

V. Financial Management

On January 6, 2016, HUD's regulations were conformed to the "Federal Awarding Agency Regulatory Implementation of Office of Management and Budget's Uniform Administrative Requirements for Federal Awards" (OMB Uniform Requirements). The OMB Uniform Requirements, found at 2 CFR part 200, are the result of combining previously individual federal regulations and OMB circulars into a joint government wide rule. Prior to the OMB Uniform Regulations, HUD's programs and requirements were covered in various locations; 24 CFR §85.36 (known as the "common rule"); A-87, A-110, and A-122 (2 CFR §220, §225, §215, and §230); circulars A-89, A-102, and A-133; and the guidance in circular A-50 on Single Audit Act follow up, to name a few.

HCD has eight divisions:

- Administration and Management.
- Audit & Evaluation.
- Codes and Standards.
- Executive.
- Financial Assistance.
- Housing Policy.
- Legal Affairs.
- Legislation.

The Division of Financial Assistance (DFA) manages annual federal appropriation funding awards through its Grant Management Section. Because of all the recent disasters in California and the large amount of HUD funding coming from disaster appropriations, which are separate from annual appropriations, HCD has established a Disaster Recovery (DR) Section. NDR is considered DR funding and will be managed under this Section. The organizational chart for NDR reflects its implementation under the DR section.

For the CDBG NDR grant, an Admin 47 form, which outline the amount, name, activities, and related information, are generated and submitted to Budgets and Accounting offices for the creation of the annual state budget authority that allows for NDR funding commitments to be made for agreements and contracts. Each agreement and contract include the amount of total amount of NDR funding committed and budget break out of eligible HUD cost categories.

By executing a HCD agreement or contract, the subgrantee or contractor agrees to comply with all federal and state statutes, regulations, and rules that apply to them and their CDBG NDR activities, in exchange for receiving the NDR funds. Some compliance requirements, listed in the General Conditions Checklist for each project, must be fulfilled prior to incurring costs and/or prior to requesting funds from HCD.

HCD's agreement includes, but is not limited to, the following components:

- Scope of work, which includes a description of the work to be performed, a

schedule for completing the work, and a budget.

- Reports and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist HCD in meeting the HUD's recordkeeping and reporting requirements.
- Program income restrictions and requirements for funds generated as result of the activities funded in the contract, including HCD approval of program income expenditures, along with reporting requirements.
- Uniform administrative requirements, as outlined in both the federal Office of Management and Budget (OMB).
- Specific NDR grant related requirements.
- Suspension and termination clauses, if HCD finds that any subgrantee materially fails to comply with the terms of the contract, and that the contract may be terminated for convenience.
- Reversion of assets clause, stating that upon contract expiration, the subgrantee will transfer any CDBG funds on hand to HCD, along with accounts receivable attributed to the use of the CDBG funds (where they do not meet the definition of Program Income).

A. Financial Management Systems

For CDBG NDR, HCD utilizes four management systems: HUD's Disaster Recovery Grant Reporting System (DRGR), the HCD Consolidated Automated Program Enterprise System (CAPES), the State's Financial Information System for California (FI\$CAL), and GrantCentral. Each of these systems is used to track grant activity budgets and expenditures. Some systems focus on agreement or contract management and some track outcome metrics. HCD ensures that all state systems reconcile with the draws reported quarterly in DRGR.

HCD assigns a program cost account (PCA) code that allows tracking of activities and funds, including encumbrances (when funds are committed to a Standard Agreement or CEA), disencumbrances, expenses or payments, and/or return of funds associated to the HUD grant. The PCA request is routed through the HCD Accounting, Legal, and Budgets offices as it is completed.

HCD utilizes separate PCA codes for each activity to track expenditures and available funding. In addition, separate PCA codes are assigned to the administration funds for each agency administering NDR activities (HCD, Tuolumne County, S SNC, and the USFS), allowing the identification of each organization's administrative expenditures and budget.

HCD staff costs are charged against the specific index/PCA combination based on the work being performed. For example, salaries for Grant Management staff working on CDBG NDR Standard Agreements are billed against index code 2720 and PCA code 44046 (Grant Management Section index and CDBG NDR PCA codes). Indirect costs are billed based on the approved Cost Allocation Plan in place for HCD. HCD

accounting staff have direct access to DRGR to draw funds for reimbursement of Grant Management staff.

On a quarterly basis, Budgets Office staff prepares DFA Section reports and submits them to the Section Chiefs. The purpose of the review is to verify accuracy, address needs or gaps reflected, and to ensure cost savings, where available, are being maximized.

Subgrantees and contractors submit funds requests with support documentation to HCD for reimbursement of NDR eligible costs. Funds requests for the CDBG NDR project are submitted electronically in the GrantCentral system, along with supporting documentation. Upon receipt, review and approval by the Grant Management Representative II (GMR), payments are set up in HUD's DRGR system and in HCD's CAPES. The CAPES form titled "Request for Funds" (RFF) is generated and forwarded to the GMR's manager for approval on the original and hard copies and through GrantCentral. After the manager approval, the RFF (with 3 copies and any special handling instructions) is delivered to the Accounts Payable team in the Division of Administration and Management (DAM). Accounting representatives verify the payment in CAPES, processes the payment request in the FI\$Cal system and approves the draw in DRGR. Further details regarding the payment process are outlined in Section V(B)5 of this manual.

1. GrantCentral

HCD uses GrantCentral, an online grants management platform, to track NDR metrics, agreements, contracts, and funds requests. Subgrantees and contractors submit funds requests through the GrantCentral system. In addition to the signed funds requests form(s), subgrantees upload required back up documentation including scanned copies of contracts, invoices, inspection reports, timesheets and other documentation outlined in the Agreements. Upon submittal of a funds request through GrantCentral, the following approvals are needed by Pillar:

- **Community Resilience Center.** Tuolumne County staff submits funds requests and all required back up documentation electronically through GrantCentral. The GMR either approves or denies the funds request submittal and the county is notified that it is approved or refused and must be resubmitted. The GMR signs the approved RFF form and submits to the Grant Management Manager (GMM) for review, approval and signature. Upon GMM signature, the GMR provides the RFF package to Accounting for processing.
- **Forest and Watershed Health Project.** SNC submits its funds requests and all required documentation directly to HCD for review and approval, using the same process as described above by the county.

However, under the three-party agreements, USFS and CAL FIRE submit fund requests and required back up documentation through GrantCentral for review and approval by SNC first. As the Project Manager, SNC is responsible for verifying work completed for Forest and Watershed Health contracts. After SNC approves the funds request, then the same process as outlined above for the county RFF processing is followed.

Biomass Utilization Facility. The GMR manages agreements and funds requests related to the BUF Pillar. SNC provides project management support for the BUF Pillar and submits funds requests through Grant Central for review and approval by the GMR and GMM.

2. Disaster Recovery Grant Reporting System

HUD requires HCD to use the online DRGR system to set up the grant with submittal and approval of an Action Plan, which contains project and activity narratives, proposed budgets and expenditures. HCD must set up each project and eligible activity, process funds requests, provide quarterly progress reports, provide updates on monitoring actions, and report data on approved outcome metrics.

HCD reports a recap of the progress and expenditures, as well as any challenges or obstacles, in the required Quarterly Performance Reports (QPR) in DRGR. The GMR is responsible for submitting all QPRs. HUD uses DRGR data to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, funds requests, and applicable administrative and public service limitations and the overall percent of benefit to low and moderate income persons; and as a basis for risk analysis in determining a monitoring plan.

Currently, the GMR is responsible for inputting funds requests to the DRGR to obtain a voucher. The GMR is responsible for inputting the QPR in a timely fashion and making changes to the Action Plan, as needed. The GMM sets up eligible activities and obligates funds. Request for Funds (RFF) created by the GMR are completed by HCD Accounting after processing and approval by the GMM. The Accounts Payable team in the DAM is responsible for the approval of all voucher in DRGR.

DRGR User Guides are located at <https://www.portal.hud.gov>.

3. Reconciliation of Systems

GMR staff in the Grant Management Section reconcile the CDBG NDR grant (identified in Action Plan and SA budget) by using HUD reports (DRGR), data maintained in CAPES and Grant Central. Each reconciliation contains the following categories: total grant amount, encumbrances, and available balances. Each category is used in conjunction with SA, Consultant Contracts and HCD's administration allocation. For the NDR grant, HCD staff track grant awards, obligations, unobligated balances, and expenditures, using CAPES, DRGR, and GrantCentral.

California's accounting procedures are in accordance with Generally Accepted Accounting Standards (GAAS). For CDBG NDR funds, HCD requires all source documentation be submitted electronically through GrantCentral. A review and approval of documents to ensure that the expenditures are eligible, funds requests are signed, and valid is required before payments transactions created in DRGR and CAPES by the GMR and recorded in FI\$CAL by Accounts Payable.

The state's policy on miscellaneous accounting procedures, including minimum reporting requirements, is documented in the State Administrative Manual (SAM), Section 8760, and is available at <http://sam.dgs.ca.gov/>. At a minimum, HCD submits quarterly financial and performance reporting required with the QPR. On a monthly basis, CDBG NDR subgrantees and USFS submit reports on financial performance to HCD through GrantCentral. Reports are reviewed and approved by the GMR and incorporated into the QPR reports.

4. Financial Records

HCD must maintain detailed accounting records which form the basis for the grant reports, and must retain these accounting records and make them available for audit for a minimum of five years from the HUD grant closeout (this requirement is longer than the SAM requirement of three years from the date of report date; HCD must use the more stringent requirement whenever conflicts occur between federal and state requirements). For purposes of the NDR grant, files are retained for five years after HCD gets HUD grant closeout completed.

Grant Management Section managers and staff are responsible for closing out HUD NDR grant as well as Agreements with subgrantees, based on close out requirements in each Agreement.

5. Financial Information Systems for California

Note: As of July 1, 2018, FI\$Cal replaced the California State Accounting & Reporting System, or CALSTARS.

Prior to July 1, 2018, California State Accounting & Reporting System, or CALSTARS, was HCD's accounting system of record. However, effective July 1, 2018, HCD converted to Financial Information System for California (FI\$Cal), which is a partnership of the state's Department of Finance, Department of General Services, the State Controller's Office, and the State Treasurer's Office. FI\$Cal is the budgeting, accounting, procurement and cash management system that optimize the financial business management of California's government, allowing the state to operate as a single enterprise for the first time in history.

Accounts Payables staff process payment requests through FI\$Cal and prepare a physical claim schedule package per payment, which is reviewed and approved by the Payables Accounting Admin I or Senior Accounting Officer. Claim schedules are bundled and given to the Federal Drawdown staff in the General Ledger unit. Each DRGR voucher, once the claim is audited, is updated to reflect the approved release date (for that same week's Friday date) and approved, which triggers the US Treasury to release funds to California.

Claims are batched by like grants and audited against DRGR by voucher number to ensure the dollar amounts and payees match the claim schedule information.

Claim schedules are couriered to State Controller's Office (SCO) on Wednesday mornings for them to arrive at the same time the federal funds are being processed, minimizing the time between the federal funds being drawn from the US Treasury and the funds being sent to the recipient. SCO forwards a report reflecting journal entry postings of HCD's federal funds received that week to

HCD. Upon receipt of the SCO journal report, Accounts Payables staff enter the warrant issue dates into HCD's CAPES.

Claim Schedule instructions and guidance are located on the SCO website at:
http://www.sco.ca.gov/ard_state_claim_sched.html

B. Financial Management Payment Process

1. Reimbursement Payments

For all CDBG NDR projects, HCD operates on a reimbursement basis. All costs must be incurred and paid for by the subgrantee or USFS prior to HCD providing a reimbursement. Payment requests must be submitted along with evidence that all invoices and costs incurred were paid by the requester and the work was inspected. HCD defines evidence as one or more of the following:

- Timesheets showing hours worked,
- Paid invoices from subcontractors' purchase of supplies, travel costs,
- Bank statements from the subgrantee showing the funds were expended.
- Cancelled checks matching the invoices paid by the subgrantee.
- Another mechanism approved by HCD in writing for the specific grant.

The GMR reviews and processes all payment requests to ensure only eligible costs are reimbursed. See "Funds Request Payment Processing" below for more details on the review process.

2. Advance Funding

Currently, all NDR agreements with subgrantees and contractors restrict payments to reimbursement only. If a subgrantee wishes to use an advance payment system, then their original NDR agreement must be formally amended to allow for advance funding for an activity.

The OMB Uniform Requirements, 2 CFR 200.3 defines an advance payment as a payment that a federal awarding agency or pass through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the nonfederal entity disburses the funds for program purposes.

In the CDBG Final Rule, effective May 23, 2012 [Federal Register Volume 77, Number 78, Monday, April 23, 2012, Rules and Regulations Pages 24139-24146], in an effort to streamline the States CDBG Program and make it more aligned to the Entitlement Program, HUD amended the grant repayment language to remove references to advances. Specifically, 24 CFR §570.489(c) states:

"Federal grant payments. The state's requests for payment, and the Federal Government's payments upon such requests, must comply with 31 CFR §205. The state must use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the state to units of general local government. States must also have

procedures in place and units of general local government must use these procedures to minimize the time elapsing between the transfer of funds by the state and disbursement for CDBG activities.” 31 CFR §205 describes the US Treasury/State agreements and requirements.

When advance payments are approved:

- 1) Advances are defined as payments where the funds to pay invoiced, completed and inspected work have not been paid out by the subgrantee. Work not completed, regardless of subgrantee payment status, is not eligible for advance payment (with the exception of Housing Rehabilitation contracts requiring escrowed payments; see # 11 below).
- 2) Payments for construction work shall be made at no more than 95 percent of invoiced amount, requiring a minimum five percent retention (unless the payment is the final retention payment and the subgrantee has verifying evidence no mechanics’ liens or other encumbrances have been filed against the property/project) and the advance request shall be the net (95 percent) amount; the invoice amount less the retention.
- 3) Subgrantees, USFS and consultants may only request “advance” activity funds from their CDBG NDR contract if they have adequately demonstrated the willingness and ability to minimize the time lapsing between the receipt of HCD’s funds and the subgrantee’s disbursement and the advanced payments are approved by the Section Chief [2 CFR §215.2 (b)(5)] and [24 CFR §570.489 (c)(1)].
- 4) Advances may only cover invoices received for work that has actually been completed, inspected and approved for payment by the subgrantee and are limited to the amount necessary to pay for actual immediate cash needs, all of which must be documented prior to submitting an advance funds request. Advances are not processed for work that has not been completed or invoiced. Subgrantees must have internal policies and procedures in place that sufficiently document when invoices are received, as well as when the invoiced work was completed and inspected.
- 5) Within two business days of receipt of the State of California’s warrant for the CDBG NDR payment, the subgrantee must place all advanced funds into an interest bearing account, where the funds must remain until expended.
- 6) Subgrantees must pay all invoices (release the funds to the company that have invoiced the work/costs) identified in the advance request within five business days of receipt of funds from HCD.
- 7) Interest earned on advanced funds, prior to expenditure, is not considered program income and must be returned to HCD each month.
- 8) Subgrantees are required to complete and submit the reconciliation of each advance within 30 days of the date the warrant for the advanced funds was received. Subgrantees must complete the “Advance

Reconciliation” section of the Funds Request to include the date the warrant was received, details of the expenditures covered by the advanced funds, the source and uses of all advanced funds, and any excess cash on hand. Unspent funds (excess cash on hand) must be returned to HCD immediately. Any earned interest and any excess cash must be returned to HCD with the Advance Reconciliation, no later than 30 days from the date the warrant was received. Note: excess cash should rarely, if ever, occur, since each advance request must be based on actual invoices received for completed work already inspected by the subgrantee.

Reconciliations are not completed until HCD has reviewed and approved them; upon approval, HCD provides the subgrantee an “approved” copy for their program records.

- 9) Per the Standards for Financial Management Systems [2 CFR part 215.21], accounting records must be supported by source documentation such as cancelled checks, invoices and demands, payrolls, timesheets and attendance records, contract and subgrant award documents, etc.
- 10) Subgrantees are required to maintain financial records and submit the financial reports sufficient to ensure compliance with all recordkeeping and reporting requirements.
- 11) Escrow Accounts for Housing Rehabilitation [24 CFR §570.511] shall not be used unless the contract between the property owner and the selected rehabilitation contractor specifically requires that payment to the contractor shall be made through an escrow account. No advanced funds can be deposited into the escrow account until after the contract between the property owner and rehabilitation contractor has been fully executed. [24 CFR §570.511 (a)(2)].
 - a) Escrow accounts funded with advanced funds are only eligible for housing rehabilitation projects [24 CFR §570.511a].
 - b) Escrowed funds are limited to only paying actual rehabilitation costs (no soft or administrative costs), and payments made to contractors must withhold a 10 percent retention payment, unless the payment is the final payment due (retention release).
 - c) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of the deposit into the escrow account [24 CFR §570.511 (a)(4)].
 - d) If, for any reason and at any time, the escrow account contains funds exceeding 10 days of cash needs, the subgrantee shall immediately return the excess funds back to the Department [24 CFR §570.511 (a)(4)].

- e) Funds deposited into an escrow account shall be used only to pay the actual rehabilitation costs incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, i.e., the subgrantee's administrative costs or rehabilitation activity delivery costs, are not permissible uses of advanced escrowed funds. Such costs may only be paid under the Department's reimbursement process [24 CFR §570.511 (a)(5)].
- f) Noncompliance – If the Department determines that the Grantee has failed to use an escrow account in accordance with regulations, the Department may require the Grantee to discontinue the use of the escrow accounts [24 CFR 570.511 (c)].

3. Advance Funding Procedures

To ensure advance requests are made in accordance with the policy and regulations noted above, grantees requesting advance funds must submit:

- a) Funds Request identifying the funds are being requested as an advance:
All requests for advances must be submitted on the Funds Request form, which must be entirely completed, including a declaration of cash on hand and certification regarding grant funds, Program Income and/or Revolving Loan Fund balances.
- b) Advance Request Form/Supporting Documentation:
An Advance Request detailing what the advanced funds will be used for, specifics about the invoice(s) for the advance request (invoice date, date received by the grantee, vendor name, project name, location, total amount due, work covered in invoice), a certification stating the work was inspected (naming inspector and providing their position, date of inspection, description of work inspected and certification that the work was completed in a workmanlike manner) and when the funds will be disbursed. Supporting documentation must be attached to the justification (project budget, copies of third party contracts, copy of the invoice, inspection, etc.).
- c) Certification to Process Form:
On the Certification form the Authorize Signor certifies that:
 - 1) The funds will be deposited into an interest bearing account within two days of receipt; and,
 - 2) The funds will be expended within five days of deposit; and,
 - 3) The documentation supporting the advance request is true and correct.

The general U.S. Treasury rules for drawing federal funds require that funds not be drawn until needed. There are, however, two regulatory provisions that allow drawing funds from the Treasury in advance which apply with respect to rehabilitation. They are: (a) Lump Sum Drawdown; and (b) Escrow Accounts.

Escrow accounts are not expressly authorized in the HCDA; HUD advises States wishing to allow the use of escrow accounts to follow the provisions of 24 CFR 570.511 of the CDBG Entitlement program regulations, which limits the use for rehabilitation of privately owned residential property only and has very specific requirements.

4. Lump Sum Draw Down

Section 104(h) of the Housing and Community Development Act of 1974 (HCDA) requires HUD to establish standards governing the use of lump sum drawdowns. These standards are at 24 CFR §570.513 of the Entitlement program regulations and states operating the CDBG program may choose to adopt these regulations. On December 20, 2017, HUD issued Notice CPD-17-014 (CPD-17-014), which provides Lump Sum Drawdown requirements, including the limit of advance payments to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the subgrantee carrying out an eligible activity.

HCD may allow one of their subgrantees to draw, as a single amount, the total amount needed for a specific rehabilitation project if it enters into an agreement with a financial institution that meets the requirements set forth in 24 CFR §570.513(b)(2) and if it complies with other requirements under 24 CFR §570.513. Some of the key requirements outlined in the provisions include:

- The agreement may not exceed two years.
- The financial institution must agree to provide certain benefits in conjunction with the activities paid for from the account.
- There are time benchmarks for when the rehabilitation carried out with funds in the account must begin and the pace at which the funds must be used.
- There are limits to what the funds can be used for.
- Lump sum drawdowns are subject to all advance payment policy requirements.

HCD only allows CDBG subgrantee jurisdictions to request funds in a lump sum for projects to rehabilitate privately owned properties eligible under Section 105(a)(4), (a)(14) and (a)(17) of the HCDA. This includes the rehabilitation of privately owned commercial or industrial buildings, and the rehabilitation of nonprofit owned nonresidential buildings and improvements that are not public facilities or improvements. Where a property is owned by a for profit entity, rehabilitation, under §570.202, rehabilitation is limited to exterior improvements of the building and the correction of code violations. For profit owned properties that

require more extensive renovations may be financed with a lump sum drawdown under §570.203 as a special economic development activity. The subgrantee must establish a rehabilitation fund with financial/lending institutions (bank or credit union) for the purpose of financing eligible housing rehabilitation activities (administration and activity delivery funds are not allowed to be drawn in the lump sum). Lump sum draw requests may not be made or processed prior to the execution of the Standard Agreement and the clearance of all general and special conditions (including guidelines, environmental review, procurement, relocation, real property acquisition, lead based paint, labor, etc.) has been issued and HCD has received, reviewed and approved the subgrantee/financing institution's rehabilitation fund agreement.

For the purposes of the CDBG NDR grant, HCD is not funding housing rehabilitation activities, and does not anticipate any lump sum drawdowns.

5. Funds Request Payment Processing

Funds requests, along with required supporting documentation, are completed and submitted by the subgrantees and USFS to HCD via GrantCentral. Each funds request is associated with a specific Agreement or contract. Requests are submitted separately according to the budget line items in the agreement and do not include expenditure information for more than one budgeted line item. Funds requests are broken out by monthly costs.

All payments are made according to the terms of the agreement and budget between HCD and the entity (jurisdiction, state agency, contractor, CBDO, USFS) carrying out the CDBG NDR activities. All requests for payment are supported with proper documentation and are certified by the Authorized Signor identified in the resolution executed with each agreement. Funds requests, along with required supporting documentation, are reviewed and approved by the GMR and submitted for review through GrantCentral. For service contracts, HCD then sends a copy of the invoice to Contracts, who creates a receipt in FI\$Cal.

Upon receipt, GMR notes the receipt of the funds request in the CAPES system. The GMR reviews all submitted documentation for compliance to the federal and state requirements, compares the activity amounts available to the CAPES system to ensure funds are available, validates that any advanced funds have been fully reconciled, and that the funds request certifications are signed by the authorized signor, per the resolution or Agreement. The GMR works with the submitting agency to obtain any information/documentation necessary (if needed) to complete the funds request documentation. Communications are documented (notes taken for verbal conversations, emails printed and maintained in the contract file). Once all information/documentation is received, the GMR indicates that they have approved the funds request through GrantCentral and submits the approved request electronically through GrantCentral to the Contract Management Manager.

The GMR reviews the funds request documentation and approves the request electronically in GrantCentral. For FWHP and BUF, SNC reviews and approves the documentation in GrantCentral first before the GMR reviews the funds request. The approval of the funds request is entered into the CAPES system and

a RFF which acts as a check request for accounting is developed. The RFF is then approved by the GMM and sent to HCD Accounting staff for review and processing. Accounting staff check the RFF against HCD annual budget numbers in FISCAL for payment processing. Accounting staff approve and send the RFF/check request to SCO for payment.

At minimum, one NDR funds request per quarter is randomly selected for monitoring by the HCD staff. The monitoring of the funds request requires source documentation for all costs listed on the funds request to be submitted by the selected subgrantee, partner or contractor. Desk and/or onsite monitoring is coordinated with HCD audit staff and agency staff submitting the funds request. The random quarterly monitoring is completed by DFA staff that is not affiliated with the CDBG NDR grant to ensure an independent review. This monitoring supports HCD's oversight and verification of accuracy, identifies areas that need improvement, and ensures cost savings, where available, are maximized. Funds request status is discussed during the regularly scheduled meetings which discuss the generation for the QPR each quarter to ensure timely expenditure of the CDBG NDR funds. See Section XVI for policies and procedures on desk reviews and monitoring.

HCD's TA contractor, the GMR, and GMM review the performance measures and outcomes for CDBG NDR activities each quarter using the DRGR quarterly report. This information is shared with the Core Team to inform them as to the progress being reported to HUD on each of the activities.

As part of submitting a final funds request, after the project has been completed, all beneficiary data is reported to HCD using a Project Completion Report. In addition, HCD's subgrantees must complete an analysis of the outcomes and resilience standards work performed. The GMR and HCD's contractor works with the subgrantees and partners to close out the grants. Note that HUD has yet to announce the grant closeout requirements; HCD issues a Management Memo outlining the documentation needed for grant closeout upon receipt of additional guidance from HUD. Once the documentation needed according to the HUD guidance is collected, reviewed, and complete, HCD will closeout the Agreement.

C. Approved Leverage Funds versus Match Funding Reporting

The State of California does not have "approved leverage" funding requirements under the NDR grant agreement with HUD. No approved leverage will be reported in DRGR.

However, HUD does encourage the State of California to report any and all match funds provided as part of implementation of CWRP activities. CDBG-NDR match from other sources of funding increases the impact of the HUD award dollars. Matching funds include financial assistance provided by local governments, state agencies, federal agencies and private sources. Match funds will be reported on subgrantee/partner monthly reports and provided to HUD via DRGR on a quarterly basis.

D. Program Income

HCD manages CDBG-NDR program income through the provisions in the Standard Agreement, which all subgrantees sign to receive NDR funding from HCD. Each program may or may not generate program income based on the activities engaged in and the project outcomes.

In the case where partners or subgrantees report program income to HCD through a request for payment, HCD requires that subgrantees use program income prior to requesting additional funds from HCD. Subgrantees provide monthly reports to HCD on program income generated and retained. If at the end of a Standard Agreement there is remaining program income, it is returned to HCD during closeout where the Accounting Section tracks the program income until it is obligated in a new Standard Agreement and tracked through CAPES. However, any program income generated after the HUD CDBG-NDR close out will become CDBG Program Income for the county. HCD reports all program income to HUD through the DRGR.

After HCD finalizes the project activities, it will determine if NDR program income will be generated. Should NDR program income be generated, HCD will refine the program income section to accurately describe how program income will be managed.

E. Salaries and Wages

Salaries and wages of HCD, subgrantee or contractor staff persons being charged to the NDR grant are documented with timesheets and evidence the work being performed is related to the grant (if staff work on multiple programs, functional timesheets that have been approved by a senior position must be documented in the files).

F. Indirect Costs

HCD has an approved Cost Allocation Plan approved by HUD. HCD accounting staff use that rate along with staff timesheets to determine the monthly voucher amounts in DRGR generated for HCD NDR administration expenses.

HCD CDBG-NDR expenses for real property, such as computer equipment, are distributed to each fund source based on the amount of authorized personnel position per program. The annual percentage of indirect costs is determined by the scheduled expenditures. When the computer equipment has reached the end of its useful life, it becomes surplus (there is no income or revenues generated), and the equipment either goes to the Prison Industry Authority, to the State of California Department of General Services, or is identified as waste.

Contractors are not allowed to charge indirect costs. Subgrantees are allowed to charge indirect costs upon documentation of an approved Indirect Cost Rate Proposal (ICRP). Documentation of an ICRP includes: 1) a current ICRP approval letter from a federal funding agency; 2) requesting an ICRP approval from HCD. HCD has developed a formal ICRP approval process for review and approval of subgrantee ICRPs as the cognizant agency. NDR subgrantees and partners may choose not to use an ICRP.

HCD will only request reimburses for expenses that are directly related to the approved activities and for costs that are reasonable and necessary for operating the program or completing the CDBG assisted project. Appendix VII of Part 200 (OMB regulations) states:

- 1) Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.
- 2) Indirect costs include:
 - a) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards, and
 - b) The costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to Part 200—State/Local Government and Indian Tribe Wide Central Service Cost Allocation Plans) and not otherwise treated as direct costs.
- 3) Indirect costs are normally charged to federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled “A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.” A copy of this brochure may be obtained from HHS Cost Allocation Services or at their Web site at <https://rates.psc.gov>.

Since governmental entities must support indirect costs with an approved cost allocation plan or an indirect cost proposal prepared in accordance with the circular, indirect costs must be allocated in a manner which results in the grant program bearing only its fair share of total indirect costs.

G. Timeliness of Expenditures

Each NDR project is tracked in GrantCentral, CAPES and DRGR. The parties involved in the project, as well as HCD staff (GMR, along with other interested parties) have access to the shared file(s). Continued evaluation of each project is performed by HCD, primarily managed by the GMR and is compared to the data contained in the monthly reports and regular calls that provide updates on activity implementation.

At a minimum, HCD uses the following procedures to ensure timely expenditures:

- 1) Include start and end dates in all contracts with local governments, contractors and/or subgrantees. Most contracts will have expenditure deadlines six months before the end of the period of performance, or the HUD grant expenditure deadline.
 - a) As part of the contracting and awards process, HCD works with local governments and contractors to develop performance benchmarks to include in the Agreement. The benchmarks are the basis for monitoring implementation and performance on each activity. Projected start and end dates are identified within DRGR and reported in each quarterly report by activity.
- 2) Review and process expenses against eligible reimbursements provided by subgrantees and draw down expenditures in DRGR on a quarterly reimbursement basis. This allows for internal monitoring of expenditures and ensures that funds are drawn within the system without delay or a lapse in time.
- 3) HCD staff monitors the progress of activities via the monthly reports in order to address any delay in production which could lead to the slow expenditure of NDR funds.
- 4) For stalled activities, the subgrantee submits a mitigation work plan designed to get the activity back on track so that funds can be drawn down, as outlined Exhibit A performance measures of HCD's Agreements. If an acceptable work plan cannot be prepared, HCD reallocates funds to address other eligible unmet needs through the use of an Amendment to the Action Plan.

H. Improper Payments

An improper payment is any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements. These include but are not limited to: a payment to an ineligible party, a payment for an ineligible good or service, a duplicate payment, a payment for a good or service not received (except for such payments where authorized by law), a payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

If a funds request is submitted to HCD and it is determined to have one or more ineligible expense, HCD notifies the subgrantee or contractor to revise the request for funds to exclude the ineligible expense.

If any CDBG NDR payments have been made for ineligible costs or activities, the total amount of CDBG NDR funds must be repaid in full (activity, activity delivery and/or administrative funds). HCD holds returned funds in a local account and uses the funds to pay for future eligible activities if the subgrantee's Standard Agreement is still in effect and the contract balance is greater than the amount of the improper payment. If the Standard Agreement has expired or the amount of improper payment

is greater than the contract balance, HCD contacts HUD to determine the appropriate action.

I. Internal Controls

1. Organizational Charts
2. Staffing

HCD's Division of Financial Assistance assigns one full time staff person in the Grant Management Section to oversee contract management for the CDBG NDR funding. This position, the Grant Management Representative II and known as the GMR, ensures HUD grant compliance by HCD and oversees the SA work performed by the Tuolumne County, SNC, USFS, and CAL FIRE staff. GMR also works closely with HCD Contract staff on procurement of contractors needed for NDR implementation and administration. Once procured by HCD the GMR oversees the contracts and ensures performance and payment compliance.

In addition, HCD has contracted with a third party technical assistance contractor to support the GMR in HUD compliance for HCD, subgrantees and partner as well as contractor oversight work. TA contractor provides guidance to GMR and staff in relation to the DRGR as well as creating documents that build HCD compliance capacity and the capacity of subgrantees. The TA contractor has regular meetings with HCD staff, provides trainings to HCD and subgrantees on NDR requirements and regulatory compliance. On-site visits are conducted as needed to provide hands on training. The GMR works with the HCD Specialist II who serves as the NDR Project Manager and as the liaison between the GMR and HCD leadership.

The GMR works closely with the TA contractor to set up regular communications and reporting that enables HCD to accurately track progress and expenditures for each of the funded CDBG NDR activities. The TA consulting firm provides grant management software, GrantCentral, that facilitates the transfer of information between the state and federal systems to track milestones, outcomes and beneficiary data for each CDBG NDR activity, as outlined in the Action Plan approved by HUD.

The GMR and TA contractor reviews draft NDR agreements between HCD and its CDBG NDR subgrantees or contractor prior to execution to ensure that required federal language is in place. The TA contractor also reviews the agreements or contracts between the subgrantee and their contractors or subrecipients.

Upon execution of the agreement and completion of NEPA documentation, subgrantees may begin expending any general administration funding. Project administration funding may also be utilized as long as it is work that qualifies under the NEPA category of exempt and will be covered by an exemption form for general administration. The County of Tuolumne, as Responsible Entity (RE), completes NEPA/CEQA reviews for general administration and CRC planning and implementation activities. HCD is the NEPA RE and CEQA lead agency on general administration activities NDR pillar planning and implementation activities for FWHP and BUF.

For implementation of project activities, a subgrantee must complete the appropriate General Conditions Clearance checklist (GCC) found on the NDR webpage at NDR Grant Administration Manual and Forms, under “NDR Forms” and provide a signed copy of the GCC with copies of compliance documentation to HCD for review and approval. Upon HCD review and written approval, the subgrantee can begin incurring costs for NDR project implementation activities.

HCD’s Standard Agreement is the contractual document that details the financial and recordkeeping requirements and standards for entities awarded funds to carry out specific eligible NDR activities (subgrantees). Since the USFS does not fall under HUD’s definition of CDBG subgrantee, and to cover the unique relationship where HUD (a federal agency) grants funds to HCD (a state), who in turn provides funds to USFS (another federal agency), HCD developed a CEA. The CEA fulfills the same role as the Standard Agreement, covers the FWHP work and was executed by HCD, SNC and USFS.

A three-party Standard Agreement between HCD, SNC and an eligible non-profit will be used for administering BUF planning and financial assistance activities. The CBDO Agreement will be used to engage and manage the relationship needed for that will execute the project.

Together, the Standard Agreement, CEA and contractor agreement comprise HCD’s formal agreements with subgrantees, partners and contractors. Each Agreement outlines the budget line items, scope of work, performance measures, reporting schedule and timetable for deliverables. HCD’s GMR and contractor staff work with the subgrantee to ensure timely and accurate reporting. In addition to the formal reports, the GMR contacts subgrantees on a regularly scheduled basis to obtain progress updates and to provide technical assistance as the projects progress forward through completion.

The GMR oversees and provides guidance on labor compliance for CDBG NDR construction activities in accordance with subgrantee and partner agreements. Each subgrantee that conducts construction activities is required to name a Labor Standard Compliance Officer to monitor federal and state prevailing wage compliance for each public construction project and directly manage any labor compliance on the projects they are implementing on behalf of HCD (USFS and Tuolumne County). The GMR is responsible for ensuring subgrantees follow federal procurement processes, including the incorporation of applicable prevailing wage language and processes for public construction activities in all bid and contract documents (see the Procurement chapter for specifics). The GMR coordinates with the HUD Region IX Labor Specialist for construction activity implementation, including the submission of labor reports. Procurement and contractor bidding details can be found in Section VI. Additional information on Davis-Bacon can be found in Section VI part O, 2b.

3. Required Standards for Asset Management

HCD, subgrantees and partners whose use of NDR funding will generate assets, as well as any of their contractor whose activities generate assets must provide documentation of internal controls to safeguard CDBG NDR cash, property and other assets. Documentation must be maintained in the files to support oversight.

A combination of written policies, procedures, detailed job responsibilities, named personnel and the chain of command, along with reports showing the control of all assets purchased with CDBG NDR funds are required. Documentation must also include the communication and training for any changes in policies and procedures.

HCD staff will require, when applicable, loan portfolio management policies and procedures, as well as evidence of regular, ongoing compliance review for all program assets, must be maintained by each subgrantee who has a loan portfolio.

Upon the final NDR grant closeout, a report showing the status of any cash, as well as each asset financed or purchased with CDBG NDR funds, and restrictions in use for those assets, must be submitted to HCD.

J. Internal Audits

Congress created the Single Audit Act of 1984 to improve auditing and management of federal funds provided to state and local governments. The Act requires a single organization wide financial and compliance audit for state and local governments. The Act is intended to promote sound financial management, including effective internal controls, with respect to federal awards administered by state and local governments and nonprofit organizations. Internal controls encompass a system of accounting and administrative controls, including management and program policies, procedures, and guidance that help ensure effective and efficient use of resources, as well as prevention and detection of fraud, waste, and abuse, and the reliability of financial reporting.

In addition to internal controls, the Act focuses on compliance with laws and regulations governing federal awards. Compliance refers to how well the respective agency receiving federal funds complies with the requirements in federal law, regulations, contracts, and grants applicable to each of its federal programs. The Single Audit Act Amendments of 1996 were to reduce burdens on state and local governments and to ensure that federal departments and agencies rely on and use the audit work.

All nonfederal entities that expend \$750,000 or more in federal awards in a fiscal year are required to have a single audit for that year in accordance with the Single Audit Act of 1984, Single Audit Act Amendments of 1996, and 2 CFR §200 Subpart F-Audit Requirements.

1. State of California Single Audit Report

Each year, California receives and expends billions of dollars in federal funds for numerous programs. As a condition of receiving these funds, an annual independent audit must be conducted of the state's financial statements. This audit must also include California's compliance with the federal program regulations.

The California State Auditor (State Auditor), the state's independent and nonpartisan audit, evaluation, and investigative arm of the Legislature, plays a critical role in the oversight for federal funds received by the state each year.

As the state's external independent auditor, the State Auditor is the only entity that has, by statute, full access to records, accounts, correspondence, property, or other files of state and local agencies, special districts, public contractors, and school districts. The State Auditor's general powers include the ability to subpoena records, take depositions, and administer oaths. The State Auditor's Office is responsible for evaluating HCD's administration and management of public funds and programs to assure that the proper checks and balances are in place. In addition, the office evaluates HCD's compliance with laws and regulations. Although audits encompass a wide range of topics, HCD staff is comprised of highly trained professionals with a depth and breadth of experience that allows them to evaluate programs and recommend ways to make government more efficient, improve management controls, and instill best practices.

In addition to conducting high risk assessments as authorized by statute, investigations of misconduct by state employees, and audits mandated in statute or requested and approved by the Joint Legislative Audit Committee, the State Auditor is statutorily responsible for annually conducting the statewide Single Audit.

If an outside audit firm is procured to perform any of the audit functions, California Contract Code Sections 10330 through 10334 apply to the procurement and contracting of the firm(s).

State statutes also mandate that the State Audit be:

- Conducted in accordance government and industry auditing standards.
- The independent audit of the state's basic financial statements.
- The independent compliance audit of numerous federal programs administered by California.

As required by the Single Audit Act of 1984 and Single Audit Amendments of 1996, the State Auditor complies with generally accepted Government Auditing Standards (GAS) when conducting the financial and federal compliance audit. The U. S. General Accounting Office issues these standards. In addition, OMB issues guidance for auditors to follow when conducting the Single Audit. This guidance is intended to provide for consistency and uniformity for the audit of the expenditure of federal awards by states, local governments, and nonprofits.

The California Single Audit Report encompasses all state agencies that expend federal funds. HCD is committed to ensuring that policies and practices are in place to make certain that all federal, state, and local program rules, regulations, statutes, and best practice standards are being met. If HCD managed programs are named in any Single Audit Reports as a finding, HCD reviews the issue and the practices that lead to the finding, determines what process changes are needed to become compliant, and implements the necessary changes. Process changes include adequate oversight and monitoring to assure ongoing compliance.

The State of California's annual financial statements and single audit reports are available to the public on the State Controller's Office (SCO) website. Financial

reports are located at http://www.dof.ca.gov/reports_and_periodicals/; single audit reports are located at http://www.dof.ca.gov/single_audit_reports/.

This comprehensive annual Single Audit fulfills the provisions of the federal Single Audit Act of 1984, Single Audit Act Amendments of 1996, and 2 CFR 200 Subpart F-Audit Requirements.

a. Audit Requirements

While the State Department of Finance (Finance) has responsibility for the state's financial and business policies, a separate Office of State Audits and Evaluations (OSAE) was established. OSAE has audit responsibilities for all financial and performance audits of the state departments and agencies. OSAE is responsible to perform audits/evaluations of various state funds and/or programs. Additionally, OSAE conducts engagements as requested by the Governor's Office, Finance Director, or other state entities.

OSAE accomplishes these multifaceted objectives using staff with diverse backgrounds, professional certifications, and technological expertise. OSAE is committed to adherence to professional standards and to maintaining the credibility of the organization.

Per the State Administrative Manual Section 20070, the SCO is the Pass Through Entity for California and is responsible for coordinating Single Audit compliance with local governments for all federal funding including CDBG NDR funding. CDBG NDR subgrantees that are a nonfederal entity must comply with the Single Audit requirements. Compliance is reported to both the State of California Controller's Office and the Federal Audit Clearinghouse.

Documentation showing compliance with the federal single audit requirements includes:

- If the entity expends less than \$750,000 in federal awards, it is required to submit written notification of its exempt status to the State Controller's Office (SCO).
- If the entity expends equal to or in excess of \$750,000 in federal awards and that amount does not include any state pass through funds, the entity submits either the audit report or an explanation letter to the SCO. If the entity is currently being monitored by the SCO, a "No Review Letter" is issued to the entity in return.
- If the entity expends equal to or in excess of \$750,000 in federal awards and that amount includes any state pass through funds, then the SCO requires a complete single audit reporting package to be submitted for review. Reporting packages are reviewed on a first in, first out basis.

Per OMB Regulations 2 CFR §200.512, the SCO electronically submits the State's Single Audit Report data in the prescribed format to the Federal Audit Clearinghouse within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period. The Single Audit Report is also posted on the California Department of Finance website.

b. Uniform Administrative Requirements

To comply with Uniform Administrative Requirements for audits as set forth in 2 CFR part 200.500-521, HCD prepares financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is being audited. Audits are performed annually in accordance with the State of California's Financial and Compliance Audit requirements and those set forth at 2 CFR part 200.504.

Depending on the scope of the audit, HCD may include entity wide financial statements, including departments, agencies, and other organizational units that have separate audits and prepare separate financial statements from those prepared by HCD directly.

HCD also prepares a schedule of expenditures of federal awards for the period covered by HCD's financial statements, which must include the total federal awards expended. If requested, HCD provides information requested by HUD to make the schedule easier to use. At a minimum, the schedule must:

- List individual federal programs by federal agency. For a cluster of programs, provide the cluster name, list individual federal programs within the cluster of programs, and provide the applicable federal agency name. For R&D, total federal awards expended must be shown either by individual federal award or by federal agency and major subdivision within the federal agency.
- Provide total federal awards expended for each individual federal program and the associated identifying number used by the federal agency. For a cluster of programs also provide the total for the cluster.
- Include the total amount provided to subgrantees from each federal program.
- For loan or loan guarantee programs, identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total federal awards expended for loan or loan guarantee programs in the schedule.
- Include notes that describe significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the ten percent de minimis modified total indirect cost rate in lieu of a negotiated indirect cost rate.

At the completion of any audit in which follow up and corrective action are required, HCD completes a corrective action plan. Corrective action plans are applicable to the audit year but reference previous findings, if applicable.

The final audit reporting package is submitted to the Federal Audit Clearinghouse and includes:

- Financial statements and schedule of expenditures of federal awards.

- Summary schedule of prior audit findings.
- Any Auditor's reports.
- The corrective action plan.

Alternatively, HUD may elect to perform a program specific audit on NDR funds. To comply with a program specific audit, HCD prepares the financial statements for the NDR program that include, at a minimum, a schedule of expenditures of NDR funds and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings, and a corrective action plan, if applicable. The completion of the audit is otherwise consistent with agency wide audits, including the completion of a corrective action plan and submission of the complete audit package to the Federal Audit Clearinghouse as detailed above.

2. HCD Audit Committee

The internal HCD Audit Committee consists of HCD executive staff. On an annual basis the Audit Committee selects parts of HCD which will be monitored that year. The HCD Audit staff notify the Grant Management Staff of their audit function, and audit timeline. They coordinate with staff to access files (electronic and paper to review). The Audit staff reports findings, concerns, and recommendations to the HCD Audit Committee which are then passed down to the Grant Management staff for implementation.

3. Subgrantee and Partner Audit Requirements

Some subgrantees must submit an annual Single Audit Report or financial statement, as applicable, to the State Controller's Office (SCO). State agencies who are subgrantees do not need to submit annual audits because they are covered with HCD in the California annual state annual audit. The USFS is not an agency that is required to submit an annual audit. Other subgrantees, who are not state or federal agencies, must submit annual audits and notify HCD of their submission to SCO.

Agreements involving the expenditure of public funds greater than \$10,000, entered into by any state, local, or public entity, are subject to an audit by the California State Auditor's Office for a period of three years after final contract payment per California Government Code, Section 8546.7. Every public contract must contain a provision stating that the contracting parties shall be subject to examination and audit, although failing to include such a provision does not preclude the California State Auditor from conducting the audit.

The State Auditor notifies HCD of any findings. HCD then reviews all State CDBG grantee audit findings and issues a Management Decision Letter regarding the findings within 180 days of the date the audit was received by the State Controller's Office. The letter defines a period of time for the applicant or subgrantee to provide policies and procedures or any other corrective actions needed to ensure findings are mitigated. HCD reviews the response and notifies the jurisdiction if the response was accepted. If the jurisdiction does not provide a

response, it will be considered out of compliance and counted against them on review of any current or future CDBG applications.

4. Allowable Costs

A proportionate share of audit costs is allowed to be paid for with for NDR funding, provided that the portion of costs is relative to the portion of the audit that is conducted on NDR activities. The costs associated with a financial statement audit may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

Audit costs that are not allowable include costs associated with audits that have not been conducted in accordance with the requirements set forth by 2 CFR part 200 Subpart F – Audit Requirements and the costs of auditing an agency or program exempt from Subpart F requirements because the expenditures under federal awards are less than \$750,000 during the fiscal year.

K. Preventing Fraud, Waste, and Abuse

HCD's mission is to provide leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. To support the mission, HCD:

- Is determined to maintain a culture of honesty.
- Is committed to preventing fraud, financial abuse and/or waste of federal funds or assets.
- Requires all employees to conduct themselves in an ethical and legal manner.

All levels of management provide active, ongoing oversight and monitoring processes for the prevention and early detection of fraud and errors in program administration or activity delivery, and must routinely monitor, evaluate, and improve internal controls when necessary. HCD provides whistle blower information easily accessible on SharePoint and on printed posters throughout the office, and staff attend fraud prevention trainings with OIG to improve their ability to prevent and detect fraud.

HCD's subgrantees, partners and contractors are held to the same expectations of prevention as outlined in "False Claims Act" below

1. Defining Fraud, Waste, and Abuse

HCD uses the following definitions:

- Fraud is:
 - A type of illegal act involving the obtaining of something of value through willful misrepresentation.
 - A false representation of a material fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives another so that he acts, or fails to act to his detriment.

- An intentional deception or misrepresentation made by a person or entity, with the knowledge that the deception could result in some unauthorized benefit to himself/herself or some other person.
- Abuse is:
 - Any action that may, directly or indirectly, result in unnecessary costs.
 - The involvement of any payment for items or services when there is not legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment.

Abuse includes any practices that are inconsistent with good fiscal, business, or professional practices and that result in an unnecessary cost to any HCD programs, or in seeking reimbursement for goods or services that are not necessary or that fail to meet the program standards.

- Waste is:
 - The overutilization of and/or the misuse of program resources that result in taxpayers not receiving reasonable value for money or other assets in connection with any program funded activities due to an inappropriate act or omission by persons with control over or access to the program resources. Waste is primarily the mismanagement, inappropriate actions, and inadequate oversight of the use of program resources. Waste goes beyond fraud and abuse and includes situations when there is no intent to deceive, misrepresent, commit a crime or violate a law.

2. Applicant Review

The majority of the State of California's proposed NDR projects are not applicant based. For the BUF, the GMR will work with SNC to develop an AFWA process for each applicant receiving funds. The full AFWA process for the BUF programs will be outlined in the program manual.

3. Internal Auditor

The California State Auditor promotes the efficient and effective management of public funds and programs by providing to citizens and the State independent, objective, accurate, and timely evaluations of state and local governments' activities. The purpose of the California State Auditor's Office is to improve California government by assuring the performance, accountability, and transparency that its citizens deserve. The California State Auditor's staff conduct their reviews in a nonpartisan manner, free from outside influence, including that of the Legislature, Governor, and the subjects of their audits and investigations.

Additional details on the Internal Auditor's process can be found under Part K "Internal Audit."

4. False Claims Act

HCD also requires its subgrantees and partners to behave in a fair and honest way, and to ensure that funds are used in accordance of all federal and state rules, statutes, regulations and guidance. HCD's subgrantees and partners must have policies in place that require reasonable due diligence in detecting fraud, abuse and waste of resources in their process of providing assistance to beneficiaries.

All HCD CDBG NDR recipients must adhere to the requirements listed in the False Claim Act, located in California Government Code Section 12650 to 12656, which states that any person who commits any of the acts listed below shall be liable to the state or political subdivision for three times the amount of damages that the state or political subdivision sustains because of the act of that person:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.
- Knowingly makes, uses, or caused to be made or used a false record or statement material to a false or fraudulent claim.
- Conspires to commit a violation of the False Claim Act.
- Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less than all of that property.
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property to be used.
- Knowingly buys or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or to any political subdivision, or knowingly conceals or knowingly and improperly avoids, or decreases an obligation to pay or transmit money or property to the state or to any political subdivision.
- Is a beneficiary of an inadvertent submission of a false claim, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

False claims include billings for undocumented, unnecessary goods or services that are outside the scope of the project as awarded by HCD.

5. Whistleblower Protection

California Labor Code Section 1102.5 is California's general whistleblower statute, and provides Whistleblower Protection for employees, former employees, or

members of an organization who report suspected misconduct to people or entities that have the power to take corrective action.

On October 12, 2013, California Governor Jerry Brown signed into law SB 496, which, along with two other new laws (SB 666 and AB 263), expanded protections for whistleblowers in California by significantly altering California Labor Code Section 1102.5. The amendments took effect January 1, 2014.

Before it was amended, Section 1102.5 already prohibited employers from retaliating against employees who reported reasonably believed violations of state or federal laws, rules, or regulations to a government or law enforcement agency. SB 496 extended this protection to employees who report suspected illegal behavior:

- Internally to “a person with authority over the employee” or to another employee with the authority to “investigate, discover, or correct” the reported violation.
- Externally to any “public body conducting an investigation, hearing, or inquiry.” Additionally, SB 496 declares unlawful any employer’s rule, regulation, or policy that prevents the disclosure of reasonably believed violations of local (in addition to state and federal) laws, rules, or regulations.

The bill also imposed liability where any person acting on the employer’s behalf retaliates against an employee who engages in protected whistleblowing activity. In addition, employers and persons acting on their behalf may not retaliate against an employee for disclosing such information or because the employer believes the employee has disclosed or may disclose the information externally or internally.

SB 496 further provides that the protection of whistleblowers applies regardless of whether disclosing such information is part of the employee’s job duties. For example, a company’s compliance officer is protected under section 1102.5 for disclosing purported illegal activity even though his job duties may require him to report such activity externally or internally.

California’s general whistleblower statute can have serious consequences for employers—not the least of which are civil penalties of up to \$10,000 per violation. Employers should be aware of the fact that they can now be found liable for “anticipatory retaliation” if they, or any person acting on their behalf, take adverse action against an employee based on the mere belief that the employee has disclosed or might disclose information about a reasonably believed violation of federal, state, or local law.

SB 496 clarified how employers are to handle the conflict that exists among federal courts about whether an individual must first report a reasonably believed violation of securities laws to the Securities and Exchange Commission (SEC) to receive protection against retaliation under the Dodd Frank Act; SB 496 requires that regardless of whether a California employee first reports suspected illegal activity to a government or law enforcement agency, to a specified public body, or via an employer’s internal reporting procedure, California whistleblower retaliation laws protect this activity.

6. Reporting Fraud, Waste, and Abuse

Per the State Administrative Manual, section 20080, Notification of Actual or Suspected Frauds and Irregularities, entities (including HCD) must notify the OSAE and the State Auditor of all cases of actual or suspected fraud, theft, or other irregularities it has become aware of either internally or by referral. This requirement applies to all incidents involving state assets, whether alleged against state employees or others.

Notification is made to OSAE and the State Auditor in writing not later than the first business day following the actual or suspected fraud, theft, or irregularity. The notification includes, as a minimum, the sequence of events, the internal controls that failed, the means of discovery, the corrective actions taken, the actual or estimated dollar amount, and any punitive actions taken or being considered. In those instances where complete information is not available by the first business day following discovery, a preliminary notification will be made. A complete notification is made within 30 days. If not completed within 30 days, a progress report is submitted every 30 days until the entity has resolution of the incident to the proper authority.

Additionally, agencies must notify OSAE of material irregularities in the annual Letter of Representation in accordance with SAM section 20020 (Single Audit Coordination). For reporting lost, stolen or destroyed property, see SAM section 8643.

All HCD employees are obligated to disclose and report any irregularities, possible violations of fiduciary responsibility or possible violations of state or federal statutes, rules or regulations, or serious wrongdoing and/or gross mismanagement to a person with authority to investigate, discover, or correct the possible violation or noncompliance. Whistleblower protection applies to all HCD activity, including CDBG–NDR interagency, subgrantee or contractor's actions associated with the funding awarded for eligible activities and administration costs. Reports of suspected or questionable activities must be made to:

Investigations
California State Auditor
P.O. Box 1019
Sacramento, CA 95812
www.auditor.ca.gov/hotline
800-952-5665 phone
916-322-3360 phone
916-322-2603 fax

VI. Procurement and Contract Management

This section provides guidance on standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other goods and services for CDBG NDR programs. Depending on who is procuring the goods or services, and what is being procured, there are different standards of procurement. Subgrantees adopt federal procurement standards in signing the HCD Agreement and as such must follow the applicable federal procurement standards at 2 CFR part 200.317 through 200.326. HCD is responsible for ensuring CDBG funds are used in accordance with federal and state regulatory requirements. The use of subgrantees or contractors does not relieve HCD of this responsibility.

Procurement standards apply differently to different recipients of NDR funding, who are using them to implement different eligible activities. For instance, all subgrantees who are jurisdictions are required to follow the procurement standards from 2 CFR 200, or local standards, whichever is more restrictive. For example, the County of Tuolumne will follow federal procurement standards, unless their local procurement standards are higher. For subgrantees who are state agencies, they will follow HCD certification of state procurement standards meeting federal standards. So, for SNC and CAL FIRE, they must use state standards but ensure that any federal standards that are higher are followed. For subgrantees that are non-profits, they must follow federal procurement standards. For private citizens or businesses using CDBG NDR funding, they are not required to follow 2 CFR 200, however HCD requires them to document that their procurements meet basic federal procurement standards of being necessary and reasonable costs.

Lastly, due to the USFS' unique position as a federal partner to HCD and because it is a Federal Agency, HCD will allow them to follow the procurement standards from the Federal Acquisition Regulations, or FAR, which outlines the procurement policies and procedures for federal agencies. While the FAR and 2 CFR 200 are closely related, they do have several important differences, such as allowing service contract procurements to be used for non-construction FWHP activities. Detailed requirements related to procurements are outlined in each recipient's agreement or contract used with CDBG NDR funding.

HCD has conducted several procurement trainings for the subgrantees and has provided them with HUD's "Buying Right" procurement guide. HCD staff support subgrantees through their procurement processes and review documents as needed.

Procurement involving federal funding shall be conducted in accordance with applicable Federal, state, and local laws and regulations. As such, HCD follows the State of California's procurement processes and standards, which it has certified are equivalent to the procurement standards at 2 CFR part 200.317 through 200.326. HCD Legal has drafted a crosswalk between state procurement and 2 CFR 200.317-326 to demonstrate how the state standards align with federal requirements. In addition, HCD follows the policies and procedures identified in the State Administrative Manual (SAM) and applicable sections of the Public Contract Code (PCC). While the federal standards act

as the minimum procurement and contracting requirements for the HCD and other state agencies receiving NDR funding, if inconsistencies between federal, state and local procurement requirements arise, they follow the strictest of the requirements.

HCD procurements using CDBG NDR funding are coordinated with GMR and Contract staff. Contract staff work in the HCD's Business Services office and are tasked with meeting state procurement standards. GMR staff are tasked with meeting federal procurement standards. Together the two staff coordinate procurement processes for NDR and ensure procurement files contain all the necessary documentation for state and federal procurement standards.

A. Personnel

The Procurement Division, Department of General Services (DGS), is responsible for every purchase of non IT supplies or equipment more than \$100 and for contracts for purchases for every state agency with such exception as stated in PCC Sections 10295, 10298, 10430, and 12100.5.

The DGS assists agencies in making determinations relative to the appropriate method of acquisition of their equipment needs. DGS also provides effective means of acquiring equipment, whether the acquisition is to be made by purchase or through non-purchasing techniques. (See, *State Administrative Manual §3500*.)

B. Code of Conduct

2 CFR part 200.318(c)(1) requires HCD to maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. To meet these standards, HCD follows the requirements of Article 8: Conflict of Interest § 10410, 10412 of the PCC and the guidance under part 7.10 of the State Contracting Manual, which state, "no officer or employee in the state civil service or other appointed state official shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer's or employee's regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods."

1. Solicitation or Acceptance of Gifts

2 CFR part 200.318(c)(1) allows grant recipients to set "standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value."

The State of California requires HCD and its subgrantees to uphold ethics and bar conflicts of interest in their procurement standards. This includes real and perceived conflicts of interest. The appearance of a conflict of interest includes any indirect or noncash gifts, such as donations to employee fundraising drives, event tickets, meals, or giveaway gifts like a Thanksgiving turkey or iPad drawing given in an employee affiliated organization. These gifts could be considered

potential conflicts of interest as they may create influence, real or perceived, over the decisions regarding awards of federal funds.

2. Organizational Conflicts of Interest

Conflict of interest requirements are specified by HUD; however, they are also dictated by state and local law under PCC §§ 10410 – 10411. CDBG NDR subgrantees must ensure compliance by reviewing their local government situations and determining if the decision-making process was followed appropriately to ensure all HUD, California and local standards are followed; if there are conflicts, the most restrictive standards must be documented and adhered to.

California's conflict of interest standards of conduct applies to all procurement activities. A booklet on all state requirements for conflicts of interest can be found through the State of California Department of Justice webpage at <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/coi.pdf>.

All non-procurement activities (acquisition and disposition of property, direct assistance to individuals and/or businesses) are subject to the HUD requirements described in 24 CFR part 570.489(h). The general rule is persons acting on behalf of state or local government in a State CDBG decision making role, or who are in a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from State CDBG funded activities. This prohibition ends one year after the decision making person has left their position.

HCD evaluates and decides if conflict of interest exists for a subgrantee/partner, employee, agent, contractor, officer, elected official, appointed official of the state, locality, any designated public agencies, subgrantees or other recipient on behalf of their employees or agents which are receiving CDBG funds. The regulations contain a list of factors to be included in any requests, and which must be considered when evaluating them, including:

- Whether the exception would provide a significant cost benefit or essential degree of expertise that would otherwise be missing.
- Whether an opportunity was provided for open competitive bidding.
- Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries, and the exception will allow the person to receive the same benefits as other members of the class.
- Whether the person has withdrawn from the role of decision maker.
- Whether the interest or benefit was present before the affected person became an employee, agent, contractor, officer, or elected official or appointed official of the state, or locality, or of any designated public agencies, or subgrantees, which are receiving CDBG funds.
- Whether undue hardship will result to the State, UGLG or affected person when weighed against the public interest.

- Any other relevant considerations.
- Request for exception must include public disclosure & attorney opinion that exception does not violate state or local law

If HCD or a subgrantee has a parent, affiliate, or subsidiary organization, HCD must also maintain written standards of conduct covering organizational conflicts of interest.

Organizational conflicts of interest refer to situations where, because of the relationships with a parent company, affiliate, or subsidiary organization, the subgrantee is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

C. Pre solicitation

HCD is required to engage with small and minority businesses, women owned business enterprises, and with labor surplus area firms. In addition, HCD follows certain procedures when it develops and maintains lists of prequalified firms.

1. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

Per 2 CFR part 200.321, HCD "must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible." To meet this important goal, HCD follows the procedures set forth in PCC Article 12: Minority Business Participation §10470-10474. Prequalified Lists.

Per 2 CFR part 200.319(d), HCD "must 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, HCD "must not preclude bidders from qualifying during the solicitation period."

These provisions are covered in the State Contracting Manual under parts 8.20 – 8.22 and parts 5.03, 5.05, *et seq.*, 5.11, 5.15, and 11.05 respectively. HCD does not currently anticipate the use of prequalified lists for procured work under the CDBG NDR grant. If that practice changes, this manual will have future updates to policies.

D. Solicitation Requirements

Per 2 CFR 200.319, HCD has written solicitation procedures for all procurement transactions prior to securing contract services under parts 5.03, 5.05, *et seq.*, 5.11, and 5.15 of the State Contracting Manual. These procedures ensure that solicitations include:

- A clear and accurate description of the technical requirements for the material, product, or service to be procured.
- All requirements which the offerors must fulfill.
- All other factors used in evaluating bids or proposals.

1. Full and Open Competition

One of the primary purposes of a procurement process is to ensure full and open competition. Specifically, 2 CFR part 200.319 requires that, “all procurement transactions must be conducted in a manner providing full and open competition.” To fulfill this obligation, the State of California has committed to a program of active competition in the procurement of goods and services.

PCC section 10318 makes it illegal for any agency or employee to draft or cause to be drafted any specifications in such a manner as to limit the bidding directly or indirectly to any one specific concern, or any specific brand, product, thing, or service. It is the aim and desire of the Procurement Division, Department of General Services, to require that such competition be at all times by responsible suppliers and the materials bought through such competition be properly suited to the job intended both as to price and quality (SAM § 3503).

E. Ineligible contractors

HCD is committed to ensuring that contractor performance is measured objectively and that unfair competitive advantages are eliminated from the procurement per the requirements of 2 CFR 200.319(a). Therefore, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals are to be excluded from competing for such procurements.

1. Examples of restrictive situations

For procurements to be truly open and fair, governments make sure not to exclude any qualified firms from the process. Accordingly, HCD takes action to eliminate the following situations as outlined in 2 CFR 200.319(a), which are considered to restrict competition:

- Placing unreasonable requirements on firms for them to qualify to do business.
- Requiring unnecessary experience and excessive bonding.
- Noncompetitive pricing practices between firms or between affiliated companies.
- Noncompetitive contracts to contractors that are on retainer contracts.
- Organizational conflicts of interest.
- 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.
- Any arbitrary action in the procurement process.

F. Geographic Preferences

To make the process fair and open, all eligible firms are allowed to participate, regardless of where they typically do business. Allowing outside firms to compete gives HCD the best opportunity at finding the right company for the job. Therefore,

HCD has committed to following 2 CFR part 200.319(b), which states that HCD, “must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed 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 criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.”

G. Clear and Accurate Descriptions

For HCD to procure exactly the goods or services that it needs, it is important for its staff to draft the procurement language as carefully as possible. As required by 2 CFR part 200.319(c)(1) and SCM part 5.35, HCD ensures that solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.

Per 2 CFR part 200.319(c)(1), these descriptions “may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specification should be avoided if at all possible.”

While federal requirements allow purchasing agents to specify the use of “brand name products or equivalent” to define the performance or other salient requirements of procurement, the specific features of the named brand which must be met by offers is clearly stated.

H. Most Economical Approach

To comply with 2 CFR §200.318(d), HCD follows its written procedures in the SCM § 5.85, 7.61, and 7.62 that seek to avoid the “acquisition of unnecessary or duplicative items.” Therefore, consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. Refer also to the SAM procurement guide.

1. Lease versus Purchase Alternatives

One way governments can avoid the purchase of unnecessary items is to lease goods, instead of purchasing them. Steps are taken, where appropriate, to analyze “lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.”

2. Cost Sharing

Another key tenet of procurement is to foster greater economy and efficiency. To promote the cost effective use of shared services across the federal government, HCD examines the effectiveness of entering into state and local intergovernmental agreements for procurement or use of common or shared goods and services in accordance with 2 CFR part 200.318(e).

I. Surplus property

2 CFR 200.318(f) encourages HCD “to use federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.” To meet this goal, the State of California adheres to PCC section 12153, which authorizes the Department of General Services to, “draft, establish, and implement policies that ensure the procurement and use of recycled resources.”

Per PCC Article 6: Purchase of Federal Surplus Property §10385-10389, HCD may “purchase, lease or otherwise acquire from the federal government or any agency thereof for use of state agencies, surplus real property, including buildings, fixtures, and equipment situated thereon, whenever in the department’s judgment the purchase or acquisition and the terms and conditions thereof are in the best interests of the state.”

To meet this goal, the Department of General Services:

- Keeps in constant touch with federal agencies charged with the sale or disposition of federal property and secures full details as to the nature and availability of the property and the terms and conditions under which it can be purchased or acquired.
- Transmits information thus secured to all state agencies in order that they may possess complete and up to date information as to the nature and selling price of available property.
- Prescribes procedures consistent with this article to be followed by state agencies in requisitioning and paying for the property and inform them of the procedures.

J. Value Engineering

Per 2 CFR part 200.318(g), HCD examines the effectiveness of and, where appropriate, uses value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

K. Contractor Requirements

Per 2 CFR 200.318(h) and SCM § 5.40, 10.15, and 11.05, HCD awards contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration is given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

L. Independent Cost Estimate and Cost or Price Analysis

HCD and its subgrantees are required to determine that costs are reasonable through performing a cost or price analysis in connection with every procurement action above the Simple Acquisition Threshold [currently set at \$150,000], including contract modifications. There are two parts of the cost or price analysis. First there is the Independent Cost Estimate (ICE) which is done prior to bidding or at least accepting

bids for a procurement. Second, a cost or price analysis must be done after receiving bids but before executing a formal agreement. More detailed information on procurement requirements for CDBG NDR can be found in the [HUD Buying Right Guide](#).

An ICE provides a baseline estimation of what the required expenditures will be and what they should cost based on suppliers and market values. The method and degree of analysis is dependent on the facts surrounding the procurement situation but, as a starting point, HCD and its subgrantees complete independent estimates before receiving bids or proposals.

A cost analysis is performed when the respondents are required to submit the elements of their estimated cost, as occurs under professional, consulting, and architectural engineering services contracts. A cost analysis is necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established based on a catalog or market price of a commercial product sold in substantial quantities to the public or on prices set by law or regulation.

A price analysis is used in all other instances to determine the reasonableness of the proposed contract price.

For the NDR grant, Tuolumne County submits cost estimates related to the CRC and the USFS and SNC submit cost estimates related to the Forest & Watershed Health Pillar for review and approval by the GMR, who acts as the HCD NDR Contract Representative. The GMR is responsible for completing cost and price analysis for BUF procurements.

HCD and its subgrantees use an Independent Cost Estimate form, which documents the good or service being procured, the method for completing the estimate, the outcome of the estimate, and the supporting documentation used to substantiate the estimate.

M. Methods of Procurement

HCD and its subgrantees are required to use one of the following methods of procurement for projects using CDBG NDR funds. These methods align with both the State of California's procurement requirements, as well as 2 CFR 200. The USFS follows similar methods that are allowed by the FAR.

1. Micro purchases

2 CFR part 200.320(a) defines a procurement by micro purchase as, "the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis Bacon Act). To the extent practicable, the nonfederal entity distributes micro purchases equitably among qualified suppliers. Micro purchases are awarded without soliciting competitive quotations if the nonfederal entity considers the price to be reasonable."

2. Small Purchases

2 CFR part 200.320(b) defines a procurement by small purchase as, “those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.”

Where the dollar threshold involved is \$150,000 or less or where the competitive field is very limited, the Procurement Division requests informal quotations in lieu of using the more expensive formal method. Informal quotations are also used to determine if previous prices are still in effect when dollar amounts are relatively small. These quotes are obtained from qualified sources via telephone, fax, email, mail, or any other reasonable method. In addition, HCD maintains written documentation on the names of the businesses contacted and how they were contacted, the prices that were quoted, and the basis for selecting one firm or supplier over the other(s).

Procurements valued at \$150,000 and less are considered informal and are conducted in accordance with the State Contracting Manual, Volume II, Purchasing Authority Manual (PAM) requirements for informal competitive non-IT goods procurements.

3. Sealed Bids

2 CFR part 200.320(c) defines sealed bids as procurements that, “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.” Sealed bids are the preferred method of procurement for construction contracts, assuming the following conditions from 2 CFR part 200.320(c) have been met:

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the business.
- The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally based on price.

HCD follows the requirements of PCC Article 3: Competitive Bidding and Other Acquisition Procedures §10300-10334. Except for contracts and purchases covered by SAM Chapter 1200 and SAM Chapter 5200, contracts and purchases in amounts exceeding \$150,000 are normally made by sealed bid procedure. Policies are also included in SCM § 5.11, 5.15, 5.80 (A), 5.90, and 11.05. In emergency situations or other special circumstances, statutes may exempt purchases from the bid procedure. Sealed bids are opened and read at a specified time and are maintained on file (PCC section 10301). SAM § 3503.

HCD makes a diligent effort to secure at least three competitive bids. If it cannot obtain three competitive bids, the employee who solicited the bids prepares and

signs a list of the firms or individuals contacted. The agency attaches the bid solicitation list and the bids received.

4. Competitive Proposals

Per 2 CFR part 200.320(d), 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.

HCD follows the requirements of PCC Article 3: Competitive Bidding and Other Acquisition Procedures §10300-10334. For service contracts, HCD follows PCC Article 4: Contracts for Services §10335-10381. Competitive proposals are used for purchases over the Simplified Acquisition Threshold. This procurement method requires formal solicitation, fixed price or cost reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.

5. Procurement by Noncompetitive Proposals

Procurement by noncompetitive proposals, also known as sole source procurement, occurs when a proposal is solicited only from one source. Noncompetitive procurement requires HCD approval in writing and may be approved for use only when the award of a contract is infeasible under small purchase procedures, sealed bids, or RFP/RFQ proposals and one of the following circumstances applies:

- Where the item is available from only a single source. This requires a letter from the Authorized Representative explaining the circumstances and requesting a sole source approval from HCD.
- Where a public exigency or emergency is such that the urgency will not permit a delay beyond the time needed to employ one or the other procurement methods. This also requires a letter from the subgrantee's Authorized Representative explaining the circumstances and requesting a sole source approval from HCD.
- Where after solicitation of a number of sources (RFP/RFQ), competition is determined to be inadequate (one responsible proposal). This requires a letter from the subgrantee's Authorized Representative requesting a sole source approval from HCD and must include the following full procurement file to date:
 - Copy of RFP/RFQ (with all exhibits and attachments).
 - Cost analysis, completed prior to issuing RFP/RFQ (or at a minimum, before receiving bids).
 - Solicitation list, public notices (with proof of publication) and/or other method(s) of distribution, including proof that RFP/RFQ was delivered to the solicitation list.

- List of all proposals received. If any were considered nonresponsive or non-responsible, include the written justifications.
- Full copies of all bids received, including nonresponsive proposals.
- Review scoring results for each respondent based on selection criteria indicated in RFP/RFQ, including names of subgrantee's review panel.
- Proof of no debarment of all proposals received.
- Complete draft contract (ready to execute); this must include all CDBG federal contract provisions.

N. Pre-Award

1. Debarment Check

Per 2 CFR part 200, Appendix II (I), "a contract award must not be made to parties listed on the government wide Excluded Parties List System in the System for Award Management (SAM)...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."

Prior to awarding a contract, HCD's GMR takes the following steps:

- Search for the awarded party's name at:
<https://www.sam.gov/portal/public/SAM/>
- Verify that the awarded party has not been included on any federal debarment lists, which includes ensuring they have a current registration number for DUNs.

2. Conducting Cost/Price Reasonable Analysis

2 CFR part 200.323 requires HCD to "perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the nonfederal entity must make independent estimates before receiving bids or proposals." HCD also applies SCM Chapter 2 Appendix, §2(B)(2).

a. *Negotiating Profits*

2 CFR 200.323(b) requires HCD to, "negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work."

This applies when there is no price competition in a procurement. Profit is to be considered separately from the cost analysis and should be documented as such, however this is not a “cost plus percentage of cost” contract. Refer to HUD’s [Quick Guide to Cost and Price Analysis](#) for further detail.

b. Cost Reasonableness Determination

HCD and its subgrantees use a standard form to document the outcomes of the cost or price analysis and determine whether the cost of the bid or proposal is reasonable. The form includes a description of the method used to analyze the cost, a comparison of the cost to the independent cost estimate, and the outcome of profit negotiations.

3. Prohibited Contracts

The following types of contracts are either prohibited by 2 CFR part 200 or should be used sparingly, with careful oversight.

a. Time and Materials Contracts

Both federal and state regulations forbid the use of time and materials contracts, except in specific scenarios. These types of contracts create an open-ended contract price, which provides no positive incentive to the contractor to control costs or labor efficiency.

2 CFR part 200.318(j)(1) states that HCD, “may 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 its own risk. Time and material type contract means a contract whose cost to a nonfederal entity is the sum of: i) the actual cost of materials; and ii) direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.”

Time and material type contracts may be used only after a determination has been made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at their own risk.

A time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiencies. Therefore, subgrantees must document how they will maintain a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls. If a time and materials contract is required and justified, the contract must outline clear terms for labor and materials to be included and set a maximum threshold based on cost analysis.

b. Cost Plus Contracts

2 CFR 200.323 (d) states that, “the cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.” HCD will not enter into cost plus contracts for the NDR grant.

O. Contract Provisions

The following provisions must be included in any contract between a vendor or contractor and HCD.

1. Special Conditions

a. Insurance Requirements

HCD requires that, at a minimum, contractors provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by HCD. Federally owned property need not be insured unless required by the terms and conditions of the federal award.

b. Bonding Requirements

2 CFR part 200.325 requires that, for construction contracts or subcontracts exceeding the Simplified Acquisition Threshold, HCD obtain assurances that its interest is adequately protected.

All HCD subgrantees and contractors must obtain fidelity bonds sufficient to safeguard against fraud and misuse of funds, per 2 CFR part 200.304(b).

In accordance with Government Code section 11007.4, the State of California has elected to be self-insured for liability exposures. The state and its employees acting in the course and scope of their employment are insured for tort liability arising out of official state business. Contractors of the State of California must comply with bond requirements under PCC §7103 according to the amount of the contract award.

HCD subgrantees or contractors that are not state agencies must provide evidence of fidelity bonding to meet the OMB requirements listed in 2 CFR part 200.304(b) and 31 CFR part 223, Surety Companies Doing Business with the United States, or provide a self-insurance certification to HCD for the activities associated with any CDBG NDR activities.

c. Procedures for When Bids Exceed Cost Estimates

In some cases, the lowest bid received will exceed the amount of funds allocated for the project. When this happens, the contractor or vendor must notify the GMR, who consults with HCD contract staff and staff at the Department of General Services to determine the best option to proceed.

2. Federal Funding Compliance Provisions

In addition to other provisions required by HUD, all contracts made by HCD under the CDBG NDR grant award must contain provisions covering the following, as applicable.

a. Equal Employment Opportunity.

Except as otherwise provided under 41 CFR §60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR §60-1.3 must

include the equal opportunity clause provided under 41 CFR §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR §1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR §60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

b. Davis Bacon Act, as amended (40 U.S.C. 3141-3148).

When required by federal program legislation, all prime construction contracts more than \$2,000 awarded by nonfederal entities must include a provision for compliance with the Davis Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR §5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. HCD or its subgrantees must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation.

The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. HCD or its subgrantees must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR §3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Copeland Act provides that each contractor or subgrantee must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. HCD must report all suspected or reported violations to the federal awarding agency.

c. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

Where applicable, all contracts awarded by the HCD or its subgrantees entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR §5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours.

Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings

or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

d. Rights to Inventions Made Under a Contract or Agreement

If the federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and HCD or its subgrantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” HCD and its subgrantees must comply with the requirements of 37 CFR §401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

e. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal awardee to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

f. Energy Policy and Conservation Act

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 (42 U.S.C. 6201).

g. Debarment and Suspension (Executive Orders 12549 and 12689)

A contract award from a covered procurement over \$25,000 (see 2 CFR §180.220 and 2424) 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 implement Executive Orders 12549 (3 CFR §1986 Comp., p. 189) and 12689 (3 CFR §1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

h. Byrd Anti Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has 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 of a

member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to HCD.

i. Solid Waste Disposal Act

A nonfederal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR §247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.”

P. Contract Management

Per 2 CFR part 200.318(i), HCD and its subgrantees “must maintain records sufficient to detail the history of procurement. These records 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.” State requirements are also outlined in SCM part 9.09.

In addition, 2 CFR part 200.318(b) requires HCD to “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” SCM parts 1.04 and 9.04 detail specific requirements for the responsibilities of any contract manager for the state. HCD will ensure that contractors are in compliance through regular desk monitoring and on-site visits.

1. Awarding Agency or Pass through entity review

Per 2 CFR part 200.324, HCD must make available, upon request by HUD or the State of California, procurement records. HCD and its subgrantees must ensure that their procurement policies and procedures are comprehensive regarding the level of documentation to be maintained for the purchase of any goods or services. Whenever contractors or subgrantees conduct a procurement, they will provide HCD with records of contracts, amendments and evidence that the procurement has been reviewed. Contractors and subgrantees may keep original files for their records and provide HCD with copies and make them available and readily accessible for audit, monitoring or other reviews. Audit and record retention requirements of the state also outline the level of documentation to be maintained under SMC §7.50 and 9.16.

Q. Disputes

Per federal regulations, HCD is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of a procurement. These include, but are not limited to, source evaluation, protests, disputes, and claims.

1. Rejecting Bids

Subgrantees must have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to HCD. A protestor must exhaust all administrative remedies with the subgrantee before pursuing a protest with HCD, and with HUD. Reviews of protests by HCD are limited to:

- Violations of state or federal law or regulations and the standards of procurement
- Violations of the subgrantee's protest procedures for failure to review a complaint or protest
- Protests received by HCD other than those specified above will be referred to the subgrantee

When the range of bids received is such that purchase is not in the best interest of the state, all bids will be rejected. When all bids are rejected, all bidders will be advised.

Also, all bids may be rejected when it is determined, with consideration of the surrounding circumstances, that it would be in the state's best interest to do so.

R. Contract Award

Depending on the type of procurement used, HCD executes the required contract type. Regardless of the services provided or templates used, all contracts must include all required CDBG Compliance Provisions.

S. Contract Modifications

1. Amendments

HCD reviews all proposed contract amendments to ensure that the amendment is in accordance with NDR program or project objectives. Any amendment that does not meet NDR objectives is not eligible for consideration.

Prior to approving an amendment that adjusts project costs, HCD completes cost or price analysis, including an ICE. Once the ICE is complete, HCD reviews the proposed costs from the contractor and ensures that the costs are reasonable. In addition to project costs, HCD reviews amendments to ensure that the proposed change in scope and project timeframe are reasonable and necessary to complete NDR objectives.

HCD reserves the right to extend existing agreements via amendments, so long as full and open competition is not jeopardized as set forth in 2 CFR part 200.319,

and SCM part 5.15, and that the ability to extend the agreement is stipulated within the existing agreement.

2. Change Orders

The procurement process extends to change orders received for previously procured work. Amendments or change orders must be reviewed by HCD before approval or execution by the contractor and must be determined to be reasonable and necessary to complete the contracted task.

Before approving the change order, an ICE must be completed by HCD to ensure that the change order is reasonable. Once the ICE is completed, HCD may compare it to a quote supplied by the contractor to perform the work.

Where feasible and appropriate, care must be taken to limit change orders to prevent a violation of free and open competition for NDR funds. Once accepted, the change order becomes a part of the contract record and all record retention policies governing contracts are applicable.