

## Exhibit D

# HCD CDBG-NDR MONITORING RESULTS DIRECTORY

**Directions:** Use the standard language provided below to populate findings included in the monitoring results letter. Note that some findings may need to be adjusted to more accurately describe the finding discovered during monitoring. This list is not an exhaustive list of findings and will be further developed to account for planned and completed monitoring activities.

### Relocation and Real Property Acquisition

**Written notices to property owners affected by relocation or real property acquisition efforts were not delivered.**

In accordance with 49 CFR 24.102-108, property owners affected by relocation or real property acquisition must be notified in writing. A record of the receipt of the notification must be kept by the implementing organization., including acknowledgements that the property owner received the notice.

**Corrective Action:** Revise program policies and/or procedures to ensure that future notification letters are delivered and a confirmation of receipt is maintained by the program.

**Critical program documentation is incomplete or insufficient to provide a record of relocation or real property acquisition.**

In accordance with 49 CFR 24.102-108, documentation of relocation and real property acquisition efforts must be maintained. These documents include property appraisals, offer forms to property owners, offer acceptances and/or appeals, contracts, and deed filings.

During its review, HCD determined that the following documentation is missing: **indicate missing documentation.**

**Corrective Action:** Establish document management protocols to ensure that documentation is properly categorized and maintained. Additionally, revise program policies and procedures to ensure that collection of critical documentation is a part of the implementation process.

### General Compliance

**The most recent Financial and Accomplishment Report (FAR) is incomplete or contains errors.**

The FAR is a record of performance necessary to ensure compliance with CDBG-NDR objectives. During a review of the FAR, the following deficiencies were noted: **indicate concerns with the FAR.**

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**Corrective Action:** Establish a process of review to ensure that FARs are timely and accurate.

### **Program income reports for CDBG-NDR income-generating activities are not correct or lack required information.**

Program income earned in the implementation of CDBG-NDR activities must be reported and accounted for. CDBG-NDR program income used to deliver CDBG-NDR activities is allowable with HCD approval but must be reported to HCD prior to expenditure. A review of the program income reports provided indicate errors in program income calculations or a lack of accountability for program income.

Deficiencies in program income reports include: **indicate deficiencies in program income reports.**

**Corrective Action:** HCD recommends an audit of program income and requires the submission of an accurate program income report.

### **There is a lack of evidence of compliance with Section 3 requirements set forth by HUD.**

Section 3 is a provision set forth by the Housing and Urban Development Act of 1968 that ensures employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, be directed to low- and very low-income persons. CDBG-NDR funded activities must comply with Section 3 requirements.

A review of the provided Section 3 plan indicates deficiencies in the documentation of Section 3 efforts. These deficiencies include: **list deficiencies in Section 3 plan implementation or documentation.**

**Corrective Action:** Review Section 3 guidance and revise policies and procedures to ensure that Section 3 plans are followed correctly. Establish a document control system to ensure that Section 3 efforts are well documented and such documentation is correctly maintained.

### **The wage compliance report does not support compliance with Davis-Bacon and Related Acts (DBRA).**

HUD-funded construction projects must comply with Davis-Bacon wage rates, established by the Department of Labor, as well as other wage requirements, such as the Contract Work Hours and Safety Standards Act. A review of the provided wage compliance report does not support that Davis-Bacon compliance was effectively monitored and that construction contractors may not have complied with DBRA.

**Corrective Action:** Implement a process for monitoring and ensuring compliance of DBRA requirements, including adjustments to procurement, contracting, and construction monitoring processes. Immediately begin enforcing DBRA requirements and monitoring of ongoing construction agreements.

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**Construction and service contracts using CDBG-NDR funds do not include the necessary federal cross-cutting requirements.**

Appendix II to 2 CFR 200 includes federal contract requirements necessary to ensure compliance with cost principles and federal statutes. HCD has indicated in subrecipient agreements the necessary federal cross-cutting requirements that must be set forth with procured contractors or vendors. A review of executed contracts indicates the following required provisions were not included: list federal requirements missing from contracts.

**Corrective Action:** Update the list of cross-cutting requirements and include these requirements in future CDBG-NDR funded contracts. Immediately amend existing contracts to ensure all required provisions are included.

### Equal Opportunity

**Nondiscrimination, equal opportunity employment, and personnel policies are not sufficient to meet federal requirements.**

CDBG-NDR funded projects must be administered in compliance with nondiscrimination and equal opportunity employment personnel policies. Subrecipients as well as contractors must comply with the following requirements:

- Section 109 of Title 1 of the Housing and Community Development Act of 1974;
- Section 504 of the Rehabilitation Act of 1973;
- The Americans with Disabilities Act of 1990 (ADA);
- The Equal Employment Opportunity Act; and
- The Immigration Reform and Control Act (IRCA) of 1986.

A review of contracts as well as internal policies indicates that the following item(s) are not included in contracts or are not followed internally.

List which requirements are not included in contracts.

Compliance requirements with items identified above include add in specific finding associated with noncompliance with the EEO requirements listed above.

**Corrective Action:** Review the fair housing laws and presidential executive orders guide at [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/FHLaws](https://www.hud.gov/program_offices/fair_housing_equal_opp/FHLaws) and ensure that all contracts comply with all statutory requirements therein. Compliance requirements set forth for insert missing EEO item(s) at:

Section 109 of Title 1 of the Housing and Community Development Act of 1974:  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/fhlaws/109](https://www.hud.gov/program_offices/fair_housing_equal_opp/fhlaws/109)

Section 504 of the Rehabilitation Act of 1973:  
[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disability\\_main](https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_main)

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The Americans with Disabilities Act of 1990 (ADA):

[https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disability\\_overview](https://www.hud.gov/program_offices/fair_housing_equal_opp/disability_overview)

The Equal Employment Opportunity Act:

[https://www.eeoc.gov/eeoc/history/35th/thelaw/eeo\\_1972.html](https://www.eeoc.gov/eeoc/history/35th/thelaw/eeo_1972.html)

The Immigration Reform and Control Act (IRCA) of 1986:

<https://www.uscis.gov/tools/glossary/immigration-reform-and-control-act-1986-irca>

Continue to monitor CDBG-NDR programs for compliance with nondiscrimination and equal employment opportunity requirements.

### Procurement

#### **Procurement records do not include an independent cost estimate.**

2 CFR Part 200.323(a) requires that an independent cost estimate (ICE) is completed before receiving bids or proposals. 2 CFR Part 200.323(a) applies to all contracts procured and paid for with CDBG-NDR funds. Procurements lacking an ICE are not adequately supported and are at risk for repayment of grant funds, including amounts already paid to selected contractors or vendors.

**Corrective Action:** Immediately establish policies and procedures to ensure an ICE is completed prior to the receipt of bids or proposals.

#### **Cost or Price Analysis is not complete or is not sufficient to determine reasonableness of the contract price.**

2 CFR Part 200.323(a) requires a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold, including contract modifications, to ensure that costs are reasonable before signing a contractor or vendor agreement. Procurements lacking a cost or price analysis are not adequately supported and are at risk for repayment of grant funds, including amounts already paid to selected contractors or vendors.

**Corrective Action:** Conduct a cost analysis to ensure that the prices or costs associated with the contract are reasonable. If possible and necessary, negotiate revised contract terms to ensure costs are made reasonable. Ensure that future change orders are determined to be cost reasonable before execution. Immediately establish policies and procedures to ensure a cost or price analysis is completed prior to executing contracts or vendor agreements.

#### **Profit does not appear to have been negotiated with the procured contractor or vendor.**

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2 CFR Part 200.323(b) requires that profit be negotiated separately from the price of each contract in all instances where there is no price competition or when a cost analysis is performed.

**Corrective Action:** Immediately establish policies and procedures to ensure that profit is negotiated appropriately during the procurement process.

#### **The procurement method selected is not supported or is the incorrect procurement type for the procured good or service.**

The type of procurement is dependent on the facts and scenario for each procured good or service. There are five allowable procurement types: micro-purchase, small purchase, sealed bid, competitive proposal, and non-competitive proposal. The procurement method used in the procurement does not match the facts or scenario necessitating the selected procurement type. Documentation must be provided to ensure that the proper procurement method was used. A review of the procurement process indicates that identify which procurement method was used was used. However, based on the facts of the procurement it appears that identify which procurement method below should have been used:

**Micro-purchase.** Used for procurements for contracts or items less than \$3,500 in aggregate. Typically used for supplies.

**Small purchase.** Used for procurements between \$3,500 - \$150,000. Typically used for materials, supplies, or single-task services.

**Sealed bids.** Used for all construction procurements, even those less than \$150,000 and for items above \$150,000 when competitive proposals are not needed.

**Competitive proposals.** Used for architectural and engineering services or other professional services or specialty items where price is not the only determining factor in the procurement. Must be used for professional services over \$150,000 but may be used in lower valued procurements as well.

**Non-competitive proposals.** Used only when well documented and when there has been a determination that insufficient competition exists for the product or service required. Non-competitive proposals may only be used when other procurement methods are not feasible.

**Corrective Action:** Provide documentation to support the procurement method chosen for the good or service procured. Documentation should include internal discussion or decision-making notes regarding why the selected procurement method was chosen. Cite internal policy, where applicable, to support the decision. If the procurement method used was selected erroneously, indicate in the corrective action plan specific steps taken to improve the process for future procurements.

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#### **The advertisement of the procurement was not sufficient.**

2 CFR Part 200.320 outlines the methods of procurement and the advertising requirements for each procurement type. Advertising requirements include:

- Publicly advertising bids;
- Including specifications and requirements to include in the bid response, including any evaluation factors other than price that may be considered;
- Indicating a time and place identified for unsealing bid responses; and
- Including sufficient response time prior to the date set for the end of the procurement.

A review of the procurement process indicates that procurements were not adequately advertised, which may have adversely impacted procurement responses.

**Corrective Action:** Provide documentation detailing the advertisement efforts for the procurement. Review procurement guidelines and ensure that procurement procedures require proper procurement advertising and that documentation of the advertisement is maintained.

#### **The record of engagement with Minority and Woman-Owned Businesses Enterprises (M/WBE) is incomplete or not sufficient.**

2 CFR Part 200.321 requires that procurements take necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. These steps include placing M/WBEs on solicitation lists, reaching out to M/WBEs during the advertising process, and dividing procurements to promote M/WBE engagement. A review of the procurement documentation does not support that M/WBEs were adequately considered during the procurement process.

**Corrective Action:** Review the procurement process to ensure that M/WBE engagement is required in the process. Document efforts to promote M/WBEs engagement in procurement opportunities.

#### **The documentation of solicitation responses is incomplete or not sufficient.**

An adequate number of solicitation responses (three or more) must be received to maximize competition. A review of the procurement process indicates that there were insufficient responses to determine that there was full and open competition. Selection of a contractor or vendor may proceed when less than three responses to a solicitation are received. However, the decision-making process to proceed with the procurement must be well-supported, documented, and included in the procurement file.

**Corrective Action:** Review the outreach procedures used to reach potential contractors or vendors to ensure that competition is maximized through improved advertisement, outreach, and engagement. Review the contractor or vendor selection process and ensure that procurement decision-making processes support the selection of a contractor or vendor when an inadequate number of responses are received. Identify policies or procedures on re-solicitation to ensure that it is an option, depending on the response from the initial solicitation.

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#### **The evaluation of proposals is incomplete or not sufficient.**

2 CFR Part 200.319(c) indicates that procurements must clearly outline the technical requirements that an offeror must fulfill as well as all other factors used in evaluating bids or proposals received. A review of the procurement process does not indicate a satisfactory review process of solicitations received, or that the solicitation review does not support the selection of the procured contractor or vendor.

**Corrective Action:** Review the procurement process to ensure that proposal reviews are conducted in accordance with established policies and procedures. Provide documentation to justify the selection of the procured contractor based on a review of all proposals received. Documentation used to justify contractor selection includes:

- Score cards with notes on competitive proposals;
- Cost or price analysis on sealed bids;
- Debarment checks; and
- Other checks on responsible and responsive proposers, such as reference checks.

#### **There does not appear to have been a debarment check performed on the selected contractor or vendor.**

2 CFR Part 200.212 sets standards for debarment checks in all procurement matters. Prior to the acceptance of a proposal, a check at [www.sam.gov](http://www.sam.gov) must be performed to determine that a proposer has not been barred from receiving federal funds. After a review of the procurement and contract documentation, it does not appear that a debarment check was performed before awarding the contract.

**Corrective Action:** Add documentation to the program file indicating that a debarment check was completed at [www.sam.gov](http://www.sam.gov) and check current contracts to ensure that contracts have not been entered into with debarred contractors.

#### **Contract Management**

#### **There do not appear to be sufficient contract oversight standards or oversight was not performed in a sufficient manner.**

In accordance with the standard agreement signed with HCD, contract management is the responsibility of **agency or municipality**. After a review of contractor performance associated with CDBG-NDR funding, as well as contract management policies and procedures, it appears that oversight of contractors and vendors may not be sufficient to ensure effective and eligible use of CDBG-NDR funds.

**Corrective Action:** Review the monitoring requirements set forth in the standard agreement and ensure full compliance with all terms therein. Implement a contractor oversight plan that includes proper management of contractors in accordance with their contract terms and requirements. Specific oversight should include monitoring

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construction for timely completion and workmanship, adherence to performance requirements and reviewing contract deliverables as set forth in the NDR-funded contract.

### Labor Standards

#### **Davis-Bacon wage rates do not appear to have been provided to contractors.**

Davis-Bacon wage rates must be provided to construction contractors at the time bids are let. A review of the procurement documentation does not support that Davis-Bacon wages were provided to prospective contractors at that time.

**Corrective Action:** Ensure that in future procurements Davis-Bacon wage rates are communicated to construction contractors. Ensure that current contractors have Davis-Bacon wage rates and are correctly applying wage rates in compliance with Davis-Bacon requirements.

#### **Davis-Bacon compliance was not adequately monitored.**

A review of the construction contract monitoring has indicated that required Davis-Bacon monitoring, such as certified payroll reports and on-site interviews, have not been conducted or have not been conducted in a sufficient manner.

Davis-Bacon compliance may not be adequately monitored if the proper provisions are not included in contract documentation. Grantees may also need to provide technical guidance to contractors to ensure compliance with Davis-Bacon requirements. Requirements include submitting certified payroll weekly during the construction period and ensuring that laborers are paid the applicable Davis-Bacon wage rate. Additionally, on-site interviews must be conducted by the grantee to ensure that construction workers are paid the correct wages and in a timely manner, and that certified payroll reports received are accurate.

**Corrective Action:** Provide documentation to show that Davis-Bacon compliance has been maintained. Compliance documentation includes:

- Current wage rate reports;
- A record of correspondence on Davis-Bacon compliance and technical assistance, when needed, with the contractor;
- Certified payroll reports;
- Onsite interview reports.

Review Davis-Bacon compliance requirements and ensure that future monitoring conforms to these requirements.

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### Financial Management

**A review of grant accounting records indicates there may be ineligible grant fund expenditures.**

CDBG-NDR grant funds must be expended in accordance with the terms found in the standard agreement. A review of CDBG-NDR grant expenditures indicates that there were ineligible and/or unauthorized uses of grant funds. Funds paid for ineligible or unauthorized uses do not meet a national objective or are not in alignment with CDBG-NDR program goals as set forth in the authorizing federal register notice or supplementary CDBG-NDR program guidance.

The specific expenditures found to be non-compliance include:

List out the specific expenditures determined to be ineligible or unauthorized.

**Corrective Action:** Immediately support expenditures to ensure that only eligible and authorized costs have been paid for with CDBG-NDR grant funds. If ineligible or unauthorized costs have been paid, establish a plan of action in coordination with HCD to address these questionable costs.

**Records of grant funds disbursements are unclear or incomplete.**

A review of CDBG-NDR expenditures indicates that accompanying invoices, contracts, and work performed do not substantiate the amount of each expenditure. All CDBG-NDR expenditures must have a corresponding invoice or other documentation to indicate that the expenditure is related to an eligible cost incurred relative to approved CDBG-NDR programs or projects.

The following expenditures were reviewed and found to lack support or clarity in the associated cost:

Provide a list of expenditures with comments or notes about invoices, receipts, payroll logs, etc. to explain a lack of clarity or missing evidence to support the expenditure.

**Corrective Action:** Immediately support expenditures to ensure that only eligible and authorized costs have been paid with CDBG-NDR grant funds. If ineligible or unauthorized costs have been paid, establish a plan of action in coordination with HCD to address these questionable costs.