

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**  
**AND**  
**THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**TO**  
**IMPLEMENT THE NATIONAL DISASTER RESILIENCE (NDR)**  
**PROGRAM AWARD**  
**UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER**  
**RECOVERY (CDBG-DR) PROGRAM**

**I. PARTIES AND PURPOSE**

**WHEREAS**, this Memorandum of Understanding (“MOU” or “Agreement”) constitutes an agreement between the New Jersey Department of Community Affairs (“DCA” or “Grantee”) and the New Jersey Department of Environmental Protection (“DEP” or “Department”) and collectively referred to as “the Parties”; and

**WHEREAS**, in the aftermath of Superstorm Sandy (“Sandy”), the United States Congress, through the Disaster Relief Appropriations Act of 2013, Public Law 113-2, appropriated nearly sixteen billion dollars (\$16,000,000,000) to the U.S. Department of Housing and Urban Development (“HUD”) to be allocated as disaster recovery community development block grants among States, including the State of New Jersey, and other eligible government entities to provide crucial funding for recovery efforts involving housing, economic development, infrastructure and the prevention of further damage to affected areas; and

**WHEREAS**, the State of New Jersey (the “State”) submitted to HUD and HUD on April 29, 2013 approved a “Community Development Block Grant-Disaster Recovery Action Plan” (“Action Plan”), and later approved ensuing Action Plan Amendments detailing a range of programs to address New Jersey’s substantial unmet needs and recovery relief after Sandy; and

**WHEREAS**, based on the approved Action Plan and subsequent Action Plan Amendments, the State has received HUD Community Development Block Grant-Disaster Recovery (“CDBG-DR”) funding for Sandy disaster recovery and other eligible events in calendar years 2011, 2012, and 2013 and is a grantee for such purposes; and

**WHEREAS**, pursuant to 24 CFR 570.501, DCA has been designated to administer the State’s CDBG-DR Program, which is subject to the Federal statutes and regulations governing CDBG

grants, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD; and

**WHEREAS**, consistent with the State's status as a grantee of Sandy disaster recovery funding, DCA is referred to as "Grantee" under this MOU; and

**WHEREAS**, pursuant to FR-5696-N-01 (March 5, 2013) the State received a first allocation of \$1,829,520,000; pursuant to FR-5696-N-06 (November 18, 2013) the State received a second allocation of \$1,463,000,000; and pursuant to FR-5695-N-11 (October 16, 2014) the State received a third allocation of \$501,909,000 and an additional \$380,000,000 Rebuild by Design (RBD) allocation.

**WHEREAS**, as part of the Federal government's Sandy recovery efforts and using CDBG-DR funds, HUD established the National Disaster Resilience (NDR) Competition that was designed to promote risk assessment/planning and implementation of innovative resilience projects to better prepare communities for future storms and other extreme events and made \$1 billion available to communities struck by natural disasters in recent years; and

**WHEREAS**, pursuant to FR-5936-N-01 (June 7, 2016), HUD awarded the State \$15,000,000 as part of the NDR Competition ("Grant Funds"); and

**WHEREAS**, the purpose of this MOU, including the Appendices hereto, is to set forth the terms and conditions by which DCA will provide DEP with CDBG-DR funding for DEP to implement the NDR Program given DEP's long and successful history of implementing such programs; and

**WHEREAS**, implementation of the NDR Program shall be undertaken in compliance with Federal, State and local laws and regulations as well as the requirements of the CDBG-DR Program and Federal cross-cutting requirements including the National Environmental Policy Act of 1969 ("NEPA"), as amended; and

**WHEREAS**, activities undertaken under this MOU and benefits determined for recipients shall not duplicate programs or benefits provided to the State of New Jersey through other Federal recovery programs, private benefits or benefits gained from non-profit entities, including those run by Department of Homeland Security and the Federal Emergency Management Administration ("FEMA"), and will be coordinated with such resources; and

**WHEREAS**, the Parties wish to set forth their mutual understanding regarding their respective roles and responsibilities in implementing the NDR Program.

**NOW, THEREFORE**, in consideration of the principles, assurances and promises contained herein, DCA and DEP hereby agree on the following terms and conditions to govern the funding, administration, implementation and oversight of the NDR Program.

## II. DEFINITIONS AND LIST OF APPENDICES

### A. Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this MOU:

“**Act**” means the Disaster Relief Appropriations Act of 2013 (PL 113-2).

“**Activity**” means any project, program or portion thereof that: (1) receives Grant Funding under this MOU; (2) is CDBG-eligible or has received a waiver (See 78 FR 14329, March 5, 2013 for an explanation of waivers); (3) meets a “national objective” as set forth in 24 CFR 570.482; and (4) addresses a direct or indirect impact from Sandy.

“**Activity Delivery Costs**” (also referred to as Program Delivery Costs or “ADCs”) means the actual delivery costs, including staff and overhead costs, directly related to carrying out activities under 24 CFR 570.201 through Part 570.204; these costs are considered part of such activities and are specifically excluded from the definition of administrative costs set forth in 24 CFR 570.206. All ADCs are allocable to a CDBG activity, including direct and indirect costs integral to the delivery of the final CDBG-assisted activity.

“**Action Plan**” means the New Jersey Department of Community Affairs’ Community Development Block Grant Disaster Recovery Action Plan, as amended, under the Disaster Relief Appropriations Act of 2013 and Title I of the Housing and Community Development Act of 1974 (“HCD Act”), as approved by HUD.

“**Administrative Expenses**” means those costs as authorized by 24 CFR 570.206, and 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), Subpart E, Cost Principles. Administrative costs are not directly related to a specific activity.

“**Agreement**” means this Memorandum of Understanding (“MOU”) entered into and between DCA and DEP.

“**Allowable Costs**” (also referred to as “Eligible Costs” or “Eligible Expenses”) means costs that are acceptable under 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards), Subpart E, Cost Principles, all other applicable Federal regulations, and approved as part of an activity in this Agreement or DEP agreements related thereto.

“**Carrying Charges**” means costs included in administrative costs pursuant to 24 CFR 570.206 related to Program planning and execution but does not include staff or overhead costs.

“**Contractor**” means a Contractor paid with CDBG funds in return for a specific service (e.g., construction management services, design, feasibility consultant, etc.). A Contractor is a third-party firm the Grantee or DEP contracts with through a formal procurement process to perform specific functions; DEP is not a Contractor.

“**Draw Down**” means the process of requesting and receiving CDBG funds.

**“Duplication of Benefits”** means financial assistance under any other program or from insurance or any other source for any part of a loss for which an otherwise eligible applicant or Subrecipient has received assistance through CDBG funds for programmatic activities.

**“Eligible Activity”** means any project, program or portion thereof that receives financial assistance under this Agreement consistent with the State’s Action Plan, Action Plan Amendments, and Federal Register Notices applicable to Superstorm Sandy allocations and otherwise compliant with applicable Federal laws and regulations, and therefore is eligible to receive CDBG-DR funding.

**“Environmental Requirements”** means the requirements described in 24 CFR Part 58.

**“Environmental Studies”** means all eligible activities necessary to produce an “environmental document,” as that term is defined at 40 CFR 1508.10, or to comply with the requirements of 24 CFR Part 58.

**“Grant Funding Sub-Recipient Agreement”** means the agreement executed between DEP and an eligible public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under 24 CFR 570.201(o) for purposes of implementing approved Action Plan projects as set forth in this MOU.

**“Grantee”** means the New Jersey DCA. Even though DCA and DEP are divisions within the same legal entity, because DCA controls the distribution of CDBG-DR funds, it shall be construed as the Grantee for purposes of this MOU.

**“Indirect Costs”** means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective. See 2 CFR 200.416.

**“National Objectives”** means the following policy objectives of Title I of the Housing and Community Development Act of 1974 (the HCD Act), of which at least one (1) must be approved by HUD for application and therein complied with in using CDBG-DR funds to carry out CDBG-DR funded programs: (a) urgent need, such that the activity addresses existing conditions that pose a serious and immediate threat to the health or welfare of the community in the aftermath of a disaster and other financial resources are not available to meet such needs; (b) benefit to low- and moderate-income persons, either directly, or to a geographical area with a population concentration of low- and moderate- income persons that HUD determines would satisfy the aims of the HCD Act; or (c) to prevent or eliminate slums or blight.

**“Program”** means the designated NDR projects, as approved by HUD in the New Jersey Department of Community Affairs’ Community Development Block Grant Disaster Recovery Action Plan Amendment Number Twelve and any related ensuing amendments thereto.

**“Program Costs”** means costs to accomplish the NDR activity;

**“Subcontractor”** means an individual, business, or entity that a Contractor retains pursuant to an agreement to carry out activities or services related to CDBG projects.

**“Subrecipient”** means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a

beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

## **B. List of Appendices**

All Appendices are attached hereto and made a part hereof:

**Appendix A: Statement of Assurances**

**Appendix B: Disaster Recovery Grant Reporting System**

**Appendix C: Performance Standards and Guarantees**

**Appendix D: DCA Policy No. 2.10.2 Procurement Policy – CDBG-DR**

**Appendix E: CA Policy No. 2.10.21 Small, Minority-Owned, Women-Owned and Veteran-Owned Businesses, and Labor Surplus Area Firms**

**Appendix F: DCA Policy No. 2.10.10 Government Wide Debarment and Suspension – Excluded Parties Verification**

**Appendix G: DCA Policy No. 2.10.9 Conflict of Interest**

## **III. IMPLEMENTATION OF AGREEMENT AND ASSURANCES**

- A.** DEP is responsible for complying with the portions of the Fiscal Year 2014 General Section of HUD's Notice of Funding Availability (NOFA), FR-5800-N-29A2, as amended, and the NOFA (including appendices) made applicable by the grant agreement and FR-5936-N-01 (June 7, 2016).
- B.** DEP is responsible for complying with all applicable requirements of the Appropriations Act, Public Law 113-2 and Federal CDBG-DR Program and CDBG regulations and for implementing the Program in a manner satisfactory to the Grantee and HUD and consistent with any applicable guidelines and standards that may be required as a condition of the Grantee's providing the Grant Funds, including but not limited to all applicable CDBG Program administration and compliance requirements set forth by this Agreement and the Statement of Assurances, attached hereto as Appendix A and made a part hereof. The Grantee's providing of Grant Funds under this Agreement is specifically conditioned on DEP's compliance with this provision and all applicable CDBG-DR Program and CDBG regulations, guidelines and standards, including compliance with 24 CFR 570.900 et seq., governing performance reviews and remedial action.
- C.** DEP shall be responsible for requiring that all of its grantees, subrecipients, and Contractors (and all tiers of their Subcontractors) adhere to all applicable State and Federal laws and regulations, including all applicable Federal CDBG-DR Program and CDBG regulations, and to conduct all necessary monitoring for such compliance.
- D.** DEP is responsible for environmental review, decision-making, and other action that would otherwise apply to HUD under the NEPA and other related provisions of law. DEP agrees that

it will not commit any Grant Funds to a project until it has received the proper clearances, including exemptions if applicable, in compliance with environmental laws and release of funds.

#### **IV. NDR OVERVIEW**

Grant Funds will be used to implement the Regional Resiliency Planning Grant (RRPG) program. The RRPG program will help communities devise an approach – through local policies, zoning and projects – to help them develop a comprehensive resiliency plan to prevent and address flooding events. The ultimate product of this process will be a regional adaptation action plan that identifies and addresses vulnerabilities to increased flood risk, protection of environmental resources, and promotion of sustainable/smart growth development, including appropriate policy, planning, and design activities. An additional goal of the regional adaptation action plans includes preparing communities for future funding rounds for capital projects. The RRPG program seeks to fund up to six planning projects within multi-municipal regions within the nine Sandy-impacted counties in New Jersey: Bergen, Hudson, Essex, Union, Middlesex, Monmouth, Ocean, Atlantic, and Cape May.

Additionally, in order to replicate the lessons from DEP’s RBD Meadowlands project, DEP will evaluate project outcomes and develop a toolkit of best practices that can be applied to other communities facing similar flooding challenges. The toolkit will offer other communities suggestions for how selected elements of the Meadowlands Project could be adapted or scaled to local needs.

#### **BUDGET**

The total grant funds from HUD to New Jersey (Grant Number B-13-DS-34-0002) for NDR is \$15,000,000, allocated to NDR Projects as follows: 1) \$8 million to the “Regional Resiliency Planning Grant Program”; 2) \$4 million to the “Best Practices Toolkit”; 3) \$2,250,000 for planning as described above in Section IV; and 4) \$750,000 for general administration costs. The funds allocated for NDR are intended for use only on implementation of NDR activities, and include allowable costs for Planning, Administrative Expenses<sup>1</sup> and Activity Delivery

The total budget authorized under this MOU to DEP is \$15,000,000.

<b>NDR Projects</b>		<b>NDR Project Funds</b>
Regional Resiliency Planning Grant Program		\$ 8,000,000.00
Regional Resiliency Planning Grant Program General Administration and Planning		
Admin	\$ 500,000.00	
Planning	\$ 1,500,000.00	
Best Practices Toolkit		\$ 4,000,000.00
RBD Toolkit General Administration and Planning		
Admin	\$ 250,000.00	
Planning	\$ 750,000.00	
<b>Subtotal</b>		
<b>Total</b>	<b>3,000,000.00</b>	<b>\$ 12,000,000.00</b>

**A. Funding Use**

Funds shall be used to implement the NDR Projects in accordance with FR-5936-N-01 (June 7, 2016), "Notice of National Disaster Resilience Competition Grant Requirements," the approved Action Plan and applicable Action Plan Amendments, and New Jersey's Phase 1 and Phase 2 submissions for the NDR competition.

**B. Administrative Expenses**

DCA agrees to provide funding for DEP's administrative expenses up to the amount set forth in the above-referenced budget. These costs include: funds for general management, oversight and coordination, monitoring and compliance including administrative services performed under third party contracts or agreements such as general legal services, accounting services, integrity monitoring and audit services.

Administrative Expenses may also include costs for goods and services required for administration of the Program, such as the rental or purchase of equipment to the extent allowable under 24 CFR 570.207, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

**C. Program Expenses**

DCA agrees to provide funding to cover Program Costs for each of the projects included under this MOU, in accordance with HUD regulations and requirements and all applicable OMB circulars.

Activity Delivery Costs are included within the project budget and include those allowable costs incurred for implementing and carrying out the NDR Project and Program activities. DEP agrees to cover Program Delivery Costs associated with the Program's use of SIROMS. The cost is dependent upon Program usage relative to other programs and will be determined at a later date.

**D. Eligible Costs**

Eligible Costs under this MOU are costs incurred to carry out NDR project activities, as defined in the current, pending and future applicable Action Plan and Action Plan Amendment(s), when approved by DCA in accordance with eligibility rules under CDBG guidelines and subject to limitations established by DCA.

**E. Duplication of Benefits**

DEP shall establish and implement processes and procedures to prevent any duplication of benefits as defined by Section 312 of the Stafford Act. Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011). HUD published additional guidance on July 25, 2013, titled "Guidance on Duplication of Benefit Requirements and Provision of CDBG-DR Assistance."

DEP shall require any Subrecipient, as a condition for the Subrecipient receiving CDBG-DR funds, to repay DCA the amount of any funds the Subrecipient has received or later receives from any other disaster assistance funding source for the Activities it will be receiving CDBG-DR funds for pursuant to its Subrecipient Agreement with DEP.

**F. Matching Funds**

CDBG-DR funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG-DR Activity, if there is no duplication of benefits of Federal funds. This includes programs or activities administered by the Federal Emergency Management Agency ("FEMA"), the United States Environmental Protection Agency ("EPA"), the United States Department of Transportation ("DOT"), National Oceanographic Atmospheric Administration (NOAA), or the U.S. Army Corps of Engineers ("USACE").



## **V. PERFORMANCE REQUIREMENTS**

### **A. Performance Requirements**

Subject to the terms and conditions of this Agreement, DCA, as Grantee and administrator of the CDBG-DR Program, shall make available to DEP disaster recovery funds up to the maximum amount of Fifteen Million Dollars (\$15,000,000) (the "Grant Funds") for the purpose of funding activities under the Action Plan, as it may be amended, related to the stated NDR projects. The Grant Funds must be expended by DEP by September 30, 2022.

DEP shall ensure that all contracts with Subrecipients, recipients, grantees, and Contractors clearly state the period of performance or date of completion.

DEP shall ensure that it and all Subrecipients, recipients and grantees receiving CDBG-DR funds to carry out NDR Project and Program activities incorporate performance requirements and penalties into each procured contract or agreement. All such procured contracts or agreements shall contain the "Performance Standards and Guarantees" provision, revised as appropriate, set forth in Appendix C to this Agreement.

DEP will provide to DCA financial and performance projections, to be updated on a periodic basis as defined by DCA.

## **VII. PAYMENT PROCESS: COMPENSATION**

- A.** The Grantee shall provide DEP with spending authority equal to the amount of funds obligated under the Program. DEP shall submit funding requests through the Sandy Integrated Recovery Operations and Management System (SIROMS) for payment of eligible expenses under this Agreement to DCA-Sandy Recovery Division for approval. Such requests shall be made on a schedule formatted and provided by Grantee, clearly identifying what documentation is required to be provided by DEP to render the funding requests complete. Funding requests submitted to the Grantee will be approved in all cases, provided that such requests are deemed to be complete and for eligible expenses, in accordance with program, State and Federal guidelines. Funding requests not approved by the Grantee shall be returned to DEP for further processing, together with a written explanation as to why the requests were denied and what steps DEP must take to have the requests rendered complete.
- B.** The Grantee shall be responsible for submitting draw down requests to the Federal funding agency to reimburse the State for expenditures made on behalf of the program. To facilitate the draw down process, DEP will provide the Grantee, in a format and timeline prescribed by the Grantee, with a report of program expenditures.
- C.** DEP will maintain full documentation of Administrative Expenses and Program costs for all expenses incurred. DEP agrees that this documentation will be kept in a manner which is

readily accessible to the Grantee, the Federal funding source, or any other monitoring agency upon request.

- D. In the event of non-compliance with this Agreement, the Grantee may withhold approval of funding requests for payment of DEP expenses until the Grantee determines DEP has brought the Program into compliance. Non-compliance on any aspect funded under this Agreement may serve as a basis to withhold approval on other funds payable under this Agreement.

## **VIII. FINANCIAL MANAGEMENT SYSTEM**

### **A. DEP's Financial Management System**

DEP shall be responsible for maintaining an adequate financial management system and will notify DCA as soon as practicable if DEP cannot comply with the requirements established in this section of the MOU.

DEP's financial management system shall be consistent with the standards set forth at 2 CFR Part 200, Subpart D, Post Federal Award Requirements Standards for Financial and Program Management, and the requirements for the Disaster Recovery Grant Reporting (DRGR) System in Appendix B, and the requirements for Records and Records Retention in Appendix A, Statement of Assurances.

DEP shall maintain accurate, current, and complete reports for disclosure of financial results in a format which conforms with generally accepted principles of accounting, and reporting.

DCA may review the adequacy of the financial management system of DEP under this MOU at any time subsequent to the signing of the MOU. If DCA determines that DEP's accounting system under the MOU does not meet the standards described in this section, additional information to monitor the MOU may be required by DCA upon written notice to DEP, until such time as the system meets with DCA approval.

DEP shall also:

#### **1. Accounting Records**

Maintain records that adequately identify the source and application of the Grant Funds.

#### **2. Internal Control**

Maintain effective internal and accounting controls over all Grant Funds provided DEP under this MOU. DEP shall adequately safeguard all such funds and assure that they are used solely for authorized purposes. DEP records shall distinguish Grant Funds for its Activities from those to be provided to any Subrecipient or Contractor.

**3. Budget Control**

Provide for the comparison of the actual expenditures or outlays with budgeted amounts.

**4. Allowable Costs**

Implement procedures to determine the reasonableness and acceptability of costs consistent with this MOU.

**5. Source Documentation**

Maintain accounting records that are supported by source documentation (such as purchase orders, invoices, and canceled checks).

**B. Use and Reversion of Assets**

The use and disposition of immovable property, equipment and remaining Grant Funds under this Agreement shall be in compliance with all CDBG regulations, which include but are not limited to the following:

1. DEP shall transfer to the Grantee any Grant Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. In all cases in which equipment acquired, in whole or in part, with Grant Funds is sold, the proceeds shall be reviewed to determine if Program Income, as defined in 2 CFR Part 200.80. Equipment not needed by DEP for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained by DEP after compensating the Grantee an amount equal to the current fair market value of the equipment less the percentage of any non-CDBG funds used to acquire the equipment.
3. DEP agrees to present DCA with annual Indirect Cost Rate (ICR) agreements to support any ICR charges submitted for reimbursement.

## **IX. PROCUREMENT**

- A.** Contract awards shall be in accordance with DCA's Procurement Policy CDBG-NDR, Policy No. 2.10.93. A copy of Policy No. 2.10.93 is attached in Appendix D.
- B.** Non-federal entities (defined at 2 CFR § 200.69) other than DEP, including any subrecipients of DEP who are not State entities, must follow the procurement standards set forth at 2 CFR §§ 200.318-200.326.
- C.** Procurement of Recovered Materials: DEP shall ensure that any agency of a political subdivision of the State (Subrecipient) using assistance under an NDR program for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, 42 U.S.C. § 6962. See 2 CFR 200.322 for requirements of section 6002.
- D.** DEP shall ensure that its subrecipients comply with 2 CFR 200.321 and with DCA's policy for "Small, Minority-Owned, Women-Owned and Veteran-Owned Businesses, and Labor Surplus Area Firms" (Policy No. 2.10.21). A copy of Policy No. 2.10.21 is attached in Appendix E.
- E.** Debarment and Suspension
  - 1. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implements Executive Orders 12549 and 12689, "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.
  - 2. Prior to entering into any HUD-funded agreement, DEP and DPMC will check all contractors, subcontractors (including sub-tier contractors), consultants, etc., against the SAM, found at <https://www.sam.gov>, to determine if the contracting entity is debarred or suspended, and to confirm that the contracting entity is registered in SAM.
  - 3. In addition, DEP will obtain a certification that the contracting entity and its principals are not debarred, suspended, or otherwise excluded or ineligible from bidding on, receiving, or participating in Federally funded contracts or grants.
  - 4. DEP will require that its Subrecipients verify that their Contractors and/or Subcontractors are not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs.

5. DEP will comply with DCA's Policy "Government-wide Debarment and Suspension" (Policy No. 2.10.10), and 2 CFR Parts 180 and 2424. A copy of Policy No. 2.10.10 is attached in Appendix F.
6. DEP also will comply with State debarment requirements.

## **X. GENERAL CONDITIONS**

In addition to applying to this MOU, DEP shall include the provisions of this Section in each Subrecipient Agreement and third party contract as applicable.

### **A. Independent Contractor**

Nothing contained in this MOU is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. In the event that DEP contracts with third parties to perform any of the services to be performed hereunder, such third parties shall at all times remain an "Independent Contractor" with respect to the provision of such services. DCA shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, with respect to such third party contracts or Grant Fund Sub-Agreements.

### **B. Hold Harmless/Indemnity Contractors/Subcontractor**

To the extent that DEP or DEP's Subrecipient is authorized to, and utilizes the services of, any third parties in performance of its duties and obligations in implementing the programs described in this MOU, any contract entered into shall contain a provision that the Contractor and/or Subcontractor shall hold DEP and DCA harmless and defend and indemnify DEP and DCA from and against any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or Subcontractor's performance or nonperformance of the services.

### **C. Workers' Compensation**

DEP shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this MOU.

**D. Amendments**

This MOU may only be amended in writing and executed by a duly authorized representative of each Party. Amendments shall not invalidate this MOU, nor relieve or release either Party except as may otherwise be provided. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Project or Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii) revision that would result in the need for additional funding; iv) a change in the budget as described in Section V of this agreement; and v) expenditures on items for which applicable cost principles see 2 CFR Part 200, Subpart E, Cost Principles require prior approval (see 24 CFR 570.200h for pre-award/pre-agreement costs).

DCA may, in its discretion, require that this MOU be amended to conform to Federal, State or local governmental laws, regulations, guidelines, policies and available funding amounts. If any such amendment will result in a change in the funding, the Activities, or schedule of the Activities to be performed under this MOU or Grant Funding Sub-Agreement, such changes shall be incorporated by written amendment signed by both the Grantee and DEP.

**E. No Assignment**

Neither Party may transfer or assign this MOU or transfer or assign any of its rights or assign any of its duties under the MOU without the express prior written consent of the other Party. However, if the Parties do mutually agree to an assignment, all rights and obligations set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns.

**F. Severability**

The terms and provisions of this MOU are severable. Unless the primary purpose of this MOU would be frustrated, the invalidity or unenforceability of any term or provision of this MOU shall not affect the validity or enforceability of any other term or provision of this MOU. Should any judicial or administrative authority deem any provision invalid or unenforceable, the parties shall reform the provision, if possible, consistent with the intent and purposes of this MOU, and if such a provision cannot be reformed, enforce this MOU as set forth herein in the absence of such provision.

**G. Entire Agreement**

This MOU and any amendments, exhibits or other formally incorporated documents constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this MOU.

**H. No Authorship Presumptions**

Each of the Parties has had an opportunity to negotiate the language of this MOU prior to its execution. No presumption shall arise or adverse inference be drawn by virtue of authorship. Each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this MOU, including but not limited to any rule of law to the effect that any provision of this MOU shall be interpreted or construed against the Party who (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any Person that becomes a Party by reason of assignment and/or assumption of this MOU and any successor to a signatory Party.

**I. Applicable Law and Venue**

This MOU shall be governed by and construed in accordance with the laws of the State of New Jersey.

**J. No Personal Liability of Individual Representatives**

No covenant or agreement contained in this MOU shall be deemed to be the covenant or agreement of any official, trustee, officer, agent or employee of either Party in his or her individual capacity, and neither the officers of either Party nor any official executing this MOU shall be personally liable with respect to this MOU or be subject to any personal liability or accountability under this MOU by reason of the execution and delivery of this MOU.

**K. Delay or Omission**

No delay or omission in the exercise or enforcement of any right or remedy accruing to either Party under this MOU shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**L. Prohibited Activity**

DEP is prohibited from using, and shall require that its Contractors and Subcontractors, if any, are prohibited from using, the Grant Funds provided herein or personnel employed in the administration of the Program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. DEP will comply with the provision of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of certain employees.

**M. Safety**

DEP shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of its performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and DEP shall take or cause to be taken such additional safety and health measures as DEP may determine to be reasonably necessary.

DEP shall require all Contractors, Subcontractors, and Subrecipients to provide safety insurance for their employees.

**N. Fund Use**

DEP agrees not to use any Grant Funds to urge any elector to vote for or against any candidate or proposition on an election ballot, nor shall such Grant Funds be used to lobby for or against any proposition or matter having the effect of law being considered by the New Jersey Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the New Jersey Legislature or any local governing authority.

DEP shall ensure that its Contractors, Subcontractors, or Subrecipients seeking reimbursement have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. DEP's Contractors, Subcontractors, or Subrecipients shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**O. Subcontractors**

DEP may enter into contracts with third parties for the performance of any part of DEP's duties and obligations in implementing the programs described in this MOU. In no event shall the existence of such a contract operate to release or reduce the liability of DEP to DCA for any breach in the performance of DEP's or any Contractor's duties.

**P. Copyright**

No materials, including but not limited to reports, maps, documents or plans produced as a result of this MOU, in whole or in part, shall be available for copyright purposes to any other person. Any such material produced as a result of this MOU that might be subject to copyright is the property of and all rights shall belong jointly to the Parties, unless the Parties agree otherwise in writing.



Software and other materials owned by DEP or a third party prior to the date of this MOU and not related to this MOU shall be and remain the property of DEP or third-party.

The Parties will, where either Party believes necessary, provide information to undertake their responsibilities described herein. All records, reports, documents and other material delivered or transmitted shall remain the property of the transmitting Party and shall be returned, upon request, at termination, expiration or suspension of this MOU.

**Q. Drug-Free Workplace Compliance**

DEP hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429. Further, DEP will endeavor to ensure that Contractors and any third parties providing Program services are in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429.

**R. Notices**

Any notice required or permitted to be given under or in connection with this MOU shall be in writing through mail, email or facsimile. All such communications shall be transmitted to the contact information set forth below, or such other address or numbers as may be hereafter designated by either Party in written notice to the other Party compliant with this Section.

**To DCA:**

Attn: Laura Shea  
Assistant Commissioner  
Department of Community Affairs  
Sandy Recovery Division  
101 South Broad Street  
P.O. Box 823  
Trenton, New Jersey 08625  
E-mail: [laura.shea@dca.nj.gov](mailto:laura.shea@dca.nj.gov)  
Phone: 609-943-4243  
Facsimile: 609-292-3726

**To DEP:**

Attn: David Glass  
Deputy Commissioner  
Department of Environmental Protection  
Mail Code 401-07 P.O. Box 402  
Trenton, New Jersey 08625  
E-mail: [david.glass@dep.nj.gov](mailto:david.glass@dep.nj.gov)  
Phone: 609-292-2908  
Facsimile: 609-292-7695

**S. Applicability of Provisions Included/Excluded from the MOU**

Failure to expressly reference any applicable Federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt either Party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.

Likewise, execution of this MOU will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not otherwise applicable to the use of the CDBG-DR funds provided herein or to the particular projects performed under this MOU, even though it may be referenced in this MOU or in the Appendices.

**T. No Third Party Beneficiary**

Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this MOU. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG-DR funds, including the obligations to provide access to records and cooperate with audits as provided in this MOU.

**U. Subrogation**

In the event that DEP receives funds from the CDBG-DR program and whether, before, during or after program initiation, funds from other sources are provided to DEP for Activities of the Programs under this MOU resulting in a potential duplication of benefits regarding the program funds, DEP agrees to contact DCA regarding such potential duplication. As provided in this MOU in paragraph E of Section V, DEP agrees to reimburse DCA if it later receives other disaster assistance for the same purposes as under this MOU.

**V. Conflicting Rules or Procedures**

In the occasion that two or more applicable rules, regulations, or procedures related to this Agreement are in conflict with one another, the most proscriptive rule, regulation, or procedure shall apply, unless otherwise provided by law.

**W. National Objective**

DEP's use, or DEP's subrecipient's use, of Grant Funds for planning activities under 24 CFR 570.205 and 24 CFR 570.206 will be considered to meet a National Objective under the requirements of 24 CFR 570.208(d)(4).

**XI. TERM OF AGREEMENT; TERMINATION OR SUSPENSION OF AGREEMENT**

**A. Term of Agreement**

This MOU shall be deemed effective as the date of the last signature and shall continue until September 30, 2022, unless terminated prior to such time in accordance with the terms and conditions of this MOU.

**B. Termination/Suspension for Cause**

DCA may, upon forty-five (45) days advance written notice specifying the effective date, suspend or terminate this MOU in whole or in part if DEP materially fails to comply with any term of this MOU, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable at any time;
2. Failure, for any reason, of DEP to fulfill in a timely and proper manner the material obligations under this MOU;
3. Submission by DEP of reports to DCA, HUD, or their auditors, that are incorrect or incomplete in any material respect; and/or
4. Ineffective or improper use of Grant Funds as provided for under this MOU.

Notwithstanding anything hereinabove to the contrary, DCA agrees that it shall not exercise its right to suspend or terminate this MOU until it shall have given written notice to DEP of the alleged non-compliance, and has given DEP a reasonable amount of time not to exceed thirty (30) days after DEP's receipt of such notice, to correct and/or cure the alleged non-compliance. DEP may request additional time in writing to correct alleged non-compliance, which consent DCA agrees not to unreasonably withhold. If the non-compliance cannot be corrected and/or cured, DEP shall, unless the termination or suspension notice directs

otherwise, immediately discontinue all activities relating to this Agreement, except as may otherwise be legally required pursuant to a binding commitment to perform.

**C. Termination for Convenience**

DCA may terminate this MOU in whole or in part at any time by giving at least sixty (60) days prior written notice to DEP, with such written notification setting forth the reasons for termination and the effective date. Upon receipt of notice, DEP shall, unless the notice directs otherwise, immediately discontinue, or find other sources of funding for the Program Activities set forth in this MOU, except as may otherwise be legally required pursuant to a binding commitment to perform

**D. Termination Due to Unavailable Funding**

This MOU is contingent upon the appropriation and release of sufficient funds to DCA to fulfill the requirements of this MOU. Failure of the appropriate authorities to approve and provide an adequate budget to DCA for fulfillment of this MOU shall constitute reason for termination of the MOU by either Party. DEP shall be paid, for all authorized services properly performed prior to termination, including reimbursement to each Subrecipient for completion of a DEP-approved Project undertaken pursuant to a Grant Fund Sub-Agreement, as well as be permitted to draw Grant Funds in an amount required to fund all essential services performed prior to termination.

**E. Obligations Governing Use of CDBG-DR Funds Survive Termination**

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish DEP's obligations governing the use of CDBG funds under applicable statutes and regulations or under this Agreement and/or shall not terminate any of DEP's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following: (1) the duty to maintain and provide access to records; (2) the duty to monitor and report on the use of any Grant Funds expended or awarded to DEP in compliance with all terms, conditions and regulations herein; (3) the duty to enforce compliance with terms of grants or loans issued by DEP under this Agreement; and (4) the duty to monitor, collect and manage Program Income, if applicable.

**F. Payment upon Termination**

Except in the event of termination or suspension for cause, DEP shall be entitled to payment on approved invoices submitted to DCA no later than ninety (90) days from the date of termination contained within the notice, to the extent that requests represent Eligible Costs for

Eligible Activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of this Agreement.

**G. Return of Unused Funds**

Unless otherwise agreed upon by the Parties, upon termination of the Agreement, DEP and any subrecipients shall release the commitment of funds for any unused funds to the Grantee within 30 days and ensure that no CDBG-DR funds are allocated for projects beyond the scope of this Agreement.

**XII. ON-GOING COMMUNICATION**

DCA and DEP recognize the value of cooperation and communication among all State and external partners with regard to these Programs' deliverables and findings and for the need for adherence to HUD/NEPA reviews necessary for HUD and State/local requirements. DCA and DEP agree to confer, by mutual consent, by meeting, teleconference or written report at least once per month, if needed, to review the Program's progression, and to address issues as they may arise.

**XIII. DOCUMENTATION AND RECORD KEEPING; AUDITS**

**A. Records to be Maintained**

DEP shall maintain all records required by 24 CFR 58, including if applicable all State environmental regulatory approvals required under the Program and for each Project approved under a Subrecipient Agreement, and make all such records available to DCA.

**B. Access to Records**

With respect to those records referenced in Appendix A "Statement of Assurances," DCA and DEP shall comply with the retention and access requirements set forth in 24 CFR 570.506. DCA, the State Comptroller, HUD, the Comptroller General of the United States, and any of their duly authorized representatives or agents, shall have access to any books, documents, papers and records of DCA and DEP created under this MOU for the purpose of audits, examinations, and making excerpts and transcriptions.

DEP and DCA shall provide reasonable access to records regarding the past use of CDBG funds in compliance with applicable State, Federal, and local laws and regulations regarding privacy and obligations of confidentiality.

All records, reports, documents, or other material or data, including electronic data, related to this MOU and/or obtained or prepared by DEP, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance

of the services contracted for herein, shall remain the property of DEP, and shall be subject to the State's record retention policies.

DCA and DEP also shall comply with all State mandated record retention policies. Those policies can be reviewed at the Records Management Services main page:

<http://www.state.nj.us/treasury/revenue/rms/recman.shtml>

State General Schedule:

<http://www.state.nj.us/treasury/revenue/rms/pdf/g100000.pdf>

Imaging Certification:

<http://www.state.nj.us/treasury/revenue/rms/imgcertification.shtml>

<http://www.state.nj.us/treasury/revenue/rms/imgcertificationprocess.shtml>

DEP shall comply with Records and Records Retention requirements (Appendix A ), and Disaster Recovery Grant Reporting System (DRGR) requirements (Appendix B).

#### **C. Close-outs**

DEP's obligations under this Agreement shall not end until all close-out requirements as set forth in 24 CFR 570.509 are completed. The terms of this Agreement shall remain in effect during any period that DEP is exercising any supervision or control over CDBG-DR funds, including Program Income.

#### **D. Audits and Inspections**

In addition to any other audit requirements set forth in this Agreement, DEP agrees to comply with 2 CFR Part 200, Subpart F, Audit Requirements, which mandates that a single or program-specific audit be performed by an independent auditor of all Federally-funded awards administered by DEP, including the award covered by this Agreement. It is hereby agreed that the Grantee, the State Comptroller, HUD, the Office of Inspector General, HUD monitors, and auditors contracted by any of them, shall have the option to audit all records and accounts of DEP and/or its Subrecipients, Contractors and Subcontractors that relate to this Agreement at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data upon providing DEP, and/or its Contractor or Subcontractors, as appropriate, with reasonable advance notice. DEP and its Contractors and Subcontractors shall comply with all relevant provisions of State law pertaining to audit requirements, including NJ OMB Circular Letter 15-08-OMB and New Jersey State Grant Compliance Supplement (available on the Internet at <http://www.state.nj.us/treasury/omb/grant.htm>). Any deficiencies noted in audit reports must be fully cleared within thirty (30) days after receipt by DEP, its Subrecipients, Contractors, and/or Subcontractors, as appropriate.

Failure of DEP and/or its Subrecipients, Contractors, and Subcontractors to comply with the above audit requirements will constitute a violation of this Agreement and may, at the Grantee's option, result in the withholding of future payments and/or return of Grant Funds paid under this Agreement and/or termination of this Agreement. DEP and its Contractors hereby agree to have an annual audit conducted in accordance with current State policy concerning DEP and its Contractor's audits.

Property Owner Data Disclosure: DEP understands that property owner information that may be collected under this contract is private and that the use or disclosure of such information, when not directly connected with the administration of the Grantee's or DEP's responsibilities with respect to services provided under this Agreement, is prohibited by DEP unless written consent is obtained from such person receiving service or, in the case of a minor, that of a responsible parent/guardian. Notwithstanding the foregoing, DEP shall be required to provide such access to client information as may be required by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and as may otherwise be required by law. In the event that DEP determines it is required to provide access to client information pursuant to the foregoing, it agrees to provide notification of such disclosure to Grantee.

#### **XIV. CONFLICT OF INTEREST**

Except for approved eligible administrative and personnel costs, none of DEP's designees, agents, members, officers, employees, consultants, and no other public official who exercises or who has exercised any functions or responsibilities with respect to the Program during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Program, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program or in any activity, or benefit there from, which is part of this MOU at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to DCA and DCA has approved such exception. See DCA Policy No. 2.10.9, Conflict of Interest, attached hereto as Appendix G, for specific guidance.

#### **XV. OTHER REQUIREMENTS**

DCA will provide all assistance, guidance and information required by DEP to ensure its compliance with the Act, the CDBG-DR Program, or any other applicable standards in its performance under the MOU.

DCA will maintain responsibility to meet the obligations and requirements of the CDBG-DR Program including reporting, project performance goals, plan submittal, coordination, and other procedural requirements imposed by HUD.

The Parties agree to adhere to all applicable Federal, and State program requirements, including such Federal cross-cutting requirements as may apply to the use and expenditure of

CDBG-DR funds, and the CDBG authorizing legislation subject to exceptions noted in the Federal Register for the CDBG-DR allocation. This includes, but is not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified at 2 CFR Part 200; and the *Federal Register* Notice published March 5, 2013 (78 FR 14329), as supplemented by additional applicable Notices published by HUD in the *Federal Register*, including the *Federal Register* Notice published June 7, 2016 (81 FR 36557).

All financial management and procurement performed by DEP for the Programs covered under this MOU will be in compliance with 2 CFR Part 200, Subpart D, Post Federal Award Requirements Standards for Financial and Program Management.

DEP will also comply with 24 CFR 570.489: Program Administrative Requirements; 24 CFR 570.490: Recordkeeping requirements; and with State inter-agency administrative requirements.

#### **XVI. BINDING EFFECT**

All of the terms, conditions, and covenants to be observed and performed by the Parties shall be applicable to and binding upon their several successors and assigns, as the case may be.

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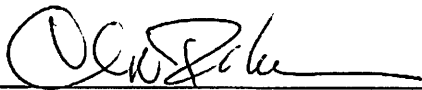


**XVII. AUTHORITY AND EFFECTIVE DATE**

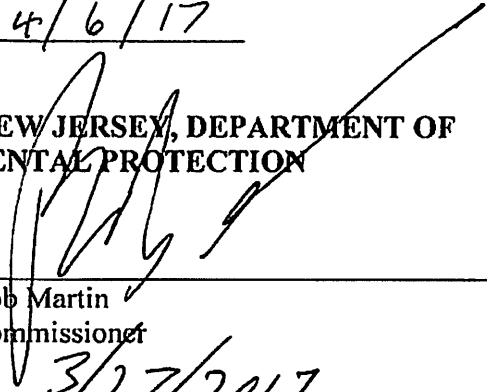
By the signatures below, the Parties execute this MOU and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization to all provisions contained herein.

The Parties have executed and delivered this MOU on the date set forth next to their respective signatures below, but the MOU is effective as of the date of the last signature.

**STATE OF NEW JERSEY, DEPARTMENT OF  
COMMUNITY AFFAIRS**

Signature:   
Name: Charles A. Richman  
Title: Commissioner  
Date: 4/6/17

**STATE OF NEW JERSEY, DEPARTMENT OF  
ENVIRONMENTAL PROTECTION**

Signature:   
Name: Bob Martin  
Title: Commissioner  
Date: 3/27/2017

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**Appendix A: Statement of Assurances**

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## STATEMENT OF ASSURANCES

### ADDITIONAL FEDERALLY FUNDED AGREEMENT PROVISIONS APPLICABLE TO COMMUNITY DEVELOPMENT BLOCK GRANT- DISASTER RECOVERY FUNDED PROJECTS

The purpose of this Statement of Assurances is to list requirements applicable to programs funded in whole or in part by Community Development Block Grant-Disaster Recovery ("CDBG-DR") funds received from the U.S. Department of Housing and Urban Development ("HUD"). Not all of the requirements listed herein shall apply to all activities or work under the relevant agreement.

DEP agrees to comply with all *applicable* federal CDBG-DR laws, guidelines and standards in a manner satisfactory to the State and HUD, including all administration and compliance requirements set forth by this Statement of Assurances. To the extent that DEP utilizes any contractors, consultants or other third parties to supply goods or services in connection with the Agreement activities and paid with CDBG-DR funds, DEP shall require and ensure that each contractor, consultant or other third party comply with all *applicable* federal CDBG-DR laws, guidelines and standards, and any contract entered into by DEP with such parties shall set forth these requirements.

DEP also agrees to comply with all *applicable* cross-cutting statutes and regulations, subject to waivers cited in the Federal Register, Docket No. FR-5696-N-01 (March 5, 2013) (Allocations, Common Application, Waivers, and Alternative Requirements for DEPs Receiving CDBG - DR funds in Response to Superstorm Sandy), as supplemented by additional applicable Notices published by HUD in the Federal Register.

DEP agrees to comply with the requirements of Title 24 of the CFR, Part 570 (HUD regulations concerning Community Development Block Grants).

The failure to list herein a legal requirement applicable to activities undertaken by DEP does not relieve DEP from complying with that requirement.

#### **A. GENERAL PROVISIONS**

1. Under provisions of the Hatch Act that limit the political activity of employees and HUD regulations governing political activity (24 CFR 570.207), CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.
2. No federally appointed funds shall be used for lobbying purposes regardless of level of government, in accordance with 2 CFR 200.450.
3. HUD rules prohibit the use of CDBG funds for inherently religious activities, as set forth in 24 CFR 570.200(j), except for circumstances specified in the Department of Housing and Urban

Development Allocations, Common Application, Waivers, and Alternative Requirements for DEPs Receiving CDBG Disaster Recovery Funds in Response, 78 FR 14329 (March 5, 2013).

4. HUD rules impose drug-free workplace requirements in Subpart B of 2 CFR part 2429, which adopts the government-wide implementation (2 CFR Part 182) of sections 5152-5158 of the Drug-Free Workplace Act of 1988.
5. Citizens will be provided with an appropriate address, phone number, and times during which they may submit complaints regarding activities carried out utilizing these CDBG-DR funds. The State will provide a written response to every citizen complaint within fifteen (15) working days of the complaint.

**B. PERSONALLY IDENTIFIABLE INFORMATION:** To the extent the DEP receives personally identifiable information, it will comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information. The term "personally identifiable information" refers to information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., either alone or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc. See 2 CFR 200.79 & OMB M-07-16. DEP shall require all persons that have access to personally identifiable information (including contractors/consultants and their employees) to sign a Non-Disclosure Agreement.

**C. FINANCIAL MANAGEMENT AND PROCUREMENT**

1. *To the extent applicable*, DEP shall adhere to the principles and standards governing federal grant distribution as set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
2. DEP shall comply with all *applicable* laws pertaining to financial management, including 2 CFR Part 180 and 2 CFR Part 2424, which prohibit the making of any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs. To the extent that it uses contractors or consultants, DEP must verify that none of them are on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 2 CFR Part 2424. No contractors or consultants that are on the List may receive any CDBG funds.
3. Conflict of interest rules, as set forth in 24 CFR 570.489, 24 CFR 570.611, and 2 CFR 200.112, apply. DEP shall disclose in writing any potential conflict of interest to DCA.
4. *To the extent applicable*, DEP shall comply with 24 CFR Part 570 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.

*To the extent applicable*, DEP shall comply with 24 CFR 570.489(j) regarding change of use of real property. These standards apply to real property within its control (including activities undertaken by contractors/consultants). These standards apply from the date CDBG-DR funds are first spent until five years after the close-out of the Program.

#### **D. RECORDS AND RECORDS RETENTION**

1. The DEP shall be responsible for maintaining records, in accordance with N.J.A.C. 17:44-2.2(b), 2 CFR 200.333, 24 CFR 570.502 and 570.506. Records shall be maintained for the longer of:
  - (a) a period of three (3) years from submission of the final expenditure report for the Program;  
and
  - (b) a period of seven (7) years from the date of final payment.
2. If any litigation, claim, or audit pertaining to the Agreement has been started before the expiration of the five-year record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required five-year period, whichever is later.
3. DEP shall provide the State and HUD, including their representatives or agents, access to and the right to examine all records, books, papers, or documents related to the Agreement and the use of CDBG funds.

#### **DI. FEDERAL LABOR STANDARDS:** *To the extent applicable, DEP shall comply with Federal Labor Standards, including:*

1. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. §5310, 24 CFR §570.603 and HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Urban Development Programs, as revised, which require that all laborers and mechanics (as defined at 29 CFR §5.2) employed by DEP (including its contractors/consultants) in connection with construction contracts over \$2,000, are paid wages at rates not less than those prevailing on similar construction in the locality as per the Davis-Bacon Act (40 U.S.C. §3141 *et seq.*), as amended; except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. The Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work-week, and projects must comply with safety standards;
3. The Federal Fair Labor Standards Act (29 U.S.C. 201 *et seq.*), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;
4. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3), which apply to contracts and subcontracts for construction, prosecution, completion, or repair of public buildings, public works or buildings, or works financed in whole or in part by Federal loans or grants, and requires payment of wages once a week and allows only permissible payroll deductions;
5. Department of Labor regulations in parallel with HUD requirements above:
  - a. 29 CFR part 1: Procedures for Predetermination of Wage Rates

- b. 29 CFR part 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
  - c. 29 CFR part 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
  - d. 29 CFR part 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.
6. All applicable Federal Labor Standards provisions set forth in form HUD-4010. DEP will ensure that form HUD-4010 is included in all bid packages and subcontracts entered into with contractors, consultants, or other third parties to supply goods or perform services in connection with the Contract activities and paid with CDBG-DR funds.

**F. SECTION 3 REQUIREMENTS**

1. *To the extent applicable, DEP shall comply with Section 3 of the Housing and Urban Development Act of 1968, as amended ("Section 3"). Section 3 is intended to encourage recipients of HUD funding to direct new employment, training, and contracting opportunities to the greatest extent feasible to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to DEPs and subrecipients that receive assistance exceeding \$200,000 in certain types of HUD funding, including CDBG funding, and to contractors and subcontractors that enter into contracts in excess of \$100,000 funded by certain types of HUD funding, including CDBG funds, for any activity that involves housing construction, rehabilitation, and demolition, or other public construction. A guide to Section 3 applicability and compliance requirements is located at HUD's website,  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/section3/section3](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/section3/section3), under Frequently Asked Questions (FAQs).*
2. Pursuant to 24 CFR 135.38, the following language shall be included in all contracts and subcontracts:
  - a. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
  - b. *The parties to this contract agree to comply with HUD's regulations in 24 CFR 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with 24 CFR part 135.*
  - c. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and shall post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of*

*apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*

- d. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor shall not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- e. The contractor shall certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- g. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

#### **G. FAIR HOUSING AND NON-DISCRIMINATION**

1. *To the extent applicable, DEP shall comply with the following fair housing and non-discrimination laws. Any act of unlawful discrimination committed by DEP or failure to comply with applicable laws shall be grounds for termination of the Contract.*
  - a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §200d et seq., and the regulations issued pursuant thereto (24 CFR Part 1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which it receives federal financial assistance and shall immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to it this assurance shall obligate it, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.*
  - b. Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601-3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.*

- c. Title II of the Civil Rights Act of 1968 (25 U.S.C. 1301-1303), which prohibits discrimination because of race, color, religion, or natural origin in certain places of public accommodation.
- d. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.* The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term "building" does not include privately owned residential structures not leased by the government for subsidized housing programs.
- e. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 *et seq.*, which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794, which provides that no otherwise qualified individual shall solely by reason of his or her handicap be excluded from participation, denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance.
- g. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
- h. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
- i. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the DEP is in compliance with various specified requirements.
- j. Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
- k. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 *et seq.*, as amended by the ADA Amendments Act of 2008, which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- l. Housing for Older Persons Act of 1995 ("HOPA") (42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older.
- m. Accessibility requirements contained in Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 *et seq.*).
- n. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertain to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- o. Executive Order 11246 (Johnson), September 24, 1965, as amended by Executive Order 11375 (Johnson), October 13, 1967, as amended by Executive Order 13672 (Obama), July 21, 2014, which prohibit discrimination in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. Further, contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative



- action to insure that equal opportunity is provided in all aspects of their employment, including, but not limited to: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
- p. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
  - q. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.
  - r. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
  - s. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency (LEP), August 11, 2000, and Federal Register Notice FR-4878-N-02 (available online at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>), which require recipients of federal financial assistance to ensure meaningful access to programs and activities by LEP persons. (The State's Language Access Plan (LAP) is available online at [http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP-Version-1.0\\_2015.01.14-for-RenewJerseyStronger.pdf](http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP-Version-1.0_2015.01.14-for-RenewJerseyStronger.pdf)).
  - t. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
  - u. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
  - v. Implementing regulations for the above:
    - i. 24 CFR part 1: Nondiscrimination in Federally Assisted Programs of HUD.
    - ii. 24 CFR part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance.
    - iii. 24 CFR 5.105: Other Federal Requirements.
    - iv. 24 CFR part 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974.
    - v. 24 CFR part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development.
    - vi. 24 CFR 50.4(l) and 58.5 (j): Environmental Justice.
    - vii. 24 CFR 91.225(a)(1): Affirmatively Furthering Fair Housing.
    - viii. 24 CFR 91.325(a)(1): Affirmatively Furthering Fair Housing.
    - ix. 24 CFR 91.325(b)(5): Compliance with Anti-discrimination laws.
    - x. 24 CFR 91.520: Performance Reports.
    - xi. 24 CFR part 100 – part 125: Fair Housing.
    - xii. 24 CFR part 107: Non-discrimination and Equal Opportunity in Housing under Executive Order 11063 (State Community Development Block Grant DEPs).
    - xiii. 24 CFR part 121: Collection of Data.
    - xiv. 24 CFR part 135: Economic Opportunities for Low- and Very Low-Income Persons.
    - xv. 24 CFR part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance.
    - xvi. 24 CFR 570.206(c): Fair Housing Activities.
    - xvii. 24 CFR 570.487(b): Affirmatively Furthering Fair Housing.
    - xviii. 24 CFR 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant DEPs).
    - xix. 24 CFR 570.490(a)-(b): Recordkeeping requirements.
    - xx. 24 CFR 570.491: Performance Reviews and Audits.
    - xxi. 24 CFR 570.495(b): HCDA Section 109 nondiscrimination.
    - xxii. 24 CFR 570.506(g): Fair Housing and equal opportunity records.
    - xxiii. 24 CFR 570.601: Affirmatively Further Fair Housing.
    - xxiv. 24 CFR 570.608 and Part 35: Lead-Based Paint.

- xxv. 24 CFR 570.614: Architectural Barriers Act and Americans with Disabilities Act.
- xxvi. 24 CFR 570.904: Equal Opportunity and Fair Housing Review
- xxvii. 24 CFR 570.912: Nondiscrimination compliance

## **II. CONTRACTING WITH SMALL AND MINORITY FIRMS AND WOMEN'S BUSINESS ENTERPRISES**

1. DEP shall take all necessary affirmative steps to ensure contracting opportunities are provided to small, minority-owned, woman-owned, and veteran-owned businesses, and labor area surplus firms. As used in this contract, the terms "minority-owned business," "women-owned business," and "veteran-owned business" means a business that is at least fifty-one percent (51%) owned and controlled by minority group members, women, or veterans. For purposes of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and Native Americans. DEP may rely on written representations by businesses regarding their status as minority, women and veteran businesses in lieu of an independent investigation.
2. Affirmative steps shall include:
  - a. Placing qualified small and minority-, veteran- and women-owned businesses on solicitation lists;
  - b. Ensuring that small and minority-, veteran- and women-owned businesses are solicited whenever they are potential sources, for goods and/or services required in furtherance of the Contract;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority-, veteran- and women-owned businesses;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority-, veteran- and women-owned businesses; and
  - e. Using the service and assistance, as appropriate, of organizations such as the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce; and
  - f. Requiring the subcontractor, if subcontracts are to be let, to take the affirmative steps listed in subparagraphs (a) through (e) of this section.

## **I. ENVIRONMENTAL REGULATORY COMPLIANCE**

*To the extent applicable*, DEP must comply with HUD regulations found at 24 CFR Parts 50 and 58, implementing the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, and other Federal environmental requirements, including but not limited to:

1. Floodplain management and wetland protection:
  - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
  - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));

3. In relation to water quality:
  - a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;
  - b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) *et seq.* and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency ("EPA") determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and
  - c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, *et seq.*) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation's water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 *et seq.*), as amended, particularly section 7 (16 U.S.C. §1536);
5. The Fish and Wildlife Coordination Act of 1958, as amended;
6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 *et seq.*), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));
7. Executive Order 11738 (Nixon), Sept. 10, 1973, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and EPA regulations (40 CFR 15);
8. The Clean Air Act of 1970 (42 U.S.C. § 7401 *et seq.*) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 *et seq.*, particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
10. Noise abatement and control requirements at 24 CFR 51B;
11. Explosive and flammable operations requirements at 24 CFR 51C;
12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;
13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

#### **J. EQUAL EMPLOYMENT OPPORTUNITY**

1. All federally assisted construction contracts must include the equal opportunity clause provided under 41 CFR §60-1.4(b). Federally assisted construction contracts include any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the federal government.

Construction work is defined as "the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction." 41 CFR §60-1.3.

2. Pursuant to 41 CFR §60-1.4(b), the following language shall be included in all federally assisted construction contracts and subcontracts:

*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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 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 considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*(4) 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 advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

*(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.*

*(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.*

*(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said 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 or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.*

*(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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 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 administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.*

2/13/2016

**APPENDIX B**  
**DISASTER RECOVERY GRANT REPORTING SYSTEM**  
*(Minimum data requirements)*

DEP agrees to provide the following information as requested but not less than quarterly to DCA for the HUD's Disaster Recovery Grant Reporting System, and require any Subrecipient, as a condition for reimbursement, to provide such information to DEP:

**Prior to initiation of Activity:**

1. **Activity Type**
  - a. National Design Resiliency (Defined by HUD for NDR)
2. **National Objective**
  - a. Low and moderate income area
  - b. Alleviate slums and blight
  - c. Urgent need
3. **Grantee Activity Number – Assigned by DCA**
4. **Activity Title – Assigned by DCA**
5. **Activity Status**
  - a. Cancelled
  - b. Completed
  - c. Planned
  - d. Underway
6. **Total Budget**
7. **Total Budget, Disaster Recovery Grant (Includes all CDBG-DR and other funds)**
8. **Projected Start Date**
9. **Projected End Date**
10. **Project –Project under which Activity shall be created.**
11. **Environmental Assessment**
  - a. Exempt (See DEP Determination of Level of [NEPA] Review, dated 9/20/13)
12. **Name and type of all funding sources for an Activity**
  - a. Organization name
  - b. Organization type (for-profit, local government, nonprofit, state, state agency, TA provider, or unknown)
  - c. DUNS number (Dun & Bradstreet provides a DUNS Number, a nine digit identification number, for each physical location of a business)
  - d. Tax or employer identification number
  - e. Address/City/State/ZIP
  - f. Organization contact person and title
  - g. Organization contact person email, address, telephone and fax numbers
13. **Method by which benefit is reported (area or direct)**
  - a. If area, indicate: Census or survey
14. **Proposed accomplishments (total numeric for activity)**
15. **Location in which activity is undertaken (county/municipality/area name/city/neighborhood)**

**Quarterly Reporting (Upon obligation of funds):**

**For the Quarterly Performance Report (QPR) due to HUD thirty days after the last day of each Quarter, data must be submitted to DCA by DEP within approximately 10 calendar days after the end of each calendar quarter. DCA will send out the calendar specifying the calendar deadline for each QPR. DEP will submit the reports electronically in SIROMS for DCA approval. *Information reported each quarter is ONLY for accomplishments during ("QPR") reporting period and IS NOT cumulative.***

**HUD also requires a Monthly Performance Report. Data, as defined by DCA must be submitted at the end of each month. This data is cumulative. Monthly Performance Reports are not expected to be required by HUD for NDR**

Data to report includes:

- For each activity, actual accomplishments for all performance measure criteria proposed (numeric; only those achieved within QPR reporting period).
- For each activity, brief narrative of each activity status / progress in prior quarter / anticipated progress in next quarter (identifies challenges, if any, and proposed resolution).
- For each activity, total Disaster Recovery funds expended within the QPR reporting period.
- For each activity, total matching funds expended within QPR reporting period.
- For each activity, total leveraging funds expended within QPR reporting period.
- For each activity, total program income, if applicable.

**APPENDIX C**

**PERFORMANCE STANDARDS AND GUARANTEES**

Effective and efficient operation of the project is necessary to promote the best interests of all parties, especially the public. To the extent that actions of the Contractor result in failure to meet performance standards, the (Subrecipient) may suffer damages that could be difficult or impossible to quantify. As a result, situations may arise where the imposition of liquidated damages may be required to compensate for the failure to meet performance standards.

If the Contractor fails to meet any of the performance standards or conditions of the contract, the (Subrecipient) may withhold payment for damages from the fees or premiums due to the Contractor in an amount equal to the damages stated in this section. Such payments shall not relieve the Contractor of its obligation to remedy any breach of the performance standards to which they relate. Nothing in this section shall limit the (Subrecipient's) right to seek damages or any other remedy at law or equity not specified in this section.

Scope Description	Performance Requirement	Time Frame	Performance Guarantee

**PERFORMANCE STANDARDS AND GUARANTEES ASSESSMENT PROCEDURE**

Prior to the assessment of any of the damages as a result of failure to meet performance standards in this section, the (Subrecipient) shall provide written notice to the Contractor specifying the nature and details of each violation, including reference to the section(s) under which the damages are proposed to be assessed and the amount of the assessment. The (Subrecipient's) notice, which will be sent to the Contractor after receipt of the Contractor's measurement report, will specify whether the Contractor will be required to pay the amount of the assessment to the (Subrecipient) or whether the assessed amount will be withheld from the Contractor's next payment(s).

Payment of the Contractor's invoice without resolution of such claims, shall be without prejudice to the Contractor's and (Subrecipient's) rights and obligations to continue to attempt to resolve such claims or if they are not resolved, assess performance guarantees therefore.



The (Subrecipient's) decision not to invoke performance guarantees in any instance of performance deficiency shall not be deemed to be a waiver of the (Subrecipient's) right to invoke performance guarantees in any other instance.

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

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SUBJECT: Procurement Policy – CDBG-DR

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NUMBER: 2.10.2

EFFECTIVE: March 2013

REVISED: July 2015

REVISED: June 2016

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SANDY CDBG-DR

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APPROVAL:



Samuel R. Viavattine  
Deputy Commissioner



Laura Shea  
Assistant Commissioner

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OVERVIEW:

The State of New Jersey (hereinafter referred to as “N.J.”, “State” or “Grantee”) is a recipient of CDBG-DR funds made available pursuant to the Disaster Relief Appropriations Act of 2013, Public Law 113-2 (“Appropriations Act”) and distributed by the U.S. Department of Housing and Urban Development (“HUD”). HUD published Federal Register Notice 78 FR 14329-14349 on March 5, 2013 detailing certain requirements the State was required to meet before HUD would fully obligate the CDBG-DR funds. The Notice requires State Grantee procurement processes to be equivalent to the procurement standards at 24 C.F.R. §85.36.

HUD’s procurement standards codified at 24 C.F.R. § 85.36(a) provide that “a State will follow the same policies and procedures it uses for procurements from its non-Federal funds.” *See also* 24 C.F.R. § 570.489(g) (when procuring goods and services using CDBG funds, “the state *shall* follow its procurement policies and procedures”). Pursuant to Federal Register Notice 78 FR 14329-14349 (Mar. 5, 2013), the State submitted a written procurement policy to HUD, noting that all procurements using CDBG-DR funds would be processed through the Division of Purchase and Property (“DPP”), and certified that those procedures were equivalent to the federal procurement requirements set forth in 24 C.F.R. § 85.36 (attached for reference as Appendix A). By Memorandum dated April 29, 2013, HUD indicated that it had “reviewed the financial control materials submitted by the State” and “the State of New Jersey has demonstrated adequate financial controls, procedures and processes,” and certified that “the State of New Jersey has in place proficient financial controls and procurement processes.” On February 17, 2015, the State inquired and HUD confirmed that the State can procure goods and services through other State agencies with procurement authority (e.g., Division of Property Management & Construction (“DPMC”)) so long as applicable procurement processes are substantially similar to those certified by HUD. DPMC’s procurement processes are substantially similar to those utilized by DPP.

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Effective December 26, 2014, HUD amended 24 C.F.R. Parts 84 & 85 and adopted the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, set forth in 2 C.F.R. Part 200, which apply to Federal awards made on or after December 26, 2014. *See* 2 C.F.R. § 2400.101. Despite these changes, the State was awarded Superstorm Sandy CDBG-DR funds prior to December 26, 2014, and “Federal awards made prior to December 26, 2014 will continue to be governed by the regulations in effect and codified in 24 C.F.R. part 85 (2013 edition) or as provided by the terms of the Federal award. . . .” 24 C.F.R. §85.1.

Pursuant to 24 C.F.R. §85.1, HUD Transition Notice SD-2015-01, and HUD’s April 29, 2013 certification as to the proficiency of the State’s procurement procedures, the State continues to follow 24 C.F.R. §85.36(a) and use State procurement standards when procuring CDBG-DR funded contracts.

All other non-Federal entities, including subgrantees of the State who are not State entities, will follow 24 C.F.R. §§ 85.36(b) – (i). At least once every twelve (12) months, the Sandy Recovery Division (“SRD”) Monitoring Unit monitors each program in receipt of Sandy CDBG-DR funding (the DCA Internal Audit team monitors the programs pertaining to homeownership). This review includes documents related to subgrantee procurements.

All procurement activities shall adhere to the principles and standards governing federal grant distribution or their equivalent in State law, and all applicable State procurement laws, including but not limited to Executive Order 125 (Christie 2013) (“EO 125”).

N.J. Department of the Treasury Circular 13-15-DPP, *Purchases from Federal Supply Schedules or Schedules of Other Federal Procurement Programs* (effective February 5, 2013 or as may be amended), sets forth the procedure for establishing a State contract based on the pricing offered through a federal procurement program, including but not limited to the U.S. General Services Administration (“GSA”), the Department of Veterans Affairs (“VA”), and the Defense Logistics Agency (“DLA”). DPP, within the N.J. Department of the Treasury, is the State’s central procurement agency and is the entity responsible for Circular 13-15-DPP, as well as other procurement-related circulars and guidance at N.J.A.C. 17:12. Although DCA and other State agencies may possess their own statutory procurement authority, all procurements using CDBG- DR funds will be processed through DPP to ensure compliance with 24 C.F.R. §85.36(a) and fair and open competition.

To be clear, New Jersey does *not* purchase *through* GSA eBuy or other federal procurement schedules; rather, State law authorizes the Director of DPP to “promulgate the

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Federal Supply Schedules of the Federal General Services Administration or schedules from other federal procurement programs . . . as an alternate price guide for the purchase of goods and services,” which in turn permits DPP to create a State contract based upon the federal pricing. (N.J.S.A. 52:34-6.1) The overarching purpose of this process is to obtain goods and services that are most advantageous to the State, price and other factors considered, while maintaining a level playing field for all vendors through competition and transparency.

For reference, DPP statutes are found at N.J.S.A. 52:34-6 et seq. and administrative regulations pertaining to DPP operations are found at N.J.A.C. 17:12 et seq.

The following outlines how the State’s procurement processes are equivalent to the procurement standards set forth in 24 C.F.R. §85.36:

**§85.35 Subawards to debarred and suspended parties.**

**§85.35:** *“The State must not make any award or permit any award at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ‘Debarment and Suspension’.”* Before awarding a contract using CDBG funds, DCA consults the Federal System for Award Management (“SAM”) for listings of contractors suspended or debarred. DPP maintains a central debarment list and its causes for debarment are set forth at N.J.A.C. 17:12-6.3, Causes for debarment of a person(s). In addition, Section 2.10 of the State’s Standard Terms and Conditions, which are applicable to all contracts entered into by the State, requires that “[i]he contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.” SAM notwithstanding, the State’s administrative regulations, coupled with the State’s Standard Terms and Conditions, will effectively eliminate any debarred or suspended entity from consideration for a disaster recovery contract award.

**§85.36(a) States.**

**§85.36(a):** *“When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds.”* With respect to GSA procurements, Circular 13-15-DPP is the source of guidance for navigating this process, regardless of funding source.

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**§85.36(b) Procurement standards.**

**§85.36(b)(1):** *“Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law...”* Circular 13-15-DPP was crafted in accordance with State law and DPP regulations. The procurements conducted pursuant to this procedure also comply with applicable Federal law. DPP is copying the DOD GSA procurement process to ensure full and open competition. DPP procurement specialists review procurements on a case-by-case basis to ensure compliance with subject-specific Federal laws (e.g. Davis-Bacon Act for public works procurements). Procurement specialists also monitor State and federal debarment lists as well as political contribution databases for “Pay to Play” conflicts prior to awarding contracts.

**§85.36(b)(2):** *“Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts...”* DPP maintains a Contract Compliance and Audit Unit, which is authorized by N.J.A.C. 17:12-4 to request and audit records related to State procurements, either as discovery related to a complaint or for any other reason to ensure that contractors are performing in compliance with contract terms and conditions. In addition, vendors and agencies are required to submit reports to DPP on a regular basis to ensure that the contracts are performed in accordance with the specified terms.

Additionally, the independent Office of the State Comptroller is responsible for auditing and monitoring the solicitation of proposals and the awarding of State contracts that involve “a significant consideration or expenditure of funds or are comprised of complex or unique components. . . .” See N.J.S.A. §§ 52:15C-7 and 52:15C-10. Pursuant to EO 125, the State Comptroller reviews all Sandy-related procurements and contract amendments.

**§85.36(b)(3):** *“Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts...”* All State employees are bound by the Uniform Ethics Code, which outlines the code of conduct for all employees and is borne from New Jersey’s Conflict of Interests Law. The State Ethics Commission administers and enforces the Conflicts of Interest Law, N.J.S.A. 52:13D-12, et seq. The Commission consists of seven (7) members, four (4) public members appointed by the Governor to staggered terms and three (3) Executive Branch employees who are appointed by and serve at the pleasure of the Governor. Additionally, the New Jersey Code of Local Government Ethics Law (N.J.S.A. 40A:9-22.1)

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provides a written code of standards of conduct which governs the performance of employees engaged in the award and administration of contracts.

The State also maintains a *Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey* ("Guide"). The Guide covers a wide range of business practices and procedures, setting forth basic principles to guide all employees, officers, and directors of companies transacting business with the State of New Jersey. The Guide is publicly available on the Department's website at [http://www.state.nj.us/treasury/purchase/ethics\\_guide.shtml](http://www.state.nj.us/treasury/purchase/ethics_guide.shtml).

In addition, the Department of the Treasury requires that all employees involved in the "drafting, reviewing, evaluating or making contract awards, or substantively assisting in any of those tasks, or authorizing payments under those contracts" must complete a *Personal and Business Relationships Disclosure Form*, which is reviewed and approved by the Department's Ethics Liaison Officer. These forms must be completed annually and employees are subject to discipline and/or prosecution for submitting false information. In addition, DPP requires all employees that serve on Evaluation Committees to complete a form that requires committee participants to maintain confidentiality and screen participants for potential conflicts of interest. This process is documented in a Divisional Standard Operating Procedure.

§85.36(b)(4): "*Grantees and subgrantees will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase...*" With respect to GSA procurements, DPP regulations at N.J.A.C. 17:12-1A.5 mandate that Federal supply schedule-based contracts shall only be promulgated when the following conditions have been met:

1. The price of the good and/or service being procured is no greater than the price offered to Federal agencies;
  2. The State receives the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract; and
  3. The price of the good and/or service under consideration for purchase via a Federal supply schedule contract is not equal to or greater than the State contract price for the same or equivalent goods or services, unless the Director determines that the best interests of the State are served by use of the proposed Federal supply schedule-based contract.
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Goods and services obtained through these contracts must be procured in a way that is most advantageous to the State, price and other factors considered.

§85.36(b)(5): *“To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.”* To further leverage the economy of scale provided by the Federal supply schedules, DPP regulations permit local use of State contracts based on Federal supply schedules pursuant to N.J.A.C. 17:12-2.3.

§85.36(b)(6): *“Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property...”* The State makes every effort to utilize Federal excess and surplus property when doing so is consistent with State law and Department policy.

§85.36(b)(7): *“Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size...”* The State makes every effort to utilize value engineering clauses for applicable construction projects when doing so is consistent with State law and Department policy.

§85.36(b)(8): *“Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.”* Procurement specialists and evaluation committee members carefully and thoroughly review proposals and mandatory forms to ensure that procurements are awarded to responsible bidders. State law requires that bidders provide evidence of ownership disclosure, political contributions and disclosure of investments in Iran. In addition, Department policy mandates that bidders provide disclosure of investigations or other adverse actions prior to award. Proposals are evaluated based on a number of factors, including the bidder’s ability to successfully perform the contract. Procurement specialists are also responsible for monitoring State and federal debarment lists as well as political contribution databases for “Pay to Play” conflicts prior to awarding contracts.

DPP maintains a central debarment list and its causes for debarment are set forth at N.J.A.C.17:12-6.3, Causes for debarment of a person(s). In addition, Section 2.10 of the State’s Standard Terms and Conditions, which are applicable to all contracts entered into by the State, requires that “[t]he contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.” The administrative regulations, coupled with the Standard Terms and Conditions, will effectively eliminate any debarred or suspended entity from consideration for a disaster recovery contract award.

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Additionally, the independent Office of the State Comptroller is responsible for auditing and monitoring the solicitation of proposals and the awarding of State contracts that involve “a significant consideration or expenditure of funds or are comprised of complex or unique components. . . .” See N.J.S.A. §§ 52:15C-7 and 52:15C-10. Pursuant to EO 125, the State Comptroller reviews all Sandy-related procurements and contract amendments.

**§85.36(b)(9):** *“Grantees and subgrantees will maintain records sufficient to detail the significant history of procurement...”* As part of DPP’s pre-approval process, agencies are required to research the various federal program schedules to identify vendors that sell the desired goods or services and must obtain price quotes from at least three viable vendors by giving all solicited vendors the same opportunity to provide a price quote and the same information regarding work to be performed as well as the conditions of the proposed Federally- based contract to ensure that all vendors are on a level playing field. If agency due diligence reveals that fewer than three vendors offer the required good or service, the agency must document this fact. All research, vendor selection determination and supporting documentation are provided to DPP which is made part of the permanent file and retained by DPP for a minimum of 7 years.

**§85.36(b)(10):** *“Grantees and subgrantees will use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at his own risk.”* Every effort is made to avoid the use of time and material contracts. In the limited instances where these contracts are used, the contract complies with the conditions set forth in this subsection. All contracts awarded for recovery efforts will require a task-order process on firm fixed price or a not-to-exceed basis before any expenditure of funds under that contract.

**§85.36(b)(11):** *“Grantees and subgrantees alone will be responsible...for the settlement of all contractual and administrative issues arising out of procurements...”* All issues arising out of and pertaining to procurements are handled either by the State Contract Manager or DPP. Protests are handled by DPP Hearing Officers, pursuant to procedures set forth at N.J.A.C. 17:12-3. Complaints are handled by DPP’s CCAU unit pursuant to procedures set forth at N.J.A.C. 17:12-4. With regard to protest procedures, the State Contract Manager is also empowered to deal with various administrative procurement issues. Awards through a GSA RFQ are made by the Procurement Bureau within DPP. All protests of Procurement Bureau awards to the Director are handled by DPP Hearing Officers, pursuant to procedures set forth in N.J.A.C. 17:12-3. Protests handled by DPP Hearing Officers are then appealable to the Appellate Division of the New Jersey Superior Court.

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§85.36(b)(12): *“Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements...”* Awards through a GSA RFQ are made by the Procurement Bureau within DPP. All protests of Procurement Bureau awards to the Director are handled by DPP Hearing Officers, pursuant to procedures set forth at N.J.A.C. 17:12-3. Protests handled by DPP Hearing Officers are then appealable to the Appellate Division of the New Jersey Superior Court.

**§85.36(c) Competition.**

§85.36(c) (1): *“All procurement transactions will be conducted in a manner providing full and open competition...”* The overarching purpose of the State’s procurement process is to obtain goods and services that are most advantageous to the State, price and other factors considered, while maintaining a level playing field for all vendors through competition and transparency. DPP, through its previous interactions with FEMA in the development of the debris removal contracts, is fully aware of the need to maintain full and open competition and a level playing field for all participants in the procurement process. Specifications, requirements, scopes of work, and requests for proposal are developed by the using agencies in concert with DPP and are developed in such a way as to ensure fair and open competition. In the event that a procurement is so complex or technical that development of a specification requires the assistance or engagement of a contractor by the State, that contractor would be excluded from competing for that procurement or participating as a subcontractor in any resultant contracts.

§85.36(c) (2): *“Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals...”* To combat the perception of local favoritism that can be inferred from such local preference laws, many states have promulgated statutes and regulations to enforce reciprocal action against states and localities. New Jersey is no exception. N.J.A.C. 17:12-2.13, Preference laws; out-of-State vendors, states in part that “. . . the Director shall apply on a reciprocal basis against an out-of-State bidder any in-State preference which is applied in favor of that bidder by the state or locality in which the bidder maintains its principal place of business.”

§85.36(c)(3): *“Grantees and subgrantees will have written selection procedures for procurement transactions . . .”* DPP advises bidders of the criteria to be used in the evaluation of proposals and these criteria are clearly described and outlined in the procurement documents. The criteria are weighted by the procurement specialist prior to the proposal submission date and these weights are not disclosed to the bidders until an award has been made. The procurement document sets forth a written description of the technical requirements

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necessary for bidders to submit a responsive proposal, including but not limited to, delivery and submission requirements, forms and certifications to be included with the proposal, and submittals comprising the technical and price proposals. The procurement documents further set forth the general evaluation criteria to be used in the technical evaluation of the proposal. In addition, a pricing evaluation model is generally set forth in the procurement documents which serve as the basis for the ranking of bidder submitted price proposals.

**§85.36(c)(4):** *“Grantees and subgrantees will ensure that all prequalified lists of persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition...”*

Currently, DPP does not maintain any prequalification lists for vendors or otherwise related to the procurement of goods or services administered through DPP. In the event that DPP adopts a prequalification procedure in the future, this process will be developed with an eye toward maximizing full and open competition. At times, DPP may procure a multiple award contract to a pool of contractors that have succeeded our advertised competitive process. In those instances both a task-order based process and a “mini-bid” process will occur before any work is performed under that type of contract.

**§85.36(d) Methods of procurement to be followed.**

It is difficult to align each specific standard in this subsection with specific State policies; however, the process set forth in Circular 13-15-DPP is equivalent to the intent of Federal standards set forth in this subsection by ensuring full and open competition and a level playing field for all bidders by requiring quotes from at least three viable sources, publication of evaluation criteria, clearly written scope of services, a thorough technical evaluation of proposals, and awards to responsible vendors whose proposals are most advantageous to the State, price and other factors considered. When the Procurement Bureau within DPP conducts an RFQ posted through GSA, the regular procurement lifecycle is completed, albeit in a condensed timeframe. After the RFQ is posted, a question and answer period is conducted. The RFQ contains standard terms and conditions and Best and Final Offers (similar to Final Proposal Revisions) are requested from bidders determined to be in the competitive range. After the intent to award is issued, unsuccessful bidders may request a debriefing and if necessary, may submit a protest to the Director. Protests are heard in accordance with N.J.A.C. 17:12-3. It is the State’s intention to use the Procurement Bureau to the maximum extent practicable for all HUD grant funded procurements.

Pursuant to Circular Number 16-02-DPP, Delegated Purchase Authority, DPP established thresholds for simplified procurement methods for purchases that do not exceed \$36,000. Micro-purchases, or those valued at less than \$1,000, can be issued without price competition.

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Purchases between \$1,000 and \$17,500 may be accomplished by soliciting three (3) telephone quotations, internet quotations, or signed facsimile quotations. To assure fair competition, the agency provides all vendors with the same information about the good or service to be acquired, along with the same terms and conditions. The date and time that each quote is received is noted and the quote is retained. For purchases valued at more than \$17,500 but less than \$40,000, an agency must solicit a minimum of three (3) sealed quotes. The Agency Request for Proposal, which includes the deadline for submissions, is distributed to all vendors at the same time. The agency establishes internal control procedures for acceptance, security, review and evaluation of the sealed quotes. Generally, the vendor with the lowest price is entitled to award, provided that the vendor's proposal fully conforms to the terms and conditions of the agency's specifications and the State's Terms and Conditions.

**§85.36(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.**

State law prohibits the establishment of set-aside goals based on race or gender. The State has adopted a goal that 25% of contracts (by dollar value) should be awarded to small businesses, however, and when appropriate, DPP will designate certain contracts or subcontracting opportunities as "Small Business Set Asides." DPP strongly encourages the use of small, minority, women and veteran-owned New Jersey businesses and invites the successful bidders to utilize these resources.

**§85.36(f) Contract cost and price.**

It is difficult to align each specific standard in this subsection with specific State policies; however, the State's policy overall is equivalent to the intent of the standards set forth in this subsection with respect to GSA procurements as DPP regulations at N.J.A.C. 17:12-1A.5 mandate that Federal supply schedule-based contracts shall only be promulgated when the following conditions have been met:

1. The price of the good and/or service being procured is no greater than the price offered to Federal agencies;
  2. The State receives the benefit of any contract price reductions, whether statutory, regulatory or contractual in nature, during the term of the contract; and
  3. The price of the good and/or service under consideration for purchase via a Federal supply schedule contract is not equal to or greater than the State contract price for the same or equivalent goods or services, unless the Director determines that
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the best interests of the State are served by use of the proposed Federal supply schedule-based contract.

Therefore, this cost analysis must be undertaken by the agency prior to submission to DPP as part of the pre-approval process outlined in the Circular. Goods and services obtained through these contracts must be procured in a way that is most advantageous to the State, price and other factors considered. When the Procurement Bureau itself conducts an RFQ posted through GSA, the regular procurement lifecycle is completed, albeit in a condensed timeframe. After the RFQ is posted, a question and answer period is conducted. The RFQ contains standard terms and conditions and Best-and-Final Offers (“BAFOs”) are requested from bidders determined to be in the competitive range. Depending on the dollar value of the procurement, a DPP pricing analyst will also review the reasonableness of the pricing prior to award. After the intent to award is issued, unsuccessful bidders may request a debriefing and if necessary, may submit a protest to the Director. Protests are heard in accordance with N.J.A.C. 17:12-3.

**§85.36(g) Awarding agency review.**

It is difficult to compare each specific standard in this subsection with specific State policies; however, the State’s practice is equivalent to the intent of the standards set forth in this subsection as agencies must submit to DPP a pre-approval package, including among other items, the specification, Federal supply schedule, proposed vendor(s), and cost analysis. Prior to contract creation, DPP will thoroughly review the package and conduct a pre-award review with the agencies to ensure that a level playing field and full and open competition were maintained. When the Procurement Bureau itself conducts an RFQ posted through GSA, the regular procurement lifecycle is completed, albeit in a condensed timeframe. After the RFQ is posted, a question and answer period is conducted. The RFQ contains standard terms and conditions and BAFOs are requested from bidders determined to be in the competitive range. Depending on the dollar value of the procurement, a DPP pricing analyst will also review the reasonableness of the pricing prior to award. After the intent to award is issued, unsuccessful bidders may request a debriefing and if necessary, may submit a protest to the Director. Protests are heard in accordance with N.J.A.C. 17:12-3.

**§85.36(h) Bonding requirements.**

This section is largely inapplicable to procurements based on Federal supply schedule pricing. If the service being procured requires bonding to protect the State’s interests, the Procurement Bureau will include applicable bonding in accordance with the provisions of this subsection.

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**§85.36(i) Contract provisions.**

The general provisions enumerated in this subsection are included in the State's Standard Terms and Conditions. Section 2.10 of the State's Standard Terms and Conditions, which are applicable to all contracts entered into by the State, requires that "[t]he contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder." The Federal provisions are incorporated into contracts where they are applicable, (e.g. Davis-Bacon Act is only applicable to public works projects).

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Appendix A

§ 85.36(a) States.

When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

§ 85.36(b) Procurement standards.

1. Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
2. Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
3. Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
  - i. The employee, officer or agent,
  - ii. Any member of his immediate family,
  - iii. His or her partner, or
  - iv. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic

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value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

4. Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase 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.
  5. To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.
  6. Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
  7. Grantees and subgrantees are 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.
  8. Grantees and subgrantees will make awards 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.
  9. Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
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10. Grantees and subgrantees will use time and material type contracts only
  - i. After a determination that no other contract is suitable, and
  - ii. If the contract includes a ceiling price that the contractor exceeds at its own risk.
11. Grantees and subgrantees alone will 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 grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.
12. Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:
  - i. Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
  - ii. Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

**§ 85.36(c) Competition.**

1. All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:
    - i. Placing unreasonable requirements on firms in order for them to qualify to do business,
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- ii. Requiring unnecessary experience and excessive bonding,
  - iii. Noncompetitive pricing practices between firms or between affiliated companies,
  - iv. Noncompetitive awards to consultants that are on retainer contracts,
  - v. Organizational conflicts of interest,
  - vi. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
  - vii. Any arbitrary action in the procurement process.
2. Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage 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 criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
3. Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:
- i. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall 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, shall 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 if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a brand name or equal description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and
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- ii. Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
4. Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

**§ 85.36(d) Methods of procurement to be followed.**

1. Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
2. Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in Sec. 85.36(d)(2)(i) apply.
  - i. In order for sealed bidding to be feasible, the following conditions should be present:
    - A. A complete, adequate, and realistic specification or purchase description is available;
    - B. Two or more responsible bidders are willing and able to compete effectively and for the business; and
    - C. 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.
  - ii. If sealed bids are used, the following requirements apply:
    - A. The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

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- B. The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
  - C. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
  - D. A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall 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
  - E. Any or all bids may be rejected if there is a sound documented reason.
3. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:
- i. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
  - ii. Proposals will be solicited from an adequate number of qualified sources;
  - iii. Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
  - iv. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
  - v. Grantees and subgrantees 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.
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4. Procurement by **noncompetitive proposals** is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.
  - i. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:
    - A. The item is available only from a single source;
    - B. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
    - C. The awarding agency authorizes noncompetitive proposals; or
    - D. After solicitation of a number of sources, competition is determined inadequate.
  - ii. Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
  - iii. Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre- award review in accordance with paragraph (g) of this section.

**§ 85.36(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.**

1. The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.
  2. Affirmative steps shall include:
    - i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    - ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
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- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;
- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (c)(2) (i) through (v) of this section.

**§ 85.36(f) Contract cost and price.**

1. Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.
  2. Grantees and subgrantees will 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 will 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.
  3. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see Sec. 85.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.
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4. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

**§ 85.36(g) Awarding agency review.**

1. Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
  2. Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:
    - i. A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or
    - ii. The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or
    - iii. The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or
    - iv. The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
    - v. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.
  3. A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.
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- i. A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.
- ii. A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

**§ 85.36(h) Bonding requirements.**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall 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 his bid, execute such contractual documents as may be required within the time specified.
  2. A performance bond on the part of the contractor 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.
  3. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
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**§ 85.36(i) Contract provisions.**

A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

1. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)
  2. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)
  3. Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)
  4. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)
  5. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)
  6. Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)
  7. Notice of awarding agency requirements and regulations pertaining to reporting.
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8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data.
10. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
11. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.
12. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
13. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).

[53 FR 8068, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19642, Apr. 19, 1995]

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**SUBJECT:** Small, Disadvantaged, Minority-Owned, Women-Owned and Veteran Owned  
Businesses

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**NUMBER:** 2.10.21

**EFFECTIVE:** June 2013

**REVISED:** May 1, 2014


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**APPROVAL:**

  
\_\_\_\_\_  
Timothy Cunningham  
Director, Sandy Recovery Division

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**PURPOSE:**

To ensure that small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses can compete for and win a fair share of the contracts that are awarded by the Department of Community Affairs, its sub recipients and contractors receiving funding under the CDBG-DR program.

This policy is revised to clarify State of New Jersey reporting requirements. A form to capture data on small and veteran-owned businesses will be incorporated into SIROMS to capture the additional data, not already included in HUD Form 2516.

**POLICY:**

The Department of Community Affairs and sub recipients utilizing CDBG-DR funds will take all necessary affirmative steps to ensure that contracting opportunities are provided to small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses and labor surplus area firms (see Attachment A).

Affirmative steps shall include:

- Placing qualified small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses on solicitation lists;

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**SUBJECT:** Small, Disadvantaged, Minority-Owned, Women-Owned and Veteran Owned Businesses

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- Ensuring that small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses are solicited whenever they are potential sources, for goods and/or services required in furtherance of Sandy Recovery programs;
- Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses;
- Establishing delivery schedules, where the requirement permits, which encourage participation by small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses;
- Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce; and
- Requiring the prime contractor, if sub contracts are to be let, to take the affirmative steps listed above.

Department of Community Affairs, CDBG-DR equal opportunity records and contract files must include the following information:

- Data indicating the racial/ethnic character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid with CDBG-DR funds
- Data indicating which of those entities are small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses;
- The amount of the contract or subcontract; and
- Documentation of recipients and affirmative steps to ensure that small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services.

Affirmative steps to assure that small and disadvantaged businesses, minority firms, veteran-owned, and women-owned businesses have an equal opportunity may include, but are not limited to:

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- Technical assistance open to all businesses but designed to enhance opportunities for those enterprises; and
- Special outreach efforts to inform them of contract opportunities.

Such steps shall not include preferring a business in the award of any contract or subcontract solely or in part on the basis of race or gender.

New Jersey state law provides that contracting agencies, in consultation with the New Jersey Department of Treasury, may designate a contract, or a portion thereof, for goods, equipment, construction or services to be awarded by a contracting agency as a small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses set-aside contract pursuant to the goals and procedures established by this 1985 amendatory act,<sup>1</sup> whenever there is a reasonable expectation that bids may be obtained for at least three qualified small and disadvantaged businesses, minority firms, veteran- owned, and women-owned businesses capable of furnishing the desired goods, equipment, construction or services at a fair and reasonable price. The designation shall be made prior to the advertisement for bids. For the purposes of this policy, "contracting agency" means the State or any board, commission, committee, authority or agency of the State (N.J.S.A. 52:32-17 et.seq.). N.J.S.A.

The Sandy Recovery Division shall coordinate with appropriate DCA staff to support the Department's Small, Disadvantaged, Minority-Owned, Women-Owned and Veteran Owned Business program. This includes any reporting requirements requested by the Department of Community Affairs to comply with State statutes and compliance reporting to the Division of Purchase and Property.

The Office of Small Business Assistance within the Department of Treasury has specific oversight of the small and disadvantaged businesses, veteran- owned and women-owned businesses set-aside programs. The Office of Minority Business Enterprise within the

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<sup>1</sup> N.J.S.A. 52:32-17, et. seq ("Set Aside Act for Small Businesses, Female Businesses, and Minority Businesses.") and N.J.S.A. 52:32-20.

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Department has specific oversight of the minority business set-aside program. The New Jersey Department of Military and Veterans' Affairs can assist in assist with encouraging opportunities for veteran-owned business in State and subrecipient purchasing and procurement processes.<sup>2</sup>

See attached Exhibits for additional information:

Exhibit 1 – Instructions for Completing Uniform Certification Application

Exhibit 2 – Uniform Certification Application

Exhibit 3 – Affidavit of Certification

Exhibit 4 – Uniform Certification Application Documents Checklist

Exhibit 5 – Personal Financial Statement

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<sup>2</sup> N.J.S.A. 52:32-52 ("Goal for Contracts Awarded to Businesses Owned and Operated by Veterans.

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**Attachment A**

**NEW JERSEY- Labor Surplus Area Data (2013)<sup>3</sup>**

Atlantic City city	Atlantic City city in Atlantic County
Balance of Atlantic County	Atlantic County
Balance of Camden County	Camden County
Balance of Cumberland County	Cumberland County
Balance of Gloucester County	Gloucester County
Balance of Ocean County	Ocean County
Bayonne city	Bayonne city in Hudson County
Belleville Township Belleville Township in Essex County	
Berkeley township	Berkeley township in Ocean County
Brick Township Brick Township in Ocean County	
Bridgeton city	Bridgeton city in Cumberland County
Camden city	Camden city in Camden County
Cape May County	Cape May County
City of Orange Township City of Orange Township in Essex County	
Clifton city	Clifton city in Passaic County
Deptford Township Deptford Township in Gloucester County	
East Orange city	East Orange city in Essex County
Egg Harbor Township Egg Harbor Township in Atlantic County	
Elizabeth city	Elizabeth city in Union County
Galloway township	Galloway township in Atlantic County
Garfield city	Garfield city in Bergen County
Hamilton township	Hamilton township in Atlantic County
Irvington Township Irvington Township in Essex County	
Jersey City	Jersey City in Hudson County

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<sup>3</sup> The US Department of Labor, Employment and Training Division defines "Labor Surplus Area" as a civil jurisdiction that has a civilian average annual unemployment rate during the previous two calendar years of 20 percent or more above the average annual civilian unemployment rate for all states (including Puerto Rico) during the same 24-month reference period. If the National annual average unemployment rate during the referenced period is less than 6.0 percent then the qualifying rate is 6.0 percent. If the National annual average unemployment rate during the referenced period is above 10 percent then the qualifying rate is 10 percent.

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Kearny town	Kearny town in Hudson County
Lacey Township Lacey Township in Ocean County	
Linden city	Linden city in Union County
Long Branch city	Long Branch city in Monmouth County
Manchester Township Manchester Township in Ocean County	
Millville city	Millville city in Cumberland County
Monroe township	Monroe township in Gloucester County
Middlesex County	
Neptune township	Neptune township in Monmouth County
Newark city	Newark city in Essex County
North Bergen Township North Bergen Township in Hudson County	
Passaic city	Passaic city in Passaic County
Paterson city	Paterson city in Passaic County
Pemberton Township Pemberton Township in Burlington County	
Pennsauken Township Pennsauken Township in Camden County	
Perth Amboy city	Perth Amboy city in Middlesex County
Plainfield city	Plainfield city in Union County
Rahway city	Rahway city in Union County
Salem County	Salem County
Toms River Township Toms River Township in Ocean County	
Trenton city	Trenton city in Mercer County
Union City	Union City in Hudson County
Vernon Township Vernon Township in Sussex County	
Vineland city	Vineland city in Cumberland County
West New York town	West New York town in Hudson County
Willingboro Township Willingboro Township in Burlington County	
Winslow township	Winslow township in Camden County

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

**SUBJECT:** Government wide Debarment and Suspension – Excluded Parties Verification

**NUMBER:** 2.10.10

**EFFECTIVE:** June 2013

**REVISED:** March 2016

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**APPROVAL:**

  
Laura Shea  
Assistant Commissioner

  
Samuel ViaVattine  
Director, Sandy Recovery Division

(Note: Is further clarification of DCA Policy Number: 1.10.15, adopted April 2004, and Revised October 2007, as it relates specifically to Government Debarment and Suspension Policies for CDBG-DR funded programs and activities.)

**PURPOSE:**

To outline the policies and procedures required by the Department of Community Affairs to document compliance with the administrative requirements at 2 CFR Part 200<sup>1</sup>. This policy pertains to:

- grantees,
- sub grantees and
- non-federal entities receiving contracts under federal award (including beneficiaries, vendors, contractors)

<sup>1</sup> 2 CFR 200.213 Suspension and debarment: Nonfederal entities are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

2 CFR 200.318 (b): The nonfederal entity 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. See also §200.213 Suspension and debarment.

Appendix II to Part 200 Contract Provisions for Non-federal Entity Contracts Under Federal Awards

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.



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**This policy expressly prohibits making any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.**

**POLICY:**

This policy states the requirements for Government-wide Debarment Screening and for verification that someone to whom federal funds will be awarded is not on the Excluded Parties list. Each program that administers federal funds must document that Recipient Organizations and their Principals have not been Suspended or Debarred. In addition, prior to entering into any HUD-funded agreement, the recipients of CDBG-DR funding must check all contractors, subcontractors (including sub-tier contractors), consultants, and sub recipients against the System for Award Management (SAM), found at <https://www.sam.gov> as well as the State of New Jersey Debarment website found at <http://www.nj.gov/treasury/debarred>. The searches must be printed, initialed by the program administrator, dated and kept in the official project file (see page 9 of this document for step by step instructions on how to maintain compliance with this policy). The purpose of this process is to protect the public interest and ensure the integrity of Federal and State programs by conducting business only with responsible persons. The Department of Community Affairs requires all of its sub recipients to verify that no contractors who have been debarred by either the State or Federal government are receiving contracts utilizing CDBG-DR funds.

**I. GENERAL REQUIREMENTS**

Federal funds granted by the US Department of Housing and Urban Development may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or sub recipient during any period of debarment, suspension, or placement of ineligibility status. Prior to entering into any HUD-funded agreement, the grantee must check all contractors, subcontractors (including sub-tier contractors), consultants, and sub recipients against the System for Award Management (SAM), found at [www.sam.gov](http://www.sam.gov) and the State of New Jersey Debarment website found at <http://www.nj.gov/treasury/debarred>.

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A debarment sanction means that an individual, organization and its affiliates are excluded from conducting business with any Federal Agency government-wide. Depending upon the outcome of an investigation or legal proceeding, a suspension may lead to debarment. Debarment is the most serious compliance sanction and is generally imposed for a three-year period. However, debarment can be imposed for a longer period of time, if determined to be necessary to protect the public interest.

II. PROCEDURES FOR FEDERAL DEBARMENT AND SUSPENSION CHECK

In general, the grantee must check the eligibility of every entity (beneficiary, contractor, vendor, sub grantee, consultant, etc.), and the principals and/or owners of those entities, prior to entering into an agreement and dispersing funds. The grantee must also document that eligibility and debarment status was checked, including the date the check was made.

To check the suspension and debarment status of a firm and/or individual, the grantee must search the SAM. The following steps outline the process for checking the debarment or suspension status of a company or individual:

1. Go to <https://www.sam.gov> and select "Search Records".

The screenshot displays the SAM (System for Award Management) website. At the top, there is a search bar with fields for 'USER NAME', 'PASSWORD', 'SEARCH HISTORY', and 'SEARCH FILTERS'. Below the search bar is a navigation menu with links for 'HOME', 'SEARCH RECORDS', 'REGISTER', 'GENERAL INFO', and 'HELP'. The main content area is divided into three columns:

- CREATE USER ACCOUNT:** Text explaining that CCR transactions will not work in SAM and that users need a new SAM User Account to register or update their entity records. It includes a link to 'Create User Account'.
- REGISTER/UPDATE ENTITY:** Text explaining that users must register their Entity (Business, Individual, or government agency) to do business with the Federal Government. It includes a link to 'Register/Update Entity'.
- SEARCH RECORDS:** Text explaining that all entity records from CCR, FTA, and OFCA and exclusion records from EPLS, active or expired, are stored in SAM. It includes a link to 'Search Records'.

Below the main content area is a 'WHAT IS SAM?' section with a brief description of the system. At the bottom, there are three columns of links: 'NEWS AND ANNOUNCEMENTS', 'USER GUIDES/HELPFUL HINTS', and 'FORMER CCR REGISTRANTS'.

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
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2. In the search box, type the name of the company or individual you are looking for.
3. In the event that a company is registered in the CCR system, you will get a result with a company name. If the "Has Active Exclusion" indicates "No", the company is not excluded from Federal participation. If "Yes", do not proceed with the proposed transaction with the excluded company. In the event that a company is not registered in the CCR system, you will receive a message indicating "No records found for current search".

		USER NAME: <input type="text"/> Password: <input type="password"/>	REGISTER Log Out Account
HOME SEARCH RECORDS DATA ACCESS GENERAL INFO HELP			
<b>Search Records</b> You can enter a DUNS number, CAGE code or Business Name to search for the entities that you are interested in reviewing. You can also enter exclusion search terms to search for exclusion records. Once a search has returned results, use the filters provided to narrow results. Government employees must create a SAMS user account with their government email address. Log in before searching in order to see FOUC information and those registrants who selected to opt out of the public search.			
Enter your specific search term: <input type="text"/>		SEARCH	Need help?
(Examples of search terms include the entity's DUNS number, name, etc.)			
SAMS   System for Award Management 1.0		IBM 11.513.20121222-2220 WWW3	
Note to all Users: This is a Federal Government computer system. Use of this system constitutes consent to monitoring at all times.			

4. Print, date and initial the web page search results documenting that the proposed recipient is not on the SAMS list and place copies in the grant agreement legal file.

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- The same search procedure should be followed for individual names. Once you search the company/organization name, repeat the process for all principals, owners, and partners affiliated with the company.

Example of individual who **IS** excluded.

The screenshot shows the WSAM web application interface. At the top, there is a search bar with the text "Current Search Terms: Anthony T. Rizzo". Below the search bar, there is a "Clear Search" button. The main content area displays "Search Results" and "FILTER RESULTS". Under "FILTER RESULTS", there are checkboxes for "By Keyword States" (with "All" selected) and "By Functional Area" (with "All" selected). A red arrow points to the search results for "Anthony T. Rizzo", which are marked as "Excluded". The interface also includes a "Save As" dropdown menu and a "View Print" button.

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Example of individual who IS NOT excluded and is not in CCR:

The screenshot displays the SAM (System for Award Management) search interface. At the top, there are fields for 'USERNAME' and 'PASSWORD' with a 'Log In' button. Below this is a navigation bar with 'HOME', 'SEARCH', 'ABOUT', and 'CONTACT'. The main content area is titled 'Search Results' and contains instructions: 'You can refine your search by entering search criteria in the search box and clicking the Search for Results button. If you wish to perform a new search use the Clear Search button. Using the Save Search button will allow you to run this search at a later time. To perform searches regarding restrictions click here.' A 'Clear Search' button is visible. Below the instructions, it says 'Current Search Terms: (links) based on: (link)'. The search results section shows 'No records found for current search.' and a 'FILTER RESULTS' section with the following options: 'By Award Status', 'By Agency', 'By Functional Area', and 'By Preference Information'. There is an 'Apply Filters' button and a note: 'Note: Filters are case sensitive'.

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Example of Organization that IS excluded:

The screenshot shows a search results page from the State of New Jersey Department of Community Affairs. The search terms are 'skipworth plumbing'. The results list includes an entry for 'Skipworth Plumbing, Inc.' with a status of 'Active'. The page includes filter options for Record Status (Active, Inactive) and Functional Area (Employment, Performance Information). A 'View Details' button is visible next to the search result.

Current Search Terms: skipworth plumbing

Showing page 1 of 1

Sort: Reference Order: Ascending

**FILTER RESULTS** Your search for "Skipworth Plumbing" returned the following results...

By Record Status

- Active
- Inactive

By Functional Area

- Employment
- Performance Information

Apply Filters

Note: Filters are case sensitive

Entity Name	Entity ID	Entity Type	Status
Skipworth Plumbing, Inc.	10000	Professional Service	Active

View Details

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Example of Organization that IS NOT excluded:

		USER NAME <input type="text"/>	PASSWORD <input type="password"/>
		Exact Username?	Exact Password?
<input type="button" value="Go!"/>			
<a href="#">HOME</a>   <a href="#">SEARCH RECORDS</a>   <a href="#">DATA ACCESS</a>   <a href="#">GENERAL INFO</a>   <a href="#">HELP</a>			
<p>Search Results</p> <p>You can refine your search by entering new search criteria in the search box and using the Search In Results button. If you wish to perform a new search, use the Clear Search button. Using the Save Search button will allow you to run this search at a later time.</p> <p>Important message regarding exclusion searches.</p> <p style="text-align: center;">Current Search Terms: City* of Santa* Maria*</p> <p><input type="button" value="Clear Search"/></p>			
		<input type="button" value="SAVE FILE"/> <input type="button" value="EXPORT RESULTS"/>	
Result page 1 of 1		Sort by: Relevance	Order by: Asc
<p><b>FILTER RESULTS</b> Your search for "City* of Santa* Maria*" returned the following results...</p>			
By Record Status	<input type="button" value="Entity"/>	SANT MARIA, CITY OF	Status: Active <input type="checkbox"/>
<input checked="" type="checkbox"/> Active	DUNS: 099999999	CAGE Code: 28VNA	<input type="button" value="View Details"/>
<input type="checkbox"/> Excl'd	Has Active Exclusions: No	DODMAC:	
By Functional Area	<input type="button" value="Entity"/>	PACIFICA, CITY OF	Status: Active <input type="checkbox"/>
<input checked="" type="checkbox"/> Entity Management	DUNS: 099999999	CAGE Code: 28VNA	<input type="button" value="View Details"/>
<input type="checkbox"/> Preference Information	Has Active Exclusions: No	DODMAC:	
<input type="button" value="Apply Filters"/>			

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**STEP BY STEP STATE AND FEDERAL DEBARMENT AND SUSPENSION PROCEDURES**

Any contractor or subcontractor hired by a subrecipient or state agency will be required to be reviewed for determination if they are an "excluded party". Ultimately, DCA must ensure that this done, each and every time a contract is awarded, whether it is for "contract administration" or it's a builder hired to reconstruct or rehabilitate a residential property. If sub recipients have contractors receiving CDBG-DR funds in for any activity, project or program, then they will need to review for "excluded parties".

A standard protocol for DCA Sandy Recovery Division monitoring of all program partners (whether its internal or external – EDA, NJRA, NJ MHFA) will be the determination if the review for "excluded parties" was conducted prior to award and execution of contract.

In order to maintain compliance, the following must be completed:

1. Prior to entering into any HUD-funded agreement, recipients of CDBG-DR funding must check all contractors, subcontractors (including principals and sub-tier contractors), consultants, and sub recipients against the System for Award Management (SAM), found at <https://www.sam.gov> as well as the State of New Jersey Debarment website found at <http://www.nj.gov/treasury/debarred>.
2. Print, initial and date the web page search results documenting that the proposed recipient is not on the Federal or State debarment list and place copies in the grant agreement legal file.
3. Include a signed and dated Certification form (Exhibit 1 of this document, page 10) regarding debarment and suspension in each contract that is funded with Federal dollars.



**EXHIBIT 1**

**Debarment and Suspension Certification**

**GRANT/LOAN AGREEMENT NUMBER \_\_\_\_\_  
DEBARMENT AND SUSPENSION CERTIFICATION FOR FEDERALLY FUNDED  
CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

The undersigned (authorized official signing for the applicant organization) certifies to the best of his or her knowledge and belief, that the applicant, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State of NJ or Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

RECIPIENT: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

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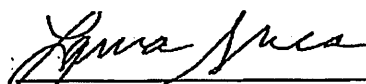
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**APPROVAL**

  
Samuel R. Viavattine  
Deputy Commissioner  
Sandy Recovery Division

  
Laura Shea  
Assistant Commissioner  
Sandy Recovery Division

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**PURPOSE:**

To outline the policies and procedures for the Department of Community Affairs to document compliance with Conflict of Interest requirements and HUD's implementing regulations found at 24 CFR 570.611 (CDBG Other Program Requirements: Conflict of Interest), 24 CFR 570.489(h) (CDBG Program Administrative Requirements for States), and 2 CFR 200 (c) (1) and (2).

**POLICY:**

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advise the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided.

*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."* (2 CFR 200.318 (c) (1).

Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the "Stafford Act") as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternative

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requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

**DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:**

None.

**I. CONFLICT OF INTEREST APPLICABILITY**

In the procurement of supplies, equipment, construction, and services by recipients and sub recipients, the conflict of interest provisions in 2 CFR 200.317- 2 CFR 200.326, and the provisions of 24 CFR 570.611 apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its sub recipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

**II. CONFLICT OF INTEREST REQUIREMENTS**

Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons<sup>1</sup> who exercise or have exercised any functions or responsibilities with respect to CDBG-funded activities, or who are in a position to participate in a decision making process or to gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with who they have family or business ties, during their tenure or for one year thereafter.

Further, no employee, officer or agent of the grantee or sub grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest,

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<sup>1</sup> Applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub recipients which are receiving federal funds.

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real or apparent, would be involved. Such a conflict would arise when there is a financial or other interest in the firm selected for award by:

- the employee, officer or agent of the grantee or sub grantee,
- 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 above

In addition, the Department of the Treasury ("Treasury") requires that all employees involved in the "drafting, reviewing, evaluating or making contract awards, or substantively assisting in any of those tasks, or authorizing payments under those contracts" must complete a *Personal and Business Relationships Disclosure Form*, which is reviewed and approved by Treasury's Ethics Liaison Officer. These forms must be completed annually and employees are subject to discipline and/or prosecution for submitting false information. Moreover, the Division of Purchase and Property (DPP) requires all employees who serve on Evaluation Committees for contract proposal submissions to complete a form that requires committee participants to maintain confidentiality and that screens participants for potential conflicts of interest. This process is documented in a DPP Standard Operating Procedure.

### III. SOLICITATION OF GRATUITIES

The State's or sub grantee's officers, employees or agents shall not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

The State and its sub grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State's and its sub grantee's officers, employees, or agents, or by contractors or their agents. HUD may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

### IV. EXCEPTIONS

Upon the written request of the recipient, HUD may grant an exception to the conflict of interest prohibition on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the

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following:

- A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

In determining whether to grant a requested exception after the recipient has satisfactorily met these requirements of paragraph, HUD shall consider the cumulative effect of the following factors, where applicable:

- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- Whether an opportunity was provided for open competitive bidding or negotiation;
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- Whether the interest or benefit was present before the affected person was an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub recipients which are receiving federal funds;
- Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- Any other relevant considerations.

**V. WRITTEN STANDARDS**

The State must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. These specific written

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standards were addressed in Provision II of this Policy, "Conflict of Interest Requirements."

The State of New Jersey State Ethics Commission administers and enforces the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. Pursuant to section 21(k) of the Conflicts Law, the Commission is authorized to promulgate, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., such rules and regulations as may be necessary to effectuate the purposes of the statute.

Section 21(o) of the Conflicts Law directs the Commission to prepare, and ensure distribution to each State officer and employee and special State officer and employee in the Executive Branch, a plain language ethics guide designed to provide a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning applicable ethical standards. The goal of the guide is to promote ethical day-to-day decision making, to give general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the Commission. Each State officer and employee and special State officer and employee must certify that he or she has received the guide, reviewed it and understands its provisions.

## VI. STATE CONFLICT OF INTEREST GUIDELINES

The following is contained in the "State of New Jersey Plain Language Guide to New Jersey's Executive Branch Ethics Standards":

*As a State officer or employee or special State officer or employee, you are prohibited from acting in your official capacity in any matter in which you have a direct or indirect personal or financial interest that might be expected to impair your objectivity or independence of judgment. As a practical matter, this means that you should not participate, even informally, on a matter in which you have a personal or financial interest.*

- *You could have an incompatible personal or financial interest through such things as:*
- *A purchase, sale, lease, contract, option, or other transaction;*
- *Property or services; and*
- *Employment or negotiations for prospective employment.*

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*Your relationship to a party involved in the matter, such as a relative, cohabitant, or person who is providing funds, goods or services to you.*

*The Conflicts Law contains an exception that permits you to represent yourself in negotiations or proceedings concerning your own interest in real property.*

***Prohibitions on Contracts with a State Agency***

***Special State Officers and Employees.*** You may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with the State agency with which you are affiliated if you have any duties or responsibilities in connection with the purchase or acquisition of property or services. This prohibition also applies to your partners and to any corporation that you control, or in which you own or control more than 1% of the stock. The prohibition does not extend to other State agencies.

***State Officers and Employees.*** You, along with your partners or any corporation you control or in which you own or control more than 1% of the stock, may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with any State agency, whether or not it is the agency for which you work.

***Limited Exceptions to these Prohibitions.*** Three categories of contracts are exempt from the general prohibition on contracting with the State. However, before entering into a contract falling within any of these categories, approval must first be obtained from the Commission. The three categories are:

- *Those purchases, contracts, agreements, or sales that are made after public notice and competitive bidding. The Commission typically approves such contracts unless the contract in question is with the State employee's own agency. In these situations, the Commission has determined that such contracts raise the issue of an appearance of impropriety under section 23(e) (7) of the Conflicts Law.*
- *Those contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-9 and N.J.S.A. 52:34-10. (See attached.)*
- *Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of Treasury, pursuant to N.J.S.A. 52: 27B-62.*

*In addition, there are two statutory exemptions that do not require advance approval by the*

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*Commission:*

- *Contracts for the development of scientific or technological discoveries or innovations: Section 19.1 of the Conflicts Law excepts contracts for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its supplemental code of ethics authorizing these contracts that minimizes actual conflicts of interest, and the contract complies with the code procedure.*
- *Certain rental agreements with State agencies: Section 19.2 of the Conflicts Law excepts rental agreements with a State agency that operates a facility which rents space or provides services to assist small businesses employing fifty people or less, pursuant to the same terms and conditions as those offered to members of the public generally.*

*Prohibitions on Representing Parties other than the State. There are severe restrictions on your ability (and that of any partnership, corporation, or firm in which you have an interest) to represent, appear for, or negotiate on behalf of a person other than the State in connection with any cause, proceeding, application, or other matter, including a negotiation concerning the acquisition or sale of property of any sort, pending before any State agency. See N.J.S.A. 52:13D-15 and 16.*

*Representation does not only involve personally appearing before a State agency on behalf of an individual or entity. Under Commission precedent, representational activities also include:*

- *correspondence to a State agency on behalf of a third party;*
- *telephone calls to a State agency on behalf of a third party; and*
- *A State employee's signature on an application or other document submitted to a State agency on behalf of a third party (e.g., an engineering report).*

*You should carefully review these restrictions or consult with your ELO if you are considering taking any action on behalf of another person or entity that might be considered representing, appearing for, or negotiating on behalf of that person or entity in opposition to the State or before a State agency.*

*For special State officers or employees, the restriction on representing parties other than the State is limited to their own agencies.*



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*Advisory Opinions. If you think that you may have a conflict of interest, you should ask your ELO or the Commission for an opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually. See Advisory Opinions, below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.*

Please refer to the attached Exhibits for additional detail:

**EXHIBIT 1: New Jersey State Ethics Commission Outside Activity Questionnaire**

**EXHIBIT 2: Plain Language Guide to New Jersey's Executive Branch Ethics Standards**

**FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**THE NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS**  
**AND**  
**THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**TO**  
**IMPLEMENT THE NATIONAL DISASTER RESILIENCE (NDR) PROGRAM AWARD**  
**UNDER THE COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER**  
**RECOVERY (CDBG-DR) PROGRAM**

This First Amendment to the Memorandum of Understanding is made by and between the NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS (“DCA” or “GRANTEE”), and the NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (“DEP” or “Subrecipient”) (together the “Parties”).

**PREAMBLES**

WHEREAS, the Parties entered into a Memorandum of Understanding (MOU), effective March 27, 2017, which made available to DEP CDGB-DR funds for the purpose of GRANTEE’s activities under the NDR Program; and

WHEREAS, the Parties have agreed that shared space in the DCA Newark Office on the 9<sup>th</sup> Floor of 2 Gateway Center will be mutually beneficial.

**NOW, THEREFORE**, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Pursuant to Section X.D. of the MOU titled “Amendments,” the MOU may only be amended in writing and executed by a duly authorized representative of each Party. Additionally, Part iv specifies that amendments will generally be required when there is a change in the budget as described in Section IV of the MOU.

The Parties seek to modify the NDR budget line items to better serve the needs of the program and as referenced above, an amendment is necessary.

- I. Section IV. Budget is amended as follows:

- A. Part 1 is replaced by the following language: \$9,562,634 to the “Regional Resiliency Planning Grant Program.
- B. Part 2 is replaced by the following language: \$4,000,000 for the “NDR Toolkit.”
- C. Part 3 is replaced by the following language: \$900,000 for planning as described above in Section IV.
- D. Part 4 is replaced by the following language: \$537,366 for general administration costs.
- E. The Budget Table is replaced with the following:

NDR Activities	Program Budget	Admin Budget	Planning Budget	Total
Regional Resiliency Planning Grant Program (RRPG)	\$9,562,634.00			\$9,562,634.00
RRPG Administration		\$287,366.00		\$287,366.00
RRPG Planning			\$150,000.00	\$150,000.00
<b>RRPG Project</b>				<b>\$10,000,000</b>
Best Practices Toolkit	\$4,000,000.00			\$4,000,000.00
Toolkit Administration		\$250,000.00		\$250,000.00
Toolkit Planning			\$750,000.00	\$750,000.00
<b>Toolkit Project</b>				<b>\$5,000,000</b>
<b>Grant Budget</b>	<b>\$13,562,634.00</b>	<b>\$537,366.00</b>	<b>\$900,000.00</b>	<b>\$15,000,000.00</b>

F. The subsequent paragraph is added after the second paragraph of (B) Administrative Expenses:

The NDR Toolkit Administration budget will include an amount not to exceed \$35,000 for the use of approximately 361 square feet of space for the remaining term of the DCA lease for 2 Gateway Center, Newark, New Jersey.

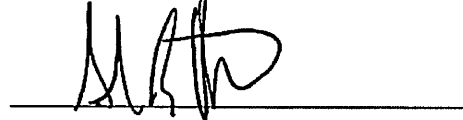
- II. The language in this Amendment shall supersede any language to the contrary contained in the MOU, and all other terms and conditions of the MOU shall remain the same, unchanged and in full force and effect.

**NEW JERSEY DEPARTMENT  
OF ENVIRONMENTAL PROTECTION**



*David Rosenblatt,  
Assistant Commissioner*

**NEW JERSEY DEPARTMENT OF  
COMMUNITY AFFAIRS**



*Samuel Viavattine,  
Deputy Commissioner*

DATE: 3-2-2018

DATE: 3/9/18