



## STATE PROCUREMENT POLICY

*Certified in both 2019 & 2020*

### Community Development Block Grant Disaster Recovery Procurement Policies and Procedures

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

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

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

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

IEDA Project Managers are responsible for compliance of sub-recipients to the procurement policy. IEDA project managers are listed in the IEDA Organizational Structure section of this policy and procedure manual.

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#### Procurement Standards

##### **General** (Replaces 2 *CFR* 200.318)

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

The subrecipient alone shall be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising



out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the subrecipient of any contractual responsibilities under its contracts.

Responsible unit: IEDA disaster project managers verified via monitoring.

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

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

If the subrecipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

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

Responsible unit: IEDA disaster project managers verified via monitoring.

**Best Cost** (Replaces 2 CFR 200.318)

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

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

**Responsible Contractors** (Replaces 2 CFR 200.318)

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

Awards must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), Debarment and Suspension." The Excluded Parties List System in





SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

rationale for the method of procurement

selection of contract type

contractor selection or rejection

the basis for the contract price.

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

SAM verification checked by IEDA Audit Coordinator via submitted IowaGrants form.

#### **Competition** (Replaces 2 CFR 200.319)

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

Examples restrictions on competition include but are not limited to:

- Placing unreasonable requirements on firms in order 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 consultants that are on retainer contracts;
- Organizational conflicts of interest;
- Specifying only a “brand name” product instead of allowing “an equivalent” product to be offered and describing the performance or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

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

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

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

Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of





the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided. When it is impractical or not reasonably feasible to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

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

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

**Small:** Estimated annual value does not exceed \$5,000 and does not exceed \$15,000 for multiyear contracts: For supplies and services only. The subrecipient does not need to solicit competitive quotations if the subrecipient considers the price to be reasonable. To the extent practicable, the subrecipient must distribute such procurement equitably among qualified suppliers.

**Simple:** Estimated annual value exceeds \$5,000 but less than \$50,000 per year and does not exceed \$150,000 for multiyear contracts: For non-engineering and architectural services and supplies only. The subrecipient may use an informal competitive selection process to engage a service provider. Informal selection means price or rate quotations must be obtained from an adequate number of qualified sources. The subrecipient may contact the prospective service providers in person, by telephone, fax, email or letter. The subrecipient should solicit at least three prospective service providers. The subrecipient must justify, to IEDA's satisfaction, contacting fewer than three service providers. The justification shall be included in the contract file.

**Professional:** Estimated annual value exceeds \$50,000 per year and exceeds \$150,000 for multiyear contracts: For supplies and services and ALL engineering and architectural services, a subrecipient shall use a formal *competitive selection* process to procure the goods or services.

**Sealed bids:** (formal advertising): The sealed bid method is the preferred method for procuring construction. Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. A complete, adequate, and realistic specification or purchase description will be developed before bidding.

The following requirements apply:

Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, and the invitation for bids must be publicly advertised (not required for nonprofit entities);

The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;





All bids will be opened at the time and place prescribed in the invitation for bids, and the bids must be opened publicly;

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

Any or all bids may be rejected if there is a sound documented reason.

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

Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

Proposals must be solicited from an adequate number of qualified sources;

The subrecipient must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

The subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

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

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



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

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

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

Affirmative steps must include:

- (1) Placing qualified small and minority businesses, small women's business enterprises, and small businesses owned by disabled persons on solicitation lists. Link to a directory of Targeted Small Businesses in Iowa: <https://iowaeda.microsoftportals.com/tsb-search/>;
- (2) Ensuring that Targeted Small Businesses are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Targeted Small Businesses;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by Targeted Small Businesses.
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration, the Minority Business Development Agency of the Department of Commerce and the Iowa Economic Development Targeted Small Business Program <https://www.iowaeda.com/small-business/targeted-small-business/> and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Responsible unit: IEDA disaster project managers verified via monitoring

**Recycled Content and Products** (Replaces 2 CFR 200.322)

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

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

Responsible unit: IEDA disaster project managers verified via monitoring.

**Cost Analysis and Contract Price** (Replaces 2 CFR 200.323)

The subrecipient must perform a cost or price analysis in connection with every procurement action in excess of the small, simple and professional acquisition thresholds, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the





particular procurement situation, but as a starting point, the subrecipient must make independent estimates before receiving bids or proposals.

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

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

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

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

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

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

- Requested by IEDA;
- The procurement is expected to exceed the small, simple and professional acquisition thresholds and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- The procurement, which is expected to exceed the small, simple and professional acquisition thresholds, specifies a "brand name" product;

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

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

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

#### **Bonding (Replaces 2 CFR 200.325)**

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





A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

A performance bond for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

A payment bond for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to ensure that the contractor will pay as required by law all persons supplying labor and material in the execution of the work provided for in the contract.

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

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

**Contract Provisions** (Replaces 2 CFR 200.326)

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

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







## Community Development Block Grant Disaster Recovery Procurement Policy & Procedures

### Appendix I: Required Contract Provisions

#### REQUIRED CONTRACT LANGUAGE

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

##### All Contracts:

Funding, in whole or in part, for this Project is funded through Community Development Block Grant-Disaster Recovery (CDBG-DR) as awarded to the State of Iowa by the U.S. Department of Housing and Urban Development (HUD). All provisions of the Federal Code of Regulations, Title 24 (CFR 24), Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments applies to this Project.

Federal Law requires that contracts relating to this Project include certain provisions of CFR Title 24 Part 85.36 (h, i) Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments. Depending on the type of work or services provided and the dollar value of the Project, some of the provisions set forth in CFR Title 24 may not apply to the Contractor or to the work or services provided hereunder; however, the provisions are nonetheless set forth to cause this Project to comply with Federal law.

This Project will be in strict compliance with program requirements of the Awarding Agency and of CFR Title 24 Part 85.36 (i & h). The Contractor certifies:

1. **To Be Detailed in Contract Terms:** Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold)
2. **To Be Detailed in Contract Terms:** Termination clause for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000). This should include under what conditions the clause by be imposed, the form the termination must take (e.g. certified letter), the timeframe required between the notice of termination and its effective date, and the method used to compute the final payment(s) to the contractor.
3. **All Construction Contracts in Excess of \$10,000:** Compliance with EO 11246 of September 24, 1965, entitled "Equal Employment Opportunity", as amended by Executive Order 11375 of October 13, 1967, and as supplemented by U.S. Department of Labor regulations (41 CFR Chapter 60).
4. **All Contracts and Subcontracts for Construction or Repair:** Compliance with the Copeland Anti-Kickback Act (18 U.S.C 874) as supplemented by U.S. Department of Labor regulations (29 CFR Part 3).



5. **All Construction Contracts in Excess of \$2,000 When Required by Federal Grant Program Legislation:** Compliance with the Davis Bacon Act (40 U.S.C 276a to 276a-7) as supplemented by U.S. Department of Labor regulations (29 CFR Part 3).
6. **All Construction Contracts in Excess of \$2,000, and All Contracts in Excess of \$2,500 for Other Contracts Which Involve the Employment of Mechanics or Laborers:** Compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by U.S. Department of Labor regulations (29 CFR Part 5). Housing rehabilitation and new housing construction contracts of less than 8 units are excluded from this requirement.
7. Notice of awarding agency requirements and regulations pertaining to reporting
8. Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract
9. Awarding agency requirements and regulations pertaining to copyrights and rights in data
10. Access by the grantee (State of Iowa), the subgrantee, the Federal grantor agency, the Comptroller General of the United States, the State Auditor, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purposes of making an audit, examination, excerpts, and transcriptions.
11. Retention of all records for 3 years after the State of Iowa has closed the CDBG-DR grant funding this Project with the U.S. Department of Housing and Urban Development.
12. **All Contracts, Subcontracts, and Subgrants in Excess of \$100,000:** Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 CFR Part 15). During the period of performance of this Contract, the Contractor agrees:
  - a. The Contractor will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the Excluded Party Listing System pursuant to 40 CFR 32.
  - b. The Contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended (42 U.S.C 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1318), relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
  - c. The Contractor agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the Contract is under consideration to be listed on the Excluded Party Listing System.
  - d. The Contractor agrees that it will include or cause to be included the criteria and requirements in Paragraph (1) through (4) of this section in every nonexempt



subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.

### **Bonding Requirements:**

For construction, facility improvements, and new housing contracts or subcontracts exceeding the simplified acquisition threshold (\$100,000), the awarding agency may accept the bonding policy and requirements of the grantee (State of Iowa) or the subgrantee provided that the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

1. A bid guarantee from each bidder equivalent to five percent (5%) of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. All Contracts Over \$25,000: A performance bond on the part of the contractor for 100 percent (100%) of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such a contract.
3. All Contracts Over \$25,000: A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided in the contract.

### **Certifications**

The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, and orders when providing Deliverables under this Contract, including without limitation, all laws that pertain to the prevention of discrimination in employment and in the provision of services. Failure to comply with this provision may cause this Contract to be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for future contracts or be subject to other sanctions as provided by law or rule. The Contractor, its employees, agents, and subcontractors shall also comply with all federal, state, and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract. If all or a portion of the funding used to pay for Deliverables is being provided through a grant from the Federal Government, the Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars, and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation on royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the grantee or subgrantee liable in any manner for the resulting changes. The grantee or subgrantee shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-



day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address legislative change. Nothing in this Subsection shall affect or impair the grantee or subgrantee's right to terminate the Contract pursuant to termination provisions.

The Contractor certifies and assures compliance with the applicable orders, laws and implementing regulations, including but not limited to, the following, as modified by the Program Rules, all as may hereafter be modified or amended:

1. Financial Management Guidelines issued by the U.S. Office of Management and Budget, OMB Circular A-133 ("Single Audit Act Amendment of 1996", OMB Circular A-22 ("Cost Principles for Nonprofit Organizations"), OMB Circular A-87 ("Principles for Determining Costs Applicable Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments").
2. Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C 5301 et seq.) and regulations which implement these laws, as modified by waivers and alternative requirements published in the Federal Register applicable to CDBG-DR funding
3. Title VI of the Civil Rights Act of 1964 as amended (Public Law 88-32, 42 U.S.C. 3601 et seq.); Title VIII of the Civil Rights Act of 1968 as amended (Public Law 90-284; 42 U.S.C 3601 et seq.); the Iowa Civil Rights Act of 1965; Iowa Code Section 19B.7 and Executive Order #34 dated July 22, 1988; Iowa Code Chapter 216, Presidential Executive Order 12259; Presidential Executive Order 11246, as amended (contracts in excess of \$10,000); Section 504 of the Rehabilitation Act of 1975, as amended (29 U.S.C 794); the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.); the Americans with Disabilities Act, as applicable, (P.L. 101-336, 42 U.S.C. 12101-12213); and related Civil Rights and Equal Opportunity statutes; and regulations which implement these laws.
4. Fair Housing Act, P.L. 90-284. The Fair Housing Act is part of Title VIII of the Civil Rights Act of 1968 as amended (42 U.S.C 3601 et seq.), Section 109 of the Title 1 of the Housing and Community Development Act of 1974, as amended; Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u); and regulations which implement these laws.
5. US. Department of Housing and Urban Development Act regulations governing the CDBG program, 24 CFR Part 570.
6. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (P.L. 101-235), and implementing regulations.
7. Requirements for the Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance, Final Rule (24 CFR Part 35, et. al)
8. Davis Bacon Act, as amended (40 U.S.C. 276a-276a-5), where applicable under Section 110 of the Housing and Community Development Act of 1974, as amended; Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); the Copeland Anti-Kickback Act (18 U.S.C 874); the Department of Defense Reauthorization Act of 1986; and regulations which implement these laws.



9. The National Environmental Protection Act of 1969 and implementing regulations.
10. The Uniform Relocation Assistance Real Property Acquisition Policies Act of 1970 (URA), as amended (42 USC 4601-4655) and implementing regulations; Section 104(d) of the Housing and Community Development Act of 1974, as amended, governing the residential anti-displacement and relocation assistance plan; and Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, governing optional relocation assistance, each modified and/or waived by the Program Rules.
11. The Iowa CDBG-DR Policies and Procedures Manual; applicable CDBG-DR program guidelines; 261 Iowa Administrative Code, Chapter 23, to the extent applicable to the Program and not in conflict with the Program Rules.
12. Financial and Program Management guidelines issued by the Iowa Economic Development Authority; the CDBG-DR Policies and Procedures Manual; and the IEDA Audit Guide.
13. Government-wide restriction on Lobbying Certification (Section 319 of P.L. 101-121), and implementing regulations.
14. Fair Labor Standards Act and implementing regulations.
15. Hatch Act (regarding political partisan activities and federally-funded activities) and implementing regulations.
16. Citizen participation, hearing, and access to information requirements under Section 104(a)(2) and 104(a)(3) of Title I of the Housing and Community Development Act of 1974, as modified by the Program Rules.
17. Subsection 104(l) of Title I of the Housing and Community Development Act of 1974, as amended, regarding the prohibition of the use of excessive force in nonviolent civil rights demonstrations and the enforcement of state and local laws on barring entrance to or exit from facilities subject to such demonstrations.
18. Drug-Free Workplace Act
19. All Federal Laws and regulations described in 24 CFR Subpart K, except for 24 CFR 570.604 and 24 CFR Part 52.
20. Iowa Code Chapter 8A.315-317 and Iowa Administrative Code Chapter 11-117.6(5)-Recycled Product Content. When appropriate, specifications under this Contract shall include requirements for the uses of recovered materials and products. The specifications shall not restrict the use of alternative materials, exclude recovered materials, or require performance standards that exclude products containing recovered materials unless the Contractor seeking the product can document that the use of recovered materials will impede the intended use of the product.

**Compliance with Environmental and Historic Preservation Requirements:**

Notwithstanding any provision of this Contract, the parties hereto agree and acknowledge that this Contract does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may only occur upon satisfactory completion of environmental



review and receipt by the Contractor of Release of Funds from the State of Iowa under 24 CFR Part 58 or 24 CFR Part 50. The parties further agree that the provision of funds to the project is conditioned on the State of Iowa's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review. It is further understood that the environmental clearance must be obtained prior to any commitment of funds or the undertaking of any physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair, or construction. This requirement applies to the Contractor, as well as to any subcontractor or contractor. Any violation of this requirement may result in the denial of funds under this Contract. The Contractor shall comply with the Programmatic Agreement between the Iowa Economic Development Authority and the State Historic Preservation Officer, as applicable to any activities included in this Contract.

## **Civil Rights**

### **1. Nondiscrimination in Employment**

The Contractor shall not discriminate against any qualified employee or applicant for employment because of race, creed, color, religion, sex, national origin, age, disability (physical or mental), political affiliation, sexual orientation, gender identity, or citizenship. The Contractor may take affirmative action to ensure applicants are employed and that employees are treated without regard to their race, creed, color, religion, sex, national origin, age, disability (physical or mental), political affiliation, sexual orientation, gender identity, or citizenship. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfers; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including an apprenticeship. The Contractor agrees to post notices setting forth the provision of the nondiscrimination clause in conspicuous places so as to be available to employees.

### **2. Consideration for Employment**

The Contractor shall, in all solicitations or advertisements for employees based by or on behalf of the Contractor, state that all applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, age, disability (physical or mental), political affiliation, sexual orientation, gender identity, or citizenship. Solicitation and Advertisement- the Contractor shall list all suitable openings with the local IowaWorks office.

### **3. Civil Rights in Employment**

The Contractor shall comply with all relevant provisions of the Civil Rights Act of 1965 as amended, Iowa Code Section 19B.7, Federal Executive Order 11246 as amended (contracts in excess of \$10,000); Title VI of the U.S. Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d et seq.), the Fair Labor Standards Act (29 U.S.C Section 201 et seq); the Americans with Disabilities Act, as applicable (P.L. 101-336, 42 U.S.C. 12101-12213), Section 504 of the Rehabilitation Act of 1975, as amended (29 U.S.C. 794), and the Age Discrimination Act of 1975 as amended (42 U.S.C. Section 6101 et seq.). The Contractor will furnish all information and reports requested by the State of Iowa or required by or pursuant to the rules and regulations thereof and will permit access to payroll and employment records by the State of Iowa to investigate compliance with these rules and regulations.

### **4. Certification Regarding Government-Wide Restriction on Lobbying**



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

a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Federal Lobbying", in accordance with its instruction.

c) The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and ontracts under grants, loans, and cooperative agreements), and that all sub-Contractors shall certify and disclose accordingly.

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

## 5. Program Nondiscrimination

The Contractor shall conform with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), HUD regulations issued pursuant thereto contained in 24 CFR Part 1, and the Iowa Civil Rights Act of 1965 as amended. No person in the United States shall on the basis of race, creed, color, religion, sex, national origin, age, disability (physical or mental), political affiliation, sexual orientation, gender identity, or citizenship be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or Work funded in whole or in part with funds made available through this Contract. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified individual with a disability as provided in the Americans with Disabilities Act, as applicable (P.L. 101-336 42 U.S.C. 1201-12213), or Section 504 of the Rehabilitation Act of 1975 (29 U.S.C. Section 794) shall also apply to such program or Work.

## 6. Fair Housing

The Contractor shall comply with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), generally known as the Fair Housing Act, and with HUD regulations found at 24 CFR Part 107, issued in compliance with Federal Executive Order 11063, as amended by Federal Executive Order 12259. The Contractor shall also comply with Section 109, Title I, of the Housing and Community Development Act of 1974, as amended.



## 7. Section 3

The Contractor shall comply with the provisions for training, employment, and contracting in accordance with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR Part 75.

## 8. Noncompliance with Civil Rights Laws

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any aforesaid rules, regulations, or requests, this Contract may be cancelled, terminated, or suspended, either wholly or in part. In addition, the State of Iowa may take further action, imposing other sanctions and invoking additional remedies as provided by the Iowa Civil Rights Act of 1965 (Chapter 216, Code of Iowa) or as otherwise provide by law.

## 9. Inclusion in Subcontracts

The Contractor will include the provisions of the preceding paragraphs 1-8 (Civil Rights) in every subcontract unless exempt by the State of Iowa, and said provisions will be binding on each subcontractor. The Contractor will take such action with respect to any subcontract as the State of Iowa may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the Contractor becomes involved in or is threatened by litigation with a subcontractor or vendor as a result of such direction by the State of Iowa, the Contractor may request the State of Iowa enter into such litigation to protect the interests of the State of Iowa.

## Flood Insurance Requirements

The following requirements shall apply to this Contract:

1. No funds under this Contract may be used for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any times has received federal flood disaster assistance that was conditional on the person having first obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property.
2. In the event of a transfer of any property assisted under this Contract for which the owner is required to obtain flood insurance as set forth herein, the following shall apply:
  - a. The transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of ANY requirements to (A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which such property is transferred; and (B) maintain flood insurance in accordance with applicable Federal law, which written notification shall be contained in the deed or other document evidencing the transfer of ownership of the property.
  - b. If the transferor of such property fails to provide notice as described in this subsection and, subsequent to the transfer of such property (A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to such property; (B) such property is damaged by a flood disaster;





and (C) federal disaster relief assistance is provided or the repair, replacement, or restoration of such property as a result of such damage, then the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of federal disaster assistance provided with respect to such property.

- c. The notification requirements of this section apply to personal, commercial, or residential property for which federal disaster relief assistance was made available in a flood disaster area where assistance has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of such property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.
3. For the purposes of this section, the term "Federal disaster relief assistance" applies to HUD or other federal assistance in "flood disaster areas". The term "flood disaster area" has the meaning given to such term in Section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, and includes an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

#### **Prohibition on Use of Funds**

The funds under this Contract shall not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers.

#### **Duplication of Benefits**

42 U.S.C. 5155 provides that any federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as a result of a major disaster or emergency, shall assure that no such person, business concern, or any other entity will receive such assistance with respect to any part of such loss as to which it has received financial assistance under any other federal program or from insurance or any other source ("the Duplication of Benefits" rules). The Contractor commits to comply with the Duplication of Benefits Rules and report any information with respect to the Duplication of Benefits rules to the Iowa Economic Development Authority as a condition to disbursements under this Contract.

#### **Disaster Recovery Requirement**

Use of all funds pursuant to this Contract shall be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas covered by the declaration of major disaster in which CDBG-DR funds were made available by Congress. This Project shall be in one or more counties in the State of Iowa for which the disaster was declared.



## STATE OF IOWA CDBG-DR CODE OF CONDUCT

### PURPOSE:

The purpose of this Code of Conduct is to ensure the efficient, fair, and professional administration of CDBG-DR federal grant funds in compliance with 2 CFR Part 200.318, 24 CFR 570.489(g), 24 CFR 570.489(h), and other applicable federal and State standards, regulations, and laws.

### APPLICATION:

This Code of Conduct applies to all officers, employees, or agents of the State of Iowa engaged in the award or administration of contracts supported by CDBG-DR federal grant funds.

### REQUIREMENTS:

No officer, employee, or agent of the State of Iowa shall participate in the selection, award, or administration of a contract supported by federal CDBG-DR grant funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- A. The employee, officer, or agent;
- B. Any member of his/her immediate family;
- C. His/her partner; or
- D. An organization which employs, or is about to employ any of the above, or, has a financial or other interest in the firm selected for award

State of Iowa officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or subcontractors.

### FRAUD, WASTE, AND ABUSE

The State of Iowa has zero tolerance for the commission or concealment of acts of fraud, waste, or abuse. All officers, employees, or agents shall notify the State Auditor of suspected actions. Allegations of such acts will be investigated and pursued to their logical conclusion, including legal action where warranted. All instances of fraud, waste, and abuse will also be referred to the HUD OIG Fraud Hotline.

### REMEDIES

To the extent permitted by federal, state, or local laws or regulations, violation of these standards may cause penalties, sanctions, or other disciplinary actions to be taken against State of Iowa officers, employees, agents, contractors, potential contractors, subcontractors, or their agents.

