

2022 SC CDBG Implementation Workshop



Back to Basics

November 9 – 10, 2022

WELCOME!

Welcome from the SC Department of Commerce, Grants Administration (GA)
Staff

Trainers

- Les Warner, ICF
- Andelyn Nesbitt Rodriguez, ICF
- Carrie Kronberg, ICF

Workshop Materials

Location of Facilities

Please introduce yourselves:

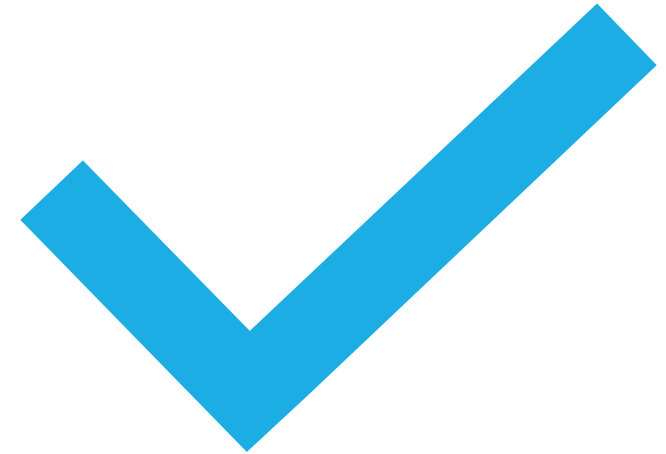
- Name, agency, nature and length of CDBG experience?

Focus on the Fundamentals...

Provide an overview of key requirements & tasks involved in the implementation of CDBG-funded projects

- We will be keeping things fairly high-level
- We will be working through process flows & doing some knowledge checks throughout

Share information & ideas with each other



What Types of CDBG Projects are Being Undertaken?

State has a variety of programs with a range of activity within those programs

- Majority of projects are public facilities
 - Water/sewer projects
 - Flood/drainage projects
 - Street improvement projects
- Increasing number of demolition activities, downtown streetscapes and fire trucks
- Housing rehab only really involving water/sewer connections
- A few economic development projects

Who Does What?

What are the First Steps?



Roles

Grantee	Grant Administrator
<ul style="list-style-type: none">• Unit of Local Government• Official recipient of CDBG funds (enter into agreement with State)• Responsible for all aspects of compliance• Administers the grant or obtain the services of a grant administrator• Enters into contracts for goods and services such as:<ul style="list-style-type: none">• Engineers, architects, environmental consultants, etc.• Construction companies	<ul style="list-style-type: none">• Works at the direction of the grantee• Typically carries out day to day administration of the grant• Oversee & coordinate with other parties:<ul style="list-style-type: none">• Contractors• Subrecipient• Engineers

Grant Administrator Roles & Responsibilities

Grant administrator is responsible for ensuring:

- Knowledge of CDBG rules & requirements
- Communication between all the involved parties
- Compliance with rules on behalf of the grantee
- Effective & efficient project management
- Ensuring project on budget & on time
- Complete record keeping & reporting tasks
- Identification & resolution of issues

Grant Agreement

Upon grant award, local government must enter into grant agreement with State

- Grant agreement must be signed & returned to GA within **15 days**
- Start up checklist items must be completed within **120 days** of grant award
 - Cannot draw funds until start up checklist package fully approved & funds

The grant agreement includes:

- Terms & conditions
- Reference to application & applicable regulations
- Grant Award Form
- Special conditions

Start Up Checklist



- Signed grant award
- Contact information form
- Performance & accomplishments report
- Proposed Activity & Beneficiary Report (EO-2 form)
- Detailed information for certain activities on planned beneficiaries to be assisted (renter/owner, demographics, income level)
- Administrative contract (if applicable)
- Environmental Release

Start Up Checklist



- Section 504
- Fair Housing Plan
- Section 3 Plan
- Section 102 Disclosure
- Subrecipient agreement (if applicable)
- Special conditions
- Financial Forms
 - Authorized Signatures for Payment and Checks Form
 - Debarment/Suspension Certification
 - Audit Requirements Certification Form

Start Up Checklist

Section 504 compliance schedule

- Schedule for ensuring compliance with Section 504 handicapped accessibility requirements

Fair Housing Plan

- Lays out what the grantee will do to affirmatively further fair housing, as required

Section 3 Action Plan

- Outlines actions to ensure compliance with Section 3 Economic Opportunities for qualifying residents and businesses

Start Up Checklist

Program Income Plan

- If CDBG \$ will generate repayment, what is the plan for re-use of those funds?

Section 102 Disclosure Report

- Section 102 of HUD Reform Act of 1989 requires disclosure of any parties with financial interest in the funded activities when HUD funds >\$200,000 in a FFY

Environmental Release

- Required paperwork to document environmental review process; more later on this

Start Up Checklist

Authorized signers for payments & checks form

- Person authorizing signatories must be higher ranking and can't sign themselves
- Authorized persons should be bonded
- Two signatures required on each check

Debarment/suspension certification

- Agency must have active registration at SAM.gov

Audit certification

- Grantee will comply with 2 CFR 200 audit requirements

Avoid Conflicts of Interest

State laws apply to procurement of supplies, equipment, construction and services by recipients and subrecipients

CDBG rules apply to cases not governed by State Law

Persons covered = Employees, agents, consultants, officers or elected/ appointed officials of state, local govt and/or recipient and subrecipient

Conflict of Interest (cont.)

Persons with CDBG responsibilities, decision-making power or information may NOT:

- Obtain a financial interest or benefit from CDBG activity
- Have any interest in contract or subcontract

Applies to family members & business ties

Applies during tenure & 1 year after

Knowledge Check #1

The Grant Administrator is responsible for ensuring:

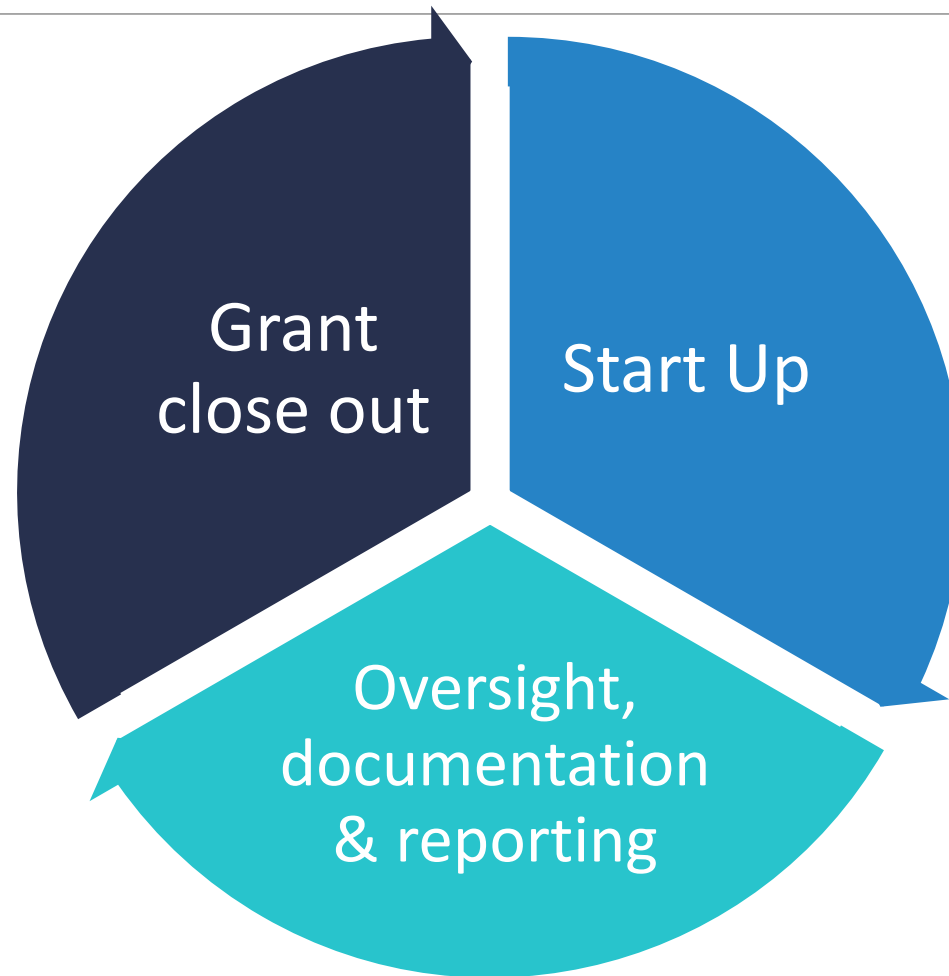
- A. Communication between all the involved parties
- B. Compliance with rules on behalf of the grantee
- C. Ensuring project on budget & on time
- D. Complete record keeping & reporting tasks
- E. All of the above



What are all the
Parts & Pieces?

When do I do
What?

Major Phases of a Project



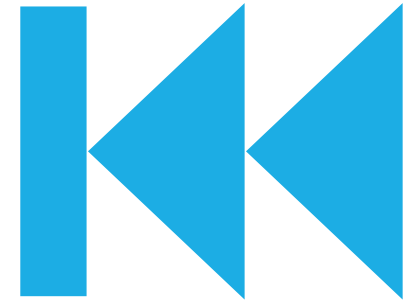
Parts & Pieces: The “Big Ones”



Parts & Pieces

For the topics listed on the previous slide, indicate:

- When do you think each comes up/has to be undertaken?
 - Start up
 - During the project (ongoing)
 - At the end of the project (close out)
- Who is responsible for each of these topics?
 - Grantee
 - Grant administrator
 - Other?



Tips for Successful Project Implementation

Use the resources provided

- Implementation Manual
- Checklists, forms, reporting formats & instructions
- HUD Exchange

Stay organized

Document, document, document!

Ask for help

- State CDBG staff
- Reach out to other grantees/grant administrators



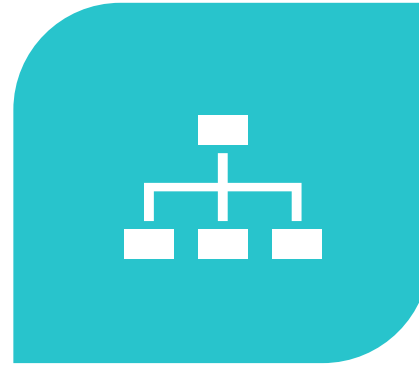
Environmental Review

Environmental Review



WHO?

Grantee is responsible
Can get help completing



WHAT?

Depends upon the
project/program being
carried out, level of
review & applicability of
laws & authorities



WHEN?

Early! Must be done
before funds released and
before “choice limiting
actions” occur)

Environmental Review – Key Points

Environmental review (ER) refers to process of looking at the entire project for impact on environment and notifying the public of findings

Environmental review of CDBG projects required *before any funds obligated* (more to follow)

Grantee (local govt) must be the responsible entity (RE) for the purposes of enviro review

Limits on Activities Prior to Clearance/Release of Funds

Do NOT commit or expend funds prior to receiving state approval IF the activity would have an adverse environmental impact or limit the choice of reasonable alternatives

- Choice limiting actions = acquisition, demo, construction, etc.
 - Do not advertise an invitation for bids until ER approval
- Under certain conditions, can enter into option agreement, provide a statement of conditional funding or enter into a non-legally binding agreement
- May proceed with exempt/CENST activities such as planning, studies, administration, etc.



Project Aggregation



Must group together & evaluate as a single project all individual activities that are related or are part of a larger set of activities

Must include all parts of the project even if not all CDBG-funded



Grantees encouraged to do ERRs based on target areas/neighborhoods & or phased projects

Environmental Review Process

Designate two roles:

- Certifying Official (CO) which is CEO of recipient or someone designated by governing body resolution
- Environmental Officer (EO) prepares the review

Set up file with all ER info = ERR

- Description of project and activities
- Forms & checklists
- Written determinations & mitigating actions
- Notices & public comments

Classify the Activity

Four categories:

- Exempt
- Categorically Excluded not Subject to 58.5 (CENST)
- Categorically Excluded Subject to 58.5 (CEST)
- Environmental Assessment (EA)

If more than one activity or classification within a project/program, go with the most stringent

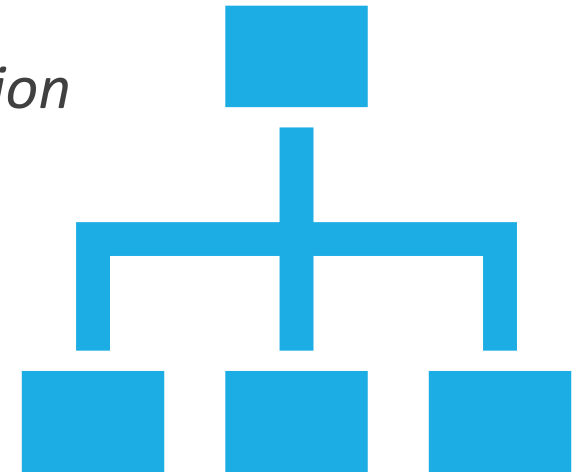
Exempt & CENST Activities

Exempt & CENST activities:

- Studies, plans, engineering & admin costs
- Public service activities with no physical impact
- Economic development *not associated with construction or expansion*
- Predevelopment costs with *no physical impact*
- Supplemental assistance

Steps:

- Complete the Exempt/CENST form
- Get RE CO signature
- Submit to GA
- Proceed with activity once all other start-up items approved



Categorically Excluded Subject To Activities (CEST)

Acquisition/improvement/rehab of public facilities other than buildings (provided less than 20% increase in capacity)

Removal of material & architectural barriers

Rehab & improvement of SF dwellings

Improvements to non-residential buildings where size/capacity change is no more than 20% & no change in land use

Acquisition/leasing/disposition of existing structure provided it's for the same use

CEST: Completing the Form

Project information

- Project location
- Project description
- Explanation of the purpose & need for the project
- Summary of existing environmental conditions & trends

Funding information

- Sources & amounts
- Total cost

CEST: Completing the Form (cont.)

Parts 58.5 & 58.6 Requirements Checklist

- Checklist items incl. historic preservation, tribal consultation, wetlands, floodplains, etc.
- Use the “SC Documentation Sources for HUD ERs” @ www.cdbgsc.com/forms/environmental/ & the HUD Exchange ER site: www.hudexchange.info/programs/environmental-review/
- Indicate whether mitigation required (“Y” or “N”)
- Provide credible, traceable & supportive source documentation
- Complete necessary reviews/consultation & obtain/note permits or approvals
- Clearly note citations, dates/names/titles of contacts, page references & attach additional info

CEST Activities - Steps

Once the checklist is complete, continue to complete the remainder of the CEST form

- Field Inspection (who completed & when)
- Summarize Findings & Conclusions
- Mitigation Measures & Responsibilities



CEST - Steps (cont.)

When complete, make a Determination:

- If determination is that project will NOT affect any of the areas covered by the laws/authorities on the checklist, the activity converts to exempt
- Complete the form, obtain CO signature & submit to GA

OR...



CEST - Steps (cont.)

If project will affect any of the resources in some way (even if mitigated):

- Obtain CO signature on form
- Publish “Notice of Intent to Request Release of Funds” (NOIRROF) for required comment period (more later)
- Send NOI-RROF to various agencies & interested parties
- Address any comments that are received
- Finalize the ERR
- Obtain CO signature on RROF
- Submit required information to GA (hard & e-copy of full ERR)

Environmental Assessments

If project not Exempt or Categorically Excluded, an Environmental Assessment (EA) required

Examples of types of projects:

- Acquisition, construction or rehab of public facilities other than buildings with more than 20% increase in capacity
- New water/sewer lines
- Construction of a new building

Preparing the EA

Several sections of the form are the same as the CEST form:

- Project Information
- Funding Information
- Part 58.5 & 58.6 Requirements Checklist



Preparing the EA (cont.)

EA Factors Checklist

- The EA is the only form that has this additional component
 - Info here focused on the qualitative & quantitative significance of the effects of the project on the character, features & resources of the project area
 - Each factor must be evaluated & documented
 - Then, make determination as to impact...
-
- Use the HUD Exchange ER website tools/guidance and the
 - SC ER Documentation Sources document

Completing an EA (cont.)

EA Factors Checklist impact codes:

- Minor beneficial impact
- No impact anticipated
- Minor adverse impact
- Significant or potentially significant impact requiring avoidance or modification which may require an EIS

Completing an EA (cont.)

Verifiable source documentation must be provided to support each determination of impact

- “NA” or “No impact” responses NOT acceptable

As with the Statutory Checklist

- ***Use the SC Documentation Sources for HUD ERs as guide!***
- Complete necessary reviews/consultation & obtain/note permits or approvals
- Clearly note citations, dates/names/titles of contacts, page references & attach additional information

Completing an EA (cont.)

After the EA Factors Checklist, must complete the following:

- List any additional studies performed (soil test, wetlands delineation, etc.)
- Indicate who completed the field inspection & when
- List sources, agencies & persons consulted
- List permits obtained (or to be obtained)
- Summarize public outreach



Completing an EA (cont.)

Other EA components:

- Cumulative Impact Analysis
 - When ERR covers activities to be implemented over 2 or more years, must consider the relationship among all component activities of the multi-year project and address & evaluate their cumulative enviro effects
- Alternatives including No Action Alternatives
 - Examine & describe alternatives to the project itself, including the alternative of no action
- Summary of Findings and Conclusions
- Mitigation Measures and Conditions

Completing an EA (cont.)

Make a Determination

- Finding of No Significant Impact (FONSI), which means that there is no potential for significant impact on the environment
- Finding of Significant Impact (FOSI), which is very rare -- contact GA immediately if this occurs

Preparer signs & dates the review

Certifying Officer signs & dates

- This must occur *prior to publication of the FONSI-NOIRROF notice*

Completing an EA (cont.)

Publish/post

- Publish/post “Combined Notice of Finding of No Significant Impact (FONSI)/Notice of Intent to Request for Release of Funds (NOIRROF)”
- 15-day public comment period for publication (starts the day after ad runs); 18-days if posted

Address

- Address any comments/issues & put documentation in ERR

Completing an EA (cont.)

Obtain

- Obtain CO signature on the RROF after comment period ends

Submit

- Submit required information to GA (ERR, notices, forms, etc.)

Proceed

- Proceed with project only after receipt of NOREC received from the State (15 day comment period at State level after receipt of info) & other start up items approved

Knowledge Check #2

The Environmental Review should be completed:

- A. Before construction/rehab begins
- B. Before funds released (and even before “choice limiting actions” carried out)
- C. Before project lease-up

Choice Limiting Actions Include:

- A. Purchase of land or property
- B. Construction contract execution
- C. Project expenditures by the grantee
- D. All of the above

ER Notices

Notices must have all current & correct information

(GA & HUD provide samples)

Publish notices in newspaper of general circulation or post in prominent public places

- Floodplains/wetlands notices *must* be published - no posting allowed

Comment period doesn't start until the day after it appears in paper or is posted

Must send copies of notices to EPA and other agencies or persons that might have interest (see contact list in manual) & news media

Timing of Notices

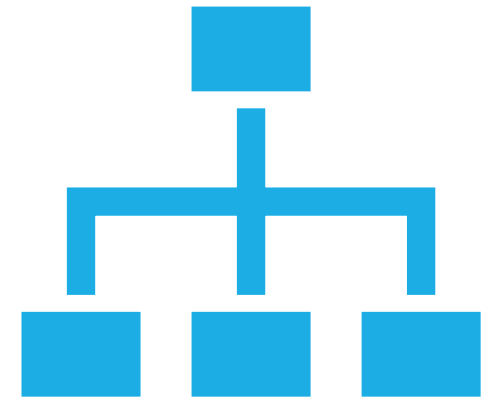
Notice	Method	Timing
FONSI	Published	15 days
FONSI	Posted	18 days
NOI/RROF	Published	7 days + 15 days for state
NOI/RROF	Posted	10 days + 15 days for state
Combined FONSI & NOI/ RROF	Published	15 days for comment 15 days for objections
Floodplain Notice of Early Public Review	Published (required)	15 days
Floodplain Statement of Findings & Public Explanation	Published (required)	7 days

Re-evaluation of Environmental Reviews

If size, location, scope of project changes, project's environmental impact must be re-assessed & ERR updated.

For example:

- Adding new activities not covered in original project scope (e.g., cost savings result in ability to extend water line beyond what was originally planned)
- New circumstances & environmental conditions that may affect the project
- Choosing an alternative approach or site not considered in the original assessment



Re-evaluation of Environmental Reviews

Submit the following to GA:

- Narrative/memo describing project & changes being made
- Maps showing original & revised project
- Identification/discussion of enviro compliance issues affected by the changes, finding/conclusions reached & documentation to support via the Environmental Review
- Document whether original finding still valid
- ID mitigation measures

Re-evaluation of Environmental Reviews

Submit the following Docs to GA (cont.):

- Documentation of whether original findings are still valid
- Submit Affirmation of Original Determination signed by Certifying Officer

If the recipient determines that the original finding is no longer valid, it must notify GA & prepare a new environmental review

Funds cannot be released unless the new decision is documented & reported



Financial Management

Financial Management

Who?

- Grantee & subrecipients must comply

What?

- Administrative & financial policies, procedures and systems must meet Federal standards

When?

- Throughout a project/program

Basic Financial Management Elements

Financial management governed by CDBG regs & the Omni Circular (2 CFR Part 200)

- Standards apply to governmental partners & subrecipients


Recipients must have system that ensures financial accountability incl. sound internal controls & cost control procedures

Adhere to applicable procurement, administrative & audit requirements


Maintain separate accounting records for CDBG funds

Allowable Costs

Costs must be reasonable, necessary and allocated to the correct activity



Pre-agreement costs allowed if in CDBG application, have prior written approval from GA and procurement procedures followed if GA covering costs



All costs must be supported by source documentation (back-up)

Admin Costs

Not more than 10% of CDBG project costs (less admin) may be used for admin costs up to a max of \$50,000

Admin draws should be proportionate to progress and must be submitted separately from other draws

For personnel costs, document how time was spent (time & attendance records)

Training directly related to CDBG is OK

- Get approval if not sponsored by GA

Cannot use state CDBG \$ to administer other grants/ other programs

Required Match/Leveraging

Generally, must have 10% minimum required match

- Cash, in-kind or non-Commerce grants or loans

Required match must be used for CDBG project-related activities

Grantee resolutions committing funds must also commit to sharing cost savings on a pro-rata basis (shared with all funding sources)

Required Match/Leveraging



If Match \$ not spent first, then CDBG funds equal to the Required Match may not be drawn until match is documented



Required Match must have supporting documentation with RFPs



Additional leveraging reported on RFPs & at close out but must also maintain documentation in files

Requests for Payment

If using cash advance,
estimate expenses
needed for 10-day
period

Request funds by
budget line item or
activity

Admin & public service
draws must be separate

Funds available for each
budget item or activity
will immediately be
reduced by the amount
drawn

If a budget revision is
approved, the budget
on the RFP must also be
updated

Requests for Payment

Submit original RFP (+ 1 copies) to Finance (blue ink recommended)

Processed weekly

- Due noon on Monday
- Allow 10-15 days for processing

Incomplete RFPs or those with errors will be returned

Final RFP will trigger close-out process

- See handout/chart in packet about final RFP process

Requests for Payment

RFPs will not be processed if:

- Admin draws not submitted separately or not proportional to project progress
- Drawing more than approved contract amount
- Project period has expired (submit extension)
- Unauthorized signature

Financial Monitoring Common Findings

- Incorrect budget activity balances reflected on submitted RFPs
- Comingling funds in general fund bank account without having an approved Separate Bank Account Waiver on file
- Utilizing multiple bank accounts for receipt and disbursement of funds for individual projects
- Maintaining an excess of the allowable \$5,000 cash on hand in the account

Adjusting Funds Drawn

Occasionally it may be acceptable to spend funds requested for one activity on another activity

Example:

- Grant involves water and sewer project
- Grantee anticipates sewer invoice and draws \$10,000 for sewer
- Invoice comes in and turns out to be for \$7,000 sewer and \$3,000 water

Grantee would need to adjust amounts drawn by:

- <\$3,000> sewer and
- \$3,000 water

Adjustments must always net to zero (\$0)

Audit Requirements

Audit requirements of 2 CFR 200 apply

Single audit required if recipient/subrecipient expends more than \$750,000 in total federal awards in a FY

Audit certification form sent in with Start Up

Recipients must also complete & submit Notification of Single Annual Audit Compliance form to GA within 60 days of the end of fiscal year (FY)

Audit Requirements

Grantee must advertise audit completion & make copies available upon request

Audit must be submitted to Finance within the earlier of 30 days after receipt of the audit or 9 months after end of the grantee's fiscal year

Must submit to Federal Audit Clearinghouse electronically

Must ensure appropriate & timely resolution of findings, questioned costs, etc.

Notify GA when resolution is complete

Knowledge Check #3

Admin Draws must be submitted separately:

- A. True
- B. False

The allowable cash on hand amount is:

- A. \$2,500
- B. \$5,000
- C. \$10,000
- D. Commiserate with the total project costs



Acquisition

Acquisition & Relocation



Who? Rules apply to any party involved in the project



What? Certain processes/procedures must be followed including notices to owners, tenants etc.



When? EARLY! Must plan for acquisition (& any relocation) well ahead of time; continue to carry out until the required process is completed

The Requirements

Uniform Relocation Act (URA) applies when real property is acquired or persons displaced as a direct result of acquisition, demo & rehab for a Federally-funded project

- Applies to government agencies, private organizations & all other parties using Federal funds
- URA may be triggered if federal assistance is in any phase of project, not just the acquisition component

Section 104(d) provides additional protections for low income displacees & replacement of LMI units in the housing stock

URA Coverage

Applies to wide range of types of purchases:

- Fee simple title, life estate & long term leases
- Permanent easements
- Temporary easements necessary for the project

Covers purchases/easements carried out by:

- Grantee
- Nonprofits or for profits with federal assistance
- Agent/consultant/subrecipient acting on behalf of the grantee
- Homebuyers with federal purchase assistance

Acquisitions

Acquisitions are generally referred to as “voluntary” or “involuntary”

- **Voluntary** means no eminent domain involved or will not use it under any circumstances (more later)
- **Involuntary** means that an agency has the power of eminent domain & may use it; most common when property is needed for a project

Regardless of the type, tenants eligible for relocation benefits

Involuntary Acquisition

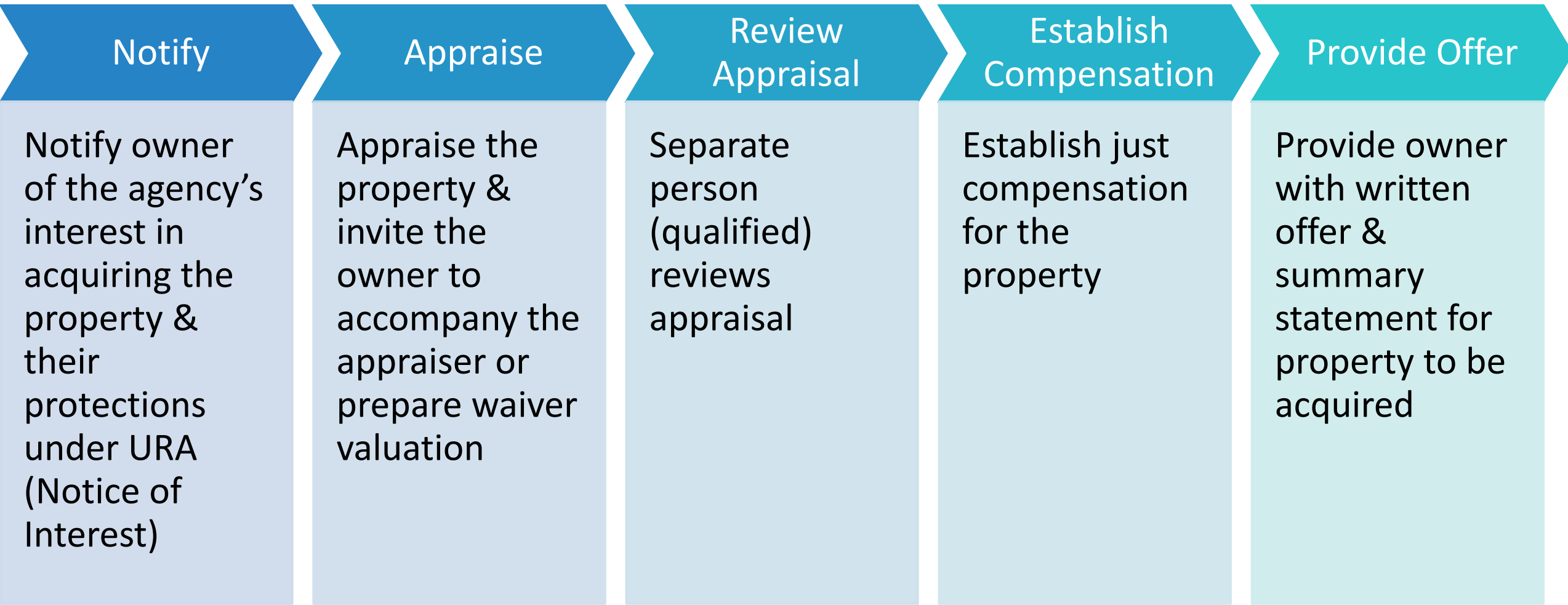
Eminent domain generally cannot be used for any acquisition with CDBG \$ not benefiting the general public

- Strictly prohibited from using eminent domain for ED & some related activities
- Check with GA before proceeding on eminent domain

Grantees must:

- Provide notices to the owner & obtain proof of delivery
- Provide URA notices & assistance to occupants
- Offer market value for the property
- Complete the purchase expeditiously

Process For Involuntary Acquisition





Appraisal

The URA specifies a process to accomplish the standard of paying just compensation as set out in the Fifth Amendment to the U.S. Constitution. The URA requires that a qualified appraiser estimate the fair market value of the property through the appraisal process.

Review Appraisal

The appraisal must be reviewed by a qualified review appraiser for consistency and reasonableness, and to ensure it meets all standards.

Just Compensation

Agencies must establish the amount of just compensation to offer the property owner, which cannot be less than the approved appraisal. An authorized agency employee must set the amount to be offered.

Written Offer

Agencies must make a written offer to the property owner for the just compensation amount. A verbal offer does not meet the URA requirements.

Negotiations

After the agency makes the offer, a reasonable period of negotiations should occur where the property owner can review the offer, ask questions, accept or reject the offer, or make a counteroffer.

Agencies can pay more than the amount of the established just compensation offer by using an administrative settlement, if it is reasonable, prudent, and in the public interest.

Yes

→ Closing

If you are successful in reaching a settlement, you will go to a closing with the property owner and obtain title to the property.

No

→ Condemnation or Walk Away

If negotiations are unsuccessful, agencies with eminent domain authority may choose to pursue condemnation through the eminent domain process. Agencies without eminent domain authority must walk away.

Notice of Interest

Sent as soon as site is selected

Serves to express interest in acquiring property

Informs owner of process & rights

- Lays out protections under the URA
- Owner is entitled to accompany appraiser
- Offer will be based on fair market value

Advises occupants not to move

- Be certain to advise them of their rights and potential relocation eligibility

Appraisals

Appraisals are written statements that provide market value of the property, which forms the foundation of purchase offer

- Must be performed by licensed & certified appraisers
- Owner must be invited to accompany the appraiser
- Report must meet standards & have all required information

Make sure no conflicts of interest present & follow procurement if CDBG funds used to pay for appraisal(s)

Review of Appraisals

- Initial appraisal must be checked by a review appraiser
- Review examines methodology for approach to value
- If the initial appraiser and review appraiser do not agree, a second appraisal must be done
- If a second appraisal is not practical, the initial reviewer may re-evaluate the original appraisal amount

Exceptions to Appraisal Requirements

Formal appraisals not required for:

- Voluntary acquisitions (will discuss later)
- Uncomplicated valuations and property values less than \$10,000 – prepare a waiver valuation
- Owner offers to donate property

Waiver valuations

- Person preparing the waiver valuation must understand local real estate market
- Document basis for determination of value
- Provide GA with methodology prior to establishing just compensation
- Unable to use if eminent domain

Determine Just Compensation

Not less than market value, which is established by the appraisal and review process

- Includes related costs & other interests in property

Must purchase any uneconomic remnant

- Meaning don't leave part of a parcel that essentially has no value by itself

Notice Of Just Compensation

- This is the written purchase offer
- Sent after appraisal & amount of compensation determined
- Based on market value
- Includes summary statement identifying location, describes property being acquired
- May also include copy of appraisal
- Constitutes initiation of negotiations (ION)

Make sure environmental review process complete prior to making purchase offer or obtaining signed donation form

Conclude the Purchase

Finalize the price & other terms/conditions of sale

- No coercive action allowed & cannot unreasonably delay process (could be perceived as “inverse condemnation”)

If successful, acquisition ends with a closing

If Unable to Agree on the Purchase...

Condemnation is used only when parties cannot come to agreement on sale

General process:

Timeframes vary depending on situation & local courts

Attorney requests background information for case

Attorney files with court

Owner may ask for settlement

Judicial review

May include jury trial

Voluntary Acquisition

Three types of voluntary acquisitions:

- Grantee has eminent domain powers but agrees in writing not to use
- Buyer doesn't have power of eminent domain
- Purchases from government agency where buyer does not have eminent domain powers over that agency (e.g., unit of local government buying from State/Federal govt)

Voluntary Type 1: Grantee Will Not Use Eminent Domain

- Grantee has the power of eminent domain but will not use if sale cannot be negotiated
- To be a “voluntary sale” property cannot be:
 - Specifically required
 - (i.e., must have that site)
 - Part of a planned or designated area in which all or substantially all property in area will be purchased
- Remember any entity acting as agent of grantee subject to same rules

Voluntary Type 1: Grantee Will Not Use Eminent Domain

Must notify the seller *before* execution of the sales contract that:

- Grantee will not use its power of eminent domain
- Federal funds are included in the purchase
- Seller is not eligible to receive relocation assistance
- Estimate of fair market value provided
 - Appraisal not required, but determination made by someone with knowledge of real estate market

Use the Voluntary Acquisition Information Notice (Agency with Eminent Domain) from GA website

Voluntary Type 2: Buyer Does Not Have Power of Eminent Domain

Must notify the seller *before* execution of the sales contract:

- Buyer does not have the power of eminent domain
- Federal funds are involved in purchase
- The seller is not eligible to receive relocation assistance
- What the estimate of fair market value is
 - Appraisal not required, but determination made by someone with knowledge of real estate market

Use the Voluntary Acquisition Information Notice (Agency without Eminent Domain) on GA website

What about Donations? Or Tenants?

Owners may voluntarily donate property but owner must:

- Be fully informed of his/her rights
- Acknowledge his/her decision to voluntarily relinquish payments due under URA

Use the Voluntary Donation of Property form on website

- Owner may want appraisal to establish value of the donation for tax purposes

Voluntary sellers not entitled to any relocation benefits BUT tenants are

- Contact GA immediately for assistance if tenants are present

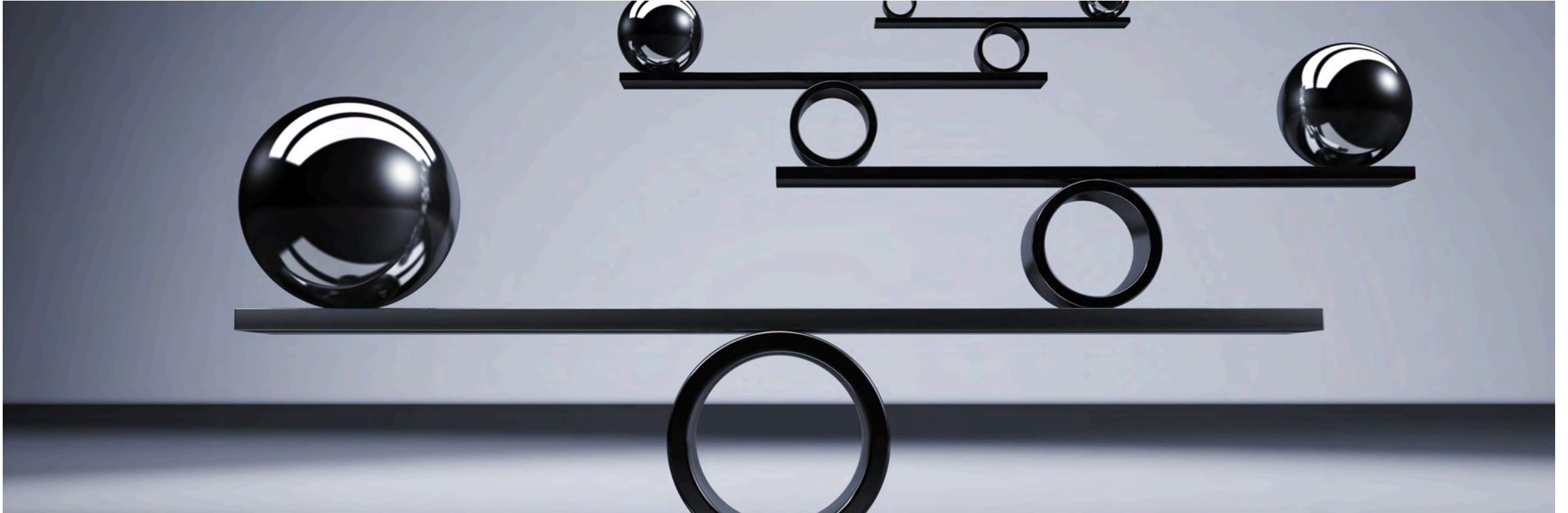
Knowledge Check #4

The property owner should be informed of:

- A. Protections/rights under URA
- B. Being entitled to accompany appraiser
- C. Offer being based on fair market value
- D. All of the above

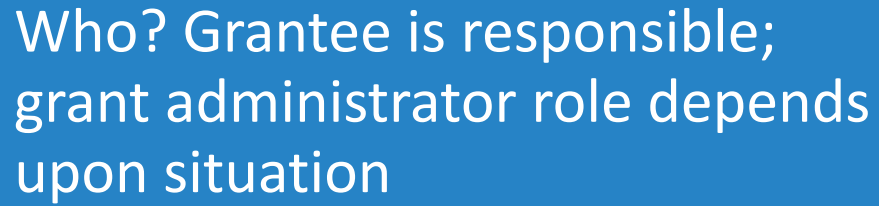
Types of voluntary acquisition are (choose two):

- A. Grantee not using Eminent Domain
- B. Grantee using Eminent Domain
- C. Buyer has power of Eminent Domain
- D. Buyer does not have power of Eminent Domain



Procurement & Contracting

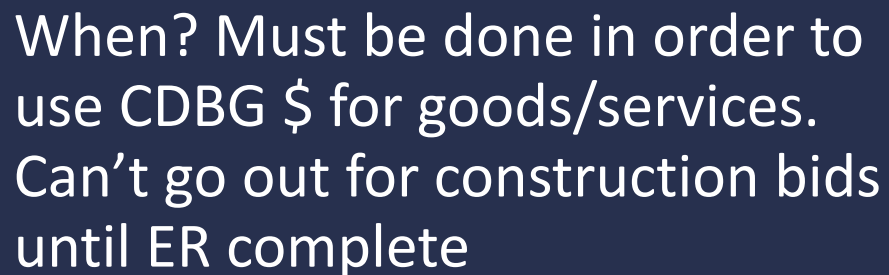
Who? Grantee is responsible;
grant administrator role depends
upon situation



What? Depends upon the
project/program being carried out,
which dictates level of review &
applicability of laws & authorities



When? Must be done in order to
use CDBG \$ for goods/services.
Can't go out for construction bids
until ER complete



Procurement & Contracting

Basic Procurement Requirements

Grantees/subrecipients must comply with Federal (2 CFR 200) & state procurement rules if using CDBG funds to pay for a cost that had to be purchased

Key principles:

- Ensure maximum open & free competition
- No geographical preferences
- Include protest procedures

Grantees must have written procurement procedures to ensure compliance

General Procurement Guidelines

2 CFR 200 requires maximum open & free competition; therefore, the following are prohibited:

- Participation of any contractor that developed draft specs, requirements or statements of work
- Non-competitive awards to consultants that are on retainer contracts
- Conflicts of interest
- Brand name items without an “or equal” clause
- Excessive bonding requirements
- Any arbitrary action in the procurement process

Must have a clear scope of work

General Procurement Guidelines

Conduct cost & price analysis for every procurement or modification

All potential offerors should be advised that the application with cost estimate is available for review

No geographic preferences allowed (i.e., cannot restrict to local firms only)

Must incorporate M/WBE & Section 3 requirements

Review procurements to avoid purchasing any unnecessary goods & services with Federal funds

Other Procurement Guidelines



Award to most responsive & responsible bidders



Only use fixed price or “max not to exceed” type contracts



Keep all records of procurement – cost/price analysis, method, contract type, selection/rejection, basis of price, protests, etc.



Settle all contractual & administrative issues arising out of procurements based on procurement policy/procedures

Procurement

When selecting private, for-profit administrators or buying goods/services, grantees, state recipients and subrecipients must comply with the Federal requirements

Also comply with Section 3 and State/local laws

Should also adopt written procurement procedures

- Designed to achieve maximum open and free competition
- Covers standard of conduct and small & minority business outreach

Others Covered by Procurement

Grantee not required to competitively procure state recipients, nonprofit/public subrecipients

Once under grantee agreement, if these entities buy goods/services for CDBG program, they must procure it

Methods of Procurement

Select one of four procurement methods-based product/service procured

- Small purchase procedures (no formal RFP or invitation for bid)
- Goods/services <\$150,000
 - GA must review all small purchase contracts of \$25,000 or more (or \$5,000 or more for professional services contracts) prior to contract execution
 - Engineering/architectural services contracts not eligible

Methods of Procurement

- Competitive sealed bids
 - All Construction contracts
 - Goods/services >\$150,000
- Competitive sealed proposals (RFP & RFQ)
 - Engineering/architectural services
 - Other professional services >\$150,000
- Non-Competitive procurement
 - Very limited usage in specific situations
 - GA approval require prior to undertaking

Small Purchase Procedures

No formal RFP or Invitation
to Bid



Goods/Services totaling
under \$150,000

Competitive Sealed Bids

This method is used for all construction work or goods >\$150,000

Requirements:

- Bid docs must match scope in CDBG application (amendment & possibly new ERR required if scope is different)
- Bid package must have all contractual terms/conditions applicable to procurement
- Specify that bid prices must be good for at least 60 days after bid opening
 - 90 days recommended
- Bids for water/sewer service connections must be included as a separate division (and separated on payment requests)

Competitive Sealed Bids

Requirements (continued)

- Bids for ineligible work must be a separate division (and separated on payment requests)
- Make sure any environmental mitigation measures included in bid documents, as appropriate
- Make sure contract period is within grant period prior to bidding
- Ensure consistency throughout the solicitation & specs with regards to owner, bid expiration, contract period, etc.
- Do not bid before environmental clearance & acquisition complete (must certify on C-1)

Prohibited Practices

Persons or firms that prepare bid package or elements of it (e.g., specs) may not also compete for the subject work

Procurement rules do not allow bid documents that specify brand names *without* an “or equal” clause

- Bid package must define what “or equal” means

Any language in bid documents that specifies brand name only (no equivalent language) is NOT allowed and the procurement will be subject to re-bid

- If in question, contact GA for assistance

Competitive Sealed Bids

Process is officially initiated by publishing invitation for bids (IFB)

Advertise for minimum of 30 days prior to bid opening (don't count publication date)

Also use direct solicitation, which must be documented

Shortened bid periods must have advance GA approval

Competitive Sealed Bids

All bids received before the opening time must be kept secure & unopened

On the advertised date & time, publicly open bids

- All late bids to be rejected and returned to contractor unopened

At least 2 bids must be received

- Written “no bid” response is acceptable

All bids must be tabulated & reviewed

- Bid must be itemized with unit pricing, or detailed schedule of values if unit pricing not possible
- No lump sums or unspecified “contingency”

Competitive Sealed Bids

Award contract to the responsible bidder that is lowest in price

- If not the lowest bidder, must document the basis & have engineer provide recommendation
- Use firm, fixed price contracts with unit prices & quantities

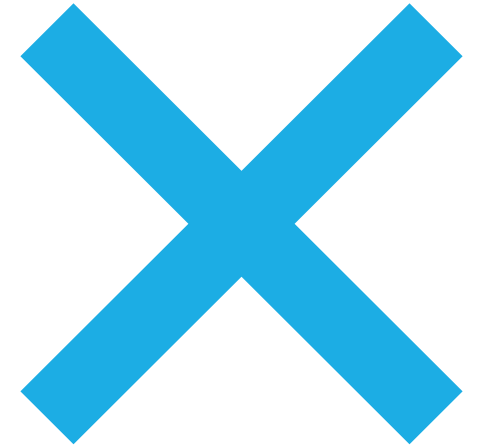
Formal terms & scope

No cost plus a percentage of cost allowed, even for change orders

Errors on Bids

Bid packages should address how errors are handled:

- Discrepancies between multiplication of units of work and unit prices should be resolved in favor of unit price
- Discrepancies between sum of any column of figures and the corrected sum should be resolved in favor of the correct sum
- Discrepancies between words and figures should be resolved in favor of words



Errors on Bids

- Bid errors may be corrected in writing, by the bidder, prior to the bid opening.
- After bid opening, the bid evaluator may note computation errors only to line-item totals, not the unit prices.
 - Errors should be addressed on certified bid tab, not on the bidder's form.
 - Bidder must be notified when error is discovered.
 - If bid is selected for award, written explanation of correction must be included in bid documentation.

Review Bids: Bids Over Budget

For bids over budget by 10% or less, negotiate with the lowest responsive and responsible bidder

- Document that time/circumstances will not permit delay for re-bidding
- Base bid, less deductive alternates, cannot exceed available funds by more than 10%
- Negotiated price must be lower than the lowest rejected bid under original solicitation
- Minor changes allowed, with prior GA approval
- Significant changes require re-bidding

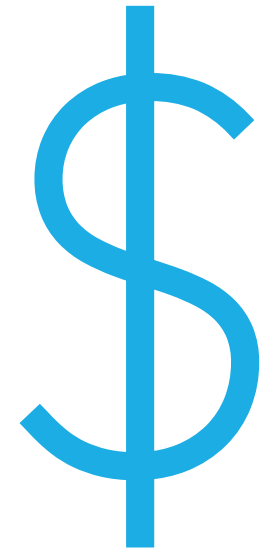


Review Bids: Bids Over Budget

If all bids are more than 10% over budget,
grantee cannot negotiate with bidders

Must re-bid or identify local funds to cover the
difference

- If additional funds are committed by the local government for the difference between the lowest base bid and the approved available funds for the project, request GA approval



Recommendation of Contract Award


The recommendation must include:

- Whether all bids were considered responsive
- Identify and explain any bid discrepancies and how they were considered in accordance with the bid documents
- Whether any alternates were accepted and the total recommended contract amount
- How costs reasonableness was determined
- Explanation for any delays in submitting bid documents for approval



Competitive Sealed Proposals


Used for services where selection based on factors in addition to cost like A/E or consulting services



Involves soliciting via RFP or RFQ



Entities that prepare proposals or elements of them (e.g., SOW, rating criteria) may not compete



Award based on qualifications related to selection criteria in the RFP/RFQ, not necessarily lowest bidder



Only fixed-price contracts or max not to exceed allowed

Knowledge Check #5

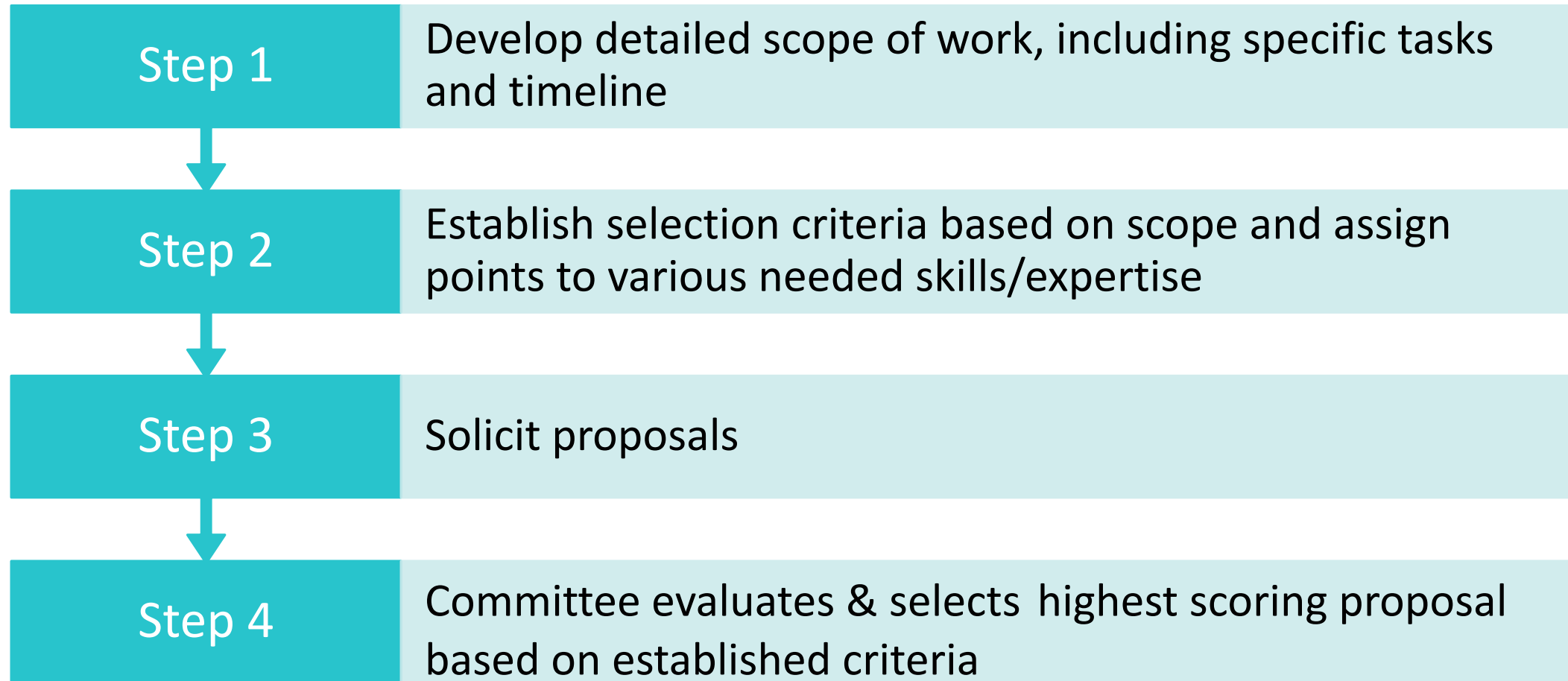
Small purchases apply to goods/services under:

- A. \$50,000
- B. \$75,000
- C. \$100,000
- D. \$150,000

Engineering and Architectural services can only be procured through the small purchases method:

- A. True
- B. False

Summary of the RFP Process



Summary of the RFP Process (cont.)

Step 5

Prepare a contract for winning proposer, formalize terms & scope



Step 6

Inform losing proposers, allow for appeals/protest process



Step 7

Submit unexecuted copy of contract and procurement documents for GA review for contracts that exceed \$5,000

Requests for Qualifications

RFQ usually does not stand alone as procurement process; typically used in conjunction with RFP as a two-step process

- Narrows down field OR creates pool of qualified firms
- Selection generally based on skills/experience
- RFP usually still required in order to select winner (to obtain price)

Only exception to this is that GA allows use of RFQ only (w/ no RFP) for complicated A/E services

Requests for Qualifications

Often, RFQ selection criteria use benchmarks

- All firms meeting the benchmarks are typically deemed qualified
- Criteria may include, years of experience, areas of expertise, capacity to carry out services & references

Committee evaluates & selects highest ranking firm

- Committees should include no fewer than three members

Non-Competitive Procurement

Non-competitive or sole source procurement is only allowed under very limited circumstances and requires advance GA authorization to use

- Only allowed when:
 - The item is available from only one source OR
 - A public exigency or emergency exists such that it will not permit a delay beyond the time needed to follow procurement methods OR
 - After solicitation of number of sources, competition is determined inadequate
- For example, utilities contract to install streetlights
- Must conduct negotiations regarding scope & price

Protests

Must be handled at local level

Must have local procedures, including responsible personnel

Bid documents must include info

Document all actions and submit to GA with contract

End of Day 1

ANY QUESTIONS?



Contracting

Contracting

Unexecuted contractual agreement should be included in bid package

This is the document that will hold the contractor accountable for performance

Contract should reference the bid proposal

Standard agreements
– USDA, AIA

Contracts should not be pre-dated in the bid package

Only issue a Notice of Intent to Award subject to GA review

General Contract Requirements

Scope of work

Firm fixed contract amount

- Identify unit price bids
- Include a “not to exceed” clause, if applicable

General provisions

- Payment instructions
- Change orders
- Retainage (10% of total construction costs)
- Liquidated damages
- Work conditions

SAM Registration & Debarment

Must verify contractor & subs registered in the System for Award Management (SAM)

- “No record found” result from a search means the company is not registered

Must verify contractor & subs not on State or Federal debarment list

Must obtain certification regarding debarment from contractor & subs

Submit certification(s) and evidence SAM was checked with the contract to GA

General Contract Requirements



Time frame for work



Technical specs & drawings



Professional service contracts should have fixed costs through contract period

Contract Special Provisions

- Davis Bacon wage rate
- Labor Standards provisions
- Equal Opportunity
- Section 3 forms
- SC Illegal Immigration Act – contractor certification
- Debarment certification

Bonding

Winning construction contractors must submit performance and payment bonds

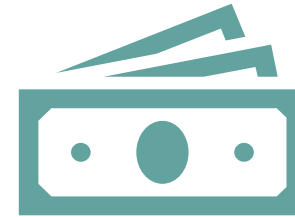
- Required for contracts greater than \$100,000
- Amount for each equal to contract price
- Within period under bid docs or 10 days from contract presentation

Bonding



Performance bond:

From a surety company on
Treasury list
Financial strength at least 5 times
contract



Payment bond:

From a surety company on
Treasury list or Best's Key Rating
Guide
Financial strength at least 5 times
contract

Contract Review & Submittal

Use Construction Contract Review Checklist

- For grant administrators to use before going out to bid and prior to contract submission to GA

Completed acquisition certification required from grantee

Submit contracts within 20 days of bid opening

- Package must be complete – do not leave items out

Contract Review & Submittal



If cost overruns to be paid by locality, written funding commitment and budget revision must be submitted



Complete the C-1 Contract Transmittal Form



If construction period will exceed grant period, submit request for project extension (more later)

C-1 Contract Transmittal Form

Must complete the C-1 Contract Transmittal Form, which includes:

- Information about the contractor like Fed. ID # , ethnicity of contractor, Sect. 3, WBE/MBE
- All funding sources & amounts
- Indication if multiple contracts are planned
- Certification that grantee/project administrator has reviewed docs & they are consistent with approved CDBG application & ERR & in compliance with all CDBG requirements

Contract Review & Submittal

If noncompetitive negotiation method was used, submit the forms listed on C-1 & justification for using this method

Include complete, unexecuted agreement with the C-1 Form

Incomplete C-1 packages or attachments will cause delays in approval

Once GA has issued approval, contracts should be executed in a timely manner

- Can affect Davis Bacon wage rate “lock-in”

Knowledge Check #6

Contracts should:

- A. Reference the bid proposal
- B. Not be pre-dated in the bid package
- C. Reference time frame for work
- D. Include special provisions like Davis Bacon wage rate, Labor Standards provisions, Equal Opportunity, Section 3, SC Illegal Immigration Act and Debarment certification
- E. All of the above

Knowledge Check #6

The C-1 Contract Transmittal Form does NOT include:

- A. Contractor information (Fed. ID # , ethnicity of contractor, Sect. 3, WBE/MBE)
- B. All funding sources & amounts
- C. Indication if multiple contracts are planned
- D. Specific contract clauses
- E. Certification that grantee/project administrator has reviewed docs & they are consistent with approved CDBG application & ERR & in compliance with all CDBG requirements



Labor Standards & Construction Management

Construction Management

Effective construction management involves planning, coordination & control of a project from inception to completion

- Goal = to ensure that CDBG requirements, include labor standards, are met & project is carried out in accordance with the contract
- Must be directed by the recipient & coordinated with the architect/engineer & project administrator



Construction Management



Key tasks:

- Project progress & reporting
- Monitoring time of performance
- Determining eligible costs
- Monitoring total costs within budget
- Monitoring compliance with CDBG requirements
- Monitoring project scope & accomplishments
- Obtaining approvals for any project changes

Construction Draws

Before submitting any construction draws to GA, the Construction Contract Draw Request Review form should be completed by the project administrator (keep in files)

- Ensures costs are consistent with approved budget & that work is consistent with the approved activities from the application and the construction contract
- Keep the form on file

In some cases, GA may require checklist & back up invoices/other docs to be submitted with RFP (more later)



Section 3

Section 3 Final Rule

Requirement

- Employment, training, and contracting opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons

Final rule published September 29, 2020

- 24 CFR Part 75

Section 3 Final Rule

Promotes sustained employment and career development

- Focuses on labor hours instead of new hires

Aligns Section 3 reporting with standard business practices

- Consistent labor-hour tracking mechanism (Davis-Bacon)

Section 3 Final Rule

Applicability and thresholds

- Assistance used for housing rehabilitation, housing construction, and other public construction is subject to Section 3 requirements
 - Exempting projects < \$200,000 of covered assistance
 - \$100,00 project threshold for all projects that receive funding from Lead Hazard Control and Healthy Home Program

Redefines Section 3 Residents and Section 3 Businesses

- Adds Section 3 Worker definition and provides distinction of Targeted Section 3 Worker

Section 3 Final Rule

- Focuses Reporting on Key Outcome Metrics: New Benchmarks
- Safe Harbor Benchmarks
 - 25% of all labor hours must be performed by a Section 3 Worker
 - 5% of all labor hours must be performed by Targeted Section 3 Workers
 - A labor hour = hours worked by all workers employed on a Section 3 project
 - Set by Notice and amended periodically as necessary

$$\frac{\text{Section 3 labor hours}}{\text{Total labor hours}} = 25\% \text{ AND } \frac{\text{Targeted Section 3 labor hours}}{\text{Total labor hours}} = 5\%$$

Defining a Section 3 Project

Section 3 Project:

- Site or sites together with any building(s) and improvements located on the site(s) that are **under common ownership, management, and financing**.

Section 3 applies to:

- An entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

Thresholds

Housing and Community Development Financial Assistance

- Applicability: Housing Rehab, Housing Construction, Other Public Construction
- Threshold: Total HCD assistance for the project exceeds **\$200,000**

Lead Hazard Control and Healthy Homes

- Threshold: Office of Lead Hazard Control and Healthy Homes assistance for the project exceeds **\$100,000**

Universe of Workers



Defining a Section 3 Worker

A Section 3 Worker is any worker who **currently fits**, or **when hired within the past five years*** fit, at least one of the following categories, as documented:



- A low or very low-income worker

OR



- Employed by a Section 3 business concern

OR



- A Youthbuild participant

*The past five years or after the Final Rule's effective date of November 30, 2020, whichever is later

Defining a Targeted Section 3 Worker

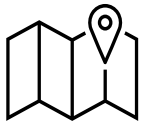


A Targeted Section 3 Worker for Housing and Community Development Projects is:



- Employed by a Section 3 business concern

OR



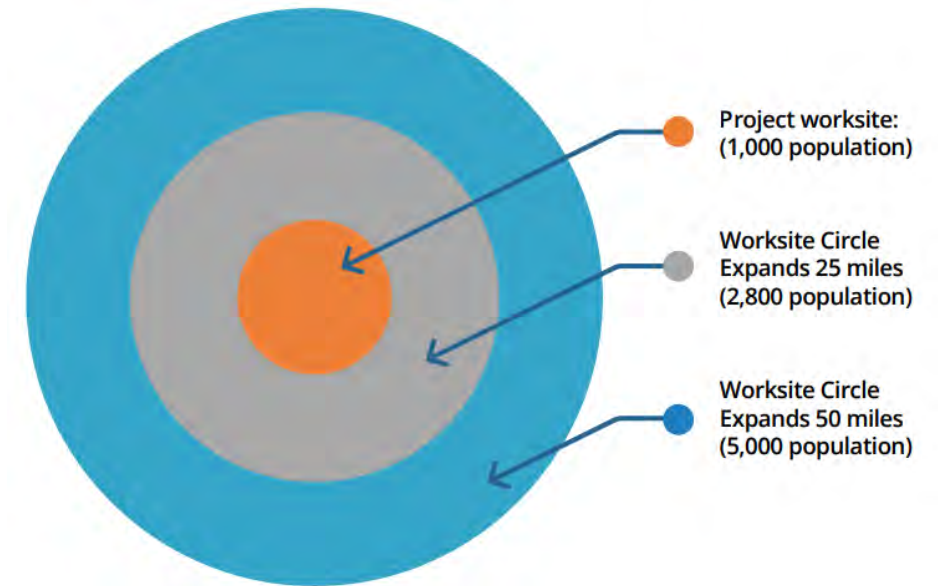
- Currently fits or when hired within the past five years* fit at least one of the following categories as documented:
 - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5
 - A YouthBuild participant

*The past five years or after the Final Rule's effective date of November 30, 2020, whichever is later

Service Area or Neighborhood of the Project as Defined in 24 CFR 75.5

Service Area or Neighborhood of the Project is:

- An area within one mile of the Section 3 project
- OR
- If < 5,000 people live within one mile of Section 3 project, it is an area within a circle centered around the Section 3 project site that encompasses 5,000 people*



*According to the most recent U.S. Census

Redefining Section 3 Business Concerns

A Section 3 Business Concern is:



- 51% or more owned and controlled by low or very low- income persons

OR



- Over 75% of the labor hours performed for the business over the prior three-month period were performed by Section 3 workers

OR



- 51% or more owned and controlled by current residents of public housing or Section 8-assisted housing

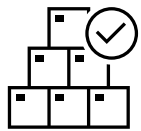
Labor Hours

Paid hours worked by all workers
employed on a Section 3 Project



Professional Service Labor Hour

Non-construction services that require an advanced degree or professional licensing may be excluded from labor hour calculations under the Section 3 Final Rule.



Bonus Opportunity:

- Recipient may count any work performed by a professional services Section 3 worker or Targeted Section 3 worker as Section 3 labor hours and as Targeted Section 3 labor hours by adding to the numerator.
- Do not count the professional services as part of the total labor hours (i.e., in the denominator of the calculation).

Low-Income and Very Low-Income Limits

- Defined at Section 3(b)(2) of the Housing Act of 1937
- Determined annually by HUD
- Section 8 income limits are used to determine eligibility
- Limits are typically established at 80 percent and 50 percent of the area median *individual* income



Certification of Prioritization of Effort

Employment & Training

“to the greatest extent feasible”



Section 3 workers residing within the service area or neighborhood of the project


Participants in YouthBuild programs

Consistent with existing Federal, state, and local laws and regulations

Certification of Prioritization of Effort

Contracting

“to the greatest extent feasible”



Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project

Participants in YouthBuild programs

Consistent with existing Federal, state, and local laws and regulations

Qualitative Efforts

If a recipient can't meet the quantitative benchmarks and prioritization of effort, HUD requires additional reporting on the qualitative efforts to comply with the Section 3 Final Rule.

Examples include:

- Provide training or apprenticeship opportunities for Section 3 Workers
- Hold one or more job fairs
- Engage in outreach to identify and secure bids from Section 3 Business Concerns
- Promote use of business registries designed to create opportunities for disadvantaged and small businesses

A non-exhaustive list of qualitative efforts is provided in the Final Rule at 75.25(b)

Section 3 Compliance



**Develop a Section 3
Action Plan**



**Make good faith efforts
to meet Section 3 Plan**

Outreach
Certification
Recruiting
Capacity Building



**Maintain
documentation &
report to GA**

Knowledge Check #7

Being a Youthbuild Participant qualifies a worker as:

- A. Section 3 Worker
- B. Targeted Section 3 Worker
- C. Both

A project that includes CDBG (\$100,000) and HOME (\$50,000) funds:

- A. Triggers Section 3
- B. Does not trigger Section 3

Section 3 Forms

- [Section 3 Portion of SC Department of Commerce CDBG Implementation Manual](#)
- [Section 3 Definitions](#)
- [Applicability Thresholds for Section 3](#)
- [Key Changes of the Section 3 Final Rule Summary](#)
- [Examples of Efforts to Offer Training](#)
- [Examples of Efforts to Award Contracts to Section 3 Businesses](#)
- [Section 3 Brochure \(Section 3 Brochure in Spanish\)](#)
- [Section 3 Information Sheet](#)
- [Section 3 FAQs](#)
- [HUD Section 3 Opportunity Portal](#)

Section 3 Requirements – CDBG

- [Sample Section 3 Action Plan](#)
- [Sample Notice of Employment and Contracting Opportunities](#)
- [Section 3 Business Concern Certification Form](#)
- [Section 3 Worker Self-Certification Form](#)
- [Targeted Section 3 Worker Certification Form](#)
- [Section 3 Labor Hours Tracking Form](#)
- [Section 3 Resident Self-Certification Form](#)
- [Section 3 Complaint Register and Instructions](#)
- [Contract and Subcontract Activity Report](#)
- [Grantee Section 3 Summary Report \(Instructions\)](#)



Labor Standards

Labor Standards: Davis-Bacon

Davis-Bacon requires workers be paid at least minimum wages provided by Dept. of Labor (DoL)

D-B applies to all construction contracts over \$2,000 involving any CDBG funds

- Exception is housing of less than 8 units under one owner
- Materials provided by a bona fide material supplier are NOT subject to Davis Bacon
- Demo not subject to Davis Bacon *unless* it is followed by construction work
- Installation work performed in conjunction with an equipment supply contract is subject to Davis Bacon when installation is more than an incidental amount of activity (i.e., more than 20%)

Other Labor Laws

Contract Work Hours & Safety Standards Act

- Applies to contracts greater than \$100,000
- Workers shall not work more than 40 hours/week unless they get overtime & projects must comply with safety standards

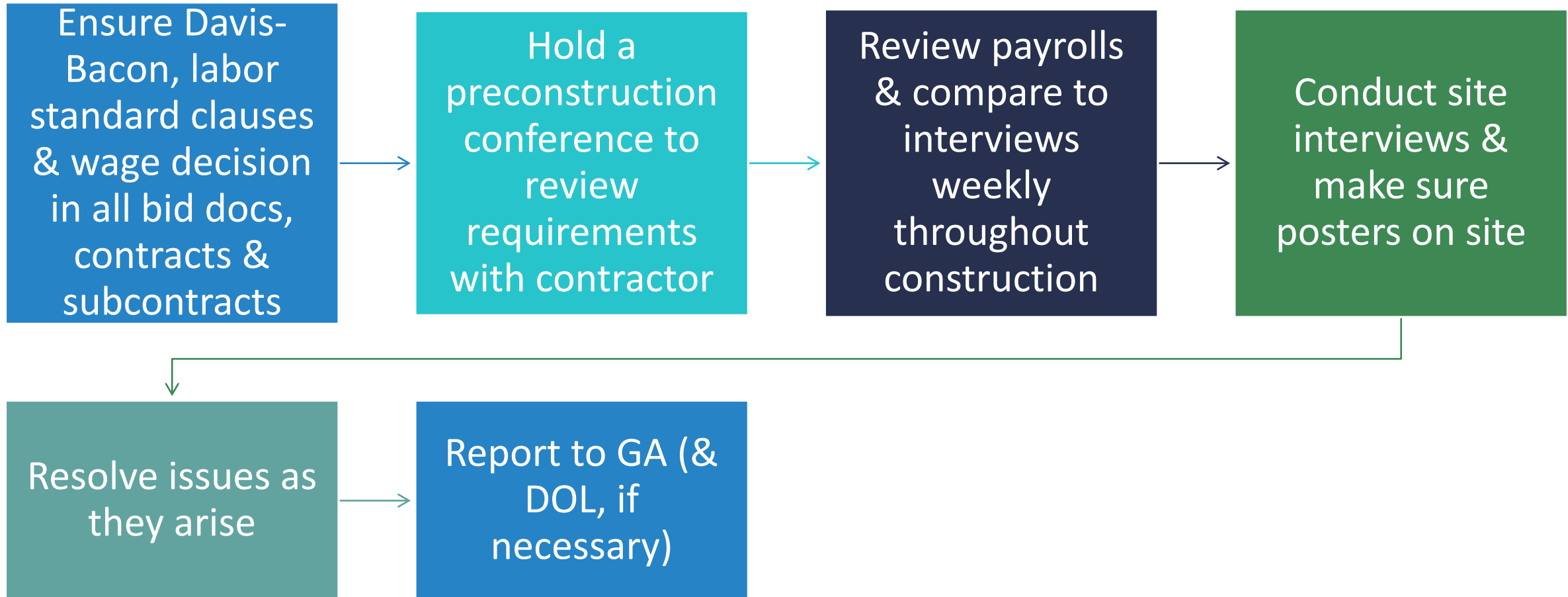
Copeland Anti-Kickback Act

- Requires workers be paid once a week
- Only permissible payroll deductions allowed

Fair Labor Standards Act

- Federal minimum wage & overtime requirements

Labor Standards Implementation Components



Davis-Bacon Wage Decisions

Wage decisions provide prevailing wages by geographic location, type of construction & worker classifications

- Building
- Heavy
- Highway
- Residential

Get wage decisions at

www.sam.gov/content/wage-determinations

Wage Decisions

Additional classifications often necessary

- Work with architect/engineer prior to bidding
- Submit requests to GA
- Attachments in the Manual provide sample letter & documentation that will be required – include all information
- Not permissible to use lowest rate as benchmark
- Proposed rate must bear a “reasonable relationship” to the rates on the wage determination

Wage Decisions

Check the wage decision web site 10 days prior to bid opening

- If wage decision modified more than 10 days prior to bid opening, must notify all bidders
- If modified within 10 days of bid opening, may disregard IF there isn't reasonable time to notify bidders of the change (document in files)

Wage decisions are “locked in” on the dates bids are opened provided that the contract is executed within 90 days of that date

Wage Decisions



Wage decision & labor provisions must be in contract & subcontract documents



Prime contractors must post wage decision & labor/EEO posters at project site

Good idea to take a photograph to document compliance

Pre-Construction Conferences

Immediately after contract award, architect/engineer will hold a pre-construction conference – grantee & administrator should be present

Recipient must play an active role in ensuring that all parties understand the CDBG requirements

- Get an attendance roster & keep detailed minutes
- Clarify roles & responsibilities
 - Establish procedures for communication throughout the project
- Be sure to review various special requirements (Section 3, environmental mitigation measures, E.O., etc.)
- Emphasize that the prime contractor is main point of contact & responsible for compliance of all subs

Labor & Pre-Construction Conferences

At the pre-con, cover Davis-Bacon & other labor requirements:

- Prime contractor responsible for all subs compliance incl. that they are registered in SAM & not on state or federal debarred list
- Review wage decision, incl. additional classifications that might be required
- Discuss how foreman, split classifications, apprentices/trainees & helpers are handled
- Discuss payrolls & statements of compliance submission
- Distribute job site posters
- Explain how employee interviews will be conducted
- Talk about what happens in cases of noncompliance

Use Contractors Guide & Pre-Con Outline provided by GA

Follow up after if additional classifications needed

Payroll Submission

Payroll reports must be submitted to grantee within 7 working days of end of pay period

- Remember workers must be paid on a weekly basis!
- Contractor/subs must use payroll form (WH 347) or equivalent
- Must include signed Certification of Compliance (original signed in ink)
- Should not include employees' address or full SSN
- Should only show regular and overtime hours worked on the CDBG-funded project (not other jobs)
- Must indicate how fringe benefits are paid on Statement of Compliance

Fringe Benefits

DB wages include the total hourly wage rate paid plus fringe benefits

The rate paid may include any combination of cash wages and fringe benefits

Fringe benefits include:

- Health insurance premiums
- Retirement contributions
- Life insurance
- Vacation, holidays, sick leave

Fringe benefits do not include employer payments or contributions required by other Federal, State or local laws (SS or disability)

Payroll Review

Recipient/grant administrator must ensure payrolls coming in on schedule

- Prime submits its payroll + all subs (that have been reviewed by the prime prior to submittal)

Recipient/grant administrator must review payrolls

- Payroll reviews “shall be comprehensive”
- Early reviews mean problems can be resolved quickly
- Refer to Payroll Falsification Indicators for guidance (See Contractor’s Guide to Prevailing Wage Requirements)
- Also look at classifications & pay, overtime & deductions
- Compare to interviews that are done on site (HUD 11s) particularly duties observed & red flags in terms of proportion of laborers to other workers

Deductions

No payroll deductions may be made that are not specifically listed in the Copeland Anti-kickback Act provisions

- NOTE that deductions NOT listed in the Act are NOT allowed even with the worker's permission (e.g., uniforms)
- Must request authorization from the Secretary of Labor for any deductions not on list
- List of authorized deductions & form to obtain permission in CDBG Implementation Manual

Unspecified/unauthorized payroll deductions are a serious discrepancy & must be resolved prior to further contractor payments

On Site Labor Interviews

Grant administrators must conduct job site interviews of workers using Record of Interview form (HUD 11)

- Do NOT fill out the forms in advance
- Do NOT have the prime contractor perform interviews

Must get a representative sampling for interviews

- By trade or job classification
- Employees from both the prime & subcontractors

Must witness what type of work is being done by each worker (& include this in “Duties Observed” section of the HUD 11)

Labor Interviews

Must compare interviews
to payroll forms

- By individual (type of work observed, classification, rate of pay, hours worked, etc.)
AND
- By company (who is working on the job site?)

Resolve any discrepancies
or issues in a timely
fashion (e.g, difference
between work observed
vs. what was on the
payroll)

- Follow up with the employee first
- Employer should resolve within 30 days

Progress Inspections & Payments

Architect /engineer must conduct periodic inspections for compliance with specs, drawings & conditions of the contract

- Must be documented in writing & kept in CDBG project files

Before approving a progress payment, recipients must ensure that all work is completed as stated, that all labor requirements are being adhered to & that costs are eligible

Draw Requests

Payment requests should be reviewed by the recipient AND project administrator to also ensure that:

- Work completed is consistent with the CDBG application & ERR
- There are no substantial deviations in quantities that would require a change order
- Time of performance is on track with the contract period

Use the Construction Contract Draw Request Review checklist

Change Orders

Change orders should be kept to a minimum!

- Limit change orders with good specs & review of bids
- Require & use unit pricing from original bid
- Change orders should not be done at time of contract award unless all bidders given opportunity to submit info on changes
- Change orders should not be used to correct errors in bid docs

Change Orders

Typically initiated by the architect/engineer or project inspector

- Must be verified/recommended by architect/engineer, project manager or other technical support personnel
- Recipient MUST approve & authorize changes

All change orders must be submitted to GA for approval

- Use the Change Order Transmittal Form (C-2)
 - Include prices AND quantities AND funding sources
 - Justification & cost reasonableness
 - Recommendation from A/E
 - Revised/updated Section 102 Disclosure form
- Do not execute the change order prior to GA approval -- Not complying could result in disallowed costs

Restitution

If underpayments to employees, contractor must make restitution

- Recipient notifies the prime contractor as to computation of restitution
- Contractor must find & pay worker
- Contractor submits corrected payroll & statement of compliance, which recipient must review & approve

If workers not found:

- Contractor must deposit/escrow restitution & provide proof to grantee
- Grantee must attempt to locate employee (certified mail, etc.)

Reporting to DOL required if amount >\$1,000

Liquidated Damages

Contractors may also be liable for liquidated damages

- \$25/day per employee who worked overtime and was not paid overtime wages

CDBG funds may be withheld until contractor pays the liquidated damages

- If this occurs, contractors must be notified in writing and that they have right to appeal
- Appeals must be in writing, state the reason for liquidated damages and sent to DOL

Final Inspections

When construction work completed, contractor must certify completion of work & submit a final pay request

BEFORE work is accepted & payment made, recipient must verify that:

- All payrolls have been received, checked & any restitution made
- All other EEO, labor, Section 3 requirements have been met, incl. reporting
- All contract submissions have been received
- All claims & disputes have been resolved & a release of liens from the contractor & all subs has been provided
- As built plans have been filed (if applicable)
- Contract completed in accordance with approved application and ERR
- Beneficiaries served as proposed
- Files are complete

Contracts & Labor Reports

Various reports relating to contracting & labor required quarterly:

- Section 3
 - Labor hour tracking form – total labor hours should be tracked on spreadsheet
 - Section 3 Worker certification forms
 - Targeted Section 3 Worker certification forms
- Contract and Subcontract Activity Report
- Labor Standards Report

Knowledge Check #8

Labor Standards Include:

- A. Davis Bacon
- B. Contract Work Hours & Safety Standards Act
- C. Copeland Anti-Kickback Act
- D. Fair Labor Standards Act
- E. Section 3
- F. All of the above

DB wages include the total hourly wage rate paid plus fringe benefits.

- A. True
- B. False



Fair Housing, Equal Opportunity & Accessibility

Fair Housing, EO & Accessibility

Who?

- Rules apply to grantee regardless of whether housing project involved; some requirements also apply to specific activities

What?

- Myriad of laws, Executive Orders & regulations

When?

- Fair Housing & 504 plans up front; comply with & carry out activities throughout the grant

Fair Housing

In accordance with HUD regs, state must certify it will require grantees to affirmatively further fair housing

- State also must develop an Analysis of Impediments (AI), which identifies sources of discrimination & barriers to fair housing

State website: www.FairHousingSC.com

- Info on the causes & effects of discrimination
- Link to file a complaints
- Statewide resource for citizens & for partner agencies to share information

Compliance with Fair Housing Laws

CDBG recipients sign certification indicating they will comply, specifically:

- Recipient must not discriminate on the basis of race, ethnicity, color, religion, sex, national origin, familial status or disability

and

- Recipient must affirmatively further Fair Housing in the community

Recipient Responsibilities

To affirmatively further fair housing, CDBG grant recipients must:

- Develop Fair Housing Plan & submit at Start Up
 - AND -
- Affirmatively further Fair Housing throughout grant period, which means carrying out various kinds of activities

Affirmatively Furthering Fair Housing

HUD's expectations regarding fair housing are that activities will be aimed at:

- Improving integrated living patterns & overcoming historic patterns of segregation
- Reducing racial & ethnic concentrations of poverty
- Reducing disparities by protected classes in access to community assets (e.g., education, transit access & employment) & exposure to environmental health hazards & other stressors that harm quality of life
- Responding to disproportionate housing needs by protected class

Recipient Fair Housing Activities

Two types of Fair Housing Activities recipients must carry out-- Typical & Significant

Number & type of activities depends upon type of recipient/grant:

Recipient Type	Typical Activities	Significant Activities
New grantee	All	NA
Not had grant in past 3 yrs	All	NA
Regular grants	All	At least 1
Multiple grants	All	1 for each open grant & must be different

Fair Housing Activities



Typical Activities:

- Proclaim April as Fair Housing Month
- Display Fair Housing posters
- Create Fair Housing resource center
- Establish a resource file
- Discuss fair housing issues at public hearings
- Use HUD Equal Opportunity logo in advertising for CDBG-assisted housing activities (if applicable)

Recipient Fair Housing Activities



Significant activities may include these examples:

- Develop public information/education programs
- Develop pool of speakers
- Develop announcements, write articles
- Conduct meetings with relevant groups
- Conduct surveys or studies of Fair Housing issues
- Adopt local ordinance
- Examine local land use/zoning policies & other potential barriers to Fair Housing
- Provide funding for Fair Housing activities

Can also come up with other activities

Equal Opportunity

Recipients must provide equal opportunity in:

- Provision of services, facilities & improvements (program benefit)
- CDBG-related employment
- Procurement & contracting
- Housing

Keep records on beneficiaries to document compliance

Accessibility – Required Actions

Section 504 prohibits discrimination on the basis of disability in federally funded programs or activities

Develop & Practice Effective Communication Methods

- Special equipment & materials
- Use checklists to ensure compliance

Follow Non-discriminatory Employment Practices

- Includes providing “reasonable accommodations”

Conduct/Update Self-Evaluation

- Evaluate current policies & practices
- Use form provided & seek input

Accessibility – Required Actions (cont.)

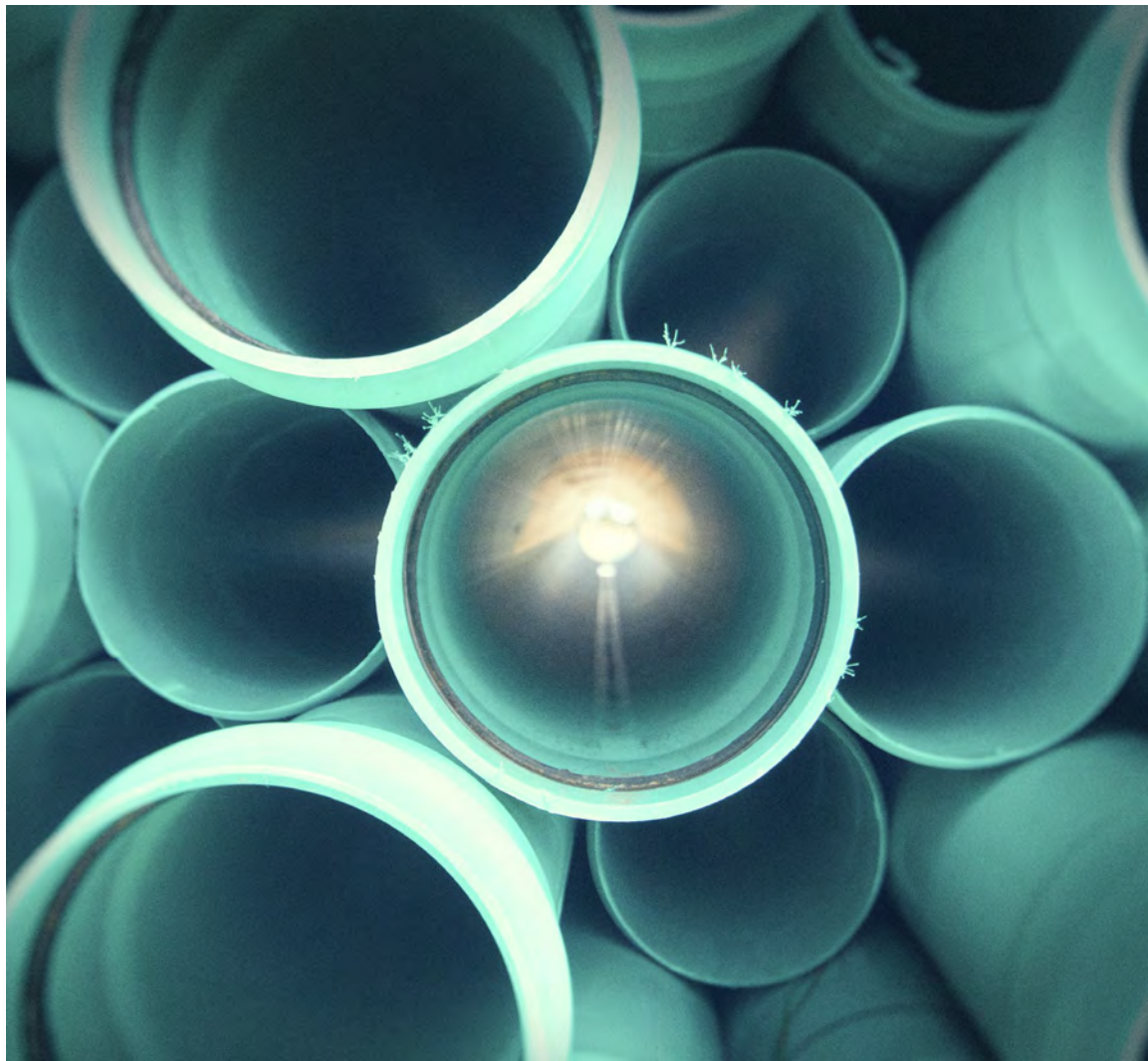
Develop/Update Transition Plan For Compliance

- ID physical obstacles in facilities
- Set forth schedule for addressing
- ID official responsible
- ID persons/groups who assisted in development of the plan

Keep Records Listed In The Manual

IF A Recipient Has More Than 15 Employees:

- Designate a Section 504 Coordinator & publish Notice of Non-discrimination
- Develop a 504 Grievance Procedure



Project-Specific Requirements

Limited Rehab Income Documentation

If the CDBG water/sewer connection costs less than \$3,500, must obtain a Self Certification of Income from the household prior to the connection being made

- Not the same as income info obtained for survey purposes!
- Use GA provided form

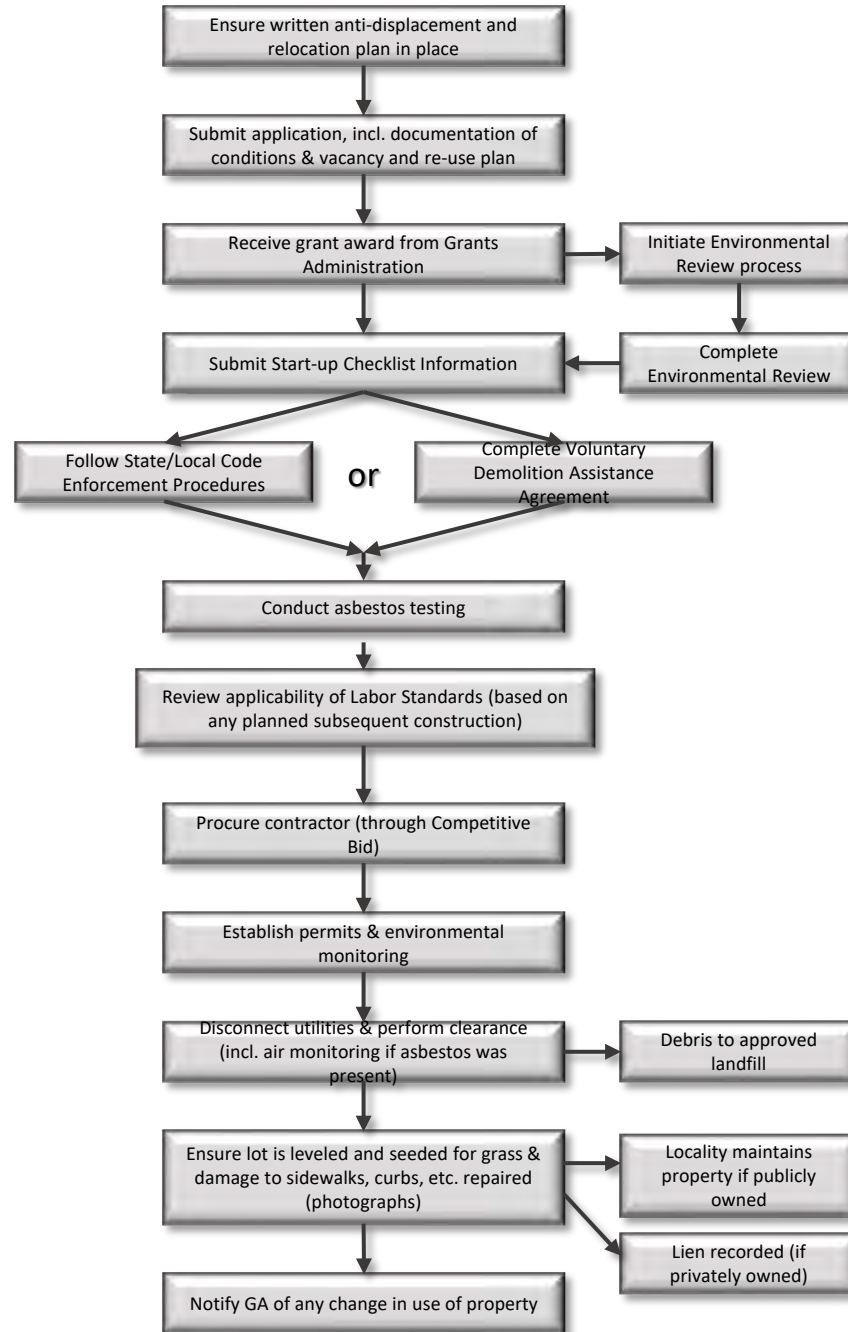
If CDBG assistance is greater than \$3,500/unit, 3rd party verification of income required

Documenting National Objective in Public Facilities

Unless funded as area benefit, income surveys of users must be taken for one year after opening to document LMI benefit



Demolition Implementation



Demo/Clearance Required Steps

Follow

- Follow state/local code enforcement procedures
 - If the structure is privately-owned & local gov't does not follow state/local code enforcement procedures, a voluntary demo assistance agreement is required prior to demo

Conduct

- Conduct asbestos testing

Determine

- Determine applicability of labor standards

Demo/Clearance Required Steps (cont.)

Procure

- Procure contractor (competitive bid)

Disconnect

- Disconnect utilities & perform clearance
 - Debris must go to approved landfill

Level & finish

- After demo, level & finish lot with grassing

Liens & Property Maintenance

If property is not publically owned, recordation of a lien to recoup demo costs will be required, unless:

- Demo is to address crime prevention in a targeted LMI neighborhood; and
- Total cost of CDBG demo (legal, air monitoring, lead/asbestos removal, demolition, disposal, etc.) does not exceed \$10,000 per property

If CDBG cost of demo for multiple properties owned by one landowner exceeds \$10,000, liens must be placed on each of the properties

Owner or locality maintains property --- inform GA if any change in use of the property

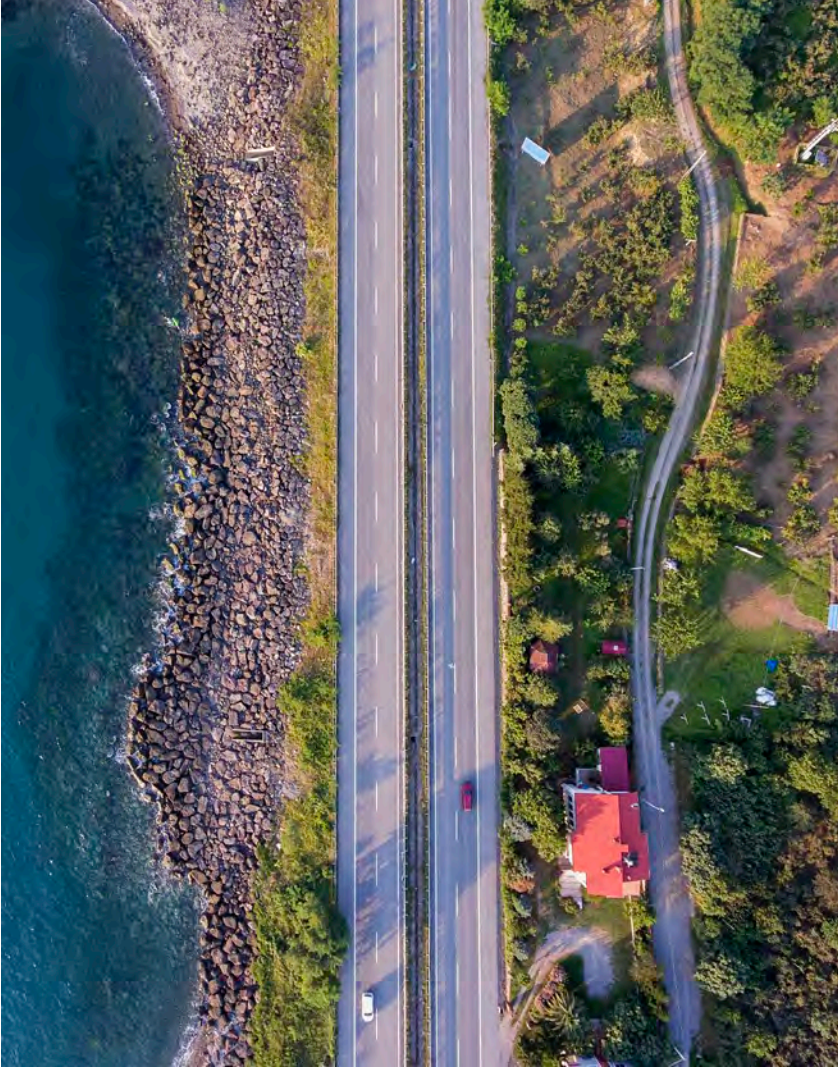
Knowledge Check #9

Records on beneficiaries must be kept to document compliance.

- A. True
- B. False

For public facilities projects, unless funded as area benefit, income surveys of users must be taken for ____ year(s) after opening to document LMI benefit:

- A. One
- B. Three
- C. Five



Other Compliance Items

Reporting

Quarterly Status Reports (Q-1) required

- 1st due first full quarter following grant award
- After that, due Jan 2, April 1, July 1 & Oct 1
- If not rec'd by 10th of month, payments may be stopped
- Keep reporting until project is closed out incl. projects pending documentation of compliance with national objectives

Include specific info on progress

Identify any problems or delays

Ask for TA if needed



Reporting

Other quarterly reporting items:

- Implementation Schedule (P-1) if off schedule
- Contract and Subcontract Activity Report (EO-1)
- Section 3 Report
- Labor Standards Report

Annual reporting

- EO-2 Annual Accomplishment Report for Direct Benefit Activities (due July for housing rehab, water/sewer connections & jobs activities)
- Program Income Report due Jan 5

Grant Timing & Performance

Recipients are expected to complete projects and close-out grants within 24 months

- GA may recapture unobligated CDBG \$ for grants that have not made significant progress within 6 months of award
- If recipients are found in significant non-compliance with project schedules, GA may terminate unobligated CDBG \$ or institute other sanctions
- Notify GA in writing when significant project delays have occurred & provide explanation

Grant Period Extensions

Required if project not closed out by end of grant period

- Also requires revised Implementation Schedule (P-1)
- Include detailed justification for extension, including all prior and new delays

Projects should be carried out in 24 mos.

- One 6-month extension generally allowed

Project Amendments

Amendment required if:

- Addition or deletion of activity
- Changed or new activity or funding source
- Activity not in area originally proposed
- Decrease or increase of more than 10% in number of beneficiaries

May be considered if project comes in under bid & grantee wants to add activities in the target area OR to expand the project area & there is adequate time

Budget Revisions

- Any change to general admin line item requires GA approval & back-up documentation
- Match requirement may increase, recipient will need to cover part of extra cost
- Use Budget Revision/Project Period Extension Form
 - Include revised Application Budget Page
 - Include information on any delays to date

Project Amendments

Use Project Amendment Request Form

- If the scope changes as a result of a budget revision, use the Project Amendment Form
- Must include an explanation of delays to date

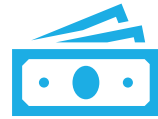
Hold Public Hearing in accordance with citizen participation requirements

Update ERR, if required

Grant Award Adjustments



Contact GA if an increase may be necessary

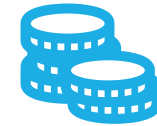


Award adjustment is a formal request for increase or reduction in grant funds



Increases must be For CDBG-eligible costs that are reasonable & necessary

Within scope of original project



Locality must contribute towards cost overruns

Grant Award Adjustments

Send letter from Grantee to GA

- Include Budget Revision/Project Period Extension Form, evidence of costs (bids), grantee \$ commitment
- Local match requirements are still applicable to any adjustment(s)
- Generally, only considered if max grant award not previously received and cost per unit is still reasonable



Record Keeping



Absolutely critical to establish good record keeping system

Documentation only way to show compliance & document progress



Maintain files for 3 years after State's close-out with HUD

State will notify when this occurs



See list of suggested files in the Implementation Manual & use various checklists provided

Monitoring

State is required to monitor its recipients to ensure:

- Activities carried out in timely manner
- Activities carried out in compliance
- Recipient has capacity to carry out activities

Monitoring incorporates periodic on-site visits & review of reports & information available to GA

Close-Out Process

Initiated upon receipt of final RFP documenting how all \$ spent to de-obligate grant

Parts to close-out process & package:

- Programmatic
 - GA may require documentation RE: national objective compliance (beneficiaries)

Hold public hearing in accordance with citizen participation requirements

45 days to complete & return package

If Single Audit required, submit within 9 months of end of fiscal year

Close-Out Letters

Four types of close-out letters a grantee might receive:

- Final close-out (no audit needed)
- Close-out pending receipt and approval of audit
- Close-out pending beneficiaries and receipt and approval of audit
- Close-out pending beneficiaries (no audit needed)



Wrap Up & Adjourn

