2. The number of replacement bedrooms must at least equal the number removed **[Because the obligations under this provision of the law can be extremely technical, the Grant Recipient should contact ODOC for detailed guidance]**;
  - 3.4.3. The replacement units must be in standard condition;
  - 3.4.4. Replacement units must be made available for occupancy within an approximate four-year time period; and
  - 3.4.5. Replacement units must remain affordable for 10 years from date of initial occupancy.

## 4. RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION

- 4.1. The Grant Recipient must prepare and adopt a Residential Anti-Displacement and Relocation Assistance Plan (Plan), regardless of whether displacement or relocation is or is not anticipated. Submission of the Plan is one of the contract conditions that must be cleared prior to release of funds by ODOC. The Grant Recipient will recall that it certified it would take all reasonable steps to minimize the displacement of persons (families, individuals, businesses, non-profit organizations and farms) as a result of activities assisted with CDBG funds.
- 4.2. The two major components of the Plan are requirements to
  - 4.2.1. Replace all occupied and vacant occupiable low and moderate income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a result of the CDBG-funded activity **[HUD Handbook 1378, 701]**; and
  - 4.2.2. Provide certain relocation assistance to any low- or moderate-income person displaced as a direct result of demolition or conversion to other use as a result of the CDBG-funded activity.
- 4.3. The nature and extent of a given Plan are dependent on whether the Grant Recipient anticipates any kind of displacement. If the nature of the project is such that no demolition or conversion is expected, the Plan is essentially a certification that required procedures for replacement and relocation assistance will be followed in the unlikely event that demolition or conversion occurs.
- 4.4. If the Grant Recipient knows from the beginning that displacement will occur as a result of project activities, the Plan must be very specific in terms of:
  - 4.4.1. The nature of project activities (a description of the project);
  - 4.4.2. The location of units to be displaced (by size and number);
  - 4.4.3. The location of comparable replacement units (by size and number);

- 4.4.4. The source(s) of funding and time schedule for providing the replacement units;
- 4.4.5. The basis for concluding that replacement units qualify; and
- 4.4.6. Other requirements of the regulations.

4.5. If developments during project implementation cause unforeseen displacement, the Plan must be amended.

## 5. SUMMARY

- 5.1. As mentioned at the outset of this Requirement, few issues have more legal or emotional impact than the rights of property owners and tenants. It is crucial that these rights be scrupulously protected and observed when undertaking any public project.
- 5.2. Grant Recipients are strongly encouraged to seek out technical assistance from ODOC at the earliest stages of project implementation. Grant Recipients are also strongly encouraged to read the more detailed guidance referenced in this Requirement if they are undertaking any property acquisition or will displace any persons or households. Finally, the Grant Recipient must take great care to avoid the existence or appearance of coercion.

## 6. ATTACHMENTS

- 1. Sample Voluntary Notice to Specific Owners
- 2. Sample Voluntary Notice to Several Owners
- 3. Sample Notice to Tenants Not Displaced
- 4. Sample Notice to Tenants Who May Be Displaced
- 5. Sample Letter Notification of Date of Appraisal/Invitation to Accompany
- 6. Sample Notification of Fair Market Value
- 7. Sample of Notice of Decision Not to Acquire Property
- 8. Property Acquisition, Individual Parcel File Requirements
- 9. Sample Notice of Interest in Acquiring Property, Non-Voluntary Acquisition
- 10. Sample Waiver of Required Appraisal
- 11. Sample Agreement to Waive Rights to Full Compensation
- 12. Sample Statement of the Basis for Determining Just Compensation
- 13. Sample Statement of Settlement Costs
- 14. Relocation, Individual Household File Requirements
- 15. Sample Residential Anti-Displacement and Relocation Assistance Plan
- 16. Notice to Prospective Buyers of Properties Located in Runway Clear Zones and Clear Zones/Accident Potential Zones
- 17. Property Acquisition Process – Voluntary Transaction Flow Chart
- 18. Property Acquisition Process – Non Voluntary Transaction Flow Chart

**For more detailed information, please see HUD.gov.**

**Tenant Assistance, Relocation and Real Property Acquisition Handbook (1378.0)**

[https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/cpd/13780](https://www.hud.gov/program_offices/administration/hudclips/handbooks/cpd/13780)

# REQUIREMENT NO. 403

## ENVIRONMENTAL REVIEW

### 1. OVERVIEW OF THE PROCESS

- 1.1. Grant Recipients shall comply with the National Environmental Policy Act of 1969 (NEPA) and the Environmental Review Procedures for the Community Development Block Grant, per 24 CFR 58.5, covering the following areas: a) Historic Properties, b) Floodplain Management and Wetlands Protection, c) Coastal Zone Management, d) Sole Source Aquifers, e) Endangered Species, f) Wild and Scenic Rivers, g) Air Quality, h) Farmlands Protection, i) HUD Environmental Standards, and j) Environmental Justice.
- 1.2. Grant Recipients shall not obligate or expend CDBG, matching/leveraged or any type of in-kind funds until the environmental review process is complete and a "Release of Funds" Notice is executed from the Oklahoma Department of Commerce in OKGrants.

***Obligating or expending funds prior to the environmental review process is an ineligible use of contract funds and such expenditure will be disallowed and the CDBG Contract will be de-obligated.***

- 1.3. Environmental responsibilities have both legal and financial ramifications. A Grant Recipient assumes the role of Federal official under the provisions of NEPA and 24 CFR 58 and 24 CFR 50. Please refer to the "CDBG Environmental Compliance Handbook", located on the OKCommerce.gov website.
- 1.4. The Grant Recipient's Chief Executive Official will assume overall responsibility for the environmental review process, including making determinations and signing required certifications. This environmental duty may not be delegated, although certified CDBG administrators, staff and/or State resources may provide technical assistance to support local efforts.

Local officials should review the liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. If a suit is filed against a program in Federal court on findings/environmental grounds, the chief executive official will be named the respondent.

- 1.5. In administering the program, the State of Oklahoma accepts no responsibilities or liabilities for the quality or accuracy of the local environmental review process. ODOC's responsibility is to ensure that the Grant Recipient has complied with the procedural requirements of various environmental statutes, regulations and executive orders.
- 1.6. Contract responsibilities require a complete environmental review of all project activities related geographically or functionally even if some activities are funded by other sources or provided by any type of volunteer or in-kind resources (24 CFR 58.32).

### 2. ENVIRONMENTAL REVIEW POLICIES AND PROCEDURES:

For policy guidance with completing the environmental review and document compliance with 24 CFR Part 58 and Part 50, please refer to the HUD Exchange website:

<https://www.hudexchange.info/programs/environmental-review/>

To assist with these reviews at the local level, a "Regulatory Agency" letter format requesting concurrence with the "Finding" found in the Form Section of this Guide.

The following “Levels of Environmental Review” may pertain to the project activities listed in the approved CDBG Application Contract Budget located in the OKGrants system. Each project activity requires submittal of a Certification Form as it pertains to levels of environmental review.

Please refer to the **Release of Funds Checklist Form** for submittals in the OKGrants system.

- 2.1. **Exempt Activities** - 24 CFR Part 58 (58.34, subject to CFR 58.6): Certain activities are exempt from the environmental review requirements of NEPA and the environmental requirements of other applicable Federal laws and requirements under 24 CFR 58.6. (Examples include grant administrative costs, advertisements, engineering, architecture, testing, and planning).
- 2.2. **Categorically Excluded Activities** - 24 CFR Part 58 (58.35b, not Subject to 24 CFR 58.5, subject to CFR 58.6): Purchase of Equipment (Fire Trucks). The Grant Recipient is still required to address the requirements under 24 CFR 58.6.

**Activities A and B above may submit for release of funds upon execution of contract with ODOC before procurement of professional services or equipment. Please complete and submit the RROF checklist and HUD Exempt/CENST forms.**

<https://www.hudexchange.info/resource/3141/part-58-environmental-review-exempt-or-censt-format/>

- 2.3. **Categorically Excluded Activities** - 24 CFR Part 58 (58.35a (1-6), Subject To 24 CFR 58.5): Certain activities are "excluded" from NEPA requirements; however, other Federal laws and authorities listed in 24 CFR 58.5 are applicable. These Categorically Excluded Activities can be found in 24 CFR 58.35a (1-6).
- 2.4. **Environmental Assessment (EA)** - 24 CFR Part 58 and Part 50 (58.36) - Activities which are neither Exempt nor Categorically Excluded will require an EA to document not only compliance with the other Federal laws and authorities, but the requirements of NEPA 24 CFR 58.5 and 58.6.
- 2.5. **Environmental Impact Statement (EIS)** – 24 CFR Part 58 and Part 50 (58.37) An EIS is required when the project is determined to have a potentially significant impact of the human environment.

### 3. RELATED LAWS AND AUTHORITIES

- 3.1. Listings under 24 CFR 50.4 and 58.6: Please refer to the following pages on HUD Exchange:  
<https://www.hudexchange.info/programs/environmental-review/hud-environmental-regulations/#related-federal-laws-and-authorities>
- 3.2. Partner Worksheets are provided for use in completing an environmental review on a project’s compliance with Federal environmental laws and authorities. These worksheets, along with all supporting documentation, are required as part of the Request of Release of Funds checklist and submittal in OKGrants.  
<https://www.hudexchange.info/resource/5119/environmental-review-record-related-federal-laws-and-authorities-partner-worksheets/>
- 3.2.1. **The Partner Worksheets are to be used to assist in determining if the proposed project activities will affect the following:**
  - 3.2.1.1. **Air Quality**: Determine if the project conforms to the latest approved State Implementation Plan (SIP) regarding air quality, EPA.gov, Region 6.
  - 3.2.1.2. **Airport Hazards and Runway Clear Zones**: Use the worksheet to document compliance for a proposed activity.
  - 3.2.1.3. **Coastal Barrier Resources/Coastal Zone Management**: Not applicable to Oklahoma.

- 3.2.1.4. **Endangered Species:** Determine if project activity will endanger species of wildlife or impact habitat areas. Project Reviews in Oklahoma are made through the IPaC Module on the Fish and Wildlife Service (FWS) Website <https://ecos.fws.gov/ipac/>
- 3.2.1.5. **Environmental Justice:** Determine if the proposed activity impacts area of minority and/or low-income. Refer to the following website: <https://ejscreen.epa.gov/mapper/>
- 3.3. The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no group of people, including racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local and tribal programs and policies. The goal of this “fair treatment” is not to shift risks among populations, but to identify potential disproportionately high and adverse effects and identify alternatives that may mitigate these impacts.
- 3.3.1. Executive Order 12898 was passed to ensure that each Federal agency makes achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. For NEPA compliance, implement the following steps:
- 3.3.1.1. Analyze environmental effects, including human health, economic, and social effects of federal actions, including the effects on minority communities; and
- 3.3.1.2. Address significant and adverse environmental effects of proposed federal actions on minority communities and low- income communities with mitigation measures outlined or analyzed in the environmental assessment or in the environmental impact statement; and
- 3.3.1.3. Provide opportunities for community input in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving accessibility of public meetings, official documents, and notices to affected communities. You should request concurrence from the Environmental Protection Agency (EPA), if a significant impact is anticipated.
- 3.3.2. **Explosive and Flammable Facilities:** Determine if the properties being proposed for use are free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances that could affect the health and safety of the occupants. The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must evaluate previous uses of the site or other evidence of contamination. This evaluation must include any proposed site in or near areas such as dumps, landfills, industrial sites, or other locations that have, or may have, contained hazardous waste. Obtain the services of qualified professionals who use current techniques to undertake the investigations that are considered necessary. An Environmental Phase I Site Assessment or equivalent analysis as appropriate may comply with this part.
- 3.3.3. **Farmlands Protection:** Determine if a proposed activity converts farmland to non-agricultural uses; request concurrence from:
- Natural Resources Conservation Service:  
<https://www.nrcs.usda.gov/wps/portal/nrcs/site/national/home/>
- NRCS Web Soil Survey Instructions:  
<https://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>
- 3.3.4. **Flood Insurance:** All CDBG project activities are exempt from obtaining flood insurance as the State of Oklahoma, Oklahoma Department of Commerce, receives these funds through a formula grant from the U.S. Department of Housing and Urban Development.

- 3.3.5. **Floodplain Management** – Document compliance with 24 CFR Part 55 by determining whether or not a project activity is affected by or may modify the base 100-year flood hazard area. Floodplain maps may be obtained at: <https://msc.fema.gov/portal/home>
- 3.3.5.1. If the project activity(s) are located in a floodplain, the Executive Order 11988, Eight-Step Decision-Making Process must be followed.
- 3.3.5.1.1. This process includes the publication of two public notices at least 16 days apart: an Early Public Notice identifying the activity and soliciting comments, and a Notice of Explanation, including a judgment whether the benefits of the activity outweigh the environmental considerations and a determination that there are no practical alternatives to the activity site. These notices become part of the Grant Recipient's Environmental Review Record (ERR) and shall be submitted as well as the floodplain map number, panel number and date recorded on the Partner Worksheet.
- NOTE:** The Corps of Engineers may charge a fee to review floodplain compliance requests. If the applicable Flood Hazard Boundary Map or Flood Insurance Rating Map shows that the project activity is **not** located within the 100-year flood hazard area, the Corps of Engineers need not be contacted. (See Sample Flood Notices – **Attachment 25**)
- 3.3.6. **Historic Preservation:** Document Historic Properties or Archeological concerns of the proposed activity. As noted for compliance and documentation on the Partner Worksheet, a concurrence letter from the State Historic Preservation Office (SHPO), and if applicable, the Tribal Historic Preservation Office (THPO) for “no historic properties affected”, “no adverse effect” or “adverse effect”. A concurrence letter from the State Archaeological Survey is also required.
- 3.3.7. **Noise Abatement and Control:** Noise analysis is recommended for noise sensitive projects such as for housing, libraries, etc.
- 3.3.8. **Site Contamination (Housing Activities):** Determine if a project activity is near a hazard operation handling petroleum products or chemicals of an explosive or flammable nature or within an aircraft clear zone. Request concurrence from the Environmental Protection Agency (EPA) EPA Region 6; and the Department of Environmental Quality (DEQ); DEQ Oklahoma; along with site evaluation. Project cannot increase density or subject citizens or buildings to above ground storage tanks greater than 100 gallons. Acceptable Separation Distance (ASD) must be determined.
- 3.3.9. **Sole Source Aquifer:** Determine if the project activity will affect a recharge area which is a primary source of local drinking water or involving dredging, filling or disposal of dredged materials upon water bodies. There is one aquifer located in Oklahoma, the Arbuckle/Simpson Aquifer; Source EPA.gov, Region 6.
- 3.3.10. **Wetlands Protection:** Determine, by site visit if necessary if wetlands are affected by a project activity. Executive Orders 11990 and 11988 are effective the same as above for Floodplain. May request concurrence from **U.S. Fish and Wildlife, the Conservation Commission, NRCS, and the U.S. Corps of Engineers.**
- 3.3.11. **Wild and Scenic Rivers:** Determine if a project activity impacts a designated wild and scenic river in Oklahoma. Please refer to the “Scenic Rivers Act” at Title 82 O.S. 1452-1471. The following counties in Oklahoma are designated scenic river areas: Adair, Cherokee, Delaware, Sequoyah, Leflore and McCurtain. Any construction or modification projects outside these counties are exempt from review by the Oklahoma Scenic Rivers Commission
- 3.4. When the Partner Worksheets have been completed, the appropriate forms can be executed as follows:
- 3.4.1. **Finding of Categorical Exclusion/Exempt from Release of Funds Publication:**  
Pursuant to 58.34(a); when it is determined, after completing all of the Partner Worksheets, that the other Federal laws and authorities in CFR 58.5 and 58.6 **are not** applicable to a categorically excluded activity, the activity will convert to exempt from public notification and the determination should be marked on the form as such.

**The Grant Recipient may submit for release of funds. Please complete CEST form and the RROF checklist.**

<https://www.hudexchange.info/resources/documents/Part-58-CEST-Format.docx>

**3.4.2. Finding of Categorical Excluded (Subject to Section 58.5):**

Pursuant to 24 CFR 58.35(a); When it is determined, after completing all of the Partner Worksheets, that the other Federal laws and authorities in CFR 58.5 and 58.6 **are** applicable to a categorically excluded activity, a “Finding of Categorical Exclusion Subject To” must be made (the activity cannot convert to exempt from public notification). The Finding identifies the activity and states the statutory authority for the exclusion.

A Notification to the Public may either be published or posted as a **Notice of Intent to Request Release of Funds**. The Notice should be mailed or emailed that same day to individuals and groups known to be interested in the activities and to the appropriate tribal, local, State and Federal. (See Sample Notice of Intent – **Attachment 26**)

**When Publishing:** The Notice must be published in a newspaper of general circulation, which informs interested parties of the Grant Recipient's intent to request a Release of Funds from ODOC. The publication must allow **seven (7) calendar days** for public comments to the Grant Recipient.

**When Posting:** The Notice may be posted in lieu of publication. It must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for **ten (10) calendar days** for public comments to the Grant Recipient.

When the comment period has elapsed and all public comments have been addressed, the Grant Recipient will submit the Request for Release of Funds (RROF) in the OKGrants System. Comments received and responded to as a result of the Public Notice should be uploaded with the RROF.

Upon receipt in the OKGrants System, ODOC must hold the Environmental Review for an additional **fifteen (15) calendar days** for Public Comment.

**3.4.3. Activities Requiring an Environmental Assessment (EA):**

Activities which are neither Exempt nor Categorically Excluded (i.e., new construction) will require an EA to document not only compliance with the other Federal laws and authorities, but the requirements of NEPA 24 CFR 58.5 and 58.6.

The assessment will determine if an activity will significantly affect the quality of the human environment. A Finding of No Significant Impact must be signed by the Certifying Officer and made a part of the ERR. A copy of the finding must be submitted to ODOC by use of the OKGrants system.

After completion of the review and after the Finding has been made, the Grant Recipient's chief elected official will sign the completed Environmental Certification and publish or post a Combined Notice of FONSI and Intent to Request Release of Funds.

Notification to the Public may either be published or posted as a **Combined Notice - Notice of Intent to Request Release of Funds and Finding of No Significant Impact**. The Notice should be mailed or emailed



that same day to individuals and groups known to be interested in the activities and to the appropriate tribal, local, State and Federal agencies (see Sample Distribution List **Attachment 20** and Sample Combined Notice **Attachment 27**)

**When Publishing:** The Notice must be published in a newspaper of general circulation, which informs interested parties of the Grant Recipient's intent to request a Release of Funds from ODOC. The publication must allow **fifteen (15) calendar days** for public comments to the Grant Recipient.

**When Posting:** The Notice may be posted in lieu of publication. It must be prominently displayed in public buildings such as the local Post Office as well as other public buildings within the project area. It must be posted for **eighteen (18) calendar days** for public comments to the Grant Recipient.

When the comment period has elapsed and all public comments have been addressed, the Grant Recipient will submit the Request for Release of Funds (RROF) in the OKGrants System. Comments received and responded to as a result of the Public Notice should be uploaded with the RROF.

Upon receipt, ODOC must hold the Environmental Review for an additional **fifteen (15) calendar** days for public comment.

If an activity is one that will significantly affect the quality of the human environment, contact ODOC before preparing an Environmental Impact Statement (EIS).

**Engineer/Architect Acknowledgement:**

The Grant Recipient must submit to ODOC a Certification of Engineer Acknowledgement as part of the Request for Release of Funds. This requirement may be waived if and only if there is no engineering activity involved in the project.

**3.4.4. Re-Evaluation of the Environmental Review Process**

The Grant Recipient must re-evaluate the results of its original review process if it:

- 3.4.4.1. Makes substantial changes in the nature, magnitude or extent of the project, including adding new activities; or
- 3.4.4.2. Discovers new circumstances and environmental conditions that may affect the project or the environment.
- 3.4.4.3. Has been over twelve (12) months since any action has been taken.

The purpose of a re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. If the original finding is still valid, the Grant Recipient needs only to provide appropriate documentation to the ERR file. However, if the re-evaluation is the result of a change in the scope of work requiring an amendment to the contract, the Grant Recipient must submit a Certification of Continued Environmental Compliance with its request to ODOC for amendment approval.

If the Grant Recipient determines that the original finding is no longer valid, it must re-initiate the appropriate review process following the procedures outlined above.

## 4. ATTACHMENTS

- 19. Sample – Regulatory Agency Concurrence Letter



20. Sample - Distribution List for Environmental Notices

# REQUIREMENT NO. 404

## CIVIL RIGHTS, EQUAL OPPORTUNITY, FAIR HOUSING, SECTIONS 3 & 504

The forms for civil rights, equal opportunity, and fair housing may be uploaded into OKGrants in the RROF Section. Original forms must be kept in the grant recipients file.

### 1. CONTRACTUAL REQUIREMENTS

- 1.1. Federal civil rights laws, whether they address hiring, housing, contracting or access, were enacted to ensure that no group or individual would be subject to any kind of discrimination, particularly when spending taxpayers' money, e.g., CDBG grants. Specific laws, the persons those laws cover and the types of discrimination prohibited are outlined at the end of this Requirement. **[Attachment 21]**.
- 1.2. Generally, these laws prohibit discrimination based on race, color, national origin, religion, age, sex, disability, familial status or sexual orientation. Identified groups included under these categories are:
  - 1.2.1. Minorities, i.e., Blacks, African Americans, American Indians, Alaskan Natives, Asians, Native Hawaiians, Pacific Islanders, Hispanics and Latinos;
  - 1.2.2. Women;
  - 1.2.3. Age groups (specifically those over 40); and
  - 1.2.4. Handicapped persons (mental and/or physical).
  - 1.2.5. Sexual Orientation for Housing Projects
- 1.3. CDBG Grant Recipients and their sub-recipients must comply with these laws, demonstrate efforts made to comply and document those efforts in various aspects of project activities.
- 1.4. Employment Practices:
  - 1.4.1. The Grant Recipient's employment policies should be examined (or re-examined) in light of the Civil Rights and non-discrimination statutes. Providing equal opportunity in the hiring process and in the evaluation of current employees is paramount. Grant Recipients are also required to make affirmative action (redress for past discrimination) a part of local policies.
  - 1.4.2. Evidence of efforts to provide equal opportunity and take affirmative action steps in the recruitment, selection and compensation of employees must be documented. Other actions that can demonstrate non-discriminatory practices of the Grant Recipient as an employer include but are not limited to the following:
    - 1.4.2.1. Upgrading, demotions or transfers;
    - 1.4.2.2. Recruitment and advertisements for employees;
    - 1.4.2.3. Layoffs or terminations;
    - 1.4.2.4. Changes in rates of pay or other forms of compensation;
    - 1.4.2.5. Selection for training, including apprenticeships; and
    - 1.4.2.6. Participation in recreational and educational activities.
  - 1.4.3. Employment notices must be posted in conspicuous places available to both employees and applicants and must contain the following provisions of this discrimination clause:
 

"All qualified applicants will receive consideration for employment without regard to race, color, religion, creed, age, sex, national origin, familial status, disability, or sexual orientation."
  - 1.4.4. It is important to remember that another part of the Civil Rights laws prohibits sex discrimination in the payment of wages to women and men performing equal work in the same establishment. **[The Equal Pay Act of 1963]** One law prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans. **[Section 402 of the Vietnam Era Veterans Readjustment**

**Assistance Act of 1974]** Special outreach should be made to notify minority or disadvantaged groups of employment opportunities. The Grant Recipient should have written employment and personnel policies and practices available for review by ODOC representatives. A Self-Evaluation Plan for Handicapped Accessibility, displaying the local government's current staffing arrangements, would supplement the written policies. A sample of a Transition Plan demonstrates format and how various programs might be addressed.

1.5. Contracts and Subcontracts **[Executive Order 11246: Equal Employment Opportunity - Contracts and Subcontracts]:**

1.5.1. Grant Recipients are required to include equal opportunity provisions and certifications in all contracts.

1.5.2. Contracting is another part of the program, which must be non-discriminatory. Efforts to ensure non-discrimination in the soliciting and awarding of contracts generated through CDBG funding is required. Advertisement and distribution of solicitation must not discriminate. Maintain records of all contacts with minority- or women-owned firms. Bid specifications and/or evaluation criteria used to review bids must not be discriminatory.

**§ 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

1.5.2.1. The non-Federal entity must take all necessary affirmative steps to assure that minority business, women's business enterprises, and labor surplus area firms are used when possible.

1.5.2.2. Affirmative steps must include:

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

1.5.2.2.2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

1.5.2.2.3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

1.5.2.2.4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

1.5.2.2.5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

1.5.2.2.6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps.

1.5.3. **Section 3**

1.5.3.1. Grant Recipients must make a special effort to provide training and employment opportunities to lower-income residents and contract opportunities to businesses in the project area. **[Section 3 of the Housing and Urban Development Act of 1992]** This requirement applies to:

1.5.3.1.1. A local government (Grant Recipient), including private entities receiving CDBG funds, if it receives CDBG funds for housing rehabilitation and/or public construction and the CDBG assistance exceeds \$200,000 for any one activity; and

1.5.3.1.2. Construction contractors and subcontractors when the activity has been determined to be covered by Section 3 for the construction contractor and the construction contract or sub-contract exceeds \$100,000. **[See Requirement 407]**

1.5.3.2. At a minimum, Contractors must include Specific Section 3 language in all solicitations (RFPs and bid documents.) **[Housing and Community Development Act of 1992, as Amended; Title VIII of the Civil Rights Act of 1968, as Amended; 42 U.S.C 3601, et seq., also known as the Fair Housing Act of 1988]**

#### 1.5.4. **Affirmatively Furthering Fair Housing:**

- 1.5.4.1. Fair housing is generally defined as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, sex, religion, national origin, marital status, familial status, age, mental or physical disability, or sexual orientation. Local governments, because of their influence and power, are in the most effective position to promote fair housing.
- 1.5.4.2. The Grant Recipients must provide documentation of steps taken to affirmatively further fair housing, regardless of the type of CDBG activity funded by ODOC, *for each fiscal year the Grant Recipient has received a CDBG contract.*
- 1.5.4.3. While the Grant Recipient has already certified that it practices fair housing, it must demonstrate that it is affirmatively furthering fair housing on a continual basis, not merely as a requirement of spending CDBG dollars. Efforts must be made to identify discriminatory housing patterns and alleviate them by working with developers, property owners, realtors, residents and government agencies.
- 1.5.4.4. Both State and Federal laws must be cited in all applicable contracts dealing with housing. Efforts must be made and documented to end discriminatory housing policies and to provide information to the public regarding fair housing matters. When rehabilitating investor owned property, you should advise the owner of the requirements for fair housing/equal employment opportunity clauses in advertising for vacant units. In addition, when rehabilitating all housing units, making those units accessible to the disabled should be taken into consideration where applicable. **[Executive Order 11063: Equal Opportunity in Housing]**
- 1.5.4.5. ODOC requires all CDBG Grant Recipients to adopt a Fair Housing Ordinance or pass a Fair Housing Resolution as the first step in affirmatively furthering fair housing.
- 1.5.4.6. In addition, ODOC requires the Grant Recipient to undertake at least one (1) new activity per year in an effort to further fair housing. The Grant Recipient is not required to undertake multiple fair housing activities if it has multiple CDBG contracts open in any one year.

#### 1.5.5. **Complaints:**

- 1.5.5.1. Since the Grant Recipient may receive complaints related to the various aspects of civil rights, equal opportunity and fair housing, a file to document such complaints must be established. **[It is advised to appoint an individual who would be responsible for handling any complaints, doing necessary follow-up and maintaining documentation on complaints received and their resolutions.]** This file should contain any relevant paperwork as well as follow-up efforts **within 15 working days** and eventual resolution.
- 1.5.5.2. Complaints may not refer to a violation of a particular civil rights law or laws. A complaint will be viewed as a civil rights complaint when the complainant:
  - 1.5.5.2.1. Indicates the belief that he/she has been denied benefits or opportunities, has been treated differently, etc.; and
  - 1.5.5.2.2. Alleges his or her race, ethnicity, and gender, status as a disabled person or age was the basis for his/her belief of discrimination.
- 1.5.5.3. Any person or specific class of persons who believes that he/she/they have been subject to any discrimination prohibited by the laws referenced in this Requirement may file a complaint. Advise your ODOC representative if you receive a civil rights complaint, as it will be referred to HUD's regional office, which deals directly with such complaints. For additional guidance, refer to HUD's web site: [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/online-complaint](https://www.hud.gov/program_offices/fair_housing_equal_opp/online-complaint)
- 1.5.5.4. Since this Requirement only summarizes applicable laws and gives general guidance to aid in compliance with those laws, a Grant Recipient and its legal counsel may want to refer to the actual statute if questions about a specific regulation arise.

#### 1.5.6. **Evaluating Municipal Accessibility (Section 504):**

- 1.5.6.1. Section 504 of the Rehabilitation Act of 1973, as amended, establishes policies, goals and procedures for assuring that no otherwise qualified individual with disabilities is, solely on the basis of the disability, denied benefits, subjected to discrimination or excluded from participation in any program or activity receiving Federal assistance. HUD has issued regulations to establish the manner in which recipients of CDBG funds are required to comply with the provisions of Section 504. **[24 CFR 8]**
- 1.5.6.2. CDBG Grant Recipients must conform to HUD's procedural requirements as a condition of receiving these Federal funds. There are ways the community may need to modify its customary way of doing business to ensure that all local services, not only grant-related activities, are accessible to your disabled citizens and that local programs discriminate against them. **[See Architectural Barriers Act of 1968, as amended; the Americans with Disabilities Act; and the Fair Housing Amendments Act of 1988]**

**1.5.7. Additional Actions:**

- 1.5.7.1. All CDBG Grant Recipients must take the following actions regarding disabled persons, regardless of the number of persons employed by the Grant Recipient:
- 1.5.7.1.1. Establish effective communication methods, e.g., auxiliary aids, information regarding accessible services, activities and facilities;
  - 1.5.7.1.2. Demonstrate non-discriminatory employment practices;
  - 1.5.7.1.3. Conduct a self-evaluation of policies, practices and programs; and
  - 1.5.7.1.4. Develop a Transition Plan for compliance.
- 1.5.7.2. Grant recipients employing fifteen or more individuals must also:
- 1.5.7.2.1. Designate a "504 contact person" and publish a Notice of Non-Discrimination; and
  - 1.5.7.2.2. Develop grievance procedures.
- 1.5.7.3. Though not required by either state or regulation, ODOC encourages all Grant Recipients to take these additional actions.

**1.5.8. Summary of Requirements:**

**1.5.8.1. Effective Communication**

**1.5.8.1.1. For Persons with Hearing Impairments**

- 1.5.8.1.1.1. Qualified sign language interpreters
- 1.5.8.1.1.2. Note takers
- 1.5.8.1.1.3. Telecommunication devices for deaf persons (TDDs)
- 1.5.8.1.1.4. Telephone handset amplifiers
- 1.5.8.1.1.5. Assertive listening devices (devices that increase the sound in large group settings)
- 1.5.8.1.1.6. Flashing lights (where aural communication is used, such as warning bells)
- 1.5.8.1.1.7. Transcription services
- 1.5.8.1.1.8. Closed and open captioning

**1.5.8.1.2. For Persons with Vision Impairments**

- 1.5.8.1.2.1. Qualified readers
- 1.5.8.1.2.2. Written materials translated into alternative formats, e.g., Braille, audio tape, large print, etc.
- 1.5.8.1.2.3. Aural communication (bells or other sounds used where visual cues are necessary).

- 1.5.8.2. The Grant Recipient must pay attention to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purpose of Section 504 compliance, the target population includes: The hearing impaired, visually impaired, mobility impaired, develop-mentally disabled and those persons requiring in-home care or institutional care.

- 1.5.8.3. Grant Recipients are not required to provide individually prescribed devices such as glasses, hearing aids, readers for personal use or study or any other device of a personal nature.
- 1.5.8.4. When a Grant Recipient communicates by phone a TDD or other equally effective communication system must be used. Further, the Grant Recipient must communicate in such a manner that disabled persons may obtain the information they need regarding the Grant Recipient's programs. All public hearings must be held in locations accessible to the disabled. It is acceptable to require that persons with disabilities provide adequate advance notice that they may need a particular auxiliary aid or service. All communications must clearly outline the specific procedures, which must be followed if an individual with disabilities intends to request an auxiliary aid or service.
- 1.5.8.5. If the requested aid or service cannot be provided as requested by the disabled individual, the Grant Recipient must advise the individual immediately of the specific reasons why the request cannot be granted and the reasons why the decision was made.
- 1.5.8.6. The Grant Recipient is not required to undertake any action which would, if taken, result in a fundamental alteration of the program or which would result in an undue financial and/or administrative burden. If it is determined this would be the case, you should contact ODOC for further advice.
- 1.5.9. **Non-Discriminatory Employment Practices:** The Grant Recipient must take the following actions or make the following assurances:
  - 1.5.9.1. It will provide an assurance that no qualified individuals will, solely because of disability, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance;
  - 1.5.9.2. It will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunity or status because of a disability. The Grant Recipient must assure that this prohibition against discrimination applies to the following activities: Recruitment, layoff, advertising, termination, employment application processing, right of return from layoff, hiring, upgrading, job assignments, promotion, job classifications, award of tenure, organizational structures, transfer, injury or compensation, position descriptions, lines of progression, seniority lists, leave, sick leave of absence, fringe benefits, selection and financial support for training, selection for leaves of action for training, employer-sponsored activities (re-creational or social), other terms, conditions or privileges of employment.
  - 1.5.9.3. It will not participate in a contractual or other relationship that has the effect of subjecting qualified applicants or employees with disabilities to discrimination;
  - 1.5.9.4. It will provide reasonable accommodations for the known physical or mental limitations of an otherwise qualified applicant with disability. Reasonable accommodations may include accessible facilities, job structuring, job relocation, part-time or modified work schedules, acquisition or modification of equipment or devices, provision of readers or interpreters.
  - 1.5.9.5. It will make a determination of whether an individual with disability is qualified for the position at the time of the employment action. This involves two steps:
    - 1.5.9.5.1. Determine if the individual satisfies the pre-requisites for the position in terms of appropriate education, skills, licenses, etc.
    - 1.5.9.5.2. Determine whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation. Essential functions are ones the individual who holds the position must be able to perform unaided or with the assistance of reasonable accommodation;
  - 1.5.9.6. **Reasonable Accommodation:**
    - 1.5.9.6.1. Grant Recipients make a reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant for employment or employee with a disability,

unless the Grant Recipient can demonstrate the accommodation would impose an undue burden on its operations. There are three categories of reasonable accommodation:

- 1.5.9.6.1.1. Accommodations required ensuring equal opportunity in the application process
  - 1.5.9.6.1.2. Accommodations enabling the Grant Recipient's employees with disabilities to perform the essential functions of the position held or desired; or
  - 1.5.9.6.1.3. Accommodations enabling the Grant Recipient's employees with disabilities to enjoy equal benefits and privileges of employment as enjoyed by employees without disabilities.
- 1.5.9.6.2. A reasonable accommodation in employment may include, but is not limited to, one or more of the following actions:
- 1.5.9.6.2.1. Making existing facilities used by employees readily accessible to and usable by individuals with disabilities;
  - 1.5.9.6.2.2. Restructuring, including part-time or modified work schedules or reassignment to a vacant position;
  - 1.5.9.6.2.3. Acquisition or modifications of devices or equipment;
  - 1.5.9.6.2.4. Appropriate adjustment or modifications of examinations, training materials or policies; or
  - 1.5.9.6.2.5. The provision of qualified readers or interpreters.
- 1.5.9.7. Self-Evaluation of Policies, Practices & Programs:
- 1.5.9.7.1. Each Grant Recipient must, after consulting with interested persons (including individuals with disabilities or organizations representing such individuals) evaluate its current policies and practices to determine whether they constitute barriers to participation by the disabled. The self-evaluation process should be viewed as the starting point toward achieving compliance with Section 504 requirements. The self-evaluation process is a comprehensive review of all current policies and practices to determine whether there are barriers to participation by the disabled in programs or services.
  - 1.5.9.7.2. The self-evaluation includes communication and employment, as well as the policies and practices for all services, programs and activities. Information to be included in the plan includes:
    - 1.5.9.7.2.1. A list of persons consulted about the self-evaluation
    - 1.5.9.7.2.2. A description of the areas examined and any problems identified; and
    - 1.5.9.7.2.3. A description of any modifications made to the policies, procedures, services and programs.
  - 1.5.9.7.3. Areas evaluated include but are not limited to:
    - 1.5.9.7.3.1. Buildings and/or facilities for physical accessibility;
    - 1.5.9.7.3.2. All programs, activities and services
    - 1.5.9.7.3.3. All outreach and communications;
    - 1.5.9.7.3.4. Eligibility and admission criteria and practices;
    - 1.5.9.7.3.5. Employment practices and guidelines;
    - 1.5.9.7.3.6. Complaint processing procedures.
  - 1.5.9.7.4. The self-evaluation must include all aspects of the Grant Recipient's organization and not just those portions that pertain or relate to the CDBG-funded program and its administration.
  - 1.5.9.7.5. The self-evaluation may determine that some non-structural modifications may be necessary, along with staff training on how to make reasonable modifications to achieve program accessibility. The self-evaluation may also determine that some structural modifications may be

necessary. These should be identified early in the process so modifications can be budgeted for and completed on a timely basis.

- 1.5.9.7.6. The regulations also require the Grant Recipient to consult with persons with disabilities and/or representative organizations throughout the self-evaluation process. The regulations do not stipulate how many people to consult, how to select the members, whether there should be a group or individual consultation or how long the consultation process should take. ODOC recommends that no less than four and no more than seven individuals should comprise a citizen's advisory committee. It is recommended that the committee consist of a wide variety of members. Following are some suggestions for soliciting persons to compose the self-evaluation committee:
    - 1.5.9.7.6.1. Solicit one or two local officials:
    - 1.5.9.7.6.2. Draw upon local agencies or chapters of disability advocate organizations:
    - 1.5.9.7.6.3. Check with local veterans' groups:
    - 1.5.9.7.6.4. Publicize widely in appropriate media accessible to persons with disabilities:
    - 1.5.9.7.6.5. Ask for the help of the local school system:
    - 1.5.9.7.6.6. Include persons within the community known to have disabilities:
    - 1.5.9.7.6.7. Check with the nearest vocational rehabilitation service;
    - 1.5.9.7.6.8. Advertise on local radio and/or television:
    - 1.5.9.7.6.9. Advertise in local and regional newspapers:
    - 1.5.9.7.6.10. Contact appropriate State agencies, boards and commissions.
  - 1.5.9.7.7. By establishing a citizens' advisory committee made up of the above types of individuals, the Grant Recipient will be able to:
    - 1.5.9.7.7.1. Ensure the most complete evaluation of programs and policies and uncover any impediments or barriers to participation by persons with disabilities:
    - 1.5.9.7.7.2. Receive information from persons or experts from organizations representing disabled individuals who are in an excellent position to recommend the least costly, most innovative solutions to accessibility problems:
    - 1.5.9.7.7.3. Demonstrate a commitment to the goals of Section 504 and ADA and help to foster support from all citizens for the handling of this compliance issue.
  - 1.5.9.7.8. Records must be kept for **three years** following final closeout of the contract.
- 1.5.10. Transition Plan for Compliance:
- 1.5.10.1. If your programs and activities cannot be made accessible by making administrative changes, structural changes will be necessary. Develop a Transition Plan for any structural changes. Interested citizens, especially disabled citizens, should be recruited to help develop the Plan. A copy of the Plan must be available for public inspection. The Plan should:
    - 1.5.10.1.1. Identify the physical obstacles that limit the program's accessibility to disabled persons. The Grant Recipient should consider utilizing the Uniform Federal Accessibility Standards (UFAS) Checklist;
    - 1.5.10.1.2. Describe in detail the method used in making the facilities in question accessible;
    - 1.5.10.1.3. Set forth the schedule of tasks, identifying actions taken within the first year, if the total project will exceed one year;
    - 1.5.10.1.4. Identify the official responsible for implementing the Plan; and
    - 1.5.10.1.5. Identify those who assisted the Grant Recipient in preparing the Transition Plan.
  - 1.5.10.2. The Grant Recipient must make reasonable accommodations to the known physical or mental impairments of an otherwise qualified participant or employee with disabilities, unless the Grant



Recipient can demonstrate that such accommodations would impose undue financial and/or administrative burdens. Accommodations could include but are not limited to the following:

- 1.5.10.2.1. Conducting home visits;
  - 1.5.10.2.2. Assigning aides to assist beneficiaries;
  - 1.5.10.2.3. Locating programs or services in accessible facilities;
  - 1.5.10.2.4. Adding or redesigning equipment or furnishings;
  - 1.5.10.2.5. Selectively altering existing facilities or acquiring or building new facilities;
  - 1.5.10.2.6. Changing management policies or procedures;
  - 1.5.10.2.7. Job restructuring;
  - 1.5.10.2.8. Modifying work schedules;
  - 1.5.10.2.9. Providing readers or interpreters.
- 1.5.10.3. If reasonable accommodation, as requested by an individual with disabilities, cannot be provided, the following steps should be taken:
- 1.5.10.3.1. Notify the individual immediately with the specific reasons why the request cannot be granted and the reasons why the decision was made;
  - 1.5.10.3.2. When claiming fundamental alteration or undue burden, document the basis for the decision in a written statement and demonstrate that all resources available for the funding and operation of the service, activity or program were taken into consideration;
  - 1.5.10.3.3. Obtain the written concurrence of both the chief elected official and the chief executive officer.
- 1.5.11. Contact Persons and Notice of Non-Discrimination:
- 1.5.11.1. At least one individual should be designated as the Section 504 Coordinator and should be the single point of contact for all Section 504 activities. **[Americans with Disabilities Act of 1990, 42 USC 12131 as amended by the ADA Amendment Act of 2008 P.L. 110-325]** This individual should be a permanent, full-time employee of the Grant Recipient. Responsibilities of the Section 504 Coordinator include:
    - 1.5.11.1.1. Overseeing formation of the citizen's advisory committee;
    - 1.5.11.1.2. Receiving and investigating grievances;
    - 1.5.11.1.3. Organizing training activities;
    - 1.5.11.1.4. Ensuring the recommendations identified in the self-evaluation and Transition Plan is implemented;
    - 1.5.11.1.5. Serving as the single point of contact for individuals who are disabled; and
    - 1.5.11.1.6. Keeping abreast of changes in laws and regulations.
  - 1.5.11.2. The Grant Recipient must assure that appropriate initial and continuing steps are taken to notify participants, beneficiaries, applicants and employees, including those with impaired vision or hearing and unions with professional agreements with the Grant Recipient that it does not discriminate based on disability.
  - 1.5.11.3. The Grant Recipient must conspicuously post or publish in a newspaper of general circulation the notice "Policy of Non-Discrimination on the Basis of Disability Status". The Section 504 Compliance file should contain the printer's affidavit for the Notice and other evidence of compliance with the notification policy.

## 2. ATTACHMENTS

### 21. Compendium of Federal Civil Rights Laws

# REQUIREMENT NO. 405

## PROCUREMENT

### 1. INTRODUCTION

- 1.1. The procurement of all purchases utilizing CDBG funds will be subject to the requirements set forth at 24 CFR subpart I, §570.489 (g), "**COMMUNITY DEVELOPMENT BLOCK GRANTS**", 24 CFR Part 85, Subpart A "**THE COMMON RULE**", as applicable, Title 19 of the Oklahoma Statutes, as required, the by Competitive Bidding Act and local ordinances where applicable.
- 1.2. Grant Recipients shall comply with the requirements set forth in this document in the procurement of all goods and services that utilize CDBG funds. Non-compliance with required procedures may result in disallowance of any or all costs associated with the procurement action.
- 1.3. Grant recipients will fall into two categories **Counties** and **Cities/Towns**.

**Counties** are required to follow the procedures as defined in O. S. 19, et al.

**Cities and Towns** are required to follow their own procurement procedures as established by local ordinance for the purchase of all goods and services.

In the absence of procurement procedures, Cities and Towns should use the procurement requirements outlined in this manual.

- 1.4. Grant Recipients are required to provide ODOC with Cities and Towns procurement policy at the execution of contract period. If the Grantee does not have a current procurement policy then no funds will be distributed until the Governing Board approves such policy and then submitted to ODOC for verification.
- 1.5. Grant Recipients are required to maintain documentation of all procurement procedures and actions on file for ODOC review, i.e., Request for Proposals (RFPs), Request for Qualifications (RFQs), newspaper advertisements, written solicitations, and board minutes, etc.

### 2. PRE-CONTRACT COSTS

- 2.1. CDBG funds shall not be obligated or used for the payment of goods or services received **prior to the start date of the contract, except** for payment of architectural or engineering services delivered prior to the beginning of the term of the contract ONLY when:
  - 2.1.1. Proper procurement requirements were followed at the time the procurement occurred; and
  - 2.1.2. Services are directly related to the proposed CDBG project and are required for preparation of the application for CDBG funding
- 2.2. Any request to deviate from these requirements must be submitted in writing and written approval must be received from ODOC prior to taking any procurement action.

### 3. REGULATORY/STATUTORY REQUIREMENTS

- 3.1. **24 CFR 570, Subpart I, §489(g)** requires that: "The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. "**FULL AND OPEN**" competition is defined as: procurement procedures that provide all suppliers of goods and services the ability to be made aware of the proposed procurement action with no restriction placed on their ability to compete. Methods of procurement shall include but not be limited to small purchase, sealed bid, formal advertising, competitive proposals, and sole source procurement.

- 3.2. **Self-Procurement Warning: Any Certified Administrator who engages in either of the following practices shall be de-certified consistent with the following procedures listed in the certification regulations:**
- 3.2.1. Assisting the municipality or county in the conduct of the procurement process, ultimately resulting in the selection of that administrator to provide CDBG administrative services.
- 3.2.2. Offering to prepare an application to ODOC for CDBG funding assistance with the understanding that no fee for preparing the application will be charged if that administrator is selected to administer the project.
- 3.3. **Exemptions from Competitive Procurement Requirements:** The following are exempt from competitive procurement procedures:
- 3.3.1. **Administrative Services:** In order for the exemption to apply, Grant Recipients must:
- 3.3.1.1. Furnish ODOC the names of Certified CDBG Administrator or Apprentice employed by:
- 3.3.1.1.1. Sub state Planning Districts;
- 3.3.1.1.2. Community Action Agency
- 3.3.2. Purchase of equipment or materials from other units of government, including those on state or county contract/bid list(s).
- 3.3.3. The purchase of used fire equipment when the purchase is made from a reputable company dealing in used vehicles that clearly qualifies as emergency equipment. Vehicles that could be converted to use as an emergency vehicle are not included in this provision.
- 3.3.4. If a grant recipient chooses to use their leverage/matching funds to pay for engineering, architecture, and/or grant administration the grant recipients are exempted from ODOC competitive procurement requirements.
- 3.3.5. For exemption from all other competitive procurement requirements written approval from ODOC is required.

## 4. METHODS OF PROCUREMENT

The methods of procurement include Small Purchases, Sealed Bids, Construction Contracts, and Request for Proposals, Sole Source, per [24 CFR 85.36(d)]. The appropriate method for any given product or service is dependent on the estimated cost or price, whether the procurement is for a service or product and the type of contract to be utilized, whether the service or product is unique or available from only one source and whether there is any eligible, qualified competition. The following are brief descriptions of each of the six procurement methods.

### 4.1. COUNTIES

- 4.1.1. **Small Purchase:** Small Purchases are those made for services, supplies or other items costing less than \$10,000.00 in the aggregate. Small purchases may be made directly from local vendors. Grant Recipients are required to obtain the best price possible.
- 4.1.2. **Sealed Bids:** If the purchase exceeds \$10,000 (in the aggregate), the Contractor is required to advertise, solicit, and receive sealed bids.
- 4.1.2.1. In order for formal advertising to be feasible, appropriate conditions must be present. These include:
- 4.1.2.1.1. A complete, adequate and realistic specification or purchase description;
- 4.1.2.1.2. Two or more responsible suppliers willing and able to compete effectively for the Contractor's business; and
- 4.1.2.1.3. The procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.
- 4.1.2.2. The following steps are to be followed in the sealed bid procurement process:
- 4.1.2.2.1. Bidder's Instructions are to be prepared, usually by the certified administrator and/or consulting architect/ engineer on a construction project. Once completed, these instructions should be reviewed by legal counsel and a determination should be made that all required compliance

notices have been included in the package. This information must be communicated to potential bidders at the time bids are solicited and not merely when contracts are to be signed. Proposals or bidders need to be alerted that they are bidding on a project involving Federal funding and that they will be required to comply with several laws and regulations. The Bidder's Instructions should provide cost estimating forms to facilitate both the presentation and review of financial information, including (if unit prices are required) cost formats that correspond exactly to the bid information sought.

**NOTE: Davis Bacon Act applies to all construction contracts in excess of \$2,000.00.** Workers' Compensation and General Liability insurance is required for all construction contracts starting at \$2,500.00 (O.S.61, Sec. 103, A & B, Section 113 A-D (2))

- 4.1.2.2.2. Notice of solicitation of bids shall also be published one time in a newspaper of general circulation in the county. Notices shall be mailed and published at least **ten (10) days** prior to the date on which the bids are opened. Proof of the mailing shall be made by the affidavit of the person mailing the request for bids and shall be made a part of the official records of the Contractor files.
  - 4.1.2.2.3. Bids shall be solicited by mailing a notice to all persons or firms who have made a written request of the Contractor that they be notified of such bid solicitation and to all other persons or firms who might reasonably be expected to submit bids.
  - 4.1.2.2.4. The Grant Recipient, in an open meeting, shall open the sealed bids, and if applicable compare them to the state contract price. The Contractor shall select the lowest and best bid based in accordance with the bid specification. The Contractor shall award the contract within **thirty (30) days** of the meeting.
  - 4.1.2.2.5. Where specified in the bid documents, factors such as availability of materials, transportation cost to the job site and life-cycle costs should be considered in determining which bid is lowest.
  - 4.1.2.2.6. The Grant Recipient shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and the best bid, the reason for such conclusion shall be recorded in the official Board Minutes.
  - 4.1.2.2.7. When bids have been solicited as provided and no bids have been received, the Grant Recipient must submit documentation to ODOC that bids were sought (solicitations, proof of publication). Upon notification that no bids were received, ODOC will provide requirements that must be met before an award can be made.
- 4.2. CITIES AND TOWNS
- 4.2.1. Small Purchases: Small Purchases are those made for services, supplies or other items costing \$5,000 or less in the aggregate. Small purchases may be made directly from local vendors. Grant Recipients must take documented steps that indicate that a competitive process was utilized.
  - 4.2.2. Small Purchases: If the Small Purchases costs between \$5,000 and \$50,000 the Grant Recipient must request and receive in writing at least 3 bids or quotes.
  - 4.2.3. If the purchase exceeds \$50,000 Sealed Bids must be received by the Grant Recipients. The Grant Recipient must advertise as well as take any other steps necessary to assure that fair and open competition was achieved as well as assuring that the Grant Recipient received the best product/service for funds expended.
    - 4.2.3.1. In order for formal advertising to be feasible, appropriate conditions must be present. These include:
      - 4.2.3.1.1. A complete, adequate and realistic specification or purchase description;
      - 4.2.3.1.2. Two or more responsible suppliers willing and able to compete effectively for the Contractor's business; and

- 4.2.3.1.3. The procurement lends itself to a firm, fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.
- 4.2.3.2. The following steps are to be followed in the sealed bid procurement process:
- 4.2.3.2.1. Bidder's Instructions are to be prepared, usually by the certified administrator and/or consulting architect/engineer on a construction project. Once completed, these instructions should be reviewed by legal counsel and a determination should be made that all required compliance notices have been included in the package. This information must be communicated to potential bidders at the time bids are solicited and not merely when contracts are to be signed. Proposals or bidders need to be alerted that they are bidding on a project involving Federal funding and that they will be required to comply with several laws and regulations. The Bidder's Instructions should provide cost estimating forms to facilitate both the presentation and review of financial information, including (if unit prices are required) cost formats that correspond exactly to the bid information sought;

**NOTE: REGARDLESS OF WHICH TYPE OF PROCUREMENT PROCESS UTILIZED BY THE GRANT RECIPIENT THE Davis Bacon Act applies to all construction contracts in excess of \$2,000.**

Additionally, Workers' Compensation and General Liability insurance is required for all construction contracts starting at \$2,500.00 (O.S.61, Sec. 103, B & C, Section 113 d B.4)

- 4.2.3.2.2. Notice of solicitation of bids shall also be published one time in a newspaper of general circulation in the county. Notices shall be mailed and published at least **ten (10) days** prior to the date on which the bids are opened. Proof of the mailing shall be made by the affidavit of the person mailing the request for bids and shall be made a part of the official records of the Contractor files.
- 4.2.3.2.3. Bids shall be solicited by mailing a notice to all persons or firms who have made a written request of the Contractor that they be notified of such bid solicitation and to all other persons or firms who might reasonably be expected to submit bids.
- 4.2.3.2.4. The Grant Recipient, in an open meeting, shall open the sealed bids, and if applicable compare them to the state contract price. The Contractor shall select the lowest and best bid based in accordance with the bid specification. The Contractor shall award the contract within **thirty (30) days** of the meeting. This contract MUST include Davis-Bacon prevailing wages if applicable.
- 4.2.3.2.5. Where specified in the bid documents, factors such as availability of materials, transportation cost to the job site and life-cycle costs should be considered in determining which bid is lowest.
- 4.2.3.2.6. The Grant Recipient shall keep a written record of the meeting as required by law, and any time the lowest bid was not considered to be the lowest and the best bid, the reason for such conclusion shall be recorded in the official Board Minutes.
- 4.2.3.2.7. When bids have been solicited as provided and no bids have been received, the Grant Recipient must submit documentation to ODOC that bids were sought (solicitations, proof of publication). Upon notification that no bids were received, ODOC will provide requirements that must be met before an award can be made.

## 5. PROCUREMENT OF CONSTRUCTION CONTRACTS

APPLICABLE TO COUNTIES, CITIES, AND TOWNS

**61 O.S. §101 et seq.** requires the use of the sealed bid procurement process for any public construction project exceeding **\$50,000**.

**NOTE: THE SPLITTING OF BIDS IN ORDER TO AVOID THE COMPETITIVE BIDDING ACT IS A VIOLATION OF STATE LAW.**

- 5.1. The purpose of the bid document is to provide prospective bidders with sufficient information to know the exact scope of work and performance requirements. The architect or engineer who designed the project should take the lead in assembling the bid document. Things to include:
  - 5.1.1. Topographic maps, a site plan and a site layout identifying all adjacent structures, utilities, easements, rights-of-way, sewer or drainage services that might have any underground installations within the project area, that are critical to design;
  - 5.1.2. Plans and specifications, including names of manufactured items, model numbers, sizes, colors, styles and all other information necessary for the construction contractor to easily price and secure the products specified (or those "equal to");
  - 5.1.3. Required wage rates, certifications, bid guaranties and affidavits;
  - 5.1.4. Notification of all public utility, gas, water and electrical services;
  - 5.1.5. Deductive alternatives: The use of deductive alternatives is highly recommended if there is any chance that all bids will exceed available funding. The bid document must be specific in describing the method and order in which alternates will be applied in determining the low bid and such alternates in the plans and specifications.
- 5.2. Davis-Bacon Wage Rate Determinations:
  - 5.2.1. **Construction Contractors are required to pay their laborers at the "prevailing wage rate" for any project involving CDBG funds, if the project costs more than \$2,000.** These rates are periodically adjusted. This request must be submitted at least **45 days prior** to the formal bid opening date. This is a critical step since these rates can significantly affect construction cost estimates.
  - 5.2.2. The Grant Recipient may obtain the wage rates from the web site: <http://beta.sam.gov> and submit wage rate information into OKGrants.com.
  - 5.2.3. Certified wage rates are valid for 180 days. Contact ODOC by e-mail or by documented telephone call **10 days prior** to bid opening to determine if wage decisions included in the bid document are still current. If rates have changed, this information must be included in an addendum, which will allow prospective bidders to amend their bids. The Grant Recipient must document the 10-day call for the CDBG file and may use the space provided on Wage Rate Request.
  - 5.2.4. It is normally the responsibility of the Certified Grant Administrator to furnish a current wage rate determination to the architect/engineer for inclusion in the bid document. However, the Grant Recipient is not relieved of the responsibility to ensure the wage rates are correct.
  - 5.2.5. If a specific job classification is not included in the wage determination, contact an ODOC Project Manager for specific instructions.
- 5.3. Other Requirements:
  - 5.3.1. Title VI of the Civil Rights Act of 1964;
  - 5.3.2. Section 3, Housing and Urban Development Act of 1968, as amended;
  - 5.3.3. Section 504 of the Rehabilitation Act of 1973, as amended;
  - 5.3.4. Age Discrimination Act of 1975;
  - 5.3.5. Section 109, Housing and Community Development Act of 1974, as amended;
  - 5.3.6. Section 402, Veterans of Viet Nam Era (if \$10,000.00 or over)
  - 5.3.7. Minority and Women Owned Business (see Requirement 404) CFR 200.321 [**Minority and Women owned Business Form**]
  - 5.3.8. Bonding and Insurance Requirements:
    - 5.3.8.1. A bond or irrevocable letter of credit.

- 5.3.8.2. A bond in a sum equal to the contract price, with adequate surety, or an irrevocable letter of credit containing terms prescribed by the construction and Properties Division of the Department of Central Services issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to ensure the proper and prompt completion of the work in accordance with the provisions of the contract and bidding documents;
- 5.3.8.3. A bond in a sum equal to the contract price or an irrevocable letter of credit containing terms as prescribed by the Division issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for the benefit of the state, on behalf of the awarding public agency, in a sum equal to the contract price, to protect the awarding public agency against defective workmanship and materials for a period of **one (1) year** after acceptance of the project; and
- 5.3.8.4. Public liability and workers' compensation insurance during construction in reasonable amounts. A public agency may require the contractor to name the public agency and its architects or engineers, or both, as an additional assured under the public liability insurance, which requirement, if made, shall be specifically set forth in the bidding documents.
- 5.3.8.5. Effective July 1, 2008, Oklahoma and U. S. Government laws require that all U. S. employers check to ensure that all employees, regardless of citizenship or national origin, are allowed to work in the United States. If an employee is not a citizen or a lawful permanent resident, he/she may need to apply for an Employment Authorization Document (EAD) to prove that he/she may work in the United States. Contractors may retrieve the appropriate forms from the U. S. Citizenship and Immigration services web site at [www.uscis.gov](http://www.uscis.gov). Although the project managers under ODOC's CDBG program are required to monitor the CDBG grant recipients and their contractors, the burden to ensure compliance with this requirement lies with the Grant Recipient.
- 5.3.8.6. A single irrevocable letter of credit may be used to satisfy paragraphs 1, 2 and 3 of this section, provided such single irrevocable letter of credit would meet all applicable requirements of Subsection B of this section.

If the contractor needs additional time in which to obtain the bonding required, the contractor may request and the awarding agency may allow the contractor an additional **sixty (60) days** in which to obtain the bonds.

- 5.3.8.7. **NOTE:** Many of the regulations regarding contract provisions require specific clauses to be included. These regulations may not be referenced.

**NOTE:** 59 O. S. § 46.21 b utilizes the guidelines of the 2003 International Building Codes which requires, in part, that: a **licensed architect** be used in the planning, designing and preparation of drawings and specifications for the alteration or construction of any building to be used as an assembly hall, municipal building or county building where the reasonably estimated total cost for constructing, remodeling or repairing such building exceeds the sum of One Hundred Fifty Eight Thousand Dollars (\$158,000).

#### 5.4. Soliciting Bids:

- 5.4.1. Bid Notice: The Grant Recipient is required to prepare a Bid Notice. The Bid Notice should include but not be limited to the following:
- 5.4.1.1. The nature of the proposed project in sufficient detail that all bidders will know exactly what their obligations will be, either in the Bid Notice or by reference to the bidding documents.

- 5.4.1.2. The name and location (address) of the officer, agent or employee from whom a complete set of bidding documents can be obtained and the cost of obtaining those documents;
  - 5.4.1.3. The date, time and place of opening the sealed bids;
  - 5.4.1.4. The name of the individual and location (address) of the office where bids should be submitted;
  - 5.4.1.5. The publication must call bidders' attention to the requirement for prevailing wages as well as equal opportunity requirements;
  - 5.4.1.6. Grant Recipients must make a good faith effort to seek contracting possibilities with small businesses, women's business and minority-owned businesses. [Minority and Women owned Business Form]
  - 5.4.1.7. Any other information considered appropriate for prospective bidders or the public.
- 5.4.2. This notice is to be advertised and distributed as follows:
- 5.4.2.1. Provision of a notice to all known prospective bidders via first class mail at least **20 days prior** to the scheduled bid opening;
  - 5.4.2.2. Request for Bids must be published in two (2) consecutive weekly issues of a general circulation newspaper. The first publication must be at least **20 days prior** to the date set for opening bids;
  - 5.4.2.3. If the project is expected to exceed \$50,000, submit bid notice to industry, trade, or construction publications. However, providing this notice is **not** a requirement to publish the notice in these publications.
- 5.4.3. Pre-Bid Conferences
- 5.4.3.1. A pre-bid conference may be held by the architect/engineer if there are multiple funding agencies and they desire it or if the project has been determined to be complex. The primary purpose of such a meeting is to explain to prospective bidders the requirements of the project and answer any questions of the bidders.
  - 5.4.3.2. If a pre-bid conference is to be held, all prospective bidders and any other interested individuals must be notified at least **10 days prior** to holding such a meeting.
  - 5.4.3.3. The Grant Recipient may also desire to pre-qualify bidders as a means to ensure that only responsible proposals are submitted. Under this arrangement, the Contractor may evaluate potential bidders to determine that they have the experience, manpower, financial strength or other relevant characteristics sufficient to presume they could undertake the project if selected.
- 5.4.4. Bid Opening and Evaluation:
- 5.4.4.1. The primary purpose of the review process is to find the most qualified construction contractor to do the job at the best possible price. All bids should be logged with the time and date of receipt, name of applicant and a procurement number. All bids received must remain sealed and in a safe place until the bid opening. Bidders shall accompany their bids with 1) a certified check, cashier's check or bid bond equal to five percent (5%) of the bid, which shall be deposited with the Grant Recipient as guaranty; or 2) an irrevocable letter of credit issued by a financial institution on behalf of the Grant Recipient in an amount equal to five percent (5%) of the bid.
  - 5.4.4.2. The process for selecting a construction contractor will normally take the following steps:
    - 5.4.4.2.1. Bid Opening: The bids must be opened publicly at the time and place stated in the bid advertisement. The bids should be read aloud and recorded for bid tabulation for the apparent low bidder determination. The apparent low bid is the least expensive proposal after the initial tabulation, prior to taking any deductive alternates and prior to establish responsiveness. If none of the bids comes in at or below budget, all proposals are reviewed for alternate bids, if stipulated in original bid documents. As a result of this process, the bidder with the lowest net bid may not be the same bidder who had the lowest original bid.
    - 5.4.4.2.2. Evaluation of Responsiveness: After the initial bid tabulation, the next step is to review proposals for responsiveness. Check each proposal to determine that all requirements of the



invitation have been met. Any proposal that fails to pass this threshold test is automatically rejected regardless of price. While it is fairly easy to determine the apparent low bid, it can take some time to evaluate proposals for technical merit and responsiveness. The Contractor has **30 days** from the bid opening date to award a contract or reject all bids. The Contractor is allowed to extend this period for an additional 90 days, which requires ODOC approval.

- 5.4.4.2.2.1. Some of the deficiencies that might void a bid are:
  - 5.4.4.2.2.1.1. Failure to provide an adequate bid guaranty;
  - 5.4.4.2.2.1.2. Failure to include affirmative action certifications;
  - 5.4.4.2.2.1.3. Failure to provide necessary affidavits.
- 5.4.4.2.2.2. Construction Contractors "self-certify" their compliance with debarment requirements by executing the Notice of Award. Grant Recipients are required to confirm construction contractor eligibility to avoid any chance of problems. To check on any construction contractor's eligibility, please go to the following website: <http://sam.gov/> for a current debarment list. Upload into OK-Grants, along with the Contractor Review Debarment and Grantee Debarment Forms.
- 5.4.4.2.3. Copies of Board Minutes and copies of bid tabulation MUST be placed in the construction contract file.
- 5.4.4.2.4. Competitiveness: The next step depends on whether there are at least two qualified bids left to consider. If there are at least two, there are two options:
  - 5.4.4.2.4.1. Select one bid. The lowest and best cost bid would normally be selected, so long as that bidder was technically qualified to undertake the project. If a bid other than the lowest is selected, the Contractor must prepare a statement of justification, which must be made available for public inspection. In either case, selection of a bid can only be made if the cost of that bid falls within the budget available for the project.
    - 5.4.4.2.4.1.1. Deductive alternates may be used only if the bid package was specific in defining what they were and how they would be applied.
    - 5.4.4.2.4.1.2. Deductive alternates must be applied to every bid, not just the lowest original bid.
  - 5.4.4.2.4.2. Reject all bids. Any or all bids may be rejected when there is a sound, documented reason. For example, this might be appropriate if the pricing of all bids, after taking deductive alternates, exceeds funding available and there is no hope of securing additional funds or rearranging the budget. **[24 CFR 85.36(d) (2)]**
  - 5.4.4.2.4.3. If only one responsible bid was received, **contact ODOC prior to award. Grant recipient must have written ODOC approval before the contract can be awarded.**
- 5.4.4.2.5. If the lowest responsible bid exceeds the currently available funding, the Contractor has three options (in order of preference):
  - 5.4.4.2.5.1. Select deductive alternates until cost comes under (or near) budget; and/or
  - 5.4.4.2.5.2. Make up the funding shortfall from non-CDBG resources; and/or
  - 5.4.4.2.5.3. Reject all bids. ODOC will not approve a budget modification if it would cause the total grant amount to exceed program limitations, reduce the benefit to low-/ moderate-income families below 51% or alter the circumstances under which the grant award was originally made.
  - 5.4.4.2.5.4. Once a responsible bidder has been selected for a cost within budget, the next step is to issue a Notice of Contract Award to the successful bidder [Notice of Contract Award Form]. The Notice must include a statement signed by the construction firm, certifying that the firm does not appear on the "list of Parties Excluded from Federal Procurement or Non-Procurement Programs". A copy of the executed Notice of Award is submitted to

ODOC. The Grant Recipient shall return a certified check or cashier's check, bid bond, or irrevocable letter of credit to the successful bidder on execution of the contract and required bonds or irrevocable letters of credit and insurance. Checks of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.

## 6. PROCUREMENT OF PROFESSIONAL SERVICES

For the purposes of the implementation and management of a CDBG project professional services shall be separated into three categories:

### 6.1. Administrative Grant Administrators/Consultants, inspectors other than engineers,

**Requests for Proposals (RFPs):** Regardless of cost, a Request for Proposal shall be used for the procurement of grant administrators and other professional service providers are not listed below.

NOTE: Any person or firm preparing or assisting in the preparation of RFP documents or providing technical assistance shall be precluded from submitting a proposal.

Grant Recipients seeking to obtain and contract with an individual or firm to provide grant administration services may undertake one of two types of competitive methods: Solicitation or Advertisement.

#### 6.1.1. Public Advertising Requirements:

6.1.1.1. When seeking Professional Service Contracts as defined in 1 above, the Contractor may choose to advertise in a newspaper with the largest general circulation within the county. When advertising for these services the RFP's or RFQ's must be publicly advertised **10 days prior** to opening regardless of cost; or

#### 6.1.2. Direct Solicitation:

6.1.2.1. When seeking Professional Service contracts, The Grant Recipient may choose to directly solicit from known individuals or firms in place of public advertisement. A minimum of three (3) professional service providers must be contacted to obtain proposals. (For procurement of administrative services, certified administrators must be contacted.) If the Grant Recipient chooses to directly solicit these services, they must maintain documentation of the names and dates of the firms or individuals that were contacted.

#### 6.1.3. The Request for Proposal process requires the following:

6.1.3.1. An RFP must be prepared in advance of soliciting proposals and provided to all interested parties.

**Note:** The Sample "Request for Proposals for Administrative Services for the Community Development Block Grant" must be used in its entirety. This Sample meets the requirements below. If a RFP other than the Sample is developed or if the Sample is altered in format or content, approval from ODOC must be obtained prior to proceeding with the planned procurement.

6.1.3.2. A cover letter clearly identifying the purpose of the RFP. The cover letter is used for transmitting the proposal package to interested parties.

6.1.3.3. Complete information and instructions necessary for interested parties to provide a responsible proposal. The information required to be in the RFP shall include the following:

6.1.3.3.1. The complete scope of services to be provided;

6.1.3.3.2. General design information regarding the project to be undertaken or specific services to be provided;

6.1.3.3.3. A statement of price for services to be rendered;

6.1.3.3.4. Anticipated start and completion dates of both the project and the services being requested;

6.1.3.3.5. Statement of minimum acceptable qualifications;

- 6.1.3.3.6. The method for reviewing and rating all proposals, including a list of all evaluation criteria to be used;
- 6.1.3.3.7. A sample of the proposed contract containing all contract terms and conditions so interested parties have the opportunity to know beforehand the specific requirements they must meet.
- 6.1.3.4. The procurement process shall be carried out only upon completion of the final RFP. The process will include public advertisement as applicable, solicitation of proposals from known service providers, evaluation and selection.
- 6.1.3.5. All proposals received in response to the RFP shall be equally evaluated in accordance with the evaluation criteria and method of evaluation identified in the RFP. When necessary, due to the complexity of the procurement or number of responses received, a review committee with knowledge of the proposed project may be selected to perform the reviews. The evaluator(s) should be given a copy of all RFP requirements prior to the beginning of the review process so they can be provided with any additional information or clarification of the process. Specific requirements for evaluation of proposals:
  - 6.1.3.5.1. No proposals received after the stated due date for proposals may be evaluated. Proposals received after the due date should be returned to the submitter with appropriate correspondence.
  - 6.1.3.5.2. Only the specific evaluation criteria identified in the RFP shall be applied to each proposal in order to make the final determination. Proposal should not include more information that is required in the RFP. Any additional information received should not be considered in the evaluation process.
  - 6.1.3.5.3. The evaluation process shall be properly documented and adequate files established to enable any State or Federal reviewers to clearly determine the basis for the award to the specific party.
- 6.1.3.6. Specific evaluation criteria to be used in rating all proposals are listed below:
  - 6.1.3.6.1. Each applicant must provide a Statement of Qualifications in such format as are required to provide a clear determination of the level of qualification. Minimum standards for consideration must be established for qualifications of the applicant.
  - 6.1.3.6.2. Each applicant must provide a brief explanation of their technical competence. Minimum competency standards can be established, if desired.
  - 6.1.3.6.3. Statement of Price Requirements: All RFPs, with the exception of A/E services, shall require a firm, fixed total cost or fee for all services being requested, along with an established rate or fee for each service being delivered.
  - 6.1.3.6.4. For all contracts other than A/E services, the Grant Recipient must request confirmation in writing from ODOC that the selected applicant of the services is not on a Federal or State list of ineligible Grant Recipients before the contract can be executed. This request may be made in advance of the final selection of the successful applicant. The confirmation letter from ODOC must be maintained in the contract file.
  - 6.1.3.6.5. All unsuccessful applicants should be notified in writing that their proposals were not selected.

**NOTE:** When less than two (2) responsive proposals are received, the requirements stated below "Use of Non-Competitive Proposals" shall apply.

## 6.2. Engineers, Architects, Landscape architects, and Attorneys, etc.

**Requests for Qualifications (RFQs):** Regardless of cost, a Request for Qualification shall be used for the procurement of Engineers, Architects, and Landscape Architects. Grant Recipients must understand that under

Oklahoma State Statutes providers of Engineering, Architectural, and Landscape architectural services are not allowed to submit a price for fee until the initial evaluation process has taken place and a qualified individual or firm has been determined. Grant Recipients seeking to obtain and contract with an individual or firm to provide Engineering, Architectural, and Landscape architectural services may undertake one of two types of competitive methods:

#### 6.2.1. Solicitation or Advertisement

6.2.1.1. Public Advertising Requirements: When seeking Professional Service contracts, the Grant Recipient may choose to advertise in a newspaper with the largest general circulation within the county. When advertising for these services the RFQ's must be publicly advertised **10 days prior** to opening of the statement of qualifications.

6.2.1.2. Direct Solicitation: When seeking Professional Service contracts, the Grant Recipient may choose to directly solicit from known individuals or firms in place of public advertisement. A minimum of 3 professional service providers must be contacted to obtain a statement of qualifications. If the Grant Recipient chooses to directly solicit these services, they must maintain documentation of the names and dates of the firms or individuals that were contacted.

6.2.2. The grant recipient must fully develop a Request of Qualifications. This RFQ must clearly communicate the following:

6.2.2.1. Type of service being sought;

6.2.2.2. Level of education and experience desired by the grant recipient;

6.2.2.3. Exact description of the work/project;

6.2.2.4. List of references;

6.2.2.5. A cover letter clearly identifying the purpose of the RFQ. The cover letter is used for transmitting the proposal package to interested parties;

6.2.2.6. Complete information and instructions necessary for interested parties to provide a responsible proposal. The information required to be in the RFQ shall include the following:

6.2.2.6.1. The complete scope of services to be provided;

6.2.2.6.2. General design information regarding the project to be undertaken or specific services to be provided;

6.2.2.6.3. Anticipated start and completion dates of both the project and the services being requested;

6.2.2.6.4. Statement of minimum acceptable qualifications;

6.2.2.6.5. The method for reviewing and rating all proposals, including a list of all evaluation criteria to be used.

6.2.3. The selection phase of procurement process shall be carried out only upon completion of the final RFQ. The process will include public advertisement or solicitation of RFQs from known service providers followed by evaluation and selection.

All proposals received in response to the RFQ shall be equally evaluated in accordance with the evaluation criteria and method of evaluation identified in the RFQ. When necessary, due to the complexity of the procurement or number of responses received, a review committee with knowledge of the proposed project may be selected to perform the reviews. The evaluator(s) should be given a copy of all RFQ requirements prior to the beginning of the review process so they can be provided with any additional information or clarification of the process.

6.2.3.1. Specific requirements for evaluation of RFQs:

6.2.3.1.1. No RFQs received after the stated due date for RFQs may be evaluated. RFQs received after the due date should be returned to the submitter with appropriate correspondence.

- 6.2.3.1.2. Only the specific evaluation criteria identified in the RFP shall be applied to each proposal in order to make the final determination. Proposal should not include more information that is required in the RFP. Any additional information received should not be considered in the evaluation process.
- 6.2.3.1.3. The evaluation process shall be properly documented and adequate files established to enable any State or Federal reviewers to clearly determine the basis for the award to the specific party.
- 6.2.3.2. Specific evaluation criteria to be used in rating all RFQs are listed below:
  - 6.2.3.2.1. Each applicant must provide a Statement of Qualifications in a format that will provide a clear determination of the level of qualification. Minimum standards for consideration must be established for qualifications of the applicant.
  - 6.2.3.2.2. Each applicant must provide a brief explanation of their technical competence. Minimum competency standards can be established, if desired.
  - 6.2.3.2.3. Once the Grant Recipient has determined which individual that is most qualified, final negotiation of the contract between the contractor and the successful applicant will take place prior to execution of the contract.
  - 6.2.3.2.4. All unsuccessful applicants should be notified in writing that their proposals were not selected.
  - 6.2.3.2.5. When less than two (2) responsive proposals are received, the requirements stated below "Use of Non-Competitive Proposals" shall apply.

### 6.3. **Independent Auditors**

#### 6.3.1. Audit Requirements

- 6.3.1.1. Each ODOC contract includes an audit requirement. Several factors affect the audit that is required including:
  - 6.3.1.1.1. Whether the jurisdiction is a municipality or county (11 O.S. Subsection 17-105 or 19 O.S. Subsection 171);
  - 6.3.1.1.2. The total level of funding received in a given year from all sources; and
  - 6.3.1.1.3. The total level of federal funds expended in a given fiscal year (OMB Circular A-133)
- 6.3.1.2. If the Grant Recipient's annual revenue is \$25,000 or more in funds (from any and all sources), it must conduct an annual audit of all funds received which complies with the Oklahoma statute; or
- 6.3.1.3. If the Grant Recipient's revenue is \$25,000 or more, but it's population is less than 2,500, it has the option of having an agreed upon procedures agreement conducted by an independent licensed public or certified accountant in lieu of an independent audit as cited in O.S. 17-105; or
- 6.3.1.4. If the Grant recipient expends \$500,000 or more in total federal funds (regardless of the source), it is subject to the requirements of the Single Audit Act OMB Circular A-133.

**Additional Notes:** Grant Recipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.

Audits should be uploaded on OKGrants in a PDF file. Hard Copies will be accepted if necessary

## 7. NON-COMPETITIVE PROPOSALS (SOLE SOURCE)

- 7.1. Non-Competitive Proposals are proposals solicited from only one source. The solicitation may be required by one of the situations listed below or after solicitation through a Sealed Bid or Request for Proposal process from a number of sources results in inadequate competition.
- 7.2. Non-Competitive Proposals require the prior written approval of ODOC and may only be utilized when:
  - 7.2.1. The item is available from a single source;

- 7.2.2. The public emergency for the required purchase of goods or services will not permit the delay resulting from competitive solicitation;
- 7.2.3. After solicitation of a number of sources, competition is determined to be inadequate or only one response is received.

# REQUIREMENT NO. 406

## FINANCIAL MANAGEMENT

### 1. INTRODUCTION

- 1.1. In order to assist you in fulfilling your financial management obligations, this Requirement will outline the steps for the successful financial management of a CDBG grant. **[24 CFR 570, Subpart I, §489(d)]**.
- 1.2. OKGrants is required for the submission of applications, implementation of projects and subsequent closeout. It is important to note that some documents will be completed on forms that are programmed into OKGrants. Certain documents will be completed by the Grant Recipient and then uploaded into OKGrants. Additional paper documents should be maintained by the Grant Recipient at the Grant Recipient's office. ODOC will provide guidance as to what documentation must be uploaded in OKGrants and which documentation must be maintained at the Grant Recipients office on paper.

### 2. ACCOUNTING SYSTEM REQUIREMENTS

The seven major elements and actions to a complete financial management system including but are not limited to [11 O.S. §§17-207, 68 O.S. §§3003]:

- 2.1. Accounting Records:
  - 2.1.1. All Grant Recipients are required by State statute to track Federal dollars by fund. This simply means that a separate set of accounting records (books) must be set up for each CDBG contract received. Each set of books will be considered a fund, much like the funds Grant Recipients are already required by law to operate under, i.e., water, street and alley, general, special revenue, etc. Within each fund, however, specific accounts are required to track expenditures by budgeted line item activity (construction, administration, engineering, etc.).
  - 2.1.2. At a minimum, each fund should contain:
    - 2.1.2.1. A cash receipts and disbursements journal. Please note that a Grant Recipient may utilize a manual accounting, i.e. paper books such as green columnar pad or a computerized set of books. What ODOC strenuously requires is that the accounting system can accurately account for the receipt and disbursement of CDBG funds. This ledger format should also be used to account for the receipt and disbursement of leveraged funds.
    - 2.1.2.2. A complete set of expense accounts for each budgeted line item, i.e., construction, engineering, administration, etc.
    - 2.1.2.3. A payroll register for any Grant Recipient employees paid from CDBG funds.
  - 2.1.3. The accounting records may be maintained on a cash or accrual basis.
  - 2.1.4. All entries recorded in the cash disbursements journal must be traceable to some form of source documentation, i.e., invoices, partial pay estimates, employee time sheets, etc. Additionally, you will need to have all original documentation filed in an orderly manner and readily available for review in the event ODOC performs a financial monitoring on your CDBG project.
- 2.2. Accounting Systems: You may apply your normal accounting systems to CDBG funds, provided that all applicable State and Federal requirements can be met.
  - 2.2.1. Funds should be placed in a non-interest-bearing checking account. If funds are placed in an interest-bearing checking account, the interest must be tracked. Any interest earned in a one-year period in excess of \$100 must be paid to HUD. The check can be sent to ODOC but must be made payable to HUD. The one-year time frame begins from the date of the first deposit into the account. Grant Recipients may keep interest amounts up to \$100 per year if they are able to document allowable CDBG administrative expenses in accordance with 24 Part CFR 570.489 and 85.21 Interest Earned on Advances.

- 2.2.2. In order to receive CDBG by electronic transfer new Grant Recipients will need to contact the Oklahoma Management and Enterprise Services (OMES). Contact via the OMES web-site <https://omes.ok.gov/services/purchasing/vendor-registration> or via phone at 405-521-2444. Once CDBG funds are requested, they will be automatically deposited by electronic funds transfer (EFT) into the checking account that has been designated for receipt of CDBG funds.
- 2.2.3. Grant Recipients, both municipalities and counties, are allowed **fifteen (15) working days** to expend the funds. Any money not expended after the maximum time allowed is considered excess cash on hand and must be returned to ODOC. The returned funds can be drawn at a later date when needed. **[Treasury Circular 1075]**
- 2.2.4. The only exception to the "cash-on-hand" prohibition is that Grant Recipients are allowed to maintain funds (up to \$2,000) after the final drawdown of funds for the payment of the CDBG pro-rata share of a State-required "Yellow Book" audit. Although the Grant Recipient may technically have cash on hand at the time of closeout, these funds will be reported as expended on the closeout documents.
- 2.3. **Internal Controls:** Adequate internal controls must be established to ensure CDBG funds are properly safeguarded. These controls must include the following:
  - 2.3.1. Payment approval procedures must be defined. All invoices must be approved by the Municipal Council or Board of County Commissioners prior to payment. You may use an authorized official if normal approval procedures by the Council or Board cannot be used. **[Per the requirements of 62 O.S. 310.1]**
  - 2.3.2. An authorized official is defined as any municipal or county officer or employee the Council or Board gives the authority to approve invoices on their behalf. **[11 O.S. §17A-102]**
  - 2.3.3. Grant Recipient ordinance must reflect any departure from the normal approval procedures. An authorized official may approve all invoices prior to payment by initialing and dating each invoice. **[11 O.S. 2014, §§17A-102]**
  - 2.3.4. All paid invoices must be defaced by writing the check number and date paid on each invoice or purchase order. A copy of the approved purchase order must be attached to each invoice. **REMEMBER**, purchase orders must be signed and dated prior to ordering goods and services and prior to receipt of the invoice (including contracts). If Council or Board members do not sign purchase orders, documentation of approval of purchase orders as reflected in the meeting minutes must be readily available for review. **Every purchase order issued for invoices paid from CDBG funds must be identified in the meeting minutes.**
  - 2.3.5. Non-Collusion Affidavits are required to be attached to all contracts for \$25,000 or more. Grant Recipients executing contracts for goods or services on a continuing basis may accept a single Non-Collusion Affidavit at the time of initial execution of the contract, which applies to all future work, services or materials completed or supplied under the terms of the contract. **[74 O.S. §85.22]**
  - 2.3.6. CDBG checks must be pre-numbered and signed by the proper officials as authorized by local ordinance or State statute. In the absence of such ordinance, the treasurer must sign all checks.
  - 2.3.7. Blank checks, undelivered checks and signature stamps must be locked in a safe, drawer or file cabinet with access restricted to individuals authorized for their use.
  - 2.3.8. Every CDBG bank statement should be reconciled. The statement balance (not including other sources of funds) should be reconciled back to the CDBG general ledger cash account. It is recommended that the reconciliation be performed by someone other than the CDBG accountant. All persons performing the reconciliation must initial and date the reconciliation to indicate approval.
  - 2.3.9. CDBG dollars cannot be placed in a petty cash fund.
- 2.4. **Purchase Order System:** Grant Recipients must use purchase orders as required by **Oklahoma Statute, Title 62, Contracts and Expenditures, §310.1**. Please note that this is not an optional requirement but rather a statutory requirement.



- 2.4.1. Unless otherwise provided by ordinance, officers, boards, commissions and designated employees of cities and towns, hereinafter referred to as the purchasing officer, having authority to purchase or contract against all budget appropriation accounts as authorized by law shall submit all purchase orders and contracts prior to the time the commitment is made, to the officer charged with keeping the appropriation and expenditure records or clerk, who shall, if there be an unencumbered balance in the appropriation made for that purpose, so certify in the following manor:

I hereby certify that the amount of this encumbrance has been entered against the designated appropriation accounts and that this encumbrance is within the authorized available balance of said appropriation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Encumbering Officer or Clerk of \_\_\_\_\_.

Provided, in instances where it is impossible to ascertain the exact amount of expenditures to be made at the time of recording the encumbrance, an estimated amount may be used and the encumbrance made in like manner as set forth above. Provided, no purchase order or contract shall be valid unless signed and approved by the purchasing officer and certified as above set forth by the officer or clerk charged with keeping the appropriation and expenditure records. The clerk or encumbering officer shall retain and file one copy of the purchase order.

- 2.4.2. After satisfactory delivery of the merchandise or completion of the contract, the supplier shall deliver an invoice. Such invoice shall state the supplier's name and address and must be sufficiently itemized to clearly describe each item purchased, its unit price, where applicable, the number or volume of each item purchased, its total price, the total of the purchase and the date of the purchase. The appropriate officer shall attach the itemized invoice together with delivery tickets, freight tickets or other supporting information to the original of the purchase order and, after approving and signing said original copy of the purchase order, shall submit the invoices, the purchase order and other supporting data for consideration for payment by the governing board. All invoices submitted shall be examined by the governing board to determine their legality. The governing board shall approve such invoices for payment in the amount the board determines just and correct.
- 2.4.3. As an alternative to the provisions of subsection B of this section, the governing body may elect to pay claims and invoices pursuant to the provisions of subsection A of Section 17-102 of Title 11 of the Oklahoma Statutes, which provides for the adoption of an ordinance to ensure adequate internal controls against unauthorized or illegal payment of invoices. The governing body may also authorize the chief executive officer or designee to approve payment of such invoices. In absence of such authority, the governing board shall approve payment.
- 2.5. **Leverage Funds Requirements:**
- 2.5.1. The Grant Recipient must also be sure not to overlook the leverage funds requirements. The term leverage refers to any funds other than CDBG funds to be used on the project. These funds were originally identified in the grant application and were given credit (scoring points) in the rating of that application. Since this commitment was part of the basis upon which ODOC awarded financial assistance, the Grant Recipient is responsible for seeing that those funds are expended on the CDBG project. Failure to expend leverage funds on the project may result in disallowance of any or all CDBG funding.
- 2.5.2. Accounting for leveraged/matching funds at a minimum, each fund should contain: Cash receipts and disbursements journal. Please note that a Grant Recipient may utilize a manual accounting, i.e. paper books such as green columnar pad or a computerized set of books. ODOC requires that the accounting system can accurately account for the receipt and disbursement of CDBG funds.

- 2.5.3. For economic development projects, financial leverage is defined as new money, recently contributed to the project for the express purpose of implementing the proposed project. The source of the new money may be cash or other valuable consideration, e.g., land, bank loans, proceeds from the sale of stocks or bonds or loans from other public agencies. Private and public investments that do not qualify as financial leverage are existing net worth, existing debt, future operating expenses, and inventory. Additionally, In-Kind Leverage is ineligible.
- 2.5.4. For community development projects, leverage may consist of cash or in-kind contributions. Cash includes other Federal/State grants and loans and local capital improvement funds set aside for a specified purpose in the Grant Recipient budget.

In-kind includes the value of force account labor, voluntary labor, value of services and supplies provided by another local entity, the fair market value of land, buildings or materials that are a part of the project and the cost of using Grant Recipient owned equipment.

- 2.5.5. **Force account labor** is defined as Grant Recipient labor used on the project that has been paid for from local funds.

**Voluntary labor** is defined as labor performed by individuals who are not compensated for their services and time. The labor performed must be for services considered to be an integral part of the project and can only be charged at the rate of \$10.00 per hour for non-skilled labor and the current hourly market rate for skilled labor, i.e., electricians, plumbers, etc. If Grant Recipient owned equipment is used on the project, the FEMA rate schedule will be used as a guide in determining the proper equipment costs.

- 2.5.6. Documentation of leveraged funds must be maintained on file by the Grant Recipient for review.
- 2.5.6.1. Documentation includes invoices, partial pay estimates, monthly billings, executed contracts, etc. For in-kind labor, it includes signed time sheets showing the amount of time charged to the CDBG project, the rate per hour paid to each employee and a brief description of the work performed. Each employee/volunteer and the employee's immediate supervisor must sign the time sheets. The employee's payroll records must also be available for review.
- 2.5.6.2. Documentation of Grant Recipient owned equipment use must consist of a written log showing the type of equipment used, the date(s) used, total number of hours used, the appropriate FEMA hourly rate and a brief description of how the equipment was used, and must be signed by the on-site supervisor.
- 2.5.6.3. Documentation should also include accounting records and bank statements the leveraged funds were paid from, if applicable. If changes to either the source or use of leverage funding from those identified in the application are required, the Grant Recipient must secure prior ODOC approval. Allowable and unallowable leverage sources will be defined in each year's application for funding. **[See Requirement 401 for guidance on budget revisions.]**
- 2.5.7. When Other Funds Are Involved: The State has made the decision to reward co-funding by giving increased points in the rating of applications as a means of stretching limited CDBG dollars further, allowing the State to fund additional projects. Such funding may come from a variety of other sources, including other State agencies, local funds, foundations, private sources and Federal agencies. There are three major issues to keep in mind:
- 2.5.7.1. The Grant Recipient should make certain that the level of other funding does not drop below the amount stipulated in the contract agreement with ODOC. This is especially important if the Grant Recipient was awarded points in its application for leveraging other funds. ODOC must be informed if leverage funds decrease below the stipulated amount in the application. Failure to achieve the promised level of match could affect the basis on which the CDBG contract was awarded.

- 2.5.7.2. In some specific instances, ODOC will require that the rate of expenditure of other funds be consistent with the rate of CDBG expenditure. In other words, CDBG funds must be spent at the same rate as other funds. Be certain to review the contract agreement to determine if this requirement is applicable to your project.
- 2.5.7.3. When other Federal funds are involved in a project, follow the more stringent requirements of other Federal Agencies. Please contact ODOC for guidance and assistance when conflicting requirements create project implementation problems. Both the State and the Grant Recipient are held accountable by HUD for administering these funds in a manner consistent with HUD regulations, even if another Federal agency takes a more lenient approach to a given compliance area.
- 2.5.7.4. Davis Bacon: It is extremely important for Grant Recipients to know that the Davis Bacon wage rate requirement applies to all leveraged funds associated with the CDBG project.
- 2.6. Allowable and Unallowable Expenses:
- 2.6.1. Items that are considered allowable and unallowable expenses to your CDBG contract. **The most important thing to remember is that you can only expend funds on the items that are listed in the detailed budget submitted with your application for funding.**
- 2.6.2. The budget has been reviewed and approved for funding through ODOC, therefore, all costs set out in the budget are considered approved. Any requests to deviate from the budget must be approved in writing by ODOC. Any CDBG funds expended on items not pre-approved by ODOC will be considered disallowed expenses and must be paid for from local funding sources.
- 2.6.3. The budget may contain two separate categories for administration. The first category, Direct Grantee Administration, can only be used for payment of Grant Recipient administration expenses. It cannot be used to pay for administrative consulting services. The second category, Public Facilities Administration, can be used to pay for Grant Recipient expenses or contract services, i.e., certified CDBG administrative consulting services.
- 2.6.4. As a general rule, administrative costs for the Grant Recipient may include:
- 2.6.4.1. Contracted certified CDBG administrative consulting services;
- 2.6.4.2. Personnel costs (payroll and fringe) for staff time on the project. The Grant Recipient's payroll account can be reimbursed with CDBG funds rather than creating an additional payroll for employees performing CDBG work activities. Time sheets are required for all employees paid with CDBG funds;
- 2.6.4.3. Pro-rata portion of the annual audit expense;
- 2.6.4.4. Miscellaneous: Legal fees, title opinions, bid advertisement expenses and postage;
- 2.6.4.5. Travel: If you are planning to charge Grant Recipient travel expenses to your CDBG contract, you will need to contact ODOC for the current reimbursement rates.

If the Grant Recipient's existing travel policies are more restrictive than the State's, the more restrictive local policies will take precedence. **[Consistent with 74 O.S. §500.1, et seq.]**

- 2.6.4.6. Program Income: Program income is money received by the Grant Recipient, in the amount of \$25,000 or more per year that has been generated from the use of CDBG funds. **[24 CFR 570, Subpart I, § 489(e)]**
- 2.6.4.6.1. Program income is not your initial receipt of CDBG funds but money made from the use of those funds.
- 2.6.4.6.2. If the Grant Recipient earns less than \$25,000 per year from the use of CDBG funds, such earnings are not considered program income. The Grant Recipient may keep any amounts of money less than \$25,000 for its own use; however, the Grant Recipient is encouraged to use it for community development-related activities.

- 2.6.4.6.3. Any revenue received in the amount of \$25,000 or more per year must be reported to ODOC. As a general rule, all program income must be returned to ODOC. Examples of program income are:
- 2.6.4.6.3.1. Proceeds from the sale of real property purchased or improved with CDBG funds;
  - 2.6.4.6.3.2. Proceeds from the sale of equipment purchased with CDBG funds and gross income from the use of real or personal property acquired with CDBG funds, less the costs incurred in creating the program income;
  - 2.6.4.6.3.3. Payment of principal and interest on loans made using CDBG funds.
- 2.6.4.6.4. Under certain circumstances, the Grant Recipient may request in writing to ODOC with an explanation of why they want to keep the program income and how they intend to expend the funds within the parameters of the CDBG program.
- 2.6.4.7. Financial Management Files:
- 2.6.4.7.1. With the implementation of OKGrants certain documents will no longer be maintained by the Grant Recipient in the traditional paper copy format. Certain documents will be maintained in OKGrants.
    - 2.6.4.7.1.1. Requests for Funds: Request for Funds will be initiated and submitted by utilizing OKGrants. Supporting documentation such as invoices, receipts and cancelled checks must be uploaded with the submitted Request for Funds. The supporting documentation must be maintained at the Grant Recipient's office.
    - 2.6.4.7.1.2. Monthly Expenditure Reports: Monthly Expenditure Reports will be submitted to ODOC utilizing OKGrants. Along with the submitted Monthly Expenditure Report, supporting documentation such as invoices, receipts and cancelled checks must be uploaded.
    - 2.6.4.7.1.3. Any other correspondence between the Grant Recipient and ODOC concerning the financial management of your CDBG contract. Correspondence and other financial management documentation not uploaded in OKGrants must be maintained in the conventional manner at the Grant Recipient's offices.
    - 2.6.4.7.1.4. Regarding specific documents Grant Recipients are encouraged to refer to **Requirement 401**.
  - 2.6.4.7.2. The financial management file should be readily available for any ODOC staff for inspection during a CDBG monitoring visit. Additionally, the following financial management records must be available during the CDBG monitoring visit. These documents will be maintained manually at the Grant Recipient's office and will not be uploaded in the OKGrants Management System.
    - 2.6.4.7.2.1. CDBG General Ledger;
    - 2.6.4.7.2.2. CDBG and leveraged fund bank statements;
    - 2.6.4.7.2.3. Cancelled checks or photocopy representation of the checks or warrants that were issued.
    - 2.6.4.7.2.4. Invoices/purchase orders;
    - 2.6.4.7.2.5. Board/Council meeting minutes indicating approval of the payments.
    - 2.6.4.7.2.6. Regarding specific documents Grant Recipients are encouraged to refer to **Requirement 401**.

### 3. DRAWING DOWN FUNDS (ADVANCE/PAY REQUEST)

- 3.1. All requests for payments must be entered into OKGrants. Hard copies will not be accepted. Grant Recipients may request a drawdown of funds necessary to meet immediate needs. This is accomplished through the submission of a Request for Funds initiated and submitted by utilizing OKGrants.

Administrative funds can be requested in accordance with the schedule below.

**ADMINISTRATION REMITTANCE SCHEDULE**

<u>Maximum Fee</u>	<u>Activity</u>
20%	Release of Funds achieved within 120 days
5%	Release of Funds achieved greater than 120 days
20%	Construction started within 270 days
5%	Construction started greater than 270 days
40%	Construction as project funds are expended (Pro rata)
20%	Submission and acceptance of Final Closeout documents

**WATER/WASTEWATER ENGINEERING CONTRACT SCHEDULE**

<u>Maximum Fee</u>	<u>Activity</u>
<i>Year One (1)</i>	
25%	Can be drawn from total allowable public administrative funds
<i>Year two through three (2-3)</i>	
20%	Construction started within 120 days
5%	Construction started greater than 120 days
35%	Construction as project funds are expended (Pro rata)
20%	Submission and acceptance of Final Closeout documents

A certified CDBG administrator/writer in OKGrants may prepare this form but the authorized official or financial officer in OKGrants must review and submit.

- 3.2. It will take approximately ten to twelve working days from the date ODOC processes your Request for Payment of Contract Funds to receive your money. ODOC will initiate an EFT through OMES to the Treasury and then to Grant Recipient's bank account.

**4. CDBG MONTHLY EXPENDITURE REPORTS**

- 4.1. Monthly Expenditure Report must be entered on OKGrants by the **10th of every month following a month in which there has been a draw, expenditure, or cash balance of CDBG funds.**
- 4.2. Leverage expenditures must also be included on the report. Leverage expenditures must be reported when incurred, if there has not been an expenditure of leverage funds please place a zero in the appropriate line item. If there are no CDBG expenses to report during the month, a report for leverage expenditures only must be submitted if leveraged expenditures occurred. Along with the submitted Leverage Expenditure Report, supporting documentation such as invoices, receipts and cancelled checks must be uploaded in OKGrants.
- 4.3. Timely submission of the Monthly Expenditure Report is important. Requests for funds will not be processed if there are any delinquent reports outstanding.
- 4.4. Inaccurate reports will be rejected by the system since it automatically tracks cumulative expenses

**5. AUDIT REQUIREMENTS**

- 5.1. Each ODOC contract includes an audit requirement. Several factors affect the audit that is required including:
  - 5.1.1. Whether the jurisdiction is a municipality or county (**11 O.S. Subsection 17-105 or 19 O.S. Subsection 171**);
  - 5.1.2. The total level of funding received in a given year from all sources; and
  - 5.1.3. The total level of federal funds expended in a given fiscal year (**OMB Circular A-133**).
    - 5.1.3.1. If the Grant Recipient’s annual revenue is \$25,000 or more in funds (from any and all sources), it must conduct an annual audit of all funds received which complies with the Oklahoma statute; or

- 5.1.3.2. If the Grant Recipient's revenue is \$25,000 or more, but it's population is less than 2,500, it has the option of having an agreed upon procedures agreement conducted by an independent licensed public or certified accountant in lieu of an independent audit as cited in **O.S. 17-105**; or
    - 5.1.3.3. If the Grant Recipient expends \$750,000 or more per year in total federal funds (regardless of the source), it is subject to the requirements of the Single Audit Act **OMB Circular A-133**.
  - 5.2. Grant Recipients should consult with ODOC and the ODOC Audit Policies and Procedures Manual for specific guidance.
  - 5.3. Audits should be uploaded on OKGrants in a PDF file. Hard copies will be accepted if necessary.

# REQUIREMENT NO. 407

## CONTRACT DEVELOPMENT

### 1. INTRODUCTION

- 1.1. Once necessary services have been properly procured, it is time to develop the legal instruments necessary to establish contractual obligations and rights. This Requirement provides general guidance concerning the compliance aspects of contract administration. As with all contractual obligations, the Grant Recipient is advised to seek legal counsel regarding rights, duties, obligations and liabilities arising from these legal arrangements. ODOC will also provide general advice concerning contract administration. **[See Requirement 405 for additional guidance on required procurement for contracts.]**

### 2. GENERAL REQUIREMENTS

- 2.1. Contract Format: As a general rule, contracts will include the following provisions:
  - 2.1.1. General Administrative Provisions, including effective date of contract, names and addresses of the parties to the contract, reference to the authority of the local unit of government to enter into the contract, conditions and terms for violation or breach of the contract and procedures for contract amendment;
  - 2.1.2. Scope of Services, including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance and specification of materials;
  - 2.1.3. Method of Compensation, including fee or payment schedules, retainage, rates and maximum amounts payable;
  - 2.1.4. Special Conditions, including provisions mandated by State and Federal law.
- 2.2. Contract Provisions: There are essentially two issues, which are critical to ensure compliance with the CDBG Program and upon which ODOC will focus its review:
  - 2.2.1. Consistency of the contract with the requirements of the contract agreement between ODOC and the Grant Recipient. This is particularly true of those terms and conditions involving scope of project, implementation schedules and method and amount of payments. The contract agreement between ODOC and the Grant Recipient is the "master" contract with which all subsequent contracts between the Grant Recipient and any construction contractors must be consistent and with which they must comply;
  - 2.2.2. Inclusion of specific provisions required by State and Federal law. These provisions are dependent on a combination of:
    - 2.2.2.1. Whether the contract is for construction or non-construction, i.e., professional services such as administration, accounting, legal, etc. **[24 CFR 85.36(L)]**;
    - 2.2.2.2. The dollar value of the contract; and
    - 2.2.2.3. Statutory mandates.

### 3. SPECIFIC CONTRACT REQUIREMENTS

- 3.1. Non-Construction Contracts: The Grant Recipient should carefully review the citations noted in **Attachment 22** to determine which provisions will be required in any non-construction contract utilized during the course of the project. **[See Requirement 404 for affirmative action, Section 504 and Section 3 requirements.]**
- 3.2. Construction Contracts:
  - 3.2.1. The construction contract will include all items included in the bid package as well as the standard terms and conditions, construction contractor certifications and bond and insurance forms. As this is a legal document, the Grant Recipient is strongly advised to consult legal counsel and obtain the attorney's signed letter certifying the review of documents. Remember: Neither the cost-plus-a-percentage nor percentage-of-construction cost method of contracting is allowed.

- 3.2.2. Depending on the amount of the contract, various contract clauses must be utilized in CDBG project contracts. Most of the specific clauses included in this chapter are required only if the project is in excess of \$10,000. A matrix has been compiled to assist in selecting the most appropriate package of contract clauses. The Grant Recipient must determine the specific CDBG Program statutory requirements with which they must comply.
- 3.2.3. The Grant Recipient should be concerned with both the body of the contract as well as the compliance requirements that are frequently included as exhibits to the base contract. Review the following for inclusion in the contract text:
- 3.2.3.1. Parties to the agreement;
  - 3.2.3.2. Project location;
  - 3.2.3.3. Scope of services;
  - 3.2.3.4. Financial commitments;
  - 3.2.3.5. Starting and ending dates;
  - 3.2.3.6. Performance schedule and milestones;
  - 3.2.3.7. Contract representatives:
    - 3.2.3.7.1. Grant Recipient;
    - 3.2.3.7.2. Construction contractor;
    - 3.2.3.7.3. Subcontractor(s).
  - 3.2.3.8. Conflict of interest;
  - 3.2.3.9. Reporting requirements;
  - 3.2.3.10. Suspension clause;
  - 3.2.3.11. Incorporation of attached requirements [**Requirement 404, Affirmative Action, Section 504 and Section 3 requirements.**]
  - 3.2.3.12. Signatures.
  - 3.2.3.13. The grant recipient and the contractor, when applicable, shall submit to ODOC a Section 3 Summary Report and a Final Wage Compliance Report as part of the closeout documents.
- 3.2.4. Additional areas that are required by the Federal government and must be incorporated in the contract can be found at <http://www.dol.gov/ofccp/>. Those which require specific language and which must be inserted verbatim into the contract are noted. These paragraphs advise construction contractors that they must comply with specific Federal laws pertaining to the environment, civil rights, labor and other laws attached to the CDBG legislation.
- 3.2.5. **Note:** ODOC will review the contract only to ensure compliance with CDBG and other Federal requirements. This review will occur during a scheduled monitoring or technical assistance visit. It is the Grant Recipient's responsibility to ensure that all State and local contract requirements are complied with. While ODOC will provide assistance to Grant Recipients, including sample contracts, ODOC accepts no responsibility for errors or omissions in any contracts between the Grant Recipient and any construction contractor.

## 4. BONDING

- 4.1. Bonds are negotiable instruments required from construction contractors as a form of insurance. State law requires that, for project contracts over \$50,000 construction contractors must secure a maintenance bond, a performance bond and a payment bond from surety companies. [61 O.S. §113] These surety bonds are then turned over to the Grant Recipient to protect against situations such as:
- 4.1.1. Construction contractor bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events;
  - 4.1.2. Work not completed as specified and/or the construction contractor refusing to finish the work without a change order or price escalation;



- 4.1.3. Laborers or subcontractors not being paid for work and suing the Grant Recipient to recover their loss; or
  - 4.1.4. Payment of liquidated damages arising from labor standards violations;
  - 4.1.5. Bonding requirements must be satisfied prior to finalizing contract award.
- 4.2. The law also requires that construction contractors provide public liability and workers' compensation insurance during construction in reasonable amounts.

## 5. NOTICE OF CONTRACT AWARD

- 5.1. The Notice of Contract Award is a formal method whereby the Grant Recipient reports the execution of contracts and subcontracts to ODOC. **[Notice of Contract Award Form]**
- 5.2. The Grant Recipient Information section of the Notice of Award includes type of trade, business ownership, and racial, ethnic, minority and Section 3 status. Please submit this form to ODOC within **seven (7) days** of execution by all parties.
- 5.3. The Notice of Award must be uploaded in OKGrants in Release of Funds, with appropriate status change as necessary and an email notification to the project manager that the upload is complete. Please note that ODOC will not process a payment for construction funds until the Notice of Award has been received.

## 6. SUBRECIPIENT INTERLOCAL AGREEMENTS

- 6.1. It is not uncommon for Grant Recipients to carry out project activities through a sub recipient. A sub recipient is defined as a public or private non-profit agency, authority or organization or other eligible entity provided CDBG funds to carry out eligible activities on behalf of the Grant Recipient, rather than directly and immediately by the Grant Recipient. If a Grant Recipient plans to carry out eligible activities in conjunction with another entity, the Grant Recipient's legal counsel needs to review the Inter-local Cooperation Act [74 O.S. 31-1001 et. seq.] A typical example might include a rural water district developing new or expanded water service to the City/Town/County residents.
- 6.2. The most likely scenario under which a Grant Recipient would opt to utilize a sub recipient is when they (the Grant Recipient) wish to support certain eligible activities that are either being carried out or are the primary responsibility of some agency outside the Grant Recipient. In effect, the Grant Recipient's goals coincide with the sub recipient's and it usually makes more sense to utilize the capacities of an existing organization rather than create the apparatus necessary to carry out project activities.
- 6.3. When is an entity not a sub recipient? An organization or individual is not considered a sub recipient if the assistance is:
  - 6.3.1. For the purpose of housing rehabilitation;
  - 6.3.2. For the purpose of relocation payments and assistance when displaced;
  - 6.3.3. For a for-profit business in a special economic development project; or
  - 6.3.4. Passed through an agency of the grant recipient, i.e. public authority and becomes the responsibility of the designated public agency of the Grant Recipient.
- 6.4. The Grant Recipient has some latitude in selecting the sub recipient to undertake activities on its behalf. In most cases, the Grant Recipient simply designates a non-profit agency to carry out the activities.
- 6.5. It is crucial to stress the importance of the Grant Recipient/sub recipient relationship. The Grant Recipient does not reduce its responsibilities by utilizing a sub recipient to carry out project activities. In fact, many activities cannot be undertaken by anyone but the Grant Recipient (such as environmental findings and requesting funds from ODOC).
- 6.6. All CDBG requirements are applicable to sub recipients in terms of how they carry out project activities (procurement, financial management, labor compliance, etc.).
- 6.7. In order to protect the Grant Recipient and to ensure the sub recipient's compliance with all relevant requirements, the relationship between the two entities must be formally defined through an agreement or

contract. Such an agreement's purposes are to clearly establish the terms and conditions under which the CDBG funding is provided and establish a legal basis for action if those terms and conditions are not met. This agreement must contain the following provisions:

- 6.7.1. Scope of Work in sufficient detail to provide a sound basis for evaluating performance in schedule and budget;
- 6.7.2. Records and Reporting specifying the records that must be maintained and reports that must be submitted in order for the Grant Recipient to meet its own record-keeping and reporting responsibilities;
- 6.7.3. Administrative Requirements specifically requiring compliance with all applicable uniform administrative mandates such as A-110, A-122 and A-133;
- 6.7.4. Program Requirements specifying the conditions for convenience and cause;
- 6.7.5. Reversion of Assets stipulating that, upon expiration of the agreement, the sub recipient must transfer to the Grant Recipient any CDBG funds on hand and any accounts receivable. [Consistent with 24 CFR 570.503] This must also include provisions designed to ensure that any real property acquired or improved, in whole or in part, with CDBG funds in excess of \$25,000 is either:
  - 6.7.5.1. Used to meet one of the three national objectives for at least five (5) years after the expiration of the agreement or longer if stipulated by the Grant Recipient; or
  - 6.7.5.2. Disposed of in manners that result in the Grant Recipient's being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-CDBG expenditures. (Reimbursement is not required after five years.)
- 6.7.6. Cessation of the sub recipient providing remedies and procedures in the event the sub recipient ceases to exist;
- 6.7.7. Standard Provisions required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.)

## 7. ATTACHMENTS

22. Required Provisions in Non-Construction and Construction Contracts.
23. SAMPLE CONSTRUCTION CONTRACT DOCUMENTS FOR CDBG-FUNDED PROJECTS.

# REQUIREMENT NO. 408

## LABOR STANDARDS & CONSTRUCTION MANAGEMENT

### 1. INTRODUCTION

- 1.1. The construction phase of a project is divided into two major components:
  - 1.1.1. The pre-construction conference and start of construction; and
  - 1.1.2. Monitoring construction progress, including labor compliance.
- 1.2. Phases are subject to various State and Federal requirements, which will be discussed at greater length in this Requirement.

### 2. THE PRE-CONSTRUCTION CONFERENCE

- 2.1. ODOC requires that every contractual relationship between the Grant Recipient and the construction contractor be initiated by a meeting to define the terms, conditions, deliverables and performance schedules that will govern the contract. This approach represents good management practice and reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the construction contractor and the Grant Recipient.
- 2.2. After contract award, but before any work is performed, the Grant Recipient, the architect or engineer and any technical advisors to the Grant Recipient must hold a pre-construction conference with the construction contractor to explain contract requirements.
- 2.3. The construction contractor should be notified in writing of the time and place for the conference. The contractor must require the attendance of subcontractors expected to undertake major portions of the work. Documentation required from the construction contractor at the time of the meeting should be identified. Satisfaction of all bonding provisions will be required at this time especially the Davis Bacon wage rate requirements.
- 2.4. Prepare an agenda. Plan to utilize and distribute a Pre-construction Checklist as a guide to assure that all areas are properly addressed. (Especially Davis/Bacon Requirements.) A recording may be used to document the meeting and/or a stenographer may be asked to prepare notes. It is the Grant Recipient's responsibility to clearly present the Federal Statutory Compliance requirements as well as performance expectations. A copy of the minutes should be signed by the parties to the contract and placed in the files.
- 2.5. ODOC recommends the following procedures as the minimum coverage of topics at the pre-construction conference:
  - 2.5.1. Review the technical aspects of the project;
  - 2.5.2. Identify the laws applicable to the contract and establish the documentation, reporting and performance that will constitute compliance;
  - 2.5.3. Establish the Grant Recipient's obligations to monitor labor standards and the procedures that will be employed;
  - 2.5.4. Establish specific requirements for reporting between the construction contractor and the Grant Recipient;
  - 2.5.5. Accept bonds and securities for performance and payment of labor and materials;
  - 2.5.6. Review the contract provisions, including all attachments regarding labor standards, civil rights, job safety standards and environmental protection as well as the Davis Bacon wage rate requirements.
  - 2.5.7. Explain the objectives of Executive Order 11246 and require a copy of the construction contractor's Affirmative Action Plan and the specific affirmative action strategy to be employed on this contract.
  - 2.5.8. Return the construction contractor's bid bonds;
  - 2.5.9. Provide for a record of the pre-construction conference to be prepared and subsequently signed by the parties to the agreement;
  - 2.5.10. Issue a notice to proceed to the construction contractor.

### 3. CHANGE ORDERS

- 3.1. It is not uncommon for circumstances to require modifications to various construction contracts. Change orders are permitted provided the cumulative impact of all such change orders does not increase the original contract amount by more than 15%. Change orders or cumulative change orders which exceed 15% shall require re-advertising of bids on the incomplete portions of the contract. If the construction contract was bid on a unit price basis and the change order is based on the unit price basis, such change order will not be subject to this requirement. [For more detailed guidance, see 61 O.S. 1995 §121.]
- 3.2. The Grant Recipient must formally approve any change order and maintain written documentation as to the reasons for the change. All change orders must contain a unit price and total for each of the following items:
  - 3.2.1. All materials with cost per item;
  - 3.2.2. Itemization of all labor with number of hours per operation and cost per hour;
  - 3.2.3. Itemization of insurance cost, bond cost, social security, taxes, Workers' Compensation, employee fringe benefits and overhead costs; and
  - 3.2.4. Profit for the construction contractor.
- 3.3. If the change order would cause any change in a budget line item, scope of project or change in beneficiaries, the Grant Recipient must request a contract modification from ODOC. The Grant Recipient may not approve such a change order until and unless ODOC approves a contract modification.

### 4. CONSTRUCTION SUPERVISION, INSPECTIONS AND CONTRACT PAYMENTS

- 4.1. One of the provisions of most design contracts (engineering and architectural) is for on-site supervision of construction in progress. **[61 O.S. 2014 §123]** It is the design professional's responsibility to ensure, on the Grant Recipient's behalf, all statements or invoices submitted to the awarding public agency for work performed shall contain a certification by the supervising architect or engineer, or other supervisory official, if no supervisory architect or engineer is employed for the project, that work for which payment is claimed has been performed and that such work conforms to the plans and specifications for the project. No such statement or invoice shall be paid by the awarding public agency without such certification. The execution of a certificate, as herein provided, shall not constitute a defense or in any other manner affect any cause or causes of action which the awarding public agency might otherwise have against the contractor for nonperformance of a public construction contract.
- 4.2. If project progressive payments are based on the public agency's estimated quantities of materials provided and work performed, certifications are not required. Payment of progressive estimates shall not constitute a defense or in any manner affect any cause or causes of action which the awarding public agency might have against the contractor for failure to properly perform in accordance with the project contract, plans, specifications, or special provisions. Final estimates shall contain a sworn certification signed by the contractor that the work performed and the material provided conform to the requirements of the contract, plans, specifications, and special provisions.
- 4.3. The amount of funding requested by the Grant Recipient from ODOC must be net after retainage. A public construction contract shall provide for partial payment based upon work completed. The contract shall provide that up to five percent (5%) of all partial payments made shall be withheld as retainage. **[61 O.S. 2014 §113.1 A]**

### 5. LABOR STANDARDS ADMINISTRATION

- 5.1. Statutory Requirements: Grant Recipients should be aware of the major labor standards requirements for CDBG projects. The three principal laws and their terms are identified below.
  - 5.1.1. Davis-Bacon Act: To download the "Making Davis-Bacon Work" guidebook goes to:  
<https://www.hudexchange.info/resource/2541/making-davis-bacon-work-contractors-guide-prevailing-wage-requirements/>

- 5.1.1.1. Grant Recipients: All construction contracts in excess of \$2,000 awarded by Grant Recipients and Sub-Recipients must include a provision for compliance with Davis-Bacon and associated USDOL regulations. The entire project regardless of whether paid with grant funds or leveraged funds fall within the Davis Bacon Requirements. The principal requirements are:
- 5.1.1.1.1. Grant Recipients must include a copy of the current prevailing wage rate determination in each Request for Bids (RFB);
  - 5.1.1.1.2. Grant Recipients may only award contracts to eligible construction contractors and subcontractors that have accepted the wage rate determination and signed a Payroll Certification Form to pay wages on that basis and comply with other labor standards; Contractors listed as debarred per (SAM) are considered ineligible for award. Three forms must be submitted for debarment certification; Contractor Debarment Review Certification, Grantee Debarment Review Certification and the Sams.gov check.
  - 5.1.1.1.3. Construction contractors must pay laborers the wage rate determined by the USDOL to be the prevailing rate in that labor market;
  - 5.1.1.1.4. Construction contractors must pay wages at least once a week; and
  - 5.1.1.1.5. Grant Recipients are required to report all suspected, reported or confirmed violations over \$100 to ODOC, who may investigate these alleged violations.
- 5.1.1.2. Sub-contractors: To qualify as a subcontractor, the following criteria must be met:
- 5.1.1.2.1. Current liability insurance must be maintained;
  - 5.1.1.2.2. Must have Federal Tax Identification number (EIN or SSN as appropriate);
  - 5.1.1.2.3. If the subcontractor does not meet both of these criteria, he/she must be listed by the prime contractor as an employee of the contractor and must be paid the prevailing Davis-Bacon hourly rate for the work.
- 5.1.1.3. Owner/Operators:
- 5.1.1.3.1. Bona fide owner/operators of trucks who are independent contractors are excluded from DBRA/WCHSSA provisions concerning their own hours of work and rate(s) of pay. These truck "owner/operators" must be reported on weekly payrolls but the payrolls do not need to show the hours worked or the rates; only the notation "owner/operator". This policy does not pertain to owner/operators of other equipment such as backhoes, bulldozers, scrapers and cranes (power equipment).
  - 5.1.1.3.2. Owner/operators of power equipment may not submit their own payrolls certifying to payment of their own wages but must be carried on the responsible contractor's or subcontractor's payroll and must be paid the prevailing Davis-Bacon hourly rate for the work.
- 5.1.1.4. Administrative/Clerical Provisions: People whose duties are primarily administrative, executive or clerical, e.g., supervisors, office staff and timekeepers, are not laborers or mechanics and are excluded from Davis Bacon and Related Acts/Contract Work Hours and Safety Standards Act (DBRA/CWHSSA). Foremen or supervisors who regularly spend more than 20% of their time performing construction work do not meet this exclusion and are covered as "laborers" and "mechanics" for labor standards purposes for the time spent performing construction work.
- 5.1.1.5. Two special classes of employees may be employed on projects of this type and be compensated at less than the Davis-Bacon prevailing wages. These classes are:
- 5.1.1.5.1. Apprentices provided they are individually registered in a bona fide apprenticeship program in which the construction contractor participates and which is approved by the USDOL and that they also satisfy other conditions as specified in the labor standards contract provisions.  
<https://www.hud.gov/sites/documents/13441C4SECH.PDF>

- 5.1.1.5.2. Trainees provided they are in a USDOL-approved training program and satisfy other conditions as specified in the labor standards contract provisions.  
<https://www.hud.gov/sites/documents/4010.PDF>
- 5.1.1.5.3. Helpers are not recognized unless they are contained in the wage determination or a conformable rate has been approved by the USDOL. If and when these employee classes appear on the construction contractor's weekly payrolls, it is the construction contractor's responsibility to provide the documentation necessary to determine compliance with the Davis-Bacon wage rate determination. <https://www.hud.gov/sites/documents/13441C4SECH.PDF>
- 5.1.2. Copeland Anti-Kickback Act [18 USC 874, 29 CFR 3]: Construction contractors are prevented, under the terms of this statute, from withholding any employee wages, which are not prescribed by law, union agreement or without the employee's permission. The Grant Recipient must conduct confidential interviews with employees to assure compliance with the terms of this law and the construction contractor is required to maintain payroll records and to submit weekly certified payrolls documenting compliance. This requirement applies to all Federally-assisted contracts.
- 5.1.3. Contract Work Hours and Safety Standards Act [40 USC 3701]: All construction contracts in excess of \$2,000 must comply with the following provisions of this law.
- 5.1.3.1. Construction contractors must compute the wages of each laborer and mechanic on the basis of a standard work week of 40 hours.
- 5.1.3.2. Work in excess of 40 hours a week is permitted provided compensation for the amount in excess of the standard is calculated at a rate not less than 1-1/2 times the basic rate of pay.
- 5.1.3.3. Construction expenditures paid with leverage funds are required to conform to the Davis Bacon wage rate requirements.
- 5.1.3.4. Construction contractors may not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety as determined under construction, safety or health standards issued by the USDOL.
- 5.2. Compliance Administration: Labor standards compliance begins with the issuance of a Notice to Proceed and is usually submitted as part of the bid or incorporated in the contract. To assure proper coverage when project activities are reviewed, the construction contractor must follow the requirements and administrative procedures listed below.
- 5.2.1. Review Certified Payrolls and Compliance: For each weekly period covered by the CDBG construction contract, copies of certified payrolls and an executed Statement of Compliance are required from all construction contractors and sub-contractors and must be in the files. Payroll forms must be compared with wage determination for each class/craft to assure that wages are being paid as prescribed by law. The Statement of Compliance contains certifications that:
- 5.2.1.1. The information covers the proper period and is complete and accurate;
- 5.2.1.2. Each worker has been paid the proper wages and benefits and no "rebates" have been taken;
- 5.2.1.3. Deductions are only those permitted by law and approved by the workers. Other deductions, other than Child Support, must be approved by the worker by having the worker complete a Payroll Deduction Authorization Form.
- 5.2.1.4. Payments to workers are consistent with the wage rate determination.
- NOTE: Use of WH-347 Payroll form is not mandatory, as long as all information contained in WH-347 is similarly recorded. If you choose to use the form, it can be located online at:**  
<https://www.dol.gov/whd/forms/wh347.pdf>
- 5.2.2. Visit the Work Site
- 5.2.2.1. The Grant Recipient must determine that the labor standards information is properly posted at the job site. The wage rates and job classifications must be posted and an Employee Federal Labor Law

poster(s) must be prominently displayed.

<https://www.dol.gov/whd/regs/compliance/posters/davis.htm>

5.2.2.2. In addition to this technical review, the Grant Recipient should also identify the specific jobs being performed and identify the workers to be interviewed regarding wages and job duties.

5.2.3. Conduct Employee Interviews:

5.2.3.1. On-site interviews must be conducted of enough employees (at least 10% coverage) to provide a reasonable representation of the crafts and trades utilized on the project (interviewing at least one employee in each job classification). **[These interviews are strictly confidential. See Requirement 401 for instructions concerning the maintenance of confidential records.]** Interviews must be conducted at least once during the course of construction. Using the Record of Employee Interview form, documentation must demonstrate that:

5.2.3.1.1. The payroll information is consistent with the wage rate determination; and

5.2.3.1.2. Employees are working in proper job classifications;

5.2.3.1.3. These interviews form the basis for determining whether any violations are occurring and facilitate subsequent follow-up by the Grant Recipient.

5.2.3.2. Note: Talk to the job-site foreman to let him/her know who you are and what you're doing. Try to conduct interviews on break time, but observe the employees at work to verify job classifications.

5.2.4. Deal With Violations:

5.2.4.1. Violations less than \$1,000, which are not willful, should be dealt with as follows:

5.2.4.1.1. Require the construction contractor to prepare a supplemental payroll to make appropriate restitution to affected employees, retain a copy of the cancelled check in the Construction Labor File; and/or

5.2.4.1.2. Assess liquidated damages for non-payment of overtime and require a separate supplemental payroll. The amount to be paid to the U.S. Government (HUD) is \$10 for each day the employee was eligible for overtime but not paid overtime at 1-1/2 times the approved rate;

5.2.4.1.3. If construction contractors refuse to comply with these requirements, the Grant Recipient must withhold sufficient amounts from the construction contractor to make restitution. This amount is to be recorded and ODOC is to be notified immediately.

All wage restitutions/liquidated damages should be aggregated on the Final Wage Compliance Report.

5.2.4.2. Serious violations, i.e., those representing under-payment greater than \$1,000, are to be reported immediately to ODOC. Technical assistance will be provided to assure proper resolution.

5.3. Documentation: As with all other compliance areas, if there is not a piece of paper to show for it, ODOC assumes it was not done, so document, document, document.

5.4. Construction Wrap-up: When the construction has been completed, there are a few (critical) items to take care of:

5.4.1. The construction contractor must submit a Certification of Project Completion, along with the final request for payment;

5.4.2. The Grant Recipient must confirm that all:

5.4.2.1. Weekly payrolls and Statements of Compliance have been received, checked and discrepancies resolved;

5.4.2.2. Discrepancies identified during on-site interviews have been satisfactorily resolved;

5.4.2.3. Other required equal opportunity and labor standards have been satisfied;

5.4.2.4. Other contract requirements have been satisfied;

5.4.2.5. Files are complete; and

5.4.2.6. As-built plans have been filed.

5.4.3. When all contract requirements have been satisfied, the Grant Recipient will issue an Acceptance of Work.

5.4.4. The Grant Recipient then submits a Request for Payment to ODOC. The amount requested at this time should not include the current retainage (of up to 10% of the total contract). **[See 61 O.S. 2014 §113.1 for retainage limitations.]**

5.4.5. **Forty-five (45) days** after the acceptance and upon receipt of a Release of Claimants from the construction contractor, the Grant Recipient may request the amount of retainage from ODOC and subsequently release this amount to the construction contractor.

## 6. SUMMARY

- 6.1. This Requirement has summarized the various State and Federal requirements pertaining to construction management and labor compliance. The Grant Recipient is ultimately responsible for knowing all of these requirements and for ensuring compliance with them.

## 7. ATTACHMENTS

24. Fringe Benefit Determination



## REQUIREMENT NO. 409

### MONITORING AND CLOSEOUT

#### 1. EVALUATING GRANT RECIPIENT PERFORMANCE (MONITORING)

- 1.1. When the State agreed to assume administrative responsibilities for the CDBG Program, it certified that activities would be conducted in a manner consistent with all applicable Federal laws. The primary tool for confirming this assurance being met is for the State to monitor the activities of its Grant Recipients, just as HUD monitors the State.
- 1.2. ODOC has developed a monitoring strategy that targets a sampling of projects or activities. This sampling is based on risk factors associated with various types of projects and/or Grant Recipients. While every project receives some level of monitoring, priority for in-depth evaluation and review is given to projects that are:
  - 1.2.1. Multi-jurisdictional, i.e., involving more than one unit of local government.
  - 1.2.2. Involve some level of risk, as evidenced by:
    - 1.2.2.1. Lack of recent history in administering a CDBG project;
    - 1.2.2.2. Evidence of numerous accounting or financial tracking errors on current or previous projects;
    - 1.2.2.3. A record of serious findings or sanctions in previous monitoring session;
    - 1.2.2.4. High turnover of administrative staff;
    - 1.2.2.5. Delays in submitting required reports;
    - 1.2.2.6. Prior violations;
    - 1.2.2.7. Failure to attend and participate in implementation workshops;
    - 1.2.2.8. Excessive tardiness in responding to prior monitoring findings.

By definition, economic development projects are considered high risk.

- 1.3. Monitoring is accomplished in two ways:
  - 1.3.1. On-Site Monitoring: Certain activities can only be evaluated on-site. The most obvious of these include the examination of Grant Recipient files to ensure adequate documentation. The frequency and depth of such on-site monitoring is dependent on the risk factors cited above.
    - 1.3.1.1. An on-site monitoring visit will be scheduled in advance. The chief executive officer of the Grant Recipient and the project administrator will be notified of the date, time, location and purpose of the visit. Upon arrival, ODOC Representative will conduct an entrance interview, reiterating the purpose of the visit and outlining files and documentation needed. Utilizing appropriate checklists, the Representative review the Grant Recipient files to determine if all requirements have been met. The primary issues that are being examined are consistency with the specific terms of the contract agreement and compliance with State and Federal requirements.
    - 1.3.1.2. At the conclusion of the visit, the ODOC Representative will conduct an exit interview, providing a tentative summary of the results of the visit. If there appear to be problems, the Grant Recipient has an opportunity to provide more information or clarification.
    - 1.3.1.3. Within **thirty (30) days** of the monitoring visit, the Grant Recipient will receive a formal monitoring result(s) letter through OKGrants. This letter will summarize the area(s) reviewed, performance expectations, an analysis of what was discovered on-site, a conclusion or finding and, if necessary, required Grant Recipient responses or actions.

- 1.3.1.4. If there were problems discovered during the monitoring, the Grant Recipient might receive a finding of non-compliance. A finding of non-compliance is a violation of law or regulation that must be remedied. A finding can result in an immediate sanction or threat of sanction if corrective action (if appropriate and required) is not taken in a specified manner and/or timeframe. For each finding, ODOC will determine if a corrective action, either to correct a past problem or to avoid future problems, must be taken by the Grant Recipient.
- 1.3.1.5. If the required corrective action is not addressed in an appropriate or timely manner, ODOC may impose a progressive level of sanctions, ranging from additional reporting to suspension of funding, additional special conditions, return of misspent funds, termination of the contract or even legal action.
- 1.3.1.6. The monitoring letter may also include one or more concerns. These are matters that, if not properly addressed, can become findings and can ultimately result in sanctions. Concerns are often used to point out operational or management problems or patterns of performance that could lead to larger problems later. Concerns may require some form of response on the part of the Grant Recipient.
- 1.3.2. Desk Monitoring: ODOC places priority on this form of monitoring as a means of staying in touch with project progress and heading off problems early, thereby avoiding costly problems left unattended too long. This method of monitoring is the most efficient and cost-effective way ODOC can employ to meet a portion of its oversight responsibilities.

## 2. CLOSEOUT

Closing out of an individual contract confirms that the intended benefits of providing the funding have been accomplished and that all of the legal requirements imposed on use of the funds have been examined. All Grant Recipients are expected and required to conduct an orderly and timely closeout of their contract with ODOC.

### 2.1. PROCEDURES.

- 2.1.1. Closeout documents are to be uploaded into OKGrants within **sixty (60) days** after the contract expiration date or completion of the project. If the Grant Recipient cannot meet this requirement, a written request for an extension of time may be submitted to ODOC through OKGrants. Permission to extend the due date for submission of closeout documents will be granted for good and valid reasons.
- 2.1.2. ODOC will have no objections to a Grant Recipient initiating close-out procedures prior to the current expiration date, provided the following conditions can be met:
  - 2.1.2.1. All final costs to be covered by the contract have been incurred or obligated, including payment of any unsettled third-party claims or contract commitments. This means no additional funds can or will be requested from ODOC. Costs are considered incurred when goods and services are received and contract work is performed. **[2 CFR 200.16] (Note:** If you have funds that have not been drawn as of the completion of the project, a request for payment of these contract funds must be submitted prior to initiation of the closeout process or submission of the closeout documents. Additional funds can only be requested for expenses incurred before the expiration date of the CDBG contract. However, they can be requested up to **sixty (60) days** after your CDBG contract expires.)
- 2.1.3. All project activities have been completed. This means that, depending on the project:
  - 2.1.3.1. The community center has passed final inspection, the opening ceremonies have been conducted and the building is in use by the community's citizens;
  - 2.1.3.2. All infrastructure construction is complete, final inspection has been made, the project is operational and all beneficiaries are being served;
  - 2.1.3.3. All persons being relocated have been relocated or provided cash assistance to relocate;
  - 2.1.3.4. Planned job creation has occurred.
- 2.1.4. All leverage funds have been expended; and

2.1.5. All issues from ODOC monitoring have been resolved.

### 3. REQUIRED DOCUMENTATION AND CLOSEOUT INSTRUCTIONS

- 3.1. Grant Recipients will close out their grants on OKGrants. The Authorized Official will prepare and submit the closeout. The Authorized Official must initiate and submit required closeout documents to ODOC; however utilizing the assistance of the grant writer is beneficial and encouraged.
- 3.1.1. All original signed documents must be submitted within **sixty (60) days** after the contract ending date or upon completion of the project - whichever comes first. For Economic Development contracts, the project must be complete and all jobs as set out in the application for funding must be created before the project can be officially closed.
- 3.1.2. The Contract Period listed on each document must correspond to the dates listed on the contract and subsequent modifications. If the ending date was changed, the latest modification date must be used.
- 3.1.3. **Note:** Once the contract closeout is submitted to ODOC, no further requests for funds or expenditure reports can be submitted. The Final Expenditure Report is required for contract closeout. If additional funds are due to the Grant Recipient, the proper **Request for Funds and Final Expenditure Report** must be submitted prior to submission of the closeout documents.
- 3.1.3.1. **Closeout Checklist Form:** Must be completed and uploaded into OKGrants.
- 3.1.3.2. **Final Expenditure Report:** Must be submitted through OKGrants prior to closeout. This form is completed through the same process as the Monthly Expenditure Report, but the “Final” radio button is marked to indicate that no further reports should be expected. Enter the correct total expenditures by line item in the appropriate column. All matching/leverage final expenditures must be reported and broken down in dollar amounts by category (i.e. federal, state, etc.) “Remaining Balance” is the budget less expenditures year-to-date. The interest reconciliation is for interest earned on deposits of CDBG funds only. Any unexpended interest must be returned to ODOC with the check made payable to HUD. NOTE: Matching expenditures must be reported by type, i.e., federal, local, etc.
- 3.1.3.3. **Contract Closeout Certification:** Must be submitted in OKGrants once the Authorized Official has changed the status of the grant to “Closeout in Process”. Total Cash Received/Requested must be for the total contract period. Total Accrued Expenditures must be the total amount expended as shown on the Final Expenditure Report. The form must be completed and saved by the local Authorized Official.
- 3.1.3.4. **CDBG Closeout Beneficiary Form:** This form must be uploaded in the appropriate place under the closeout workflow in OKGrants. For each Program Activity, report on actual accomplishments.
- 3.1.3.5. **Proof of Publication of Notice of Second Public Hearing:** The Grant Recipient must upload documentation that a public notice was posted/advertised informing citizens of the second public hearing to be held. A copy of the hearing minutes must also be included.
- 3.1.3.6. **Final Wage Compliance Report:** Enter information on liquidated damages or wage restitution paid by the construction contractor.
- 3.1.3.7. **Proof of Insurance:** The Grant Recipient must attach proof of property coverage insurance for any above ground facility built or renovated and/or for equipment purchased with CDBG funds.
- 3.1.3.8. **Board Minutes Accepting Completed Project:** The Grant Recipient must provide ODOC with Board Minutes acknowledging the project is complete and authorizing final payment to the Grant Recipient.
- 3.1.3.9. **Certificate of Completion:** The Grant Recipient must attach a certified copy of the final inspection report provided by the Engineer/Architect, indicating the project is complete and acceptable. (NOTE): If no engineer/architect services are utilized, then Board Minutes will suffice.
- 3.1.3.10. **Section 3 Summary Report:** The Grant Recipient must collect the information on the form from all construction and non-construction contractors as soon as the project is complete.

## 4. POST-CLOSEOUT RESPONSIBILITIES:

- 4.1. It is entirely possible that submission and acceptance of the Closeout documents does not signal the end of the Grant Recipient-ODOC relationship. There are several circumstances under which the Grant Recipient will have continuing responsibilities resulting from the closed project.
  - 4.1.1. **Loans:** Responsibility for loan administration and program income, as stipulated in the original contract, continues for as long as there are any funds flowing that can be attributable to the original disbursement of CDBG funds. Responsibilities include loan portfolio management, accounting and reporting;
  - 4.1.2. **Audits:** In some instances, the project may be conditionally closed out pending submission and acceptance of a final audit. The project is not technically closed until the final audit has been received and accepted. Note: Even though the Grant Recipient is eligible to submit an application for another project after closeout documents have been submitted and accepted, no new funding can be obligated until all audits due on previous projects have been submitted and accepted.
  - 4.1.3. **Other Contract Requirements:** Some contracts will have special conditions requiring post-closeout responsibilities. The most common of these involve annual reporting on job creation resulting from public improvement projects.
  - 4.1.4. **Maintenance of Records:** All project records must be maintained for three years after project closeout by the grant recipient.
  - 4.1.5. **ODOC will not accept hard copies of any closeout documents.** It is the responsibility of the Grant Recipient to file and store all hard copies.