

STATE CLOSEOUT PROCEDURE & DEOBLIGATION OF FUNDS WITH HUD

Responsible personnel or unit: IEDA DR Division Coordinator

EDA will follow closeout procedures for recipient agreements as contracts are completed, as stated in the previous section Financial Procedures, lowagrants.gov Management System Process, Recipient Closeout Procedures. Upon the closeout of all recipient agreements, IEDA will begin the closeout procedure for the DR award. IEDA's role in the closeout procedure includes the following steps, or as determined by HUD closeout guidance.

- Expend all grant funds in accordance with needs or return funds
- Update accomplishments data to reflect all activities completed (or canceled)
- Update the performance measures for actual versus proposed
- Review final QPR
- Resolve all audit and monitoring issues
- Complete closeout certification and checklist as provided by HUD
- Complete closeout agreement

If a DR funded project results in return of funds during or after the HUD closeout procedure, the funds will be held by IEDA and treated as program income. The funds will be expended through IEDA's annual CDGB program prior to the expenditure of additional regular program funds.

STATE PROCUREMENT POLICY

Community Development Block Grant Disaster Recovery Procurement Policies and Procedures

2 CFR 200.317 provides that subrecipients of a state that is administering federal funds will follow sections 200.318 General procurement standards through 200.326 Contract provisions. However, 24 CFR 570.489(g), set out in full below, enables states that administer Community Development Block Grant funds to adopt procurement standards other than those set out in 2 CFR Part 200 for units of local government that are subrecipients of CDBG funds.

24 CFR 570.489 (g) Procurement: When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

The regulation also allows the State to follow its own procurement policies and procedures to govern state-initiated procurement. The Code of Iowa 11.117 & 11.118 pertain to procurement standards by state agencies. Specifically, IAC 11.117.1(2) and 11.118.2(8A) states that Department and agencies shall follow procurement policies regardless of the funding source supporting the procurement (if allowable). Iowa Code 11.117 and 11.118 are found in the Appendix J to this Policy and Procedure Manual.

The State of Iowa, in its administration of the CDBG-DR grant, hereby establishes the following procurement standards for subrecipients of CDBG-DR funding that are units of local government.

IEDA Project Managers are responsible for compliance of sub-recipients to the procurement policy. IEDA project managers are listed on page 5 of this policy and procedure manual.

Procurement Standards

General (Replaces 2 CFR 200.318)

Subrecipients of the CDBG-DR program must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

The subrecipient alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the subrecipient of any contractual responsibilities under its contracts.

Responsible unit: IEDA disaster project managers verified via monitoring.

Conflicts of interest in awarding contracts (Replaces 2 CFR 200.318)

The subrecipient must maintain written standards of conduct covering and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

If the subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the

subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

IEDA may terminate contracts with any CDBG-DR subrecipient that violates this policy and may require full repayment of funds issued to the subrecipient.

Responsible unit: IEDA disaster project managers verified via monitoring.

Best Cost (Replaces 2 CFR 200.318)

The subrecipient's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. The subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor.

Responsible Contractors (Replaces 2 CFR 200.318)

The subrecipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Awards must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

The subrecipient must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following:

1. rationale for the method of procurement
2. selection of contract type
3. contractor selection or rejection
4. the basis for the contract price.

responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor. SAM verification checked by IEDA Audit Coordinator via submitted IowaGrants form.

Competition (Replaces 2 CFR 200.319)

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals shall be excluded from competing for such procurements. IEDA will consider requests for waivers of this provision. The subrecipient must make a sufficient showing that the number of contractors that provide the goods or services is insufficient that it is necessary to not exclude contractors that developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals.

Examples restrictions on competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- (2) Requiring unnecessary experience and excessive bonding;
- (3) Noncompetitive pricing practices between firms or between affiliated companies;
- (4) Noncompetitive contracts to consultants that are on retainer contracts;
- (5) Organizational conflicts of interest;
- (6) Specifying only a "brand name" product instead of allowing "an equivalent" product to be offered and describing the performance or other relevant requirements of the procurement; and
- (7) Any arbitrary action in the procurement process.

The subrecipient must conduct procurement in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal or State of Iowa law expressly mandates or encourages geographic preference. Nothing in this section preempts state licensing laws.

When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion, provided that an appropriate number of qualified firms remain, given the nature and size of the project, to compete for the contract.

The subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided. When it is impractical or not reasonably feasible to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
Responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor

Types of Procurement (Replaces 2 CFR 200.320)(based on Iowa Code section 11.118)

1. **Small:** Estimated annual value does not exceed \$5,000 and does not exceed \$15,000 for multiyear contracts: For supplies and services only. The subrecipient does not need to solicit competitive quotations if the subrecipient considers the price to be reasonable. To the extent practicable, the subrecipient must distribute such procurement equitably among qualified suppliers.
2. **Simple:** Estimated annual value exceeds \$5,000 but less than \$50,000 per year and does not exceed \$150,000 for multiyear contracts: For non-engineering and architectural services and supplies only. The subrecipient may use an informal competitive selection process to engage a service provider. Informal selection means price or rate quotations must be obtained from an adequate number of qualified sources. The subrecipient may contact the prospective service providers in person, by telephone, fax, email or letter. The subrecipient should solicit at least three prospective service providers. The sub recipient must justify, to IEDA’s satisfaction, contacting fewer than three service providers. The justification shall be included in the contract file.
3. **Professional:** Estimated annual value exceeds \$50,000 per year and exceeds \$150,000 for multiyear contracts: For supplies and services and ALL engineering and architectural services, a subrecipient shall use a formal *competitive selection* process to procure the goods or services.
4. **Sealed bids:** (formal advertising): The sealed bid method is the preferred method for procuring construction. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. A complete, adequate, and realistic specification or purchase description will be developed before bidding.

The following requirements apply:

1. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised (not required for nonprofit entities);
2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
3. All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;

4. The subrecipient shall enter into a firm fixed price contract award with the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
5. Any or all bids may be rejected if there is a sound documented reason.

Competitive Selection Process: The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when a sealed bidding process is not appropriate. If this method is used, the following requirements apply:

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

Noncompetitive proposals: Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source. This type of procurement is referred to as sole-source procurement;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate. This type of procurement is referred to as single-source procurement.

Responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor

Targeted Small Businesses – Minority, Disabled, and Woman Owned Businesses (Replaces 2 CFR 200.321)

The subrecipient must take all necessary affirmative steps to ensure that minority businesses, women's business enterprises, businesses owned by disabled persons, and labor surplus area firms are used when possible.

Affirmative steps must include:

- (1) Placing qualified small and minority businesses, small women's business enterprises, and small businesses owned by disabled persons on solicitation lists. Link to a directory of Targeted Small Businesses in Iowa:
<https://iowaeda.microsoftcrmportals.com/tsb-search/>;
- (2) Ensuring that Targeted Small Businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Targeted Small Businesses;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by Targeted Small Businesses;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration, the Minority Business Development Agency of the Department of Commerce and the Iowa Economic Development Targeted Small Business Program <https://www.iowaeconomicdevelopment.com/tsb>; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Responsible unit: IEDA disaster project managers verified via monitoring

Recycled Content and Products (Replaces 2 CFR 200.322)

When appropriate, specifications shall include requirements for the use of recovered materials and products.

The specifications shall not restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the subrecipient seeking the product can document that the use of recovered materials will impede the intended use of the product.

Responsible unit: IEDA disaster project managers verified via monitoring.

Cost Analysis and Contract Price (Replaces 2 CFR 200.323)

The subrecipient must perform a cost or price analysis in connection with every procurement action in excess of the small, simple and professional acquisition thresholds, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the subrecipient must make independent estimates before receiving bids or proposals.

The subrecipient must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the subrecipient under 2 CFR 200.402 - 406.

The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

Responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor.

Review of Procurement Documents and Procurement System (Replaces 2 CFR 200.324)

The subrecipient must make available upon request pre-procurement review; procurement documents, such as requests for proposals or invitations for bids; or independent cost estimates, when:

(1) Requested by IEDA;

(2) The procurement is expected to exceed the small, simple and professional acquisition thresholds and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

- (3) The procurement, which is expected to exceed the small, simple and professional acquisition thresholds, specifies a “brand name” product;

IEDA Certification: The subrecipient may request that IEDA certify that its procurement system meets these standards.

Self-certification: The subrecipient may self-certify its procurement system. Such self-certification shall not limit IEDA’s right to review and survey the system. If a subrecipient self-certifies its procurement system, the IEDA may rely on written assurances from the subrecipient that it is complying with these standards. The subrecipient must cite specific policies, procedures, regulations, or standards as compliant with these requirements and make its system available for review.

Responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor

Bonding (Replaces 2 CFR 200.325)

For construction or facility improvement contracts or subcontracts for public improvement projects and multi-family residential buildings, and new housing construction the minimum requirements shall be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to ensure that the contractor will pay as required by law all persons supplying labor and material in the execution of the work provided for in the contract.

The subrecipient may petition IEDA to accept its bonding policy, provided that IEDA has made a determination that the Federal interest is adequately protected. For housing, the recipient’s city attorney has certified that public improvements referenced in Iowa Code Section 573.7 does not pertain to housing construction.

Responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor

Contract Provisions (Replaces 2 CFR 200.326)

The subrecipient’s contracts must contain the applicable provisions set out in Appendix I of this procurement policy.

Responsible unit: IEDA disaster project managers verified via monitoring and/or state auditor

**Community Development Block Grant Disaster Recovery Recipients
Procurement Policy**

Appendix I: Required Contract Provisions

All project contracts shall contain at a minimum the following provisions, as appropriate.

ALL CONTRACTS

1. Access and Maintenance of Records

Records relating to the contract, including supporting documentation, shall be retained for the greater of three years from IEDA's closeout of the program year with HUD.

At any time during normal business hours and as frequently as is deemed necessary, the contractor shall make available to the Iowa Economic Development Authority, the State Auditor, the General Accounting Office, and the Department of Housing and Urban Development, for their examination, all of its records pertaining to all matters covered by this contract and permit these agencies to audit, examine, make excerpts or transcripts from such records, contract, invoices, payrolls, personnel records, conditions of employment, and all other matters covered by this contract.

2. Civil Rights

The Contractor must comply with the following laws and regulations:

- Title VI of the Civil Rights Act of 1964 (P.L. 88-352).
States that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color, or national origin.
- Title VIII of the Civil Rights Act of 1968 (includes affirmatively furthering fair housing requirement), as amended.
- Federal Executive Order 11063, as amended by Executive Order 12259
Equal Opportunity Housing
- Iowa Civil Rights Act of 1965.
This Act mirrors the Federal Civil Rights Act.
- Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309).
Provides that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination on the basis of race, color, national origin, sex, age, or handicap under any program or activity funded in part or in whole under Title I of the Act.
- The Age Discrimination Act of 1975, as amended (42 U.S.C. 1601 et seq.)
Provides that no person on the basis of age, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, as amended (P.L. 93-112, 29 U.S.C. 794).
Provides that no otherwise qualified individual shall solely by reason of his/her handicap be excluded from participation in, be denied the benefits of, or be discriminated against under any program or activity receiving Federal financial assistance.
- Americans with Disabilities Act (P.L. 101-336, 42 U.S.C. 12101-12213)
Provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very

low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

3. Termination Clause

All contracts utilizing CDBG funds must contain a termination clause that specifies the following:

- Under what conditions the clause may be imposed.
- The form the termination notice must take (e.g., certified letter).
- The time frame required between the notice of termination and its effective date.
- The method used to compute the final payment(s) to the contractor.

4. Certification regarding government-wide restriction on lobbying.

All contracts utilizing CDBG funds must contain the following certification concerning restriction of lobbying:

"The Recipient certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Federal Lobbying" in accordance with its instruction.
- iii. The Recipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

5. Lead-Safe Housing Regulations (As applicable)

24 CFR Part 35 et. al.

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Properties and Housing Receiving Federal Assistance, Final Rule

6. Recycled Materials

When appropriate, specifications shall include requirements for the use of recovered materials and products.

The specifications shall not restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the subrecipient seeking the product can document that the use of recovered materials will impede the intended use of the product.

ALL CONTRACTS IN EXCESS OF \$10,000

Federal Executive Orders 11246 and 11375:

Provides that no one be discriminated in employment.

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of the Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's non-compliance with the nondiscrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ALL CONTRACTS IN EXCESS OF \$100,000

Clean Air and Water Acts:

- Section 306 of the Clean Air Acts (42 U.S.C. 1857(h)).
- Section 508 of the Clean Water Act (33 U.S.C. 1368).
- Executive Order 11738. *Providing administration of the Clean Air and Water Acts*

Clean Air and Water Acts - required clauses:

This clause is required in all third party contracts involving projects subject to the Clean Air Act (42 U.S.C. 1857 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and the regulations of the Environmental Protection Agency with respect to 40 CFR Part 15, as amended. It should also be mentioned in the bid document.

During the performance of this contract, the CONTRACTOR agrees as follows:

- (1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the Excluded Party Listing System pursuant to 40 CFR 32.
- (2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- (3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Excluded Party Listing System.
- (4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.

ALL CONSTRUCTION CONTRACTS IN EXCESS OF \$2,000

Federal Labor Standards

In addition to the preceding provisions, all construction contracts in excess of \$2,000 must include the Federal Labor Standards Provisions (verbatim) found in Appendix 2 under Required Contract Provisions. (Housing rehabilitation contracts of less than 8 units are excluded from this requirement.)

Federal Labor Standards Provisions (verbatim) found in Appendix 2, including:

- Davis-Bacon and Related Acts
- Contract Work Hours and Safety Standard Act
- Copeland Anti-kickback Act

SECTION 3

Responsible Personnel or Unit: IEDA Section 3 Coordinator (Steven Stransky), Section 3 Technical Data Manager (Don Dursky), Technical Project Managers (Makaria Kirianov, Joe Bohlke, Jeff Geerts), & Section 3 Clerical Support (Hayley Crozier).

Overview

This chapter describes Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. 1701u and 24 CFR Part 75] and its applicability to HUD-funded projects.

Section 3 is HUD's legislative directive for ensuring that economic opportunities resulting from HUD financial assistance, including employment, job training, and contracting are, to the greatest extent feasible, directed to low- and very low-income persons. The regulations seek to ensure that public housing residents and low- and very low- income persons, and the businesses that employ these individuals, are notified about the expenditure of HUD funds in their community and encouraged to seek opportunities, if created.

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

- 1) The worker's income for the previous or annualized calendar year is below the applicable income limit established by HUD;
- 2) The worker is employed by a Section 3 business concern; or
- 3) The worker is a YouthBuild participant.

A **Targeted Section 3 Worker** is defined as a Section 3 worker who fits one of the following categories:

- 1) a worker employed by a Section 3 business concern; or
- 2) a worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:
 - a. Living within one mile of the project, or if fewer than 5,000 people live within one mile of the project, within a circle centered on the project that is sufficient to encompass a population of 5,000 people; or
 - b. a YouthBuild participant

A **Section 3 Business Concern** is defined as a business in which:

- 1) At least 51% owned by low- or very low-income persons;
- 2) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- 3) At least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low-

or very low-income residents in connection with projects and activities in their neighborhoods.

However, recipients are not required to hire or enter into contracts with Section 3 workers or businesses simply to meet the Section 3 goals—anyone selected for contracting or employment opportunities must meet the qualifications for the job/contract being sought.

When Section 3 Applies

Section 3 applies to projects/activities involving housing (construction, demolition, rehabilitation) or other public construction—i.e. roads, sewers, community centers, etc. Section 3 applies to HUD-funded projects when:

- The recipient has contracted with subcontractors for services, housing and/or public construction activities and the eligible HUD-funded assistance exceeds \$200,000.
- The recipient has contracted with subcontractors for HUD Lead Hazard Control and Healthy Homes programs exceeding \$100,000.

Examples of HUD assistance in which Section 3 applies include but are not limited to the following:

- Community Development Block Grants (CDBG)
- HOME Investment Partnership Assistance (HOME)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Emergency Solutions Grants (ESG)

Even if HUD assistance is only a portion of the project cost, Section 3 requirements apply to the entire project once the assistance meets the threshold. Section 3 requirements do not apply to materials-only contracts.

Compliance with Section 3

Each recipient has the responsibility to comply with Section 3 in its own operations, and ensure compliance in the operations of its contractors/subcontractors. This responsibility includes but may not be necessarily limited to:

- (a) Implementing procedures designed to notify Section 3 residents about training and employment opportunities
- (b) Notifying potential contractors for Section 3 covered projects of the requirements of this part, and incorporating compliance with Section 3 language in all solicitations and contracts.
- (c) Facilitating the training and employment of Section 3 workers and the award of contracts to Section 3 businesses
- (d) Estimating the number of labor hours utilized per project, and the projected number of labor hours to be worked by Section 3 workers.
- (e) Assisting and actively cooperating with HUD in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 75.

- (f) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

Procurement & Bid Documents

HUD-funded assistance recipients must include Section 3 language in all procurement and bid documents. The required language to be included in these documents can be found in the CDBG Management Guide. In addition to the required language, recipients must include the “Intent to Comply with Section 3” form with all RFPs.

Contractors responding to bids must submit with their bid documents a signed copy of the “Intent to Comply with Section 3” form. This form will be used to collect information that recipients should use when reviewing responses to ensure compliance with Section 3 requirements.

Selecting Contractors with Section 3

In addition to certifying new employees’ level of income, Section 3 requires recipients make an effort to the “greatest extent feasible” to facilitate contracts to Section 3 businesses. By “greatest extent feasible,” HUD means that recipients carrying out Section 3 projects should make every effort within their disposal to meet the regulatory requirements. This may mean going a step beyond normal notification procedures for employment and contracting procedures by developing strategies that will specifically target Section 3 workers and businesses for these types of economic opportunities.

While Iowa procurement procedures require recipients select the lowest responsible bidder when under a competitive sealed bid process, recipients may give preference to Section 3 businesses as a means of evaluation criteria for professional services contracts where proposals are solicited.

In order to give preference to Section 3 businesses during the contract awarding process, recipients must ask the contractor to certify whether or not they are a Section 3 business when soliciting for proposals. The “Intent to Comply With Section 3” form that will be provided with procurement documents and submitted by bidders will capture this information.

Remember, to be considered a Section 3 business, the business must meet the definition by satisfying one of the following requirements:

- 1) It is at least 51 percent owned and controlled by low- or very low-income persons;
- 2) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
- 3) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

Section 3 businesses must be given priority in contracting for work, to the greatest extent feasible. Recipients should use the following order of priority:

- 1st: Section 3 business concerns that provide economic opportunities for section 3 workers residing within the service area or neighborhood in which the section 3 project is located; and
- 2nd: Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD

Youthbuild programs (category 2 businesses);

3rd: Other section 3 business concerns.

It is important to note that Section 3 requirements at 24 CFR 75 provides only preference for contracts and subcontracts to Section 3 businesses; Eligible businesses must demonstrate that they are responsible and are able to perform successfully under the terms and conditions of proposed contracts.

Hiring & Training with Section 3

Recipients and their contractors/subcontractors are required to give hiring and training preference to Section 3 workers, to the greatest extent feasible, when employment and training opportunities result from a HUD-funded project.

When a recipient or contractor/subcontractor has identified that a new employment or training opportunity will result from the normal completion of the HUD-funded construction and/or rehabilitation projects, the HUD-funding grant administrator should work with that entity to assist with advertising the opportunity to Section 3 residents.

Notices of employment/training opportunities must be sent to the Iowa Chapter of the National Association of Housing and Redevelopment Officials (NAHRO). Notices should be sent to the NAHRO Chapter President. Contact information can be found here:

<http://www.ianahro.org/contactus.cfm>

NAHRO will share the notice with public housing authorities, in an effort to help reach Section 3 businesses. A sample notice for employment/training opportunities is provided in Appendix 8 of the CDBG Management Guide.

Notices of employment/training opportunities must also be posted to HUD's Opportunity Portal (<https://hudapps.hud.gov/OpportunityPortal>). This portal may also be used by businesses seeking Section 3 workers for open employment opportunities.

Remember, recipients are required to document affirmative steps made to meet Section 3 benchmarks when Section 3 requirements are triggered.

When giving hiring and training preference to Section 3 workers, recipients and contractor/subcontractors should use the following order of priority:

- 1st: Section 3 workers residing in the service area or neighborhood in which the section 3 project is located.
- 2nd: Participants in HUD Youthbuild programs
- 3rd: Other section 3 residents.

Section 3 Benchmarks

Federal regulations establish numerical benchmarks for employment/training for Section 3 residents and contracts to Section 3 businesses.

Recipients, their contractors, and subcontractors will be considered to have complied with Section 3 requirements when:

Twenty five percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers, as defined herein; and

1. At least five percent of the total number of labor hours worked by all workers are Targeted Section 3 workers

A recipient that has not met the numerical goals must demonstrate that it complied with the order of priority outlined herein and explain why it was not feasible to meet the established numerical goals set forth in this section. Please refer to “Reporting requirements/ reporting forms” for more information.

Note: It is important to document efforts made to comply with Section 3. Recipient files should contain any memos, correspondence, advertisements, etc. illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). IEDA staff will review this documentation during the project on-site monitoring visit.

Penalties for Non-Compliance

Recipients of HUD funding have the responsibility of complying with Section 3 regulations and ensuring compliance among its contractors and subcontractors. Federal code established penalties for Section 3 violations and non-compliance. (See 75.33(c))

Communities and contractors found in noncompliance with Section 3 requirements may result in:

- Sanctions from HUD
- Termination of contract for HUD funds
- Debarment or suspension from future HUD assisted contracts

Non-compliance with Section 3 can impact a community’s ability to receive HUD funding in the future. The State of Iowa may not enter into a contract with any entity when the state has knowledge that the entity has been found in violation of the Section 3 regulations.

Reporting Requirements & Forms

To report Section 3 data, recipients must analyze the number of labor hours worked on a Section 3 project, how many labor hours were worked by Section 3 Workers, and how many labor hours were worked by Targeted Section 3 Workers. Even if no labor hours were worked by Section 3 or Targeted Section 3 workers, this information must be reported to IEDA | IFA.

For all Section 3 projects employing Section 3 workers or Targeted Section 3 workers, the recipient/contractor must maintain self-certification forms indicating the Section 3 status of the worker. If the worker’s household income is less than 80% of area median income, they are considered a Section 3 worker. Income limits by County are available under “Recipient Income Requirements and Census Information” on IEDA’s CDBG Management Guide website: <https://www.iowaeda.com/cdbg/management-guide/>

Other certifications of Section 3 workers include certification from a PHA that the worker is a participant in one of its programs; certification from an employer that the worker’s income from the employer is within the income limits if annualized; certification from an employer that the worker is employed by a Section 3 business concern. Please use the appropriate Certification Forms, found in the appendix to this chapter.

To report Section 3 data to IEDA, recipients will report at project closeout through lowagrants.gov. This will be due by December 31st of each year. As part of this report, recipients will need to report Section 3 accomplishments and/or provide a detailed explanation of why Section 3 goals were not met. Such an explanation should discuss qualitative efforts taken to comply with Section 3 and any impediments the recipient experienced in meeting Section 3 goals.

Section 3 Business Registry/Opportunity Portal

The Section 3 Business Registry and Opportunity Portal are two online registries that connect residents to training and employment opportunities and businesses to contracting opportunities. Businesses who self-certify that they meet one of the regulatory definitions of a Section 3 business will be included in a searchable online database. The database can be used by agencies that receive HUD funds, developers, contractors, and others to facilitate the award of covered construction and non-construction contracts to Section 3 businesses.

Section 3 workers are encouraged to use the Opportunity Portal to identify businesses that may have HUD- funded employment opportunities available. Section 3 businesses are encouraged to post their training, employment and contracting opportunities to the Opportunity Portal.

HUD-funding recipients should utilize HUD's Section 3 Business Registry and Opportunity Portal to find Section 3 businesses that may be able to participate in the HUD-funded project. Recipients can search through HUD's Section 3 registry here: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness>

Businesses may register as a Section 3 Business through HUD's website here: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/RegisterBusiness>

The Opportunity Portal can be accessed through HUD's website here: <https://hudapps.hud.gov/OpportunityPortal/>

It is important to note that Section 3 businesses and Section 3 workers are not entitled to receive contracts or employment opportunities simply by being listed in HUD's Section 3 Business Registry database or Opportunity Portal.

Additional Section 3 Resources

More information, resources, and templates can be found on the IEDA CDBG Management Guide:

[CDBG Management Guide | Iowa Economic Development Authority \(iowaeda.com\)](https://www.iowaeda.com/CDBG-Management-Guide)

More information and resources on Section 3 can be found on HUD's Section 3 website here:

[Section 3 - Economic Opportunities | HUD.gov / U.S. Department of Housing and Urban Development \(HUD\)](https://www.hud.gov/economic-opportunities)

PROCEDURES TO MAINTAIN A COMPREHENSIVE WEBSITE

Responsible personnel or unit: See below

The IEDA will develop and maintain a comprehensive website dedicated to DR activities assisted with these funds per P.L. 113-2 and applicable Federal Register Notices.

IEDA's Communications Department will maintain the DR Website. The Website will be updated monthly to post any new information on the website including DRGR Action Plans and QPRs are submitted and approved by HUD, updated guidelines, awards. Action Plan Amendments will be posted within 15-days of HUD approval.

The DR website will contain the following links and responsible personnel:

- DR Action Plan/Application - Disaster Recovery Team Leader
- All Action Plan Amendments – both substantial and non-substantial - Disaster Recovery Team Leader
- DRGR Action Plan – Closeout Coordinator
- DRGR Quarterly Performance Reports (QPRs) – Closeout Coordinator
- Citizen Participation Requirements – Compliance Team Leader
- All contracts IEDA procures directly – Contract Compliance Manager
- Summary of all contracts procured by sub recipients – Closeout Coordinator
- Program Guidelines and Awards – Disaster Recovery Team Leader

DR Website link: <http://www.iowaeconomicdevelopment.com/Community/2019 DR> (to be created)