CDBG Administrative Manual

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EQUAL HOUSING OPPORTUNITY

ALTERNATIVE FORMATS FOR DISABLED PERSONS ARE AVAILABLE UPON REQUEST

PREFACE

The purpose of this Administrative Manual is to assist North Dakota Community Development Block Grant grantees in implementing their respective grants and in complying with Federal rules and regulations associated with all Federal funds as promulgated by the U.S. Treasury and the Federal Office of Management and Budget. These rules and regulations pertain to administrative and financial management responsibilities.

This Administrative Manual is intended to serve as a required guide for proper use and accountability of Federal funds. Should questions arise, grantees should immediately contact the North Dakota Division of Community Services. It is the responsibility of each grantee to assure that all provisions of this manual, Federal rules and regulations, and Financial Award are complied with and that proper and efficient grant administrative practices are preformed.

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SECTION 1 - AUTHORITY AND ORGANIZATION

A. Legal Authority

The authority for the state administration of the Community Development Block Grant (CDBG) Program is set forth in the Omnibus Reconciliation Act of 1981 (P.L. 97-35), and the Housing and Community Development amendments of 1981 (P.L. 97-35).

B. Governor Has Executive Authority

The executive authority under the above cited Federal law shall be the Governor of the State of North Dakota. The Governor has designated the North Dakota Department of Commerce/Division of Community Services as the agency to administer the Community Development Block Grant program.

SECTION 2 - FINANCIAL AWARD

The Financial Award consists of the following:

Part I. Basic Information and Signatory Sheet.

This sheet, when signed, provides the necessary authorization for a grantee to initiate the program described in the grant agreement and provides the authorization to transfer funds.

Part II. General Terms and Conditions.

This section of the grant agreement contains those provisions describing standard administrative requirements that the grantee must comply with according to Federal and State rules and regulations.

Part III. Programmatic Special Conditions.

This section describes specific programmatic conditions that must be fulfilled for program implementation. These conditions will be closely monitored by the DCS.

Part IV. Scope of Work.

This section describes the activity for which financial assistance is being provided. Included in this section is the administrative budget, if applicable, that was awarded.

Part V. State Assurances.

This section describes specific state and federal compliance requirements applicable to the expenditure of CDBG funds. These requirements constitute the major focus for on-site monitoring conducted by the DCS.

Part VI. Anti-Displacement Plan.

This section must be completed and evidence of official adoption provided as part of accepting the Financial Award.

Part VII. Certificate of Job Creation/Documentation Certification. (Economic Development awards only)

This section must be completed to ensure and demonstrate compliance with the job creation requirements.

Part VIII. Addendum to Grants and Contracts

Indemnification and insurance requirements of the recipient.

SECTION 3 - GRANT IMPLEMENTATION CHECKLIST

The following checklist is provided as an overall guide for the implementation of your approved Community Development Block Grant Activity(s). The checklist is general in nature, which means that some items may or may not be applicable based on the type of grant awarded. In addition to this checklist, some sections of the manual contain specific checklists for your use. This checklist is provided so that you can make sure certain actions have been taken, and it should be used as a reference to specific sections of this Administrative Manual. If you are not sure about any aspect of grant implementation procedures, you should contact the Division of Community Services for guidance before proceeding.

Action	Reference	Yes	N/A
1. Receive letter from DCS		☐	☐
2. Receive Financial Award		☐	☐
3. Sign and return Financial Award within 60 days of receipt		☐	☐
4. Develop Code of Conduct		☐	☐
5. Hire grant administrator (If the Administrator is not a city or county employee, or a Regional Planning Council, the position must be advertised)		☐	☐
6. Develop administrative contract (Required if CDBG funds are used to pay for administration)		☐	☐
7. Attend grant administration training		☐	☐
8. Submit ACH Authorization Form SFN 52477 to the DCS	Section 5	☐	☐
9. Establish required grant files		☐	☐
10. Establish a checking account	Section 4	☐	☐
11. Establish accounting system	Section 5	☐	☐
12. Comply with Special Conditions on Financial Award	Section 5	☐	☐
13. Receive at least three quotes or use Competitive Negotiation for engineering, architectural, legal, or other professional services	Section 6	☐	☐
14. Contact the DCS for approval of less than three quotes for professional services	Section 5	☐	☐
15. Develop a fixed price contract for professional services which includes all pertinent Federal compliance requirements	Sections 6 & 9	☐	☐
16. Prepare Environmental Review and have all pertinent records on file	Section 7	☐	☐
17. Publish Notice of Release of Funds or Combined Notice, whichever is appropriate	Section 7	☐	☐

Action	Reference	Yes	N/A
18. Send results of Environmental Review to all pertinent Federal and State agencies, and the DCS	Section 7	☐	☐
19. Submit Request for Release of Funds to the DCS	Section 7	☐	☐
20. Receive Notice of Release of Funds from the DCS	Section 7	☐	☐
21. Determine applicable Davis-Bacon Wage Rates from the most recent publication	Section 8	☐	☐
22. Develop bid package and specification documents	Sections 6 & 9	☐	☐
23. Properly advertise for bids	Sections 6 & 9	☐	☐
24. Advertise as an Equal Opportunity Employer	Section 9	☐	☐
25. Document efforts to solicit Minority and Women's Businesses	Sections 6 & 9	☐	☐
26. Properly conduct bid openings in accordance with the North Dakota Century Code		☐	☐
27. Contact the DCS when less than 2 bids are received. If the project is under $100,000 and the grantee elects to receive quotes, three must be obtained.		☐	☐
28. Follow proper bonding requirements	Section 5	☐	☐
29. Review Excluded Parties List System	Section 8	☐	☐
30. Develop contracts in accordance with all applicable Federal compliance requirements	Sections 6 & 9	☐	☐
31. Conduct a preconstruction conference	Section 8	☐	☐
32. Contractors develop contracts with subcontractors and include applicable Federal compliance requirements	Sections 6 & 9	☐	☐
33. Collect Direct and/or Indirect beneficiaries Civil Rights Data	Section 9	☐	☐
34. Develop local jurisdiction employment policies and procedures	Section 9	☐	☐

Action	Reference	Yes	N/A
35. Make sure that all contractors and subcontractors develop written employment policies and procedures	Section 9	☐	☐
36. Make sure that contractors advertise as Equal Opportunity Employers	Section 9	☐	☐
37. Develop schedule for submitting semi-annual reports	Section 14	☐	☐
38. Develop a complaint and appeals process	Section 13	☐	☐
39. Post applicable Equal Opportunity and Department of Labor posters at the job site	Sections 8 & 9	☐	☐
40. Complete 2nd public hearing		☐	☐
41. Complete or update Section 504 Self Evaluation/ Transition Plan		☐	☐
42. Submit Final Report	Section 16	☐	☐
43. Identify all property purchased with CDBG funds	Section 11	☐	☐
44. Conduct close-out audit	Section 16	☐	☐

SECTION 4 - RECORD KEEPING

A. Establishing Project Files

1. Availability

The filing system you establish should be easy to use and provide a historic account of the grantee's activities for examination and review by the General Accounting Office, the DCS, auditors, and grantee staff. The CDBG records are subject to the Freedom of Information Act and relevant state laws regarding public availability.

2. Timing and Location

The file system should be established on a program year basis. This may result in duplication of files, but will tie documentation to a given fiscal year and grant. Files should, to the extent possible, be maintained in a central location.

3. Major File Categories

The following list identifies major file categories which should be established in order to permit efficient grants management practices, and to permit an orderly review and audit of all records.

General Files

a. Grant Application

- ☐ Copy of application/business plan
- ☐ Correspondence concerning the application

b. Financial Award

- ☐ Notice of Award from DCS
- ☐ Financial Award
- ☐ Related Correspondence
- ☐ Amendments

c. Financial Management and Accounting records

- ☐ ACH Authorization Form SFN 52477
- ☐ Request for Funds Form. (For construction projects only. This form must be submitted with the Final Request for **Project Funds**.)

- ☐ Source documentation of all funds (invoices, payrolls, etc.)
- ☐ Canceled checks, deposit slips, bank statements, etc.
- ☐ Related correspondence

d. Contracts and Subcontracts

- ☐ Bid specifications
- ☐ Documentation of soliciting quotes and/or bids for administration, legal services, construction, etc.
- ☐ Identification of quotes and/or bids accepted, and explanations (if applicable) of acceptance of other than the low quote and/or bid
- ☐ Copies of contracts and subcontracts, or as applicable, copies of purchase orders

e. Labor Requirements

- ☐ Wage Decisions
- ☐ Additional Wage Classifications
- ☐ Contractor/Subcontractor Certifications Concerning Labor Standards
- ☐ Minutes of the bid opening
- ☐ Verification of contractor/subcontractor eligibility
- ☐ Notice of Start of Construction
- ☐ Weekly payrolls and Statements of Compliance signed by an officer of the company
- ☐ Evidence that payrolls were checked against the applicable wage rate decision
- ☐ Monthly employee interviews
- ☐ Site visit reports
- ☐ Evidence of restitution/resolution of identified discrepancies
- ☐ Complaints from workers, if any, and actions taken
- ☐ Liquidated damages assessed, appeals, if any, and outcome
- ☐ Final Wage Compliance Report
- ☐ Construction Checklist (optional)

f. Environmental

- ☐ Exempt
  - ☐ Documentation of Exemption
  - ☐ Letter Confirming Exempt Status from the DCS
- ☐ Categorically Excluded/Exemption
  - ☐ Site Specific Checklist

    All Accompanying Documentation
  - ☐ Historic Preservation Notice

    SHPO (State Historic Preservation Officer) Response
  - ☐ Documentation of Exemption
  - ☐ Letter confirming Exempt Status from the DCS
  - ☐ All Correspondence Related to the ERR Process
- ☐ Categorically Excluded Subject to 58.5
  - ☐ Site Specific Checklist

    All Accompanying Documentation
  - ☐ Historic Preservation Notice

    SHPO (State Historic Preservation Officer) Response
  - ☐ Notice of Intent to Request Release of Funds

    All Public Comments

    Grantee Responses to Comments (if any)
  - ☐ Request for Release of Funds and Certification Form
  - ☐ Division of Community Services Notice of Release of Funds
  - ☐ All Correspondence Related to the ERR Process

- ☐ Categorically Excluded Not Subject to 58.5
  - ☐ Site Specific Checklist

    All Accompanying Documentation
  - ☐ Categorically Excluded Not Subject to 58.5 Form
  - ☐ Letter confirming Categorically Excluded Not Subject to 58.5 from the DCS
  - ☐ All Correspondence Related to the ERR Process
- ☐ Environmental Assessment
  - ☐ Environmental Assessment Form
  - ☐ Categorical Exclusion Checklist

    All Accompanying Documentation
  - ☐ Historic Preservation Notice

    SHPO Response
  - ☐ Notice of Finding of No Significant Impact

    All Public Comments

    Grantee Responses to Comments (if any)
  - ☐ Notice of Intent to Request Release of Funds

    All Public Comments

    Grantee Responses to Comments (if any)
  - ☐ FONSI Distribution List
  - ☐ Request for Release of Funds and Certification Form
  - ☐ Division of Community Services Notice of Release of Funds
  - ☐ All Correspondence Related to the ERR Process

g. Civil Rights clauses for the Grantee

- ☐ Self-Evaluation or Transition Plan
- ☐ Employment Data
- ☐ EEO Form 4 for entities with 10 or more employees
- ☐ Personnel Policies
- ☐ Affirmative Action
- ☐ Documentation of special efforts to identify, train, involve and/or hire minority and lower-income residents
- ☐ Fair Housing
- ☐ Document efforts to affirmatively further fair housing; copy of fair housing policy
- ☐ Fair Housing Ordinance
- ☐ Counseling services for tenants and landlords
- ☐ Applied for other sources of funding for LMI rehab
- ☐ Assistance to local fair housing groups
- ☐ Information materials to give to persons involved in the sale or rental of housing
- ☐ Other:_____

Displacement and/or Relocation

- ☐ Data or race, head of household, age and income of persons affected
- ☐ Copies of Notices and any other applicable information
- ☐ Resolution of Excessive Force Plan
- ☐ Civil Rights Clauses Found in Contracts (See APPENDIX C of the Administrative Manual)
- ☐ Standard Equal Opportunity Clauses and Certifications

- ☐ "Section 3" Compliance in the Provision of Training, Employment and Business Opportunities

  This provides that, to the greatest extent feasible, opportunities for training and employment that arise through HUD-financed projects shall be given to lower income residents of the project. Section 3 also provides that contracts awarded in connection with such projects be awarded to businesses located in the project area or businesses owned, in substantial part, by residents of the project area.

- ☐ Executive Order 11246

  This provides that no persons shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of Federal or Federally assisted construction contracts in the excess of $10,000.

- ☐ Section 109 of the Housing and Urban Development Act of 1974

  Provides that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin and sex under any program or activity funded in whole or in part under Title I (Community Development) of the act.

- ☐ Title VI of the Civil Rights Act of 1964

  Provides that no person shall be excluded from participation; denied program benefits; subjected to discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance.

Other Civil Rights Activities

- ☐ Minority Business Participation

  Documentation of efforts to solicit minority and women-owned businesses and maintain data concerning the number of contracts and the dollar amounts of those contracts awarded to minority businesses. (See Section 14 - Reporting)

- ☐ Contractor Compliance

  Records of any monitoring trips to the project site, any findings, and copies of contractors' monthly utilization report.

- ☐ Project Beneficiaries

  Record of applicants, and direct and indirect beneficiaries by race, color, sex, national origin, age and handicap. (See Section 14 - Final Report)

h. Acquisition/Displacement/Relocation

☐ Data on race, head of household, age and income of persons affected

Acquisition

☐ Preliminary Acquisition Notice

☐ Evidence of Invitation to Accompany Appraiser

☐ Appraisal Report

☐ Review Appraisal Report

☐ Written Statement of Just Compensation

☐ Written Offer to Purchase

☐ Contract of Sale

☐ Statement of Settlement Costs

☐ If Donation, Waiver

☐ Receipt of Purchase Price

☐ Notice of Intent not to Acquire

☐ Waiver of rights, if applicable

☐ Determination of "voluntary," if applicable

Displacement/Relocation

☐ Fully Completed Record Form

☐ Copy of Notice of Displacement or

☐ Notice to Continue in Occupancy

☐ Evidence of Receipt of Notice by Relocatee

☐ Copy of 90 Day Notice

☐ Evidence of Receipt

☐ Evidence of Referrals to Replacement Housing

- ☐ Record of Inspection of Unit
- ☐ Copy of Each Relocation Claim & Supporting Documentation
- ☐ Evidence of Verification of Claim
- ☐ Appeals
- ☐ Correspondence
- ☐ Wavier of Rights

i. Project Monitoring

- ☐ Reports prepared by grantee pertaining to project monitoring activities
- ☐ Monitoring letter from the DCS
- ☐ Grantee responses to DCS monitoring findings
- ☐ Relevant Correspondence
- ☐ Quarterly Reports
- ☐ Evidence of low & moderate income persons/households

j. Grant Close-out

- ☐ Grantee Final Report
- ☐ Close-out letter from the DCS

k. Audit

- ☐ Relevant Correspondence
- ☐ Final Audit
- ☐ Documentation that all audit findings have been cleared

l. General Correspondence

Correspondence, incoming and outgoing, that does not fall into any other categories

4. <u>Records Retention</u>

All ND-CDBG records and files must be retained for a period of five (5) years after the date of the administrative closeout.

SECTION 5 - FINANCIAL MANAGEMENT SYSTEM

The financial management section has been written to help officials from small communities and grant administrators understand and implement financial management systems that comply with the North Dakota Community Development Block Grant program. The procedures address the reporting and financial management requirements of OMB Circular 2 CRF Part 200 Uniform Guidance. The OMB Circular referenced above can be found at www.whitehouse.gov/omb/circulars.

The following are subsections to financial management:

A. Cash Depositories
B. Request for Funds
C. Financial Accounting Standards
D. Standards of Allowability and Allocability of Grant Funds
E. Bonding and Insurance
F. Budget Revisions
G. Program Income
H. Audits

A. Establishing CDBG Bank Account - Requirements

1. Once the grantee has received its executed Financial Award, arrangements can be made to establish a separate, non-interest bearing bank account to receive and expend CDBG funds. The grantee will maintain only one bank account for all CDBG funds. Should the grantee elect to receive CDBG funds as a reimbursement, a separate account is not required. (Any exceptions to the separate bank account or more than one account must receive prior approval from DCS).

   The funds must be deposited in a bank with adequate Federal Deposit Insurance Corporation (FDIC) insurance coverage. CDBG funds drawn and deposited in excess of the FDIC coverage must be collaterally secured. FDIC insurance coverage is limited to $250,000, which means that any request or any combination of requests that will cause the balance of the CDBG account to exceed $250,000 must be collaterally secured. A statement from the Bank verifying the required security should be attached to all requests that will cause the current balance to exceed FDIC coverage.

   The designated depository (bank) should be aware that the CDBG funds will be transmitted directly from the DCS to the bank in the form of an Automated Clearing House (ACH) transfer. Through email, the DCS will notify the grant administrator of payments made to grantees accounts.

   The grantee must complete an ACH Authorization Form SFN 52477. The ACH form must be completed and submitted at least two weeks prior to requesting funds.

2. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority members).

B. Request for Funds - Cash Management Requirements

1. Payment requests will be honored only after the DCS has issued formal Notification of Release of Funds, and the ACH Authorization Form SFN 52477 has been submitted and approved, and any relevant special conditions contained within the Financial Award have been met.

   The ACH Authorization form will serve as the Certifying Official and Authorized Signature form. The Certifying Official cannot be one of the persons authorized to sign the Request for Funds.

2. The grantee is allowed to designate two (2) individuals the authority to request CDBG funds from the DCS. Only one signature is required on the Request for Funds form.

3. The ACH Authorization Form SFN 52477 must be submitted two weeks prior to submitting the first payment request. The form must be complete and accurate before the DCS will honor payment requests.

4. Request for funds are to be made on the Request for Funds Form (SFN 4630). Requests for funds must distinguish between project and administrative funds by indicating the amount requested for each in the Amount Requested Block. The DCS will draw Federal funds weekly. Federal funds will be drawn based on approved Request for Funds forms which have been completed accurately and are received in the DCS by noon on Tuesday. Requests received after 12:00 noon on Tuesday will be drawn the following week. Telephone requests for funds will not be honored. Faxed requests will be honored; please do not send the original copy. If sending or faxing a revised cash request, it must be noted that it is a revised copy to avoid duplicate payments.

   The grantee should allow from 6-10 days from the day the DCS requests Federal funds to the receipt of such funds by the designated bank depository.

   There may be isolated occasions whereby payment requests may be unexpectedly delayed in which the DCS has little or no control.

5. Cash drawdowns, with exception of the final request, should be for at least $5,000. Above the $5,000 threshold, cash requests should be for the minimum needed to meet the grantee's immediate cash requirements. If excessive amounts are drawn over the minimum needed, the grantee may be required to return the excess funds to the DCS. No interest can be earned or retained on funds advanced to the grantee.

6. Grantee Record Keeping - At the time the grantee prepares the Requests for Funds, the grantee should attach to its file copy all cost documentation to support the Request for Funds. This procedure will provide a traceable system and ease the reviewer's examination of the financial files.

7. Escrow Accounts - Disallowed. Housing rehabilitation projects must adhere to the same cash and financial management standards as required by other approved CDBG projects. A Housing Project Summary Form (SFN 52325) has been provided for your use when submitting Request for Funds on housing projects.

8. Administrative Funds. Ten percent of administrative funds will be withheld until the final report has been accepted.

CHECKLIST

☐ Submission of ACH Authorization Form to DCS.

☐ Receipt of Release of Funds from DCS prior to initial request for funds.

C. Financial Accounting Standards - Requirements

Recipients of CDBG funds must maintain a financial accounting system which is in compliance with various Federal guidelines and provides accurate information, traceable transactions, and accountability of funds. The grantee must ensure the following:

1. Accurate, current, and complete disclosure of the financial status of each CDBG approved activity. The Financial Award includes a budget attachment which describes each approved CDBG activity and the dollar amount authorized for each specific activity. Administration is also included in the budget summary as a CDBG activity and requires a more complete breakdown, i.e., salary, fringe, etc. As a CDBG grantee, your accounting records must be established to identify expenditures according to each approved activity. You will be required, through semi-annual and final financial status reports, to account for dollar amounts authorized, expended, and obligated by each approved activity. The accounting records should be kept current and must include approved amendments by the DCS. A separate accounting system need not be established to account for CDBG financial activity if the grantee's existing system is adaptable to meet the above stated requirements.

2. Effective control over and accountability for all funds, property, and other assets. To ensure adequate internal control, checks must have multiple signatures, appropriate bonding, and proper segregation of grants management duties and responsibilities.

3. Payment must be written to the vendor for equipment, services, etc. For economic development projects, checks should only be written to the business if it is a reimbursement based on documentation that shows payment has been made. If this is not possible, the DCS must be contacted for prior approval.

4. If "Local or Other Funds" have been included in the Financial Award as a part of the total project costs, the grantee will be required to have the proper documentation to support the expenditure of that amount. "Local or Other funds" must be reported on the Financial Status Report. Actual expenditures must be reported in lieu of budgeted amounts.

5. Procedures must be established to minimize the time elapsing between the receipt of CDBG funds and their disbursement. The DCS must be contacted immediately if CDBG funds in excess of $5,000 are on hand for more than three business days.

6. Accounting records must be supported by source documentation. Original invoices, purchase orders, and payroll records must support each payment and be on file and retained for five years from the approval of the final financial status report or until all audit findings are resolved, whichever is longer, to verify all CDBG expenditures. Payments must not be made without the invoice physically on hand.

   When compiling source documentation, please remember that adequate source/supporting documentation answers the questions:

   What was purchased and/or the purpose?
   Who was it purchased from?
   When was it purchased?
   How much was paid for it?

   All employees paid in whole or in part from CDBG funds must prepare a time sheet/PAR which indicates the hours worked on the CDBG project for each pay period. The time sheet/PAR should be inclusive of all programs to which an employee devotes time. The amount to be distributed as CDBG payroll charges during a particular period will be based on time sheet/PAR and hourly payroll cost of the employee. (Section 5, Attachment 4.)

7. Grantees must ensure that contractors are in compliance with financial management system requirements.

8. It is suggested that a cash receipts journal, a cash disbursements journal, and general ledger are maintained to track CDBG funds:

   a. Cash Receipts Journal: This journal is maintained to record the receipt of all funds (local, state, federal) used for program activities. The record must include the date funds are received, the amount of funds received, and the activity to which the funds were transferred.

   b. Cash Disbursements Journal: This journal must be maintained to record all checks issued for payment of program costs. The record must include the date of payment, the payee, check number, amount, and the account from which the disbursement was made.

   c. General Ledger: This journal must be maintained to summarize cash receipts and disbursements on a sub-account basis. All entries of the General Ledger must be made from the Cash Receipts and Cash Disbursements Journal.

CHECKLIST

- ☐ Necessary accounting journals and ledgers are established and maintained on a current basis.
- ☐ Accounting system is established to meet financial reporting requirements. (Budgets in accounting records, current cash balances, etc.)
- ☐ Funds are being disbursed upon receipt and excess cash balances are not being held by grantee.
- ☐ All employees paid with CDBG funds are maintaining time sheets.
- ☐ All payments are supported by source documentation.

D. Standards for Allowability and Allocability of Grant Funds

Recipients of CDBG funds will be responsible for determining the types of costs which can be charged to a grant in accordance with OMB Circular 2 CFR Part 200 Uniform Guidance and requirements established by the DCS. In summary, costs incurred in CDBG activities are allowable only under the following conditions:

1. Costs are incurred within the effective "Budget/Project Period" as stipulated on Part I of the Financial Award. Therefore, costs incurred (obligated) prior to the beginning date, Release of Funds, or costs incurred after the effective closing date are not allowable.

2. The only CDBG costs allowable between the time of the Financial Award and formal notification of Release of Funds are reasonable costs associated with the administration of the CDBG grant (including the environmental review procedures). Engineering and architectural costs may be incurred during this time, but the activities are required to be a separate line item on the financial award and the source of funding must be from the local match.

3. Costs for approved project activities (activities other than administration, environmental review procedures, and engineering and design costs) can be incurred only after the formal Release of Funds and all other conditions have been satisfied.

4. Costs are incurred only for eligible activities included in the CDBG grant agreement. Generally, only materials, labor costs, and other associated construction costs are deemed eligible as direct charges to CDBG project activities. For housing rehabilitation, however, through proper documentation, costs such as advertising, project inspections, and on-site visits can be charged directly to the activity instead of administration. The charges must be documented by invoices, time records, travel vouchers, and other supporting information to verify that it is directly related to the activity. Costs such as office supplies, accounting, secretarial salaries, salaries for overall administration of the grant, and associated overhead costs should be charged to "Administration". Grantees must ensure that direct project activity charges are reasonable and that administrators are accounting for the costs properly. As a guideline, the direct charges to a rehabilitation activity should not exceed $300 per household for single family and $200 per unit for multifamily. Costs in excess of this amount must receive approval by the DCS.

5. All costs charged to the CDBG program are net of credits. Income received must be reported as program income on the semi-annual financial status report and request for funds. (See Program Income.)

Grantees should refer to OMB 2 CFR Part 200 Uniform Guidance when determining the allowability and applicability of costs to be charged to the CDBG program. The principles outlined in the circular pertain to all levels of recipients of Federal funds; from the State to local and to any subgrants of the local level. This means that if a grantee decides to contract out the administration responsibilities of the CDBG grant, the grantee must ensure that the administrator will also comply with the requirements set forth by the OMB 2 CFR Part 200 Uniform Guidance and the DCS. The grantee is ultimately responsible for the proper management of the CDBG program.

Travel Costs

Travel costs are eligible as described in this section. Travel expenses should be reimbursed at the current state rates.

Current state rates for meals, lodging, mileage and other travel expenses can be found in Policy 505 at www.nd.gov/fiscal/policies/.

Mileage may be reimbursed at current federal rates with approval from the entity's governing board.

E. Bonding and Insurance - Requirements

1. Recipients of grants which require contracting for construction or facility improvements for contracts of $100,000 or less can follow their normal bonding and insurance procedures. If the DCS is certain that the government's interests are adequately protected, the recipient's procedures may be used for contracts larger than $100,000 if they meet the minimum requirements as follows:

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

   b. A performance bond on the part of the contractor for 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.

   c. A payment bond on the part of the contractor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2. Recipients of CDBG funds (city and/or county) must provide evidence of Surety and Fidelity Bond coverage for all personnel directly involved with the CDBG funds. The bond amount should be in the amount of the largest amount of CDBG funds to be handled at one time by the grantee.

CHECKLIST

- ☐ Request Approval of Bonding Procedures for Contracts in excess of $100,000.
- ☐ Evidence on file of Surety and Fidelity Bond coverage for all personnel involved with CDBG grant funds.

F. Budget Revisions

The financial budget as found in the Financial Award agreement is the approved financial plan for the CDBG funds necessary to complete the project. This budget is the financial expression of the project as approved during the application and award process and will be directly related to program performance and evaluation throughout the period and at close-out.

The grantee must obtain approval from the DCS for line item revisions in the approved CDBG administrative budget or the approved CDBG project budget when the revision will exceed 10 percent of the CDBG approved respective budget category. The request must be in writing to the DCS and include all of the requested changes among the budgeted line-items. All amendment requests must be submitted on a Request for Amendment form (SFN 52355).

Program Income

Definition of program income: program income means gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, except that program income does not include the total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government and it recipients. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds: a single parcel of land purchased with CDBG funds and other funds).

1. Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds.

2. Proceeds from the disposition of equipment purchased with CDBG funds.

3. Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of general local government with CDBG funds, less the costs incidental to the generation of income.

H. Audits

Please refer to Subpart F – Audit Requirements of 2 CFR Part 200 for specific requirements for your agency. Generally, a non-Federal entity that expends $750,000 or more in federal funds during their own fiscal year must have a single or program-specific audit.

A copy of your audit may be requested during your project application review to determine financial capacity and to review federal program experience and compliance. After your project has been completed, audit information will be reviewed to verify compliance and ensure that no audit findings were written related to CDBG Program funds. Should a finding exist, the grantee will be required to submit a copy of its corrective action plan.

ACH AUTHORIZATION (Direct Deposit)

NORTH DAKOTA DEPARTMENT OF COMMERCE

SFN 52477 (4/10)

VENDOR INFORMATION		
Vendor Name	Contact Name	
City/County Address		
City	State	Zip Code
E-Mail Address	Phone Number	EIN/SSN

Type of Change (please check one of the following):

☐ New ☐ Revised ☐ Bank Change ☐ Authorized Signature Change

Type of Business (please check one of the following):

☐ Nonprofit or Government Entity ☐ Partnership ☐ Corporation

☐ Individual or Sole Proprietorship ☐ Other (Please Specify) _____

BANK INFORMATION		
Financial Institution Name	Type of Account ☐ Checking	Is this an interest-bearing account? ☐ Yes ☐ No
Financial Institution Routing Number	Vendor Account Number	
Program (please check one) ☐ CDBG ☐ HOME Funds ☐ ESGP ☐ AmeriCorps ☐ Other _____		
This ACH form will authorize all payments to be automatically deposited into the financial institution listed above.		
Signature of Authorizing Vendor	Printed Authorized Vendor	Date
Signature of Authorizing Vendor	Printed Authorized Vendor	Date

I certify that the Signatures above are of the Individuals Authorized to Draw for the Request for Funds. (The Certifying Official cannot be one of the above signatures.)

Signature of Certifying Official (Grantee)	Date

STATE AGENCY REQUESTING VENDOR INFORMATION

Send Completed Form to:

Department of Commerce
1600 East Century Ave., Suite 2
PO Box 2057
Bismarck, ND 58502-2057
Telephone: (701) 328-5300
Fax: (701) 328-5320

Vendor Registry Use Only

Approved by Commerce
Location Name

Vendor Number
Approved By
Date

Commerce will forward original signed form to North Dakota Registry Office.

Sample

CDBG REQUEST FOR FUNDS

DIVISION OF COMMUNITY SERVICES (DCS)

SFN 4630 (03/02)

Grantee		Request Number	Amount Requested P - _____ A - _____ T - _____
Prepared By	Phone Number	Is this a Final Report? ☐ Yes ☐ No	
Bank Name & Address (Payee)		Instrument Number	Date
		Grant Begin Date	Grant End Date
Bank Account Number		(Cash advances to a grantee will be limited to the minimum amount needed)	

CASH STATUS REPORT	**A**	**B**
1. Funds Received To Date		
2. Total Gross Disbursements To Date		
3. LESS: Program Income		
4. Net Disbursements to Date (line 2 less line 3)		
5. Balance of Cash on Hand (line 1 less line 4)		
FUND STATUS REPORT	**A**	**B**
6. Grant Amount		
7. Funds Received to Date		
8. Funds Requested, But Not Yet Received		
9. Amount of this Request		
10. Total Funds Request To Date (add lines 7, 8, 9)		
11. Funds Available For Request (line 6 less line 10)		

12. Administrative Funds Received to Date		13. Administrative Funds Requested, but Not Yet Received	
14. Housing Projects Only:	Number of Units Approved	Number of Units Contracted	Number of Units Completed

15. Explain below the use of the requested CDBG project funds (See Instructions)

APPROVAL BY DIVISION OF COMMUNITY SERVICES		**CERTIFICATION OF LOCAL OFFICIAL**
DCS Authorized Signature	Date	To the best of my knowledge, the data on this form are correct and all disbursements were made in accordance with grant conditions.

THIS SECTION FOR DCS USE ONLY	Yes	No
Release of Funds		
Special Conditions Released		
Repayment Schedule & Loan Approved		
Authorized Signature		

Signature

Name and Title of Authorized Official

Date Signed

Sample

INSTRUCTIONS FOR COMPLETING "REQUEST FOR FUNDS"
SFN 4630

GRANTEE **-** Same as "RECIPIENT" as shown on Financial Award.

REQUEST NUMBER **-** Begins with number one (1) and follows in numerical sequence for each request submitted to DCS.

AMOUNT REQUESTED **-** Dollar amount of this request delineated by Program and Administrative funds (i.e. **P** = $5,000, **A** = $2,000, **T** = $7,000). Total to be the same as line 9.

PREPARED BY **-** Name and telephone number of the individual preparing this request.

BANK NAME AND ADDRESS (PAYEE) **-** Name and address of the bank that will receive the funds as a direct deposit. (Should be exactly as shown on the ACH).

INSTRUMENT NUMBER **-** Include the Instrument Number as assigned by DCS on the Financial Award.

DATE **-** Date Request for Funds is prepared.

GRANT PERIOD **-** Include the grant period as specified on the Financial Award or as stated in subsequent approved amendments.

CASH STATUS REPORT

1. Include cumulative funds received from DCS at the date of request.
2. Include cumulative cash expenditures to date.
3. Report cumulative program income received to date of request.
4. Line 2 less Line 3. (Program income is applied as a reduction in expenditures for cash status reporting to ensure that program income is expended prior to CDBG funds).
5. Line 1 less Line 4. (Cash received less cash expended equals cash on hand).

FUND STATUS REPORT

6. Include the total grant amount as authorized on the Financial Award or any subsequent approved amendments to the grant.
7. Include cumulative funds received to date. (Same as Line 1, above).
8. Funds previously requested from DCS, but have not been received by grantee. (In transit).
9. Amount of this request. Must be the same as stated above.
10. Add Lines 7, 8 and 9, for total funds requested to date.
11. Line 6 less Line 10 for remaining funds to be drawn.
12. Include cumulative administrative funds received to date.
13. Administrative funds previously requested from DCS, but have not been received by grantee. (In transit).
14. *For Housing Projects Only*: State cumulative number of approved applicants with signed commitments (per special conditions); cumulative number of units which are under contract for work and cumulative number of housing units completed.
15. Briefly identify the work, services, or purchases for which the funds will be used and the amount to be allocated. If necessary, attach an additional sheet.

CERTIFICATION OF LOCAL OFFICIAL Must be signed by one of the authorized individuals shown on the AUTHORIZED SIGNATURE CARD.

MAIL COMPLETED FORM TO:

Division of Community Services
1600 East Century Avenue, Suite 2
PO Box 2057
Bismarck, ND 58502-2057
Telephone (701) 328-5300
Fax (701) 328-2308

HOUSING PROJECT SUMMARY **ATTACHMENT 3**
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52325 **(05/02)**

HOUSING PROJECT SUMMARY				
Request for Funds as of	For City/County		Grant Number	
Applicant	Contract Amount	Amount Received	Amount This Request	Remaining Balance
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
Total				
Administration				
Grant Administrator Signature			Date	

Sample

TIME SHEET

ND DIVISION OF COMMUNITY SERVICES

SFN 52326 (03/00)

ATTACHMENT 4

EMPLOYEE _____ DATE _____

DAYS OF THE MONTH

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

SUB TOTAL HOURS		

DEPARTMENTAL USE
CITY OF LOUIS – ADMINISTRATION
CITY OF LOUIS - HOUSING REHAB
CITY OF LEXTON – ADMINISTRATION
CITY OF LEXTON - HOUSING REHAB
EDA - BLANK ACTIVITY
LOCAL FUNDS – BLANK

APPROVED BY: _____ DATE _____

Sample

SECTION 6 - PROCUREMENT METHODS AND CONTRACTS

This section describes the rules and procedures that must be followed when purchasing supplies, equipment, construction, and services in whole or in part with CDBG funds. These requirements are established to ensure that materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders. The objectives of these regulations are to assure that:

- Unnecessary or duplicate purchases are not made;
- Favorable prices for goods and services are obtained without sacrificing needed quality;
- Purchases are made on the basis of maximum open and free competition whenever possible, and
- National goals such as equal employment opportunity, stimulation of small and minority-owned businesses, and fair labor standards are encouraged through government purchases.

The requirements of procurement methods and contracts are delineated in 2 CFR Chapter 1, Chapter 2, Part 200, found at http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/pdf/2013-30465.pdf. A thorough working knowledge of 2 CFR requirements is imperative in order to assure proper grants management.

Grantee in this section shall mean Grantee, Subgrantee or Subrecipient.

PROCUREMENT STANDARDS

1. Applicability

   a. This Section establishes standards and guidelines for the procurement of supplies, equipment, construction, and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

   b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular, or the provisions of this or other OMB circulars.

2. Grantee/Grantor Responsibility

   a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

   b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement

   Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

   a. The DCS will perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Section or other criteria acceptable to the Office of Federal Procurement Policy (OFPP), such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's

procurement systems should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the DCS's prior approval.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient, and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analysis performed by agencies or organizations independent of the grantee contracting activity.

5. Protest Procedures

Grantor agencies will develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts

Pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed $150,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed $150,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Section.

d. The procurement is expected to exceed $150,000 and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than $150,000.

7. Code of Conduct - (See Appendix A)

Grantees will maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer, or agent of the grantee will participate in selection, or in the award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer, or agent;

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. Procurement Procedures

The grantee will establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation 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 which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms - (See Appendix E)

a. Accordingly, affirmative steps must be taken to assure that small and minority businesses, women’s business enterprises and labor surplus area firms are utilized when possible as sources of suppliers, equipment, construction, and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses and women's business enterprises on solicitation lists.

(2) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business and women's business enterprises participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business and women's business enterprises.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Development Agency of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. DCS may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection Procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this Section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contactors that develop or draft specifications, requirements, statements of work and invitations for bids or requests for proposals must be excluded from competing. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to:

(1) placing unreasonable requirements on firms in order for them to qualify to do business;

(2) noncompetitive pricing practices between firms or between affiliated companies;

(3) organizational conflicts of interest;

(4) unnecessary experience and bonding requirements;

(5) noncompetitive awards to consultants that are on retainer contracts;

(6) specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement; and

(7) any arbitrary action in the procurement process.

b. The grantee will have written selection procedures which will provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the name brand which must be met by offerors shall be clearly stated.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess 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.

(3) Grantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(4) Grantees will ensure that all pre-qualified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

11. Method of Procurement

Procurement under grants shall be made by one of the following methods, as described herein: (a) micro-purchases (b) small purchase procedures; (c) competitive sealed bids (formal advertising); (d) competitive proposals; and (e) noncompetitive proposals.

a. Micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $3,000 (or $2000 in the case of acquisitions for construction subject to Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

b. Small purchase procedures are those relatively simple and informal procurement methods and that are sound and appropriate for a procurement of services, supplies, or other property, costing in the aggregate not more than $150,000. Grantees shall comply with State or local small purchase dollar limits under $150,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources. No less than three.

c. In competitive sealed bids (formal advertising), sealed 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 lowest in price. The sealed bid method is the preferred method for procuring construction if the conditions below apply:

(1) In order for sealed bidding to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available;

(b) Two or more responsible bidders are willing and able to compete effectively for the business; and

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If sealed bids are used for procurement under a grant, the following requirements will apply:

(a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening bids;

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation;

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids;

(d) A firm-fixed-price contract award will be made by writing to the lowest responsive and responsible bidder. Where specified in the bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(e) Any or all bids may be rejected if there is sound documented reason.

d. Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting offers, and either a fixed-price or cost-reimbursement type contract is awarded. Competitive proposal is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements will apply.

(1) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources;

(3) The grantee will have a method for conducting technical evaluations of the proposals received and for selecting for contract awards.

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) Grantees may utilize competitive proposal procedures for qualification-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.

d. Noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase, sealed bids (formal advertising) or competitive proposals and one of the following circumstances applies:

(1) The item is available only from a single source;

(2) Public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The DCS authorizes noncompetitive proposals in response to a written request; or

(4) After solicitation of a number of sources, competition is determined inadequate.

The mere fact that a contractor is performing other consultant services for the grantee is not in itself an adequate justification for a noncompetitive negotiated award.

The grantee will be required to complete a cost analysis. They may also be required to submit the proposed procurement to the DCS for review.

12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contact modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or costs estimates included in negotiated prices are consistent with Federal cost principles. Further guidance can be found at 2 CFR Part 200.323

13. Grantee Procurement Records

Grantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Bonding Requirements

For construction or facility improvement contracts or subcontracts exceeding $150,000, DCS may accept the bonding policy and requirements of the grantee provided the DCS has made a determination that the program's interest is adequately protected. If such a determination has not been made, the minimum requirements will be as follows:

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

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

15. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law, or the DCS. (Appendix II of 2 CFR Part 200)

a. Contracts other than small purchases shall contain provisions or conditions which will allow for 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.

b. All contracts in excess of $10,000 shall contain suitable provision for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of $10,000 by grantees and their contractors or sub-grantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall 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 is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. All construction contracts in excess of $2,000, or housing rehabilitation projects of eight or more units, must include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of the contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by the Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek

of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than ½ times the basic rate of pay for all hours worked in excess of 40 hours in any work week. Section 107 of the Act is applicable to construction work and provides that no mechanic and laborer shall be

required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of DCS's requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a provision to the effect the grantee, the DCS, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

   Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use of non-exempt Federal contracts, grants, or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grant agency and to the USEPA Assistance Administrator for Enforcement (EN-329).

j. Contracts shall recognize 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 (P.L. 94-163).

   Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the Office of Federal Procurement Policy.

16. <u>Contract Administration</u>

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

SECTION 7 – ENVIRONMENTAL REQUIREMENTS

I. Introduction

A. Purpose

Every project undertaken with state CDBG funds and all activities related to that project are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA). In addition to the NEPA, there are other laws and regulations that contain environmental provisions with which CDBG grantees must comply.

The purpose of this Section is to provide guidance necessary to prepare the Environmental Review Record (ERR) which is required by NEPA and related laws. In developing the ERR, all activities associated with the project will be assessed with respect to both their beneficial as well as adverse environmental impacts.

B. Division of Community Services Responsibilities

The Division of Community Services (DCS) has five (5) primary responsibilities related to the environmental review process.

1. Withholding all CDBG grant funds (not including general administration or planning funds) until the grantee has fully and properly certified that all environmental review requirements have been satisfied.

2. Releasing CDBG funds to the grantee once the proper environmental certification has been submitted to the DCS, the required comment period has transpired without negative comment or objection and other basic grant requirements have been satisfied. It should be noted that the DCS's release of activity funds <u>does not</u> constitute a DCS approval of the grantee's findings, but only an acceptance that the certification requirements have been properly satisfied. The grantee remains legally accountable for its findings, should it be found later that these findings were inaccurate, or that proper review procedures were not followed.

3. If subsequent findings result in a determination that the grantee's certification or procedures were inadequate, the DCS is required to again withhold further activity funding to the grantee until these findings are resolved, which usually will require the grantee to redo its environmental review along with a second public comment period; recertification to the DCS; and a revision to the grantee's ERR.

4. The DCS is required to monitor the grantee during its project period including an examination of the grantee's environmental review process and ERR.

5. The DCS will provide to the extent possible and as requested, both guidance and technical assistance to the grantee for its environmental review process and ERR.

C. Grantee Responsibilities

There are five (5) basic environmental responsibilities for each CDBG grantee. These responsibilities will be further explained in this and subsequent sections. The responsibilities include:

1. Conducting an Environmental Review. Grantees must determine what type of environmental provisions pertain to their specific project/activities. For those that are not EXEMPT, CATEGORICALLY EXCLUDED SUBJECT to 58.5 or CATEGORICALLY EXCLUDED NOT SUBJECT to 58.5, the grantee will be required to conduct an Environmental Assessment in order to assess what possible environmental impacts may be involved.

2. Maintaining an Environmental Review Record. Grantees must establish and maintain an Environmental Review Record. This ERR will contain all documentation related to determinations, findings, public notices, consultation and coordination, certifications, and approvals involved in the environmental review process.

3. Providing Public Comment Opportunities. Except for "EXEMPT" AND “CATEGORICALLY EXCLUDED NOT SUBJECT TO 58.5" activities, grantees must provide for a period of public comment related to grantee environmental finding and intent to request CDBG funding for affected activities.

4. Complying With All Environmental Laws. Grantees must comply with NEPA as well as other related Federal law authorities. This compliance responsibility remains for the entire life of the program.

5. Environmental Certification and Funding Requests. The initial environmental review process is not completed until the grantee has properly certified its environmental findings and records to the DCS. This certification process also serves as a request for the release of CDBG activity funds.

II. Initial Environmental Review Procedure

There are several initial steps that the grantee should take to begin the environmental review process. These steps are important because they will help guide the grantee in its approach to this process, and help the grantee to avoid needless mistakes and time delays.

A. When to Begin the Environmental Review

The grantee should begin to satisfy its environmental review as soon as it receives its copy of the executed grant agreement from the DCS, although the grantee may choose to begin the process at the time an application is submitted to the State. Since some of the environmental review processes may become lengthy and perhaps complex, it is vital that grantees start the process as soon as possible.

B. Project Aggregation

The term "project" means an activity or a group of integrally related activities designed to accomplish, in whole or in part, a specific goal.

The term “activity” means an action that a grantee takes as part of an assisted project, regardless of whether its cost is borne by CDBG assistance or is an eligible expense under the program.

Aggregating (grouping) activities allows the grantee to consider the combined environmental effect of a project; aggregation will lessen the number of Environmental Review Records and the accompanying paperwork.

A recipient must group together and evaluate as a single project all individual activities which are related either geographically or functionally, or are logical parts of a composite of contemplated actions. For example, the aggregation of several activities carried out in a distinct neighborhood, such as housing rehabilitation, demolition, street paving, and construction of a water line could be grouped together as a project entitled "NEIGHBORHOOD PRESERVATION".

C. Limitations on Activities Pending Clearance

1. A grantee nor any participant in the development process including public or private nonprofit or for-profit entities or any of their contractors may not commit HUD/CDBG funds on an activity or project until the State has approved the grantee’s Request of Release of Funds. In addition, the grantee nor any participant in the development process may not commit non-HUD/CDBG funds on an activity or project that would have an adverse environmental impact or limit the choice of reasonable alternatives until the State has approved the grantee’s Request for Release of Funds.

2. An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the grantee on the desirability of the property for the project as a result of the completion of the environmental review and the cost of the option is a nominal portion of the purchase price. The option is only allowed on real property (not prefabricated buildings) and the amount of the option is not reimbursable by CDBG. There is no constraint on the purchase of an option by third parties that have not been selected by HUD/CDBG funding, have no responsibility for the environmental review, and have no say in the approval or disapproval of the project.

3. HUD/CDBG funds may be committed for relocation assistance before the approval of the grantee’s Request for Release of Funds provided the relocation assistance is required by 24 CFR part 42.

D. Project Categorization

There are five (5) types of environmental review categories which project activities can fall into:

1. EXEMPT Activities

2. CATEGORICALLY EXCLUDED Subject to 58.5 Activities;

3. CATEGORICALLY EXCLUDED Not Subject to 58.5 Activities;

4. Activities requiring an ENVIRONMENTAL ASSESSMENT

5. Activities requiring an ENVIRONMENTAL IMPACT STATEMENT

Each of these "categories" entails a different set of requirements and procedures. These requirements and procedures involve a progressively more detailed and complex process moving from the EXEMPT to the ENVIRONMENTAL IMPACT STATEMENT categories. Thus, it is important at the outset that grantees determine which review category their project activity(s) falls into.

E. Grantee Certifying Officer

When a grantee accepts CDBG funding, the grantee agrees to assume the legal responsibility as the "responsible official" as defined by NEPA. The local chief official is required to serve as the environmental "Certifying Officer" and accept full responsibility for the completeness and accuracy of the reviews. <u>This environmental duty may not be delegated</u>, although consultants staff and/or state resources may provide technical assistance to support local efforts.

The grantee's Certifying Officer has three principal responsibilities:

1. That of representing the grantee for environmental matters, and being subject to the jurisdiction of the Federal courts if the grantee becomes involved in environmental litigation.

2. Ensuring that all environmental, procedural and record requirements are fully and properly satisfied. The grantee must also review and comment on all EISs prepared for Federal projects that may have an impact on their project.

3. That of insuring and/or performing all necessary coordination functions required for environmental reviews. This includes consultation with all appropriate agencies directly concerned with environmental issues or having environmental responsibilities associated with the grantee's project; and the public comment process.

F. Establishing an Environmental Review Record

Grantees are required to create and maintain an Environmental Review Record (ERR). This ERR must contain a description of the grantee's program (projects and activities), and a record of all relevant documentation pertaining to the environmental review process and findings. Grantees should begin to establish this record at the very beginning of the review process.

Attachment A lists the steps grantees should follow. Section 4 of this Manual contains the lists of the items grantees must include in their Environmental Review Record.

G. Basic Guidance Questions

The Environmental Review requirements of the National Environmental Policy Act can, at first glance, appear overwhelming; however, when taken step by step, the process can be completed with relative ease. Please keep in mind that, for the most part, activities and projects are unique in their effect on the environment; a project in one community may require a different or more in-depth review than a similar project in a different locality.

The very basic guidance questions presented below may be useful in following the process:

1. QUESTION: Can the activities be aggregated into one or more projects?

   ACTION: See Part II-B Project Aggregation.

2. QUESTION: What category is the project in: Exempt, Categorically Excluded Subject to 58.5, Categorically Excluded Not Subject to 58.5, Environmental Assessment, Environmental Impact Statement?

   ACTION: Examine list of Exempt activities beginning in Part III.

   If project is not on the Exempt list, examine the list of Categorically Excluded Subject to 58.5 Activities and Categorically Excluded Not Subject to 58.5 in Part IV. If the project is not on Categorically Excluded Subject to 58.5 or Categorically Excluded Not Subject to 58.5 list, it will be either in the category of Environmental Assessment or Environmental Impact.

3. QUESTION: If the project is Exempt, what is the next step?

   ACTION: Complete the form, DOCUMENTATION OF EXEMPT ACTIVITY (Part III) and send to the DCS.

4. QUESTION: If the project is Categorically Excluded Subject to 58.5, what is the next step?

   ACTION: Complete the Form, Site Specific Checklist (Part IV). Prepare and publish the Notice of Intent to Request Release of Funds.

   Complete Request For Release of Funds and Certification.

   Following the completion of the comment periods and Release of Funds from the DCS, the grantee may incur costs.

5. QUESTION: If the project is Categorically Excluded Not Subject to 58.5, what is the next step?

   ACTION: Complete the Form, Site Specific Checklist (Part IV).

   Complete the Categorically Excluded Not Subject to 58.5 form and send to the DCS.

6. QUESTION: If the project requires an Environmental Assessment, what is the next step?

   ACTION: Complete the Site Specific Checklist (Part IV) and the Environmental Assessment Checklist (Part V). Prepare and publish separate or concurrent Notices of Finding of No Significant Impact and Notice of Intent to Request Release of Funds.

   Complete Request for Release of Funds and Certification

   Following the completion of the comment periods and Release of Funds from the DCS, the grantee may incur costs.

7. QUESTION: If the project requires an Environmental Impact Statement, what is the next step?

   ACTION: <u>CONTACT THE DCS FOR THE NECESSARY FORMS</u>.

III. Exempt Activities

A. Requirements

The environmental requirements of this Section 7 do not apply to the exempt activities identified below. The grantee does not need to undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities for the activities exempt by this section or for projects consisting solely of exempt activities.

A grantee does not have to submit a Request for Release of Funds (RROF) and certification to the DCS. However, the grantee must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section. Approval from the DCS will be needed by the grantee for the commitment and the drawdown of CDBG funds to carry out the exempt activities and projects proposed in the approved application. The form, DOCUMENTATION OF EXEMPT ACTIVITY must be used in documenting the exemption.

The grantee needs to be cautioned, however, that if one or more aggregated activities within a project are determined to be non-exempt, then the project itself cannot be determined to be exempt. The grantee will have to treat a non-exempt project in accordance with the review procedures prescribed for one of the four remaining environmental review categories.

B. Definition of Exempt Activities

CDBG activities that fall within one or more of the defined EXEMPT categories below will not require any further environmental review. For exempt activities/projects, the grantee will then follow the procedures in Part C of this Section. The exempt categories are:

1. Environmental and Other Studies. The reasonable cost of environmental and other studies, including historic preservation clearances, necessary to comply with 24 CFR Part 58 (Title I Environmental Review Requirements), including project specific environmental assessments and clearances for eligible activities, resource identification and development of plans and strategies.

2. Information and Financial Services. Payment of reasonable costs associated with eligible costs for information and financial services provided as part of a CDBG activity.

3. Administrative and Management Activities. Payment of reasonable administrative costs and carrying charges related to the planning and execution of Community Development activities financed, in whole or in part with funds provided under the CDBG program.

4. Public Services. Payment of eligible public service costs that will not have a physical impact or result in any physical changes.

5. Inspections. Payment of reasonable and eligible costs associated with inspections and testing of properties for hazards or defects, such as Housing Quality Standards Inspections and Lead-Based Paint Inspections.

6. Purchase of Insurance. Payment of reasonable and eligible insurance purchases financed in whole or in part, with CDBG funds.

7. Purchase of Tools. Payment of reasonable and eligible tool purchases. This does not include equipment purchases.

8. Engineering and Design Costs. If incurred for an activity eligible under the North Dakota CDBG program.

9. Technical Assistance and Training. Payment of reasonable and eligible costs associated with technical assistance and training.

10. Temporary or Permanent Improvements. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.

11. Principal and Interest Payments. Payment of principal and interest on loans made or obligations guaranteed by HUD.

12. Other Exempt Activities. Any of the categorical exclusions subject to 58.5 listed in Part IV of this Environmental Section provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in this Section.

    In order to qualify for an exemption under this category the grantee must have, at a minimum, filled out the Site Specific Checklist in Part IV.

    A Site Specific Checklist must be completed for each housing rehab unit.

C. Procedures for Exempt Activities

Once the grantee has determined that its activity or project falls into one of the EXEMPT activity categories listed above, the following steps will be followed:

Step 1 Prepare and submit to the DCS the form entitled, Documentation of Exemption along with the Site Specific Checklist and supporting documentation.

Step 2 Upon receiving this Certification, the DCS will prepare a Notice of Acceptance of Exemption to be sent to the grantee indicating that this grant condition has been satisfied. This DCS Notice will NOT be sent, however, until the grantee has also satisfied other basic grant conditions as explained in the Administrative Manual.

Step 3 Once the grantee has received the DCS Notice, the grantee may then begin to obligate or incur costs and request payment of funds.

DOCUMENTATION OF EXEMPTION
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52328 (04/04)

STATE OF NORTH DAKOTA
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
ENVIRONMENTAL REVIEW

DOCUMENTATION OF EXEMPTION

1. Name of Recipient	
2. Recipient's Address	
3. ERR Certifying Officer (Local Chief Official)	Date
4. Prepared By	Instrument Number
6. Project Description	
7. This activity is exempt pursuant to CDBG Administrative Manual Section 7, Part III B, _____. An Environmental Review Record (ERR) supporting this finding has been prepared and is available for the DCS review and public inspection at the address indicated above. As the responsible Federal Official, I accept responsibility under the National Environmental Policy Act for environmental reviews, decisions and actions. By my signature below, I certify that I am authorized to, and do personally, accept the jurisdiction of the Federal Court for the enforcement of the aforesaid responsibilities.	
Signature - Local Chief Official	Title
Typed Name & Title	Date

BY THIS CERTIFICATION, THE RECIPIENT REQUESTS
THE RELEASE OF COMMUNITY DEVELOPMENT BLOCK GRANT
FUNDS FOR THE ACTIVITY DESCRIBED ABOVE

Sample

IV. Categorically Excluded Activities

A. Meaning of the Term, "Categorically Excluded"

A project or category of activities which is categorically excluded does not need to address the requirements of the National Environmental Policy Act. In general, the National Environmental Policy Act requires an assessment of activities to determine their effects on the environment and what effects the environment will have on the activities. In addition, the National Environmental Policy Act requires the identification of alternative activities. Categorically Excluded activities have been divided into two separate categories:

1. Categorically Excluded Activities Subject to 58.5

2. Categorically Excluded Activities Not Subject to 58.5

B. Other Environmental Requirements

Even though a project or activity is categorically excluded from the National Environmental Policy Act requirements, a grantee must still comply with the environmental requirements of other related laws and authorities. The grantee must document its compliance with these other requirements in the Environmental Review Record. The Environmental Review Record format for documenting compliance with the applicable authorities is set forth at the end of this Part.

C. Notice and Publication Requirements

The grantee is required to publish the Notice of Intent to Request Release of Funds for Categorically Excluded Activities Subject to 58.5. The grantee must then submit for the DCS approval, the Certification and Request for Release of Funds.

The grantee is not required to publish the Notice of Intent to Request Release of Funds of Categorically Excluded Activities Not Subject to 58.5. The grantee must submit for the DCS approval the Categorically Excluded Activities Not Subject to 58.5 form.

D. Categorically Excluded Activities Subject to 58.5

1. The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Attachment B:

    a. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

b. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

c. Rehabilitation of buildings and improvements when the following conditions are met:

1) In the case of residential buildings with one to four units;

a) The density is not increased beyond four units;

b) The land use is not changed; and

c) The foot print of the building is not increased in a floodplain or in a wetland.

2) In the case of multifamily residential buildings;

a) Unit density is not changed more than 20 percent;

b) The project does not involve changes in land use from residential to non-residential; and

c) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

3) In the case of non-residential structures, including commercial, industrial, and public buildings:

a) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent.

b) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

d. Individual Actions

1) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

2) An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

3) Paragraphs D.1.d.1 and 2 of this section do not apply to rehabilitation of a building for residential use with one to four units. Paragraph D.1.c. of this section addresses residential.

e. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

f. Combinations of the above activities.

E. Procedures for Categorically Excluded Activities Subject to 58.5

Once the grantee has determined that its activity/project falls within one or more of the CATEGORICALLY EXCLUDED Subject to 58.5 categories, the following steps will be followed:

Step 1 Begin to prepare and complete the Site Specific Checklist (Part IV). When completed, this document must be made a part of the grantee's ERR, and available for public review. For housing rehabilitation projects, a Site Specific Checklist must be completed for each housing unit.

Step 2 As the grantee proceeds to complete the above form, the grantee must consult with the appropriate local, state, and federal agencies that do or might have an environmental interest in the project or activities. The grantee must show consultation through documented letters or other forms of written communication. All letters and responses must become a part of the ERR.

Step 3 If the grantee has learned through the consultation process that it must comply with certain environmental provisions of other Federal environmental laws or regulations, the grantee must document this in its ERR:

(1) Which activity(s) or project was so affected.

(2) The nature of compliance required.

(3) How the grantee has or will meet such compliance requirements

Step 4 Following the above, the grantee must then prepare a public, <u>Notice of Intent to Request a Release of Funds</u>:

(1) This Notice must be prepared in the manner shown in this Section.

(2) At a minimum, this Notice must be distributed to the local news media, individuals and groups interested in the project, and appropriate local, state and federal agencies which must include among them:

(a) State Historical Preservation Office

(b) Regional Office of the US Environmental Protection Agency

(c) Division of Community Services

NOTE: See Attachment B for a listing and addresses of these and other Information Source Agencies.

(3) This Notice must be published at least once in a general circulation newspaper in the grantee's community. If there is no newspaper, the Notice must be prominently displayed at the local Post Office (and any substations), and also displayed in other public buildings within the project area.

(4) This Notice must be distributed as explained above. If published in a newspaper, the public review/comment period shall be a minimum of seven (7) days, if posted and mailed the public review/comment period shall be a minimum of ten (10) days, prior to the grantee proceeding with Step 5 below.*

Step 5 At the conclusion of the seven day period (and assuming no adverse comments that require a change to this determination), the grantee must then submit to the DCS:

(1) A copy of the State of North Dakota Request for Release of Funds and Certification. Retain copy for ERR.

(2) A newspaper copy of the grantee's public Notice of Intent to Request a Release of Funds that indicate the date of publication or a copy of the Notice and an affidavit of publication along with documented results from steps one (1) and two (2). Retain copies for your ERR.

Step 6 Upon receiving these submissions, the DCS must allow for a fifteen (15) day public comment period prior to taking any further action. NOTE: See Part VII for a discussion of possible adverse public comments and how these must be addressed.

Step 7 If no adverse public comments are received by the DCS during this period, the DCS will then send to the grantee, Notice of Release of Funds. However, this Notice will not be sent until the grantee has also satisfied other basic grant conditions.

Step 8 Once the grantee has received the above DCS Notice, the grantee may then begin to obligate or incur costs and request payment of funds.

*COMMENT PERIODS BEGIN THE DAY AFTER THE PUBLICATION OR POSTING AND MAILING OF THE NOTICE.

F. Categorically Excluded Activities Not Subject to 58.5

1. The following activities are Categorically Excluded Not Subject to 58.5. The DCS is requiring that the appropriate authorities listed in Attachment B be contacted.

   a. Tenant-based rental assistance;

   b. Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

   c. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

   d. Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

   e. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction including closing costs and down payment assistance, interest buydowns and similar activities that result in the transfer of title;

   f. Affordable housing predevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

   g. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved. Approval must be made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required.

G. Procedures for Categorically Excluded Activities Not Subject to 58.5

Once the grantee has determined that its activity/project falls within one or more of the CATEGORICALLY EXCLUDED Not Subject to 58.5 categories, the following steps will be followed:

Step 1 Begin to prepare and complete the Site Specific Checklist (Part IV). When completed, this document must be made a part of the grantee's ERR, and available for public review. For housing rehabilitation projects, a Site Specific Checklist must be completed for each housing unit.

Step 2 As the grantee proceeds to complete the above form, the grantee must consult with the appropriate local, state, and federal agencies that do or might have an environmental interest in the project or activities. The grantee must show consultation through documented letters or other forms of written communication. All letters and responses must become a part of the ERR.

Step 3 If the grantee has learned through the consultation process that it must comply with certain environmental provisions of other Federal environmental laws or regulations, the grantee must document this in its ERR:

(1) Which activity(s) or project was so affected.

(2) The nature of compliance required.

(3) How the grantee has or will meet such compliance requirements

Step 4 Following the above, the grantee must then prepare and submit to the DCS the form entitled, Categorically Excluded Activities Not Subject to 58.5 along with the Site Specific Checklist and supporting documentation.

Step 5 Upon receiving this Certification, the DCS will prepare a Notice of Acceptance of Categorically Excluded Not Subject to 58.5 to be sent to the grantee indicating that this grant condition has been satisfied. This DCS notice will **NOT** be sent, however, until the grantee has also satisfied other basic grant conditions as explained in the Administrative Manual.

Step 6 Once the grantee has received the DCS Notice, the grantee may then begin to obligate or incur costs and request payment of funds.

H. Circumstances Requiring National Environmental Policy Act Review

If a recipient determines that an activity or project identified in paragraph (D or F) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all 24 CFR Part 58 requirements.

I. Need for Reassessments

There are several situations which will require the grantee to re-evaluate and possibly amend or redo its categorical exclusion assessment. The purpose of a reassessment is to determine whether the grantee's original assessment is still valid, and to update or correct its ERR. The situations that will require a reassessment are as follows:

1. The grantee substantially changes its project in nature, magnitude, or extent including new activities not anticipated in the original project scope and/or cost estimates.

2. There are new circumstances and environmental conditions which may affect the project, or have a bearing on its impact, such as concealed or unexpected conditions discovered before or during project implementation.

3. The grantee selects an alternative not considered in the original assessment.

   If one of these situations does arise, the grantee will be required to do a reassessment following the procedures below:

   a. If the grantee has already filed its certification of assessment with the DCS, then the grantee must inform the Office of the need for a reassessment. As such, the DCS will be required to withhold the release of further CDBG activity funds until this reassessment is completed and recertified to the DCS.

   b. If the grantee's original determination is found to still be valid after the reassessment, but the data or conditions upon which it was based have changed, the grantee must amend its original ERR and update its ERR.

   c. If the grantee finds that its original environmental determination is no longer valid, it will have to prepare a new ERR or EIS, whichever is appropriate.

   d. Where an original environmental determination is found to not be valid, or a new ERR is prepared which results in a FONSI, the grantee must once again follow the procedures explained above for public notices, as well as the certification procedures.

   NOTE: The failure to properly comply with the steps above will constitute the grounds for the DCS's withholding, non-release, or recapture of CDBG activity funds.

SITE SPECIFIC CHECKLIST
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52327 (03/06)

HOME ☐ CDBG ☐ ESGP ☐ NSP ☐ (Attach All Appropriate Agency Correspondence)

☐ Categorical Excluded Subject to 58.5	☐ Categorical Excluded Not Subject to 58.5	☐ Environmental Assessment

Location or Address of Site Reviewed	Project/Name

Project Description

1. Is the structure vacant? ☐ N/A		☐ Yes ☐ No
2. Will the structure be vacated? ☐ N/A		☐ Yes ☐ No
3. a. Attach State Historic Preservation Officer correspondence/clearance for this site.	Date of Clearance:	
b. Attach Tribal Historic Preservation Officer correspondence/clearance for this site.	Date of Clearance:	
4. Is the site within, partially within or will it affect a 100 year floodplain? Include FEMA Map indicating location of projects or State Water Commission Letter		☐ N/A ☐ Yes ☐ No
5. Is the project located outside the city limits? **If yes, attach correspondence on Wetland, Farmland Protection, Endanger Species and complete below.** Is new construction or relocation of a structure proposed?		☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No
6. Noise determination: Is the site within: 1,000 feet of a major roadway (4 lanes)? 3,000 feet of a railroad? 5 miles of a commercial airport? 15 miles of a military airfield? **If yes and structure is uninhabitable, attach information on mitigation.**		 ☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No
7. Is above ground storage of hazardous materials, including but not limited to propane or gasoline storage tanks, visible from the site (within one mile)? **If yes, complete reverse side.**		☐ N/A ☐ Yes ☐ No
8. Is the site within one mile of toxic chemicals/wastes (CERCLIS list)? **If yes, attach EPA correspondence.**		☐ N/A ☐ Yes ☐ No
9. Is the site within 3,000 feet of the end of a runway of a commercial airport or 2.5 miles from the end of a runway at a military airfield? **If yes, is it in:** Commercial: ☐ Runway Clear Zone Military: ☐ Clear Zone ☐ Accident Potential Zone (APZ)		☐ N/A ☐ Yes ☐ No
10. Will the project affect Air Quality?		☐ N/A ☐ Yes ☐ No
11. Will the project affect Sole Source Acquifers?		☐ N/A ☐ Yes ☐ No
12. Will the project affect Wild & Scenic Rivers?		☐ N/A ☐ Yes ☐ No
13. Is the density/capacity changed by more than 20%? Is the unit density changed by more than 20% (multi-family only)? Does the project involve changes in land use or zoning? Is the estimated cost of rehabilitation greater than 75% of the total estimated cost of Replacement after rehabilitation?		☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No ☐ N/A ☐ Yes ☐ No
14. Will the environmental effects of this activity be disportionally high and/or adverse on minority and low income populations?		☐ N/A ☐ Yes ☐ No
15. Is the property free of hazardous materials, contamination, radioactive substances and toxic chemicals and gases?		☐ N/A ☐ Yes ☐ No

Person Completing Site Visit	DCS USE ONLY
_____ Name of Recipient _____ Instrument Number _____ Signature & Title _____ Date	A site specific review was completed locally and then reviewed by State Program staff. Accordingly, it has been determined that this project is: ☐ Categorical Excluded/Exempt ☐ Categorical Excluded Subject to 58.5 ☐ Categorical Excluded Not Subject to 58.5 ☐ Environmental Assessment ☐ Costs may be incurred as of below date ☐ Costs may not be incurred until an CE or an EA is completed _____ Authorized Signature Date

Sample

ABOVE GROUND STORAGE OF HAZARDOUS MATERIALS				
1. Hazardous material(s):				
2. Distance of structure from hazardous material:				
3. Size of storage facility:				
4. Is any new construction proposed?				☐ Yes ☐ No
5. Will proposed rehabilitation increase the value of the structure by 75 percent or more?				☐ Yes ☐ No
6. If the structure is vacant: Has it been condemned? Is it uninhabitable?				 ☐ Yes ☐ No ☐ Yes ☐ No
Additional Comments:				

NOTICE TO HOMEOWNER

The property located at _____ is located within one mile of the hazard(s) specified in number 1 of this page. This hazard could be dangerous to your safety, now or in the future and I hereby, **release** the Department of Commerce and the State of North Dakota from all such claims arising out of or resulting from the information disclosed in this document.

I, the undersigned Homeowner, affirm that I am at least 18 years of age, am freely signing this Notice, and have been informed that a hazard has been identified near my property. My signature acknowledges that I have reviewed, been advised, and fully understand the above "Notice to Homeowner." **I fully understand that by signing this form I am giving up legal rights** and/or remedies which may otherwise be available to me regarding any losses I may sustain as a result of the above Notice. I agree that if any portion is held invalid, the remainder will continue in full legal force and effect.

Signature of Homeowner	Date
Signature of Homeowner	Date

CDBG/HOME SECTION 106 CLEARANCE
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52654 (12/14)

THIS FORM MUST BE SUBMITTED TO THE SHPO FOR SECTION 106 DETERMINATIONS

Identify funding source for project(s):

Project Description: (use attachment if necessary)

Location: Rural Areas: Township _____, Range _____, Section _____, ¼ Section _____
Cities - Street Address _____
(Only if there is no street system, use lot, block and addition (never USPS Box #, Route #, etc.)

Attach Map: Plot APE on map (city map or USGS topographic map for rural areas): Attached: _____ (check)

Areas Indirectly Affected: Attached location and maps for affected areas outside APE, (i.e., borrow sources, disposal areas, relocation sites, facilities to be abandoned, etc.)

Year Built: _____ (use the oldest part of the building, do not give age as "50"+)

Requirements for buildings/structures 50+ years or if age unknown:

Digital or 35mm photos: Take obliquely (showing front & side) of each building/structure. If rehabilitation is involved, send photo close-ups of affected areas such as windows or doors. Send actual photos, not photocopies. _____ (check)

Historic Associations: Describe associations between the property and any persons/events of historic significance.
List references (local historian, centennial book, etc.)

Based on the information collected, the type of SHPO concurrence you are requesting (check one only):

- ❒ No Historic Properties Affected
- ❒ No Adverse Effect (If rehab of historic properties will occur, review the Secretary of Interiors Standards for Rehabilitation of Historic Properties prior to developing a work plan. Note - For Historic Properties, a No Adverse Effect determination requires conforming with the Secretary of Interiors Standards.)
- ❒ Adverse determination Effect (A MOA will be prepared)

FOR SHPO USE ONLY:
No Historic Properties Affected

The described undertaking will not affect any historic properties, per 36CFR800.4(d). If the project description changes, this recommendation is void.

Review and Compliance Coordinator _____ for Claudia J. Berg, ND SHPO

Date _____ In Response Please Reference: SHPO# _____

Additional Information: Send additional information relevant to the Section 106 determination. If the project involves properties listed on, or eligible for the National Register, additional information may be required.

Send form with all attachments to:

Ms. Claudia Berg
Attn: Review and Compliance
ND State Historic Preservation Office
612 E. Boulevard Ave.
Bismarck, ND 58505-0830

Form should be returned to:

_____
Name

_____
Agency & Phone Number

_____
Address

_____
City, State, Zip

_____
Signature Date

Sample

CDBG/HOME FLOODPLAIN CLEARANCE
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 53000 (05/09)

THIS FORM MUST BE SUBMITTED TO THE STATE WATER COMMISSION FOR FLOODPLAIN DETERMINATION

Location: Rural Areas: Township _____, Range _____, Section _____, ¼ Section _____

☐ NW ☐ NE ☐ SW ☐ SE (*Check One*)_

Cities - Street Address _____

(Only if there is no street system, use lot, block and addition (never USPS Box #, Route #, etc.)

A) The property/project above (is/is not) located in a 100-year floodplain.

If the grantee has this information available, please complete the following:

Community FIRM # _____

Panel _____

Date _____

Zone _____

B) This property/project is NOT in a 100-year floodplain because

_____ no map - no areas are identified by the NFIP
_____ the area is outside of the identified floodplain on the FIRM;
_____ Zone B or X (500-year floodplain)
_____ Zone C or X (outside of 500-year floodplain)
_____ Zone D (flood hazards are undetermined)
_____ the FHBM that once existed has been rescinded by the NFIP
(Rescission date _____)

C) Executive Order 11988 (Applicable/not applicable)

Executive Order 11988 "requires federal agencies to avoid, to the extent possible, the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to the direct or indirect support of floodplain development whenever there is a practicable alternative."

Comments:

The 100-year floodplain is the same as:

- the identified floodplain
- the special flood hazard area
- 'A' zone

Fax form to: Bruce Lange
State Water Commission
701.328.3747
blange@nd.gov

Return to: Name _____

Phone _____

Fax _____

FOR STATE WATER COMMISSION USE ONLY.

INSTRUCTIONS FOR COMPLETING THE ENVIRONMENTAL SITE SPECIFIC CHECKLIST

A. HISTORIC PRESERVATION

Section 106 and 110 of the National Historic Preservation Act of 1966, amended, mandates that Federal agencies with direct or indirect jurisdiction over a Federal, Federally assisted, or Federally licensed activity afford the National Advisory Council on Historic Preservation and the relevant State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) a reasonable opportunity for comment on the project's impact on historic properties. This review procedure relates to CDBG- funded activities affecting properties included on or eligible for inclusion on the National Register of Historic Places.

According to regulation (c.f. 24 CFR 58.5), CDBG grant recipients assume the responsibilities normally borne by federal agencies for environmental review of their projects. Specifically, recipients are responsible for satisfaction of the requirements of the National Historic Preservation Act of 1966 (NHPA), as amended, and the national Environmental Policy Act (NEPA). The purpose of mandated consideration of cultural resources such as historic sites, archeological sites and buildings with architectural significance is to ensure that public funds are not used to destroy the Nation's historic resources unnecessarily or unknowingly. If a proposed project's location or design can be changed slightly to avoid an archeological site and still complete the project, or a building rehabilitation can be completed in such a manner as to preserve its historic character while providing a longer life and more usability for the building, cultural resources and the CDBG applicant can both be accommodated.

Regulations of the National Advisory Council on Historic Preservation at 36 CFR Part 800 define several terms important to the Council's regulatory impact for CDBG-funded activities:

- "Area of Potential Effect" means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties if any such properties exist;

- "Criteria of Effect" refers to both direct and indirect effects of Federally assisted projects that impact historic places. Direct effects include any change, beneficial or adverse, in the quality of the historical, architectural, archaeological, or cultural characteristics that qualify the property to meet the criteria of the National Register. Indirect effects include changes in the pattern of land use, population density or growth rate that may affect properties of historical, architectural, archaeological, or cultural significance.

- "Criteria of Adverse Effect" include the:

    - destruction or alteration of all or part of a property;

    - isolation from or alteration of the property's surrounding environment;

    - introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

    - neglect of a property resulting in its deterioration;
    - transfer, lease or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use;
    - removal of property from its historic location.

- "Historic Property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior.

- "Memorandum of Agreement" means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

Both NHPA and NEPA require federal agencies, in this case the CDBG recipient, to consult with the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them regarding:

- Whether or not there are cultural resources in the project area.

- The need for a survey to identify such resources.

- The evaluation of sites found or already known.

- The effect of the proposed project on any sites which are significant in terms of the National Register of Historic Places (NRHP).

- Plans and alternatives considered to avoid, lessen or mitigate any adverse effects which the project will have on significant cultural resources.

The Department of Interior has issued specific criteria to help determine eligibility of properties for listing in the National Register. In summary, historic and cultural resources are those districts, sites, buildings, structures, and objects which:

- Are associated with events that have made a significant contribution to the broad patterns of our history.

- Are associated with the lives of persons significant in our past.

- Embody the distinctive characteristics of a type, period or method of construction; represent the work of a master; possess high artistic values; or represent a significant and distinguishable entity whose components may lack individual distinction.

- Have yielded, or may be likely to yield, information important in prehistory or history.

If a property or project location contains significant cultural resources and the project as designed will have an effect on those resources, then the CDBG recipient may also provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment of the project. These consultations are described in regulations which can be found at 36 CFR 800, especially at 800.4 through 800.11; related regulations can be found at 36 CFR 63, especially 63.3 The SHPO has a variety of explanatory handouts available which are designed to help you understand the review and compliance process; such materials can also be obtained directly from the ACHP. Additional information may also be found at the ACHP web site www.achp.gov.

1. Analysis Technique

There is an in-place process set up to handle the review of projects such as CDBG. The regulations require that the SHPO/THPO be provided 30 days from receipt of project documentation to respond. Providing the SHPO/THPO with the information needed to assess the potential of your project to affect cultural resources, should shorten the response time.

Several steps can be combined in the review process outlined in the regulations to expedite the SHPO/THPO's response and your completion of the compliance process. If the project you propose to undertake is a simple one which will not affect cultural resources such as archeological sites or historic buildings, you need go no further than the initial exchange of letters. If the project will affect a property which is on, or potentially eligible for inclusion on the National Register of Historic Places, the process will require several exchanges, and may ultimately require consultation with the Advisory Council in Denver or Washington, D.C. The SHPO/THPO will work with you in these latter instances to expedite the review, but you should contact the SHPO/THPO as early in your planning process as you obtain information about the project. This will ensure that you are in compliance with the law and regulations, and that you do not reach a deadline in the CDBG process which cannot be met and lose project funds unnecessarily.

What the State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) will need from you is the following:

a. A completed CDBG/HOME Section 106 Clearance Form.

b. A description of the project, i.e., what you are going to do. The description should include such information as:

(1) Are you building something new, or renovating something old.

(2) What effects will the project have in terms of earth disturbance, demolition or changing buildings, etc. The SHPO/THPO is not concerned with what you are going to manufacture, for instance, but is concerned with what changes you will make to the building in which this will be done.

c. If the project is rural, or in a recently developed area of a city, send a statement of present land use and the legal description in terms of County, Township, Range, Section, and part-Section. If the project is urban, or in an area which has been developed for a long time, send a statement of whether or not any buildings or other structures will be affected, and the legal description in terms of city and street address.

d. If the project will affect, e.g., renovate, destroy, or remove an existing building, make this clear. If a building to be effected is less than 50 years old, make this clear. If the building is 50 years old, or older, send the following with your letter:

(1) Photographs of the whole building, and of those areas where the project will have an effect, i.e., the roof, doors, windows, etc.

(2) The date of building construction.

(3) The name of the architect or builder, if known.

(4) The date of any structural alterations made to the building.

(5) A description of such alterations.

(6) A description of any known associations between the property and person or events of historical importance.

The information requested in b. through e. above, should be readily available from the owner's deed or the local Building Inspector and/or Registrar of Deeds Office.

e. A map which shows the project location, i.e., street location or positions in a section. Maps should be clearly marked so that the project and location can be found.

f. If your CDBG project is one which includes a number of locations or buildings, you should clearly separate each project so the information can be identified by project and responded to individually if necessary. If your office is handling grants for several communities, please submit project descriptions for each community in a separate package with a separate cover letter.

If a building, or other site to be affected is listed on the National Register of Historic Places, or is determined eligible on the basis of the information provided, plans and specifications for the project may be requested to assess the effects of the proposed project, and allow the SHPO/THPO to provide you with recommendations on how to proceed.

Project information and requests for consultation should be sent directly to:

(1) Merl Paaverud, NDSHPO
North Dakota Heritage Center
612 East Boulevard Avenue
Bismarck, ND 58505-0830
ATTN: Review & Compliance

(2) Tribes identified in the Tribal Directory Assessment Tool (TDAT). Further Tribal Consultation requirements can be found in HUD's Guidance at http://egis.hud.gov/tdat/tribal.aspx

The SHPO/THPO staff will be glad to work with you to ensure that your CDBG project is completed in a timely fashion, and that North Dakota's fragile and non-renewable archeological, historic and architectural heritage is not unnecessarily lost in the process.

As a matter of courtesy, the grantee may want to contact its local historical society and seek their comments. Please note, however, that this in itself will not satisfy program requirements.

2. Assessment Questions

a. Does the project area contain any properties listed on the National Register of Historic Places?

b. Does the City or County have an inventory of historic places?

c. Is the project site associated with events which were historically significant?

d. Is the project site associated with the lives of persons which were significant to our past?

e. Does the project site embody distinctive or unique characteristics of a type, period, method of construction, or that represents the work of a master craftsman, or that possess high artistic value? Is it architecturally distinctive?

f. Is the site likely to yield information important in prehistory or history?

g. Is the project site part of a district that possesses distinctive characteristics of integrity of location, design, setting, materials, workmanship, feeling and association?

B. FLOODPLAIN MANAGEMENT

Under Executive Order 11988, federal executive agencies are required to protect the values and benefits of floodplains and to reduce risks of flood losses by not conducting, supporting or allowing action located in floodplains unless it is the only practicable alternative. Section 9 of E.O. 11988 authorizes that responsibilities applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974 may be assumed by the applicant if the applicant has also assumed with respect to such project, all of the responsibilities for the environmental review. The Executive Order directs federal executive agencies to take certain steps: (a) to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and (b) to avoid direct or indirect support of floodplain development, wherever there is a practicable alternative.

If CDBG grant recipients determine that the proposed projects must be located in the floodplain, then certain measures must be undertaken to minimize potential harm to the floodplain.

The evaluation should consider both flood hazards to potential CDBG projects, and possible increased flood hazards and environmental impacts resulting from Title I project construction. Federal policy defines high flood risk areas (floodplains) as those subject to a one percent or greater statistical chance of flooding in any given year. Areas identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards are set forth in a Flood Hazard Boundary Map or a Flood Insurance Rate Map and are shown as Flood Zone A and V (also referred to as the "100-year floodplain"). Such areas are expected to flood at least once every one hundred years and are normally dry areas subject to partial or complete inundation due to overflow of inland and/or coastal waters, or accumulation of other surface waters. Typical floodplain areas include low land along rivers or the ocean, flat areas in which stormwater accumulates due to clay soils, and riverine areas subject to flash floods. Impacts of locating a CDBG construction project in a floodplain may range from property damage to loss of life when a flood occurs. Even if a potential CDBG project is not located in a floodplain, project construction may increase flood hazards elsewhere. For example, extensive paving may result in faster runoff and substantially increased water volumes being emptied into local river or lakes. Encroachment of development onto a flood-plain or wetland often results from actions taken outside the floodplain or wetland. For example, construction of major roads and utilities adjacent to these areas will often encourage additional development within them. Construction of a housing development could well have the same effect.

1. Analysis Technique

The basic analysis technique is set forth in "Floodplain Management Guidelines," of the U.S. Water Resources Council issued in accord with Section 2(a) of E.O. 11988. Among other considerations, the analysis must identify and evaluate practicable alternatives to locating in a floodplain including alternative sites outside the floodplain; alternative actions which serve essentially the same purpose as the proposed project or activity but which have less potential to affect the floodplain adversely; and the alternative of taking "no action", e.g. not carrying out the project or activity.

For the approximately 16,000 communities participating in the National Flood Insurance Program, determination of whether or not the project would be located in the floodplain can be made by consulting the Flood Hazard Boundary and/or Flood Insurance Rate Map. Determining floodway or floodplain effects of large projects may require computer modeling, or engineering assistance.

If the National Flood Insurance Program Maps are not available, the determination as to whether the proposed project or activity is located in a floodplain may be made by consulting other sources, such as:

- U.S. Army Corps of Engineers Floodplain Information Reports
- USGS Flood-Prone Area Maps
- USGS Topographic Quadrangle Map
- State and local maps and records

2. Executive Order 11988

The following is an eight step process which grantee's must follow in order to come into compliance with Executive Order 11988.

a. Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (If the answer is no, check no impact and continue Environmental Review process).

b. If the answer to question one is yes, provide at the earliest possible time notice and adequate information to give the public and interested parties an opportunity to comment on the proposed action (or activities) being conducted, supported, or allowed in a floodplain or wetland.

   Each notice should include the following: statement of purpose of the proposed action and its description, and its relationship to its environs, a statement that it has been determined to be located in a floodplain or wetland, a statement of intent to avoid the floodplain or wetland where practicable, and to mitigate impacts where avoidance cannot be achieved, and identification of the responsible official for receipt of comments and for further information. All notices must include the local official's name, phone number, and address to contact for information and to make comment. At a minimum, all notices should be published in the newspaper serving the project area that has the widest circulation and should be distributed through the environmental review process to the appropriate federal agencies having responsibilities for floodplain management, wetlands protection, and environmental quality.

A minimum of 15 calendar days shall be allowed for public comment on this public notice.

c. Identify and evaluate the practicable alternatives to locating in a floodplain or wetland (including alternative sites outside the floodplain or wetland; alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to adversely affect the floodplain or wetland; and the "no action" option). The following factors should be analyzed in determining the practicability of alternatives: natural environment (topography, habitat, hazards, etc.); social concerns (aesthetics, historical and cultural values, land use patterns, etc.); economic aspects (costs of space, construction, services and relocation); and legal constraints (deeds, leases, etc.).

d. Identify the full range of potential direct or indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Flood hazard-related factors should be analyzed for all actions. These include, for example, the following: depth velocity and rate of rise of flood water; duration of flooding, high hazard areas (riverine and coastal); available warning and evacuation time and routes; effects of special problems; e.g., levees and other protection works, erosion, subsidence, sink holes, ice jams, combinations of flood sources, debris load and pollutants, etc. Natural values-related factors should be analyzed for all actions. These include, for example, the following: water resource values (natural moderation of floods, water quality maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archaeological and historic sites, and open space for recreation and greenbelts); and agricultural, aquacultural and forestry resource values. Factors relevant to a proposed action's effects on the survival and quality of wetlands should be analyzed for all actions. These include, for example, the following: public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific and cultural uses.

e. Where avoidance of floodplains or wetlands cannot be achieved, design or modify its actions so as to minimize harm to or within the floodplain, minimize the destruction, loss or degradation of wetlands, restore and preserve natural and beneficial floodplain values, and preserve and enhance natural and beneficial wetland values. CDBG grant recipients should minimize potential harm to lives and property from the 100-year flood (500-year flood for critical actions), minimize potential adverse impacts the action may have on others, and minimize potential adverse impacts the action may have on floodplain and wetland values. Minimization of harm to property should be performed in accord with the standards and criteria set

forth in 44 CFR 59 et. seq. substituting the 500-year standard for critical actions and elevating structures on open works-walls, columns, piers, piles, etc. – rather than on fill in all cases within coastal high hazard areas, and elsewhere, where practicable. Minimization of harm to lives should include, but not be limited to, the provision for warning and evacuation procedures for all actions and should emphasize adequacy of warning time, access and egress routes.

f. Re-evaluate the proposed action to determine first if it is still practical in light of its exposure to flood hazards and its potential to disrupt floodplain and wetland values and, second, if alternatives rejected at c. above are practicable, in light of the information gained in d. and e. above.

   The proposed action shall not be located in a floodplain or wetland, if there is a practicable alternative site and action, and where the potential adverse effects of using the floodplain or wetland site cannot be minimized, no action shall be taken.

g. Prepare and circulate a finding and public explanation of any final decision that there is no practicable alternative to locating an action in, or affecting a floodplain or wetland. The same audience and means of distribution used in b., above, should be used for this finding. The finding should include the following: the reasons why the action is proposed to be located in a floodplain or wetland, a statement indicating whether the action conforms to applicable State or Local floodplain management standards, a list of the alternatives considered, and all mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

   A minimum of 7 calendar days shall be allowed for public comment on this public notice.

h. Review the implementation and post implementation phase of the proposed action to ensure that the commitments for mitigation made under provisions of paragraph g. above are fully implemented.

   This responsibility should be fully integrated into the CDBG grant recipient's planning and environmental management to assure completion of the project in accord with the requirements of the Executive Orders to ensure that the Orders' goals are met.

   It should be noted that pursuant to Section 202(a) of the Flood Disaster Protection Act (P.L. 93-234), all identified flood-prone communities must enter the National Flood Insurance Program by July 1, 1975, or within one year after the hazard areas have been identified, whichever date is later, in order to continue to receive Federal financial assistance in identified special flood hazard areas, for acquisition or construction purposes (refer to Guidelines for Mandatory Purchase of Flood Insurance (43 FR February 17, 1978, 7140-7148).

3. Assessment Questions

The most important questions to ask when conducting the initial flood hazard screening are:

a. Will the project be located in the 100-year floodplain?

b. Will the project change the 100-year floodplain, or affect the floodway? (The floodway is the portion of the floodplain that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot at any point.)

c. Are there available alternatives to locating the proposed project or activity in the floodplain?

d. Is the proposed project in compliance with Executive Order 11988?

e. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

C. PROTECTION OF WETLANDS

Executive Order 11990 requires all federal executive agencies to refrain from supporting construction in wetlands wherever there is a practicable alternative. The Executive Order directs agencies to take certain steps: (a) to avoid to the extent possible the long and short term impacts associated with the destruction or modification of wetlands, and (b) to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. If an agency determines that there is no practicable alternative to the use of wetlands for a project, the agency must act to reduce the adverse impacts on the wetlands. The Order applies to Federal agencies directing construction on wetlands, to Federally financed or assisted construction in wetlands, and to the use of wetlands on Federally owned property. As defined in Executive Order 11990, the term "wetland" refers to those areas that are inundated by surface or groundwater with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Wetlands can assist man through groundwater filtering, storage, and recharge, flood control, nurturing wildlife including food sources such as water fowl and fish, water purification, oxygen production, recreational locations, and aesthetics. Urbanization has heavily impacted wetlands in the U.S. Scientists have estimated that from over a third to a half of the wetlands in the U.S. have been destroyed. In addition to filling, creation of pollution threatens additional wetlands.

1. Analysis Technique

Executive Order 11990 procedure requires that among other considerations, the analysis must identify and evaluate practicable alternatives to locating in a wetland (including alternative sites outside the wetland, alternative actions which serve essentially the same purpose as the proposed project or activity, but which have less potential to affect the wetland adversely, and the alternative to taking "no action", e.g. not carrying out the project or activity.

The Executive Order 11990 also requires that the following factors relevant to a proposed project's or activity's effects on the survival and quality of wetlands be analyzed: public health, safety, and welfare (including water supply, quality, recharge and discharge, pollution, flood and storm hazards, and sediment and erosion); maintenance of natural systems (including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources), and other uses of wetlands in the public interest (including recreational, scientific, and cultural uses).

The U.S. Fish and Wildlife Service, Department of the Interior, is developing a National Wetlands Inventory, including detailed maps showing wetlands. Where these maps have been completed, they should be the initial reference. Many states and localities have passed local wetland legislation, and will be able to provide maps and assistance.

2. Assessment Questions

a. Does the proposed CDBG project have the potential to affect or be affected by a wetland?

b. Is the project in compliance with Executive Order 11990?

c. Are there available alternatives to locating the project or activity in the wetland?

d. Is the proposed project or activity in compliance with conditions set forth by the U.S. Army Corps of Engineers concerning permits for dredge and fill activity?

D. SOLE SOURCE AQUIFERS

Groundwater refers to all of the water found below the ground's surface. While most groundwater comes directly from rainwater, some results from the sides and bottoms of lakes and streams. The water usually passes down through a layer of partially saturated material to a zone of saturation in which all of the pore spaces between the soil or rock particles are filled with water. The water table is the upper level at which this saturation occurs. The area in which the groundwater is stored is called an aquifer. Aquifers vary widely in size and depth, some cover hundreds of miles and are used extensively for drinking water and irrigation, such as the Ogallala Aquifer in the Great Plains.

The supply of groundwater depends upon a balance between the amount of water entering the ground and the amount being withdrawn. Urban land development reduces recharge to aquifers by precipitation. Excessive pumping can cause wells to run dry; increase the concentration of dissolved minerals; cause salt water intrusion if near the ocean, and cause land subsidence. The depth of the water table can vary tremendously from year to year and seasonally depending on the amount of rainfall. High water tables can result in basement flooding and surface puddles. Discharge from poorly designed, installed or maintained septic systems to drinking water wells can cause health hazards.

Some areas have experienced ground subsidence due to the pumping of ground water and the dewatering of the underground strata including aquifers. In Gulf Coast communities, such as New Orleans, excessive pumping has lowered the ground level and has made the area more prone to coastal flooding.

In many types of surficial geological formations, groundwater quantity and quality is related to the quality and presence of surface waters. Excessive well pumping can induce infiltration from streams and ponds, causing surface water levels to drop. If these surface waters are polluted, groundwater quality will be degraded. Often, groundwater flows discharge to streams. Polluted groundwater can thus degrade the quality of otherwise unaffected surface waters.

1. Assessment Questions

   Groundwater

   - Is the site subject to rapid water withdrawal problems which change the depth or character of the water table, affect water supply, and/or vegetation?
   - Will the project use groundwater for its water supply?
   - Are there a large number of wells, or wells that pump large quantities of water from the water table near the proposed project site?
   - Will a lowered water table require deep pumping for water?
   - Are septic systems being used?
   - Is there a large variance in the water table elevation? A high seasonal water table can prevent proper functioning of septic tank drain fields.
   - Have septic disposal systems been properly designed, installed and maintained to prevent effluent from contaminating groundwater supplies?
   - Is there impact on a sole source aquifer?

   In order to provide answers to many of the above questions and to determine possible negative impact, it is first necessary to review the project plans to determine such things as water supply source location and type (municipal or on-site system; groundwater or surface water source), septic or municipal sewerage for waste water, the depth of foundations and the amount of paved areas proposed. While it is unlikely that a CDBG project would fail to meet the requirements of the Safe Drinking Water Act (42 U.S.C. 5.300 et. seq.), the regional office of the Environmental Protection Agency will be able

to provide information on compliance procedures, as appropriate. Once this is established, the following can be useful in providing data on groundwater conditions in the area:

Secondary Sources
USGS or State Geological Survey Hydrologic Maps/Reports
USGS Topographic Maps USDA Soil Conservation Service Soil Surveys

E. ENDANGERED SPECIES

Under procedures mandated in the Endangered Species Act of 1973 as amended in 1978 and 1979, CDBG grant recipients must determine whether CDBG-funded projects are likely to affect endangered or threatened species or Critical Habitats.

An animal's habitat is the environment in which it normally lives and the one which meets its basic need for food, water, cover, breeding space and group territory. Urbanization has generally been at odds with the maintenance of natural habitats. Urban habitats are often found in neglected and unused areas such as along riverbanks and railroad alignments, in parks, institutional grounds and in vacant tracts of land. The protection of wildlife habitats can be at odds with urban development. However, certain actions can be taken to avoid undue disruption and to protect rare and endangered species.

To ensure that a proposed project is not likely to affect the continued existence of an endangered or threatened species nor result in the destruction or adverse modification of critical habitats of plants and animal life, CDBG grantees should consult the nearest office of the U.S. Fish and Wildlife Service.

1. Assessment Questions

The assessment questions on animal life encompass the following five topics: disruption, habitat alteration or removal, endangered species, pest species and game species.

a. Will the project create special hazards for animal life? What types of animals will be affected and how?

b. Will the project damage or destroy existing wildlife habitats?

c. Will the project threaten any animal species listed by either state or federal agencies as rare or endangered?

d. Will the project damage game fish habitats or spawning grounds?

e. Will the project create conditions favorable to the proliferation of pest species?

f. Will excessive grading alter the groundwater level and thus cause the slow death of trees and ground cover which in turn destroys animal habitat?

F. AIR QUALITY MANAGEMENT

Under the Clean Air Act of 1970, as amended in 1977, EPA has promulgated regulations with important implications for land use controls on CDBG-funded activity in urban areas. The State Implementation Plans are prepared by State environmental management agencies and reviewed by EPA. Under EPA regulations, National Ambient Air Quality Standards

(NAAQS) have been established for both pollutants emitted from industrial sources (sulfur dioxide and total suspended particulates (TSP), and from mobile and other sources (carbon monoxide, ozone, nitrogen dioxide, hydrocarbons and lead).

Air quality refers to the presence or absence of pollutants in the atmosphere. It is the combined result of natural background and emissions from many individual pollution sources. The intensity of contamination varies with:

- Size of the source (emission)
- Distance from the source
- Height of emission above the ground
- Meteorological conditions, including wind direction and speed, air temperature and humidity, and sunlight
- Height and location of human receptors in the project.

The effect of air pollution on human health can vary from a source of irritation to the eyes and throat to a contributing factor in three often fatal diseases-heart disease, lung disease and cancer. Air pollution can also damage plant growth, soil materials, reduce visibility, and alter climatological conditions.

Some population groups-the sick, the elderly, pregnant women and children-are more seriously effected by air pollution than are others. These groups are sensitive receptors, suffering adverse effects at lower pollution levels than the general public. This fact should be incorporated in any consideration of the location and/or design of schools and parks, hospitals and housing.

Air pollutants vary in their characteristics. Primary pollutants such as carbon monoxide (CO) are most dangerous in peak concentrations near their source. Others undergo chemical reactions to form harmful substances, known as secondary pollutants once in the atmosphere. An example of this is the creation of photochemical oxidants, known commonly as "smog". Because of the time required for mixing and reacting to take place, the effect of secondary pollutants is more closely related to representative concentrations than to local peak concentrations. In addition, EPA has classified some industrial pollutants as "toxic". These are controlled primarily at the source.

Sources of air quality problems can be categorized at three scales of the urban environment:

- Cumulative urban area effects resulting from both primary and secondary pollutants that can create large scale problems for a region. The area wide impact of the project is considered in this group.

- A major source such as a power station or industry including the sources of "toxic" pollutants that may be subject to specific emission controls.

- A local source, such as an industrial operation, highway, busy street, etc., inside or outside of the project directly impacting project livability.

1. Assessment Questions

   Consideration of air quality impacts is often a difficult and highly technical undertaking, involving a host of different standards for different types of development. For purposes of Environmental Assessment, the task can begin with a set of simple questions. These questions will not necessarily lead to a conclusion about a project's acceptability but rather will help to indicate if there is a potential problem and if expert advice should be sought. In many metropolitan areas, this advice can be provided by the appropriate air quality control agency.

   a. Does the project require an installation permit, operating permit or indirect source permit under local pollution control agency rules? If so, have permit requirements been satisfied?

   b. Is the project located in the vicinity of a monitoring station where air quality violations have been registered? If so, will the project exacerbate air quality problems in the area?

   c. If the project or its potential users would be particularly sensitive to existing air pollution levels, or those expected 10 and 20 years hence, has the project been designed to mitigate possible adverse effects?

   d. Will the proposal establish a trend which, if continued, may lead to violation of air quality standards in the future?

G. WILD & SCENIC RIVERS

A statewide determination has been made by Division of Community Services that No Impact will occur.

H. COASTAL AREAS PROTECTION & MANAGEMENT

A statewide determination has been made by Division of Community Services that No Impact will occur.

I. FARMLANDS PROTECTION

Agricultural lands are those lands currently used to produce agricultural commodities or lands that have the potential for such production. Agricultural commodities include food, seed, fiber, forage, oilseed, ornamental plant material and wood for all purposes. Development on or near them may destroy a valuable natural and economic asset. Infrastructure development in undeveloped agricultural areas may stimulate new commercial and residential development which would, in turn, threaten and destroy potential or future agricultural uses.

In an effort to assure that the direct or indirect actions of the Federal Government do not cause United States farmland to be irreversibly converted to nonagricultural uses, the Farmland Protection Policy Act of 1981 was legislated. The purpose of this Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and assure the administration of Federal programs so that they are compatible with State and local efforts to preserve farmland.

Due to the importance of agriculture to the national economy and the importance to agricultural of maintaining the very best farmlands in production, many local and State governments are adopting policies and regulations to preserve farmlands or agricultural lands for this assessment factor refers to three specific categories: prime farmland, unique farmland, and farmland of statewide of local importance.

- Prime farmland: land having the best combination of physical characteristics for crop production

- Unique farmland: land other than prime, with the capacity to produce specific high value food and fiber crops, e.g., citrus fruits, olives, etc.

- Farmland of State or local importance: (land not in categories a or b)

1. Assessment Questions

   a. Will the proposed project be located on or directly adjacent to land that is categorized as prime, unique, or of State or local importance?

   b. Will drainage from the project adversely affect farmland?

   c. Will the project location, construction, or activities of project users adversely affect important and productive farmlands on or near the site by conversion?

   d. Will the project create problems by introducing nuisance species of vegetation which may spread to adjacent farmland?

   If the answer to any of the assessment questions is "yes", contact the District Conservationist at your County's Soil Conservation Service for guidance and instruction on how to proceed.

J. HUD ENVIRONMENTAL STANDARDS

In addition to the NEPA requirements, HUD assisted projects must undertake a site analysis to determine the potential effects of man-made hazards particularly noise, thermal or explosive substances and airport operations. Each of the criteria to the addressed has specific standards for the location of projects in or near potential hazardous zones. The purpose of such standards is to minimize the possible loss of life and any possible property damage from such hazards.

The standards contained in the following paragraphs must be used as a basis when calculating acceptable separation distances between HUD assisted projects and a specific stationary hazardous operation, storage facilities or source of noise.

1. Noise

Noise is defined as any unwanted sound which disturbs human activity. In the urban environment, noise is due primarily to vehicular traffic, air traffic, heavy machinery and heating, ventilation and air conditioning (HVAC) operations. Ambient noise levels in urban areas are increasing due to the growing volume of noise-generating activities. As with other kinds of environmental impacts, the long-term effects of noise on people are difficult to determine with scientific precision. A causal relationship has been established between noise and various effects, such as hearing loss and impairment, interference with speech communication, sleep disturbance, general anxiety, irritability and annoyance. Other less well established effects include fatigue, unsociability and inefficiency in performing complicated tasks.

a. Definitions

Although the point at which sound becomes undesirable, and hence "noise", varies with the individual and the sound itself, levels of noise can be defined according to the volume or intensity of the sound, its frequency or pitch, and the time of day and duration of its occurrence.

Intensity – Noise is comprised of small, very rapid fluctuations in air pressure to which the ear is quite sensitive. These sound pressure levels are measured on a logarithmic scale in decibels (or dB), where 0 dB is approximately the threshold of hearing and 120 dB is approximately the threshold of pain.

Frequency – Frequency, the number of sound waves per second produced by an emitting source, gives a sound its pitch. The human ear is less sensitive to some frequencies than to others. Thus, not all sounds having the same decibel value are perceived to be equally loud. In general, high pitched sounds are judged to "louder" (i.e., more annoying) than low pitched sounds even when both types of sounds are being emitted at the same sound pressure level. Nonetheless, low frequencies heard continuously can cause stress and impair a person's ability to sleep.

Duration – The third variable in describing noise is the time of day at which the noise occurs and its duration. For analytic purposes, night-time noise events (occurring between 10 p.m. and 7 a.m.) are generally weighted as being ten times louder (10dB higher sound pressure) than identical daytime noises. This reflects the findings of many studies that indicate a much higher human disturbance level (e.g., sleep disruption) associated with noise at night than at any other time.

Concerning noise duration, noises which are heard frequently at shorter intervals are perhaps the more irritating whereas continuous sounds tend to blend into the background, and hence become less irritating. Continuous noise at high decibel levels are, however, more likely to cause physical harm.

b. Assessment Questions

1) Is the project affected by or does it create noise impacts on residential land uses in excess of HUD's exterior standard of 65 Ldn (Day-Night Average Sound Level) or interior level standard of 45 Ldn? (Examine major reads within 1000 feet of the project, railroad uses within 3000 ft. and noise contours for airports located within 15 miles. Also, examine large noise point sources for their potential impact on the project and if appropriate to the nature of the project, i.e., large scale parking lots, foundries, metal rendering plants, etc.)

2. Hazardous Sitings

This section of the hazards discussion is concerned with kinds of hazards which can result in significant risk to HUD-assisted projects and their occupants. Hazardous sitings involves sites located near operations handling conventional fuels or chemicals of an explosive or flammable nature.

Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature.

Both people and property are at significant risk to exposure from explosion and thermal radiation (fire) when projects are located too close to storage containers of hazardous gas and liquids or chemicals of a flammable or explosive nature.

a. Definitions

Acceptable Separation Distance (ASD) – means the distance beyond which the explosion or combustion of a hazard is not likely to cause structures or individuals to be subjected to blast overpressure or thermal radiation flux levels in excess of the safety standards in section 51.203. The ASD is determined by applying the safety standards established by this subpart to the guidance set forth in HUD Guidebook, "Siting of HUD-Assisted Projects Near Hazardous Facilities."

Hazard – means any stationary container which stores, handles or processes hazardous substances of an explosive or fire prone nature. The term "hazard" does not include pipelines for the transmission of hazardous substances, if such pipelines

are located underground or comply with applicable Federal, State and local safety standards. Also excepted are: (1) containers with a capacity of 100 gallons or less when they contain common liquid industrial fuels, such as gasoline, fuel oil, kerosene and crude oil since they generally would pose no danger in terms of thermal radiation or blast overpressure to a project; and (2) facilities which are shielded from a proposed HUD-assisted project by the topography, because these topographic features effectively provide a mitigating measure already in place.

Hazardous Substances - means petroleum products (petrochemicals) and chemicals that can produce blast overpressure or thermal radiation levels in excess of the standards set forth in section 51.203. A specific list of hazardous substances is found in Appendix 1 to this subpart.

HUD-Assisted Project - the development, construction, rehabilitation, modernization or conversion with HUD subsidy, grant assistance, loan, loan guarantee, of mortgage insurance, of any project which is intended for residential, institutional, recreational, commercial or industrial use. For purpose of this Subpart the terms "rehabilitation" and "modernization" refer only to such repairs and renovation of a building or buildings as will result in an increased number of people being exposed to hazardous operations by increasing residential densities, converting the type of use of a building to habitation, or making a vacant building habitable.

b. Assessment Questions

Is the project site located within one mile of above ground storage tanks (excluding residential fuel tanks), transmission pipelines or loading facilities handling any of the following hazardous liquids or gases?

Hazardous Gases

Acetaldehyde	Butadiene	Butane
Ethene	Ethylene	Hydrogen
Ethylene Oxide	Liquefied Natural Gas (LNG)	Propane
Vinyl Chloride	Liquefied Petroleum Gas (LPG)	Propylene

Hazardous Liquids

Acetic Acid	Ethyl Benzene	Acetone
Acetic Anhydride	Ethyl Dichloride	Ethyl Ether
Acrylonitrile	Gasoline	Amyl Acetate
Heptane	Amyl Alcohol	Hexane
Benzene	Isobutyl Acetate	Butyl Acetate
Isobutyl Alcohol	Isopropyl Acetate	Butyl Acrylate
Butyl Alcohol	Isopropyl Alcohol	Methyl Alcohol
Carbon Bisulfide	Jet Fuel & Kerosene	Cellosolve
Carbon Disulfide	Methyl Amyl Alcohol	Cresols
Methyl Cellosolve	Crude Oil (Petroleum)	Cumene
Naptha	Methyl Ethyl Ketone	Cyclohexane
Pentane	No. 2 Diesel Fuel	Propylene Oxide
Ethyl Acetate	Toluene	Ethyl Acrylate
Vinyl Acetate	Ethyl Alcohol	Xylene

If storage facilities containing hazardous gases or liquids are located within one mile of the proposed project site, the grantee must contact the DCS for actual separation distances required.

3. Runway Clear Zones, Clear Zones and Accident Potential Zones

The purpose of HUD regulation "Siting of HUD-assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields," is to promote compatible land uses around civil airports and military airfields. Under these regulations the Department (HUD) wants to protect HUD-assisted projects and their occupants from being exposed to significant personal risk or property damage resulting from aircraft accidents.

The regulation applies to all military installations with aircraft operations and to all civil airports designated by the FAA as commercial service airports under the National Plan for Integrated Airport Systems.

Airports affected in North Dakota are Bismarck Municipal, Devils Lake Municipal, Fargo Hector Field, Grand Forks International, Jamestown Municipal, Minot International and Williston Sloulin Field International. Also, the military air bases located near Minot and Grand Forks would require analysis under the requirement.

Generally, HUD <u>is not</u> to provide any assistance, subsidy, or insurance for projects and actions where the proposed site is within or part of the Runway Clear zone at a civil airport or the clear zone at a military airfield. HUD will not pro-vide assistance, subsidy, or insurance to projects or actions in Accident Potential Zones at military airfields unless the project or action is generally consistent with the Department of Defense, (DOD), land use recommendations. To assess the impact of airport operations, grant recipients will need the following:

- The dimensions of the clear zones.
- The land use compatibility guidelines for Accident Potential Zones from the Department of Defense (DOD).
- The list of affected civil airports.

1. Assessment Questions

Is the project located in the Runway Clear Zone at civil airports or Clear Zones and Accident Potential Zones at military airfields? This will affect projects proposed to be located near the following airports: Bismarck Municipal, Devils Lake Municipal, Fargo Hector Field, Grand Forks International, Jamestown Municipal, Minot International and Williston Sloulin Field International. Also affected will be any project located near North Dakota's military air bases in Minot and Grand Forks. If the grant recipient is unsure of the projects location, contact the DCS if the project is within 2.5 miles of the above listed airports.

4. Other Environmental Standards

- All properties that are being proposed for use must be free of hazardous materials, contamination, toxic chemicals and gases and radioactive substances.

- The review of multifamily housing with five or more dwelling units (including leasing), or non residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by hazards listed in 1) above.

- Attention should be given to any proposed site on or in the general proximity of dumps, landfills, industrial sites or other locations that contain or may have contained hazardous wastes.

- Current techniques shall be used by qualified professionals to undertake investigations determined necessary.

NOTICE OF INTENT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52329 (11/04)

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Name of Applicant	Address
*Date	
Phone	

TO ALL INTERESTED AGENCIES, AND GROUPS, AND PERSONS:

On or about **(date) _____ the above named (City) (County) will request the North Dakota Division of Community Services (DCS) to release funds under Title I of the Housing and Community Development Act of 1974, as amended, for the following project:

_____
(Project Title and Name)

_____
(Purpose or Nature of Project)

_____
(Location-City, County, State-of Project)

_____
(Estimated Cost of Project)

An Environmental Review Record respecting the project has been made by the above-named (City) (County) which documents the environmental review of the project. The Environmental Review Record is on file at the above address and is available for public examination and copying, upon request.

(Name of Applicant) _____ will undertake the project described above with the Community Development Block Grant funds from the DCS under Title I of the Housing and Community Development Act of 1974. (Name of Applicant) _____ _____ is certifying to the State that (Name of Applicant) _____ _____and (Chief Executive Officer or other Officer of Applicant approved by the State)
_____, in his/her official capacity as
(Office) _____,
consent to accept the jurisdiction of the Federal courts if an action is brought to enforce

Sample

responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, (Name of Applicant) _____ may use the Community Development Block Grant funds, and the State will have satisfied its responsibilities under the National Environmental Policy Act of 1969. The State will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases: (a) That the certification was not in fact executed by the chief executive officer or other officer of applicant approved by the State; (b) The applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process; (c) The applicant has committed funds or incurred costs before release of funds and approval of the environmental certification by the State; or (d) That another Federal agency has submitted a written finding that the project is unsatisfactory from the view point of environmental quality. Objections must be prepared and submitted in accordance with the required procedure (24 CFR, Part 58), and may be addressed to the DCS, 1600 East Century Avenue, Suite 2, PO Box 2057, Bismarck, ND 58502-2057. Objections to the release of funds on bases other than those stated above will not be considered by the State. No objections received after ***(date of last day in the 15-day period) _____will be considered by the by the State.

_____

Name of Chief Executive Officer of Applicant

_____

Address

_____

*Insert date of first publication or, if applicable, first posting/mailing.

**A minimum of seven (7) days after the date of publication or a minimum of ten (10) days after the date of posting/mailing.

***Estimate this date from the time applicant anticipates the DCS will receive request. This time period for objections received by the DCS does not run concurrently with the local seven (7) or ten (10) day comment period allowed the public. The 15-day objection period of the State commences the day after the DCS receives the "Request for Release of Funds and Certification".

NOTE: Calculation of comment periods may be confusing for some. If so, contact the DCS to insure the dates you plan on using are correct before publishing or posting/mailing the Notice of Intent to Request Release of Funds.

Sample

CE-SUBJECT TO 58.5 REQUEST FOR RELEASE OF FUNDS
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52330 (04/04)

STATE OF NORTH DAKOTA
REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION

(Pursuant to Section 104(h) of Title I of the Housing and Community Development Act of 1974)

CATEGORICAL EXCLUSION SUBJECT TO 58.5

1. Name And Address of Recipient	2. Instrument Number
	3. Date of Request/Certification

4. Request For Release of Funds

Release of approved grant funds for the following project is requested:

PROJECT GRANTEE (If Other Than Applicant)

5. Certification. With reference to said project it is hereby certified:

That the applicant has either published in a newspaper of general circulation or posted/mailed in the community affected, a notice to the public (a copy of which is attached) in accordance with the Environmental Section of the CDBG Administrative Manual prior to submitting this request for release of funds and certification. Publication occurred at least seven (7) days prior to submission or posting/mailing occurred at least 10 days prior to submission.

That the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named in the above request for release of funds.

That the level of environmental clearance carried out by the applicant in connection with said project ☐ did ☐ did not require the preparation and dissemination of an environmental impact statement.

That the dates upon which all statutory and regulatory time periods for review, comment, or other response or action in regard to the aforesaid clearance commenced and expired as indicated below; that all such dates which are applicable to the aforesaid clearance are indicated below; and that with the expiration of each of the time periods indicated below, applicant is in compliance with the requirements of the Environmental Section of the CDBG Administrative Manual;

Sample

ITEM	COMMENCE MO/DAY/YR	EXPIRE MO/DAY/YR
Notice of Intent to Request Release of Funds: Publication Date		XXXXXXXX XXXXXXXX
Local: Comment Period - 7 Days Starting after Publication Date or 10 days after Posting/Mailing		
Request for Release of Funds (RROF) Date: Submitted to State after Local Comment Period		XXXXXXXX XXXXXXXX
State RROF Comment Period: 15 Days Starting after State Receipt		
Release of Funds Date: Day After Completion of State Comment Period		XXXXXXXX XXXXXXXX

That the undersigned officer of applicant is authorized to, and does, consent to assume the status of responsible Federal official, under the National Environmental Policy Act of 1969, insofar as the provisions of said Act apply to the State's responsibilities for environmental review, decision-making and action assumed and carried out by the applicant; that by so consenting, the undersigned officer of applicant assumes the responsibilities, where applicable, for the conduct of environmental review, decision-making, and action as to environmental issues, preparation of such statements on behalf of Federal agencies other than the State such agencies consent to such assumption.

That the undersigned officer of applicant is authorized to consent, personally, and on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all the aforesaid responsibility and the undersigned does so consent, on behalf of applicant and of the undersigned, in the official capacity of the undersigned.

Signature - Local Chief Official	Typed Name
Title	Date
Prepared By	Date

Sample

CE-NOT SUBJECT TO 58.5 REQUEST FOR RELEASE OF FUNDS
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52722 (04/04)

STATE OF NORTH DAKOTA
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM
ENVIRONMENTAL REVIEW

CATEGORICALLY EXCLUDED NOT SUBJECT TO 58.5

1. Name of Recipient	
2. Recipient's Address	
3. ERR Certifying Officer (Local Chief Official)	Date
4. Prepared By	Instrument Number
6. Project Description	

7. This activity is Categorically Excluded Not Subject to 58.5 pursuant to CDBG Administrative Manual Section 7, Part IV F, _____.

An Environmental Review Record (ERR) supporting this finding has been prepared and is available for the DCS review and public inspection at the address indicated above.

As the responsible Federal Official, I accept responsibility under the National Environmental Policy Act for environmental reviews, decisions and actions. By my signature below, I certify that I am authorized to, and do personally, accept the jurisdiction of the Federal Court for the enforcement of the aforesaid responsibilities.

Signature - Local Chief Official	Title
Typed Name & Title	Date

BY THIS CERTIFICATION, THE RECIPIENT REQUESTS
THE RELEASE OF COMMUNITY DEVELOPMENT BLOCK GRANT
FUNDS FOR THE ACTIVITY DESCRIBED ABOVE

Sample

V. Environmental Assessment

If a grantee's activity or project is neither EXEMPT nor CATEGORICALLY EXCLUDED from NEPA requirements, the grantee will have to undertake an ENVIRONMENTAL ASSESSMENT for the activity or project. An Environmental Assessment (EA) enables the grantee and others to determine the degree of significant impact that an activity (by itself or in combination with other activities) may have on the environment.

The EA will permit all interested public agencies, community groups, and individuals to examine the environmental data developed, and to comment on the environmental impact findings and course of action determined by the grantee.

There is, however, one important exception to the EA requirement. In some circumstances, the grantee may want to forego the EA and proceed directly to the preparation of an ENVIRONMENTAL IMPACT STATEMENT (EIS). An EIS is required for activities/ projects that will have a significant impact on the environment. Where this determination can be made early, the grantee should skip the EA process and begin immediately with the EIS process. This decision can be based on one or more of the following considerations:

1. The size and/or nature of the activity/project may be such that common sense suggests that it might have a substantial impact on the environment.

2. The size of the project triggers certain density thresholds which require an EIS, e.g.:

   a. One that provides a site or sites for hospitals and/or nursing homes with a total of at least 2,500 beds; or

   b. One that removes, destroys, converts, or substantially rehabilitates at least 2,500 existing housing units; or

   c. One that would construct, install, or provide sites for at least 2,500 housing units; or

   d. One that would provide enough additional water and sewer capacity to support 2,500 or more additional housing units.

      NOTE: This type of project does not have to be specifically intended for residential use, nor does it have to be totally new construction. If the project is intended to serve non-residential uses (in whole or part), the grantee must determine how many residential units could be served if all the capacity were to be used for housing. If the answer to this question is 2,500 units or more, this density threshold has been exceeded. If the project is to upgrade service to an existing development, as well as to service a new development, only that portion of the increased capacity intended to serve the new development is to be counted.

3. An EIS could be necessary if the grantee can determine early that its activity/project will likely violate or otherwise significantly impact the law or regulations of other Federal environmental provisions. It should be clear, however, that the potential violation is a major one, or that no alternative procedural resolution can be found early to adequately satisfy these other environmental provisions.

   If any of the above are applicable to an activity or project, the grantee should consider an EIS (except for item 2 above which automatically requires the EIS). Whatever the case, the grantee is strongly urged to contact the DCS prior to beginning the EIS process. The DCS may be able to assist the grantee both in the decision to do an EIS, as well as in the preparation itself.

   If it is not clearly evident that an EIS is required, then the grantee should proceed with the environmental assessment procedures explained in this section.

A. Initiating the Environmental Assessment

The basic document which grantees must prepare for an EA is the ENVIRONMENTAL REVIEW FORMAT (ERF). All sections of this document must be completed according to the instructions contained on the ERF.

If a grantee has more than one project, then a separate ERF will have to be completed for each one. REMEMBER: A project is defined as containing one or more integrally related activities designed to achieve, in whole or in part, a specific program goal.

Once the ERF is completed, it will become the core document of the grantee's Environmental Review Record (ERR). It will also serve as the main document for public review and comment. All other ERR documentation will be related to the information included in the ERF.

As the grantee begins work on the ERF, there are four (4) important procedures to follow:

1. Grantees must coordinate this effort with all appropriate local, state and federal agencies that have an interest in, or responsibility for, the environmental laws and/or potential impacts of the project. A guide to such agencies is provided in Attachment C.

2. Grantees must document the above coordination/consultation and make this documentation a part of the ERF and ERR. Such documentation is normally in the form of written correspondence.

3. Grantees must have in their ERR, all supporting data for analyses and findings (e.g., maps - surveys - charts - tables - technical opinions) contained in the ERF.

4. Grantees must conclude the Environmental Assessment by indicating the appropriate assessment finding, i.e.

   a. A Finding of No Significant Impact (FONSI), meaning that the project is in compliance with all applicable environmental laws/regulations, and that an EIS is not required; or

   b. A Finding of Significant Impact (FOSI), meaning that the project may or will have a significant environmental impact, and will require an EIS.

NOTE: If any of the procedures above are not followed, this will constitute the grounds for the DCS to withhold CDBG activity funds from the grantee until all procedures are properly satisfied.

If the grantee's EA results in a FONSI determination, then the grantee should proceed to (B) below. If a FOSI determination is made, the grantee must prepare an EIS as explained in Section VI of this Guide.

B. Required Public Notices

If the grantee has concluded its assessment with a Finding of No Significant Impact (FONSI), then there are two types of public notices required:

1. Finding of No Significant Impact Notice - This Notice must be released for public review and comment. An example of this Notice is contained in Sub Section F. Grantees should follow this public notice format. In addition, this Notice must:

   a. At a minimum, be distributed to the local news media, individuals and groups interested in the project, and appropriate local, state and federal agencies which must include among them:

      (1) State Historical Preservation Officer

      (2) State Health Department

      (3) Regional Offices of the U.S. Environmental Protection Agency

      NOTE: See Attachment B and C for addresses of these and other Information Source Agencies.

   b. Be published at least once in a general circulation newspaper in the grantee's community. If there is no newspaper, this Notice must be prominently displayed at the local Post Office (and any substations), and also displayed in other public buildings within the project area.

   c. The grantee may proceed to the certification process (E below) after the public has been given an opportunity to view and comment on the notice. The grantee must allow at least 15 days to comment on published notices and 18 days to comment on posted/mailed notices.

2. Notice of Intent to Request a Release of Funds – This Notice is required to signify the grantee's intent to request from the DCS a release of its CDBG activity funds.

   The issuance of this Notice should follow the same procedures as explained above (1). However, the minimum time required for a public review and comments on this Notice is at least seven (7) days if published or ten (10) days if posted/mailed.

   Combined Notice: Grantees are allowed to publish the above two required notices concurrently rather than separately. This is the simplest, fastest, and least costly method. The method for issuance of the Combined Notice is the same as explained above. The minimum time required for public review and comment on the Combined Notice is at least fifteen (15) days if published or eighteen (18) days if posted/mailed.

   Combined Notice for Emergencies: If funds are needed on an emergency basis and when adherence to separate comment period would prevent the giving of assistance, the Combined Notice of FONSI and the Notice of the Intent to Request Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds (RROF).

   The Combined Notice of FONSI and NOI/ROF will state that the funds are needed on an immediate emergency basis due to a Presidentially declared disaster or during a local emergency. The local emergency must be declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety and that the comment periods have been combined. The Request of Release of Funds and Certification should be submitted to the DCS at the time of publication. The Notice will also invite commenters to submit their comments to both the State and the grantee issuing the notice to assure that comments will receive full consideration.

   NOTES:
   a. Grantees must consider all comments received based on the public notice process. These comments must be made a part of the ERR. If no comments are received the grantee must document this fact in the ERR.

   b. If any comments require the grantee to revise its ERF/FONSI, the grantee should read (D) below.

   c. Failure by the grantee to follow all of the public notice procedures above will constitute the grounds for the DCS to withhold the release of CDBG activity funds until all procedures are properly satisfied.

C. Time Delays for Extraordinary Circumstances

   The term “Extraordinary Circumstances” means due to unusual conditions, an environmental assessment or environmental impact statement is required.

   There are three (3) circumstances when a grantee must make the FONSI Notice available for public review and comment for a minimum period of thirty (30) days.

These circumstances are:

1. When there is considerable interest or controversy surrounding the project.

2. When the proposed project is similar to other community development activities that normally require an EIS.

3. When the project is unique and without precedent.

D. Need for Reassessments

There are several situations which will require the grantee to re-evaluate and possibly amend or redo its EA. The purpose of a reassessment is to determine whether the grantee's FONSI is still valid, and to update or correct its ERR. The situations that will require a re-assessment are as follows:

1. The grantee substantially changes its project in nature, magnitude, or extent including new activities not anticipated in the original project scope and/or cost estimates.

2. There are new circumstances and environmental conditions which may affect the project, or have a bearing on its impact, such as concealed or unexpected conditions discovered before or during project implementation.

3. The grantee selects an alternative not considered in the original EA.

   If one of these situations does arise, the grantee will be required to do a reassessment following the procedures below:

   a. If the grantee has already certified its original EA with the DCS (see part E below), then the grantee must inform the Office of the need for a reassessment. As such, the DCS will be required to withhold the release of further CDBG activity funds until this reassessment is completed and recertified to the DCS.

   b. If the grantee's FONSI is found to be still valid after the reassessment, but the data or conditions upon which it was based have changed, the grantee must amend its original ERR and update its ERR.

   c. If the grantee finds that its original FONSI is no longer valid, it will have to prepare a new ERR or EIS, whichever is appropriate.

   d. Where an original FONSI is found to be valid, or a new ERR is prepared which results in another FONSI, the grantee must once again follow the procedures explained above for public notices, as well as those certification procedures to be explained below in (E).

      NOTE: The failure to properly comply with those steps above will constitute the grounds or the DCS's withholding, non-release, or recapture of CDBG activity funds.

E. Certification Procedures

After grantees have completed the ERF and public notice requirements, the steps below will be followed:

Step 1 The grantee must submit to the DCS, the Request for Release of Funds and Certification. The grantee must retain a copy of this Certification and be made a part of the ERR.

Step 2 The grantee must also submit to the DCS, along with the above Certification, a newspaper copy of the two individual or one combined public notice(s) as explained in (B) above that indicate the date of publication or a copy of the notice(s) and affidavit of publication; and a copy of the ERR file.

Step 3 Upon receiving the above submissions, the DCS must allow for a fifteen (15) day public comment period prior to taking any further action.

NOTE: See Part VII for a discussion of adverse public comments.

Step 4 If no comments are received by the DCS during this period, the Department will then send to the grantee a Notice of Release of Funds. However, this Notice will not be sent until the grantee has also satisfied other basic grant conditions.

Step 5 Once the grantee has received the above DCS Notice, the grantee may then begin to request payment of these released funds by using the Form, Request for Payment.

NOTES: Grantees may submit an initial payment request for the funds to be released concurrently with the Certification in Step 5. The DCS will begin to process this request at the time it sends out the notice that the basic grant payment conditions have been removed.

In the case of reassessments, Steps 1 through 3 above must be followed as a recertification process. The DCS will reply (after the 15-day waiting period) that the recertification has been accepted. The DCS can then release CDBG activity funds to the grantee upon the submission of payment requests (a payment request can be submitted along with the recertification as explained in Step 5 above).

ENVIRONMENTAL ASSESSMENT CHECKLIST
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52331 (08/07)

ENVIRONMENTAL ASSESSMENT CHECKLIST							
Recipient Name							Instrument Number
Impact Categories	No Impact Anticipated	Potentially Beneficial	Potentially Adverse Requires Documentation Only	Potentially Adverse Requires More Study	Needs Mitigation	Requires Project Modifications	All determinations need explanation. Reference to documentation, sources, notes and correspondence. (See next page for questions to be answered).
Natural Features							
Water Resources							
Surface Water							
Water Courses							
Unique Natural Features and Agricultural Lands							
Vegetation and Wildlife							
Socioeconomic							
Demographic Character Changes							
Displacement							
Employment and Income Patterns							
Community Facilities and Services							
Educational Facilities							
Commercial Facilities							
Health Care							
Social Services							

Sample

ENVIRONMENTAL ASSESSMENT CHECKLIST								
Recipient Name								Instrument Number
Impact Categories		No Impact Anticipated	Potentially Beneficial	Potentially Adverse Requires Documentation Only	Potentially Adverse Requires More Study	Needs Mitigation	Requires Project Modifications	All determinations need explanation. Reference to documentation, sources, notes and correspondence. (See next page for questions to be answered).
Community Facilities and Services (Continued)								
Solid Waste								
Social Services								
Waste Water								
Storm Water								
Water Supply								
Public Safety	Police							
	Fire							
	Emergency Medical							
Open Space And Recreation	Open Space							
	Recreation							
	Cultural Facilities							
Transportation								

Sample

ENVIRONMENTAL ASSESSMENT CHECKLIST

Recipient Name							Instrument Number
Impact Categories	No Impact Anticipated	Potentially Beneficial	Potentially Adverse Requires Documentation Only	Potentially Adverse Requires More Study	Needs Mitigation	Requires Project Modifications	All determinations need explanation. Reference to documentation, sources, notes and correspondence. (See next page for questions to be answered).
Land Development							
Conformance with Comprehensive Plans and Zoning							
Compatibility and Urban Impact							
Slope							
Erosion							
Soil Suitability							
Hazards & Nuisances Including Site Safety							
Energy Consumption							
Environmental Design and Historic Values							
Visual Quality - Coherence, Diversity, Compatible Use and Scale							

Sample

GUIDANCE QUESTIONS FOR ENVIRONMENTAL ASSESSMENT

Water Resources

Will project runoff affect local groundwater resources or wells? High-water table that should be considered during project construction: Possible subsidence problem due to over-reliance on wells or groundwater resource?

Surface Water

Will watercourses be impacted as a result of project action? Will such impacts cause loss of natural drainage area? Or loss or riparian features amenable to recreation use in its natural state? Will project damage game and/or fish habitats or spawning grounds? Will cut and fill work alter the watercourse path or boundaries?

Watercourse

Will watercourses be impacted as a result of project action? Will such impacts cause loss of natural drainage area? Or loss or riparian features amenable to recreation use in its natural state? Will project damage game and/or fish habitats or spawning grounds? Will cut and fill work alter the watercourse path or boundaries?

Unique Natural Features and Agricultural Lands

Will the project affect unique natural features such as, rock-outcroppings, special stands-of-trees or planting areas, natural landmarks or focal point? Will natural pathways be affected? Will unique or prime agricultural land areas be affected? Or, farmlands designed as important by State or local government?

Vegetation and Wildlife

Will the project damage or destroy existing remnant plant communities or habitat of wildlife or their food-chain? Will the project create environmental conditions eliminating plant life without mitigation measures? Will it, conversely create conditions favorable to the proliferation of pest species, i.e., rats, flies, and mosquitoes?

Demographic Character Changes

Demographic (distribution of commonly identified segments of the population) characteristics can provide indicators to needs of various segments of the population. Questions such as the following can assist in identifying special population needs: Will project measurably alter tenant-owner status of area? Will special services be needed, i.e., relocation services, home-maintenance counseling or assistance? Will certain segments of the population become isolated by the project, i.e., elderly, low-income? What affect is project having on vacancy ratio? Will special social services be needed in the impact area of project, i.e., job counseling, youth services, elderly services, child-care, visiting nursing service created by population composition changes?

Displacement

Will the project displace individuals or families or businesses? If so, are relocation services available? If necessary, are appropriate relocation resources available for type of relocation anticipated?

Employment and Income Pattern

Will the project create conditions favorable or unfavorable to the continuation and/or expansion of commercial or industrial business life? Will project area residents directly benefit? Will there be negative impacts on the project area's residential life? Will employment opportunities be available to the locally unemployed or under-employed? Will there be more entrepreneur opportunities available to local population? Will housing stock be affected if high number of new, outside employees are imported?

Education

Will project cause impact on schools? Is sufficient capacity available? Does project affect safety of access to existing schools? Has the school been informed of this project? Are special education services needed?

Commercial Facilities

Will project cause impact on commercial service facilities? Is there need for additional commercial services to assure project area residents have a full range of services at competitive prices? Do project beneficiaries have convenient and safe access to full-range of commercial services?

Health Care

Do project beneficiaries have any unrecognized health service needs, i.e., emergency medical services, ambulance service, visiting health service for elderly or homebound?

Social Services

Will project objectives be influenced by the availability or the lack of availability of special social services, i.e., children support groups, day-care centers, family counseling services, services for the elderly? Need for youth recreation centers?

Solid Waste

Will project generate substantial amount of solid waste? Can the local disposal system adequately service the proposed development over its expected lifetime? Collection service adequate? Are there any local concerns as to potential health threats from collection practices or from the solid waste disposal facility? Recycling of project generated solid waste practicable?

Waste Water

If applicable, will existing waste water treatment system and facilities adequately service the proposed project? Will project cause design-capacity to be exceeded? Will project residents or beneficiaries be adversely affected by a waste water treatment facility? Is waste water treatment plant serving residents approved by appropriate health officials?

Storm Water

Is there a potable water supply available for project beneficiaries? Is it periodically inspected by health authorities?

Public Safety: Police, Fire, Emergency

Are project beneficiaries adequately serviced by police, fire, and emergency services? Is there 24-hour police patrol service? Are special plans needed for added manpower or special project related security system? Is crime rate in project area characterized by any unique manifestations requiring special services, i.e., high teenage use of drugs, breaking and entering, street crimes?

Is access time of fire vehicles to project area in accord with local standard? Type of building materials in project area in compliance with local fire codes? Fire hydrant locations located in accord with local development criteria? Firefighting equipment shortage?

Emergency services appropriate to needs of project beneficiaries available? Access route for accessibility in compliance with local regulations? Will the project create any obstacles for emergency vehicles in meeting their responsibilities?

Open Space and Recreation

Is there an adequate degree of park and open space land for use by project area residents? Will project cause a lessening to the availability of service? Are park and recreation space conveniently accessible and useable to all resident groups in the project's impact area? Is there an unmet need to be filled?

Transportation

If applicable to project objectives, is there adequate access to the locally recognized public transportation system? Is the service directly and conveniently available? Do any project beneficiaries need special transportation considerations due to inadequacy of convenient shopping services? Will the project serve to reduce mobility of any segment of the population?

Conformance To Comprehensive Plan and Zoning

Is the proposal consistent with the completed components of local plans and the supporting zoning? If not and project is to continue, provide supporting discussion explaining decision basis. Identify area project may conform to local planning objectives. Identify anticipated functional conflicts and plans for mitigation where necessary.

Compatibility And Urban Impact

Covers such concerns as incompatible land use relationships due to opposing functional needs or encroachment tendencies of one use upon another, i.e., overcrowding of buildings on the land, non-conforming land uses, non-conforming use of buildings, inducing excess traffic, creation of excess noise and similar day-to-day functional demands. If a project locates water/sewer lines in a base flood hazard zone, will it induce development into such a hazardous area? Are secondary impacts occurring, such as encouraging urban sprawl prior to development of an applicable growth management plan and supportive zoning. Imposing new development into an existing neighborhood that would aggravate the transitional character of the neighborhood or increase new unwanted intrusions, i.e., introduction of off-street or on-street parking, introduction of lighting to a park to encourage night use of the park area where not previously found.

Slope Stability

If applicable, the following slope issues should be examined:

- Evidence of mud slides or other earth movement
- Evidence of slump occurrences
- Neighboring retaining walls tilting from possible past earth movement or that might indicate a potential new problem
- Exposure of several stratas of soil that might indicate conditions prone to sliding

Erosion

Does the project involve development of an erosion sensitive area, i.e., near water channel or gullies in loosely consolidate soils, sands or silty soils. Steep slopes present? Would project's cut and fill work cause silt to flow into natural waterways?

Soil Stability

Is there any visible evidence of possible soil problems, i.e., foundation cracking or settling in nearby buildings, sinkholes, ponding or limestone formation that might bring about subsidence? Loosely packed soils to a degree liquification may be a problem? Potential shrink-swell from high content of expansive clay in soil? Debris filled ground that might indicate potential for construction instability?

Hazards Nuisances and Site Safety

Under the "Environmental Assessment" checklist, an examination is requested as to potential danger to project beneficiaries from exposure to such hazards as, sanitary and hazardous waste landfills, toxic chemical dumps, uranium mill tailings and other radioactive materials in nearby lands. Explosive and flammable or fire-prone hazards are also to be examined as to potential threat to project beneficiaries. Other hazards include, presence of rodent infestation, nuisances from odors, glare, dust, vibration. Inadequate street lighting? Improperly screened drains or

catchments? Abandoned-dilapidated buildings improperly boarded-up? Unscreened quarries or other excavation works? Dangerous intersections? Hazardous, unrepaired street conditions? Street ponding causing nuisance ingress and egress problems to project area and similar safety concerns.

Energy Consumption

Energy consumption is viewed in a two-fold manner, first energy consumed directly by the facility to be constructed as to heating and cooling, hot water and, secondly energy consumed indirectly or induced by the facility, consumed chiefly in the transportation of people and goods to and from the project.

Visual Quality: Coherence, Diversity, Compatible Use and Scale

Will project cause noticeable deterioration or physical alteration of natural landscape without comparable mitigation? Will there be intrusion of elements out of character, size or scale or setback? Will project alter established vistas and views, enclosed or open? Landmarks or focal-points become obscured by project proposal? Pathways, bikeways or trails that have been established impaired? Complementary features established to existing distinguishing landmarks or development features in the impact area of the project? Unique building groups impaired visually by project?

ENVIRONMENTAL ASSESSMENT CHECKLIST	
Summary of Environmental Conditions	Briefly identify the present environmental conditions of the project impact area.
Alternatives Considered	Identify alternatives to the project which have been considered.
Additional Studies Performed (Attach Study or Summary)	
Mitigation Measures Needed	Identify, if applicable, changes which need to be made in order to eliminate or minimize adverse environmental impacts.

Sample

Environmental Assessment Checklist (Continued)		
1. Is project in compliance with applicable laws and regulations?	Yes □	No □
2. Is an EIS required?	Yes □	No □
3. A Finding of No Significant Impact (FONSI) can be made.	Yes □	No □
4. Project will not significantly affect the quality of the human environment.	Yes □	No □

Basic Reasons Supporting Decision*

Prepared By	Title
Signature of Preparer	Date
Chief Executive Officer	Title
Signature of Chef Executive Officer	Date

*Identify the major reasons for the decision of "No Significant Impact". These are to be included in the environmental public notice. (See next page for "sample reasons).

Sample

Reasons supporting a Finding of No Significant Impact and a decision not to prepare an environmental impact statement may vary with the nature of the projects and when they are carried out. In general, some of the reasons listed below may apply to a variety of projects. Careful consideration should be given to these general reasons to ensure their applicability.

1. There will be no negative impacts on the environment as a result of an activity project undertaken with CDBG funds.

2. Some increase in noise, dust or other nuisance levels may occur during construction, rehabilitation, reconstruction and/or demolition; however, such disturbances will be temporary and will cease on the completion of the activities which cause them.

3. None of the activities or projects to be undertaken will affect any known local, state or national historic, architectural or archaeological resource presently listed, or potentially eligible for listing, in the National Register of Historical Places or in any state or local Registry.

4. None of the activities or projects to be undertaken will affect or be affected by the 100-year flood plain.

5. No effect is expected on protected or endangered wildlife or vegetation.

NOTICE OF FINDING OF NO SIGNIFICANT
NORTH DAKOTA DEPARTMENT COMMERCE/DCS
SFN 52332 **(04/04)**

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT ON THE ENVIRONMENT	
Name of Applicant	Applicant's Address (Street, City, State, Zip)
*Date	
Telephone Number	

TO ALL INTERESTED AGENCIES, GROUPS, AND PERSONS:

The above-named (City) (County) proposes to request the North Dakota Division of Community Services to release funds under Title I of the Housing and Community Development Act of 1974, as amended, to be used for the following project:

_____
(Project Title or Name)

_____
(Purpose or Nature of Project)

_____
(Location-City, County, State-of Project)

_____
(Estimated Cost of Project)

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and, accordingly, the above-named (City) (County) has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).

The reasons for such decision not to prepare such Statement are as follows:

_____
_____
_____
_____
(set forth reasons for decision)

Sample

An Environmental Review Record respecting the within project has been made by the above-named (City) (County) which documents the environmental review of the project and more fully sets forth the reasons why such Statement is not required. The Environmental Review Record is on file at the above address and is available for public examination and copying, upon request, at _____ between the hours of _____ and _____.

(If applicable) No further environmental review of such project is proposed to be conducted, prior to the request for release of Federal funds.

All interested agencies, groups, and persons disagreeing with the decision are invited to submit written comment for consideration by the (City) (County) to the (office of the undersigned) (other specified place). Such written comments should be received at (the address specified) on or before (**date) _____. All such comments so received will be considered and the (City) (County) will not request the release of funds or take any administrative action on the project prior to the date specified in the preceding sentence.

_____

Name of Chief Executive Officer of Applicant

_____

Address

*Insert date of first publication or, if applicable, of first posting/mailing.
**A minimum of 15 days after the date of publication or a minimum of 18 days after the date of posting/mailing.

Comment periods begin the day after the notice is published. If you are unsure as to the appropriate length of time to allow, please contact the DCS.

Sample

NOTICE OF INTENT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52329 (11/04)

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS	
Name of Applicant	Address
*Date	
Phone	

TO ALL INTERESTED AGENCIES, AND GROUPS, AND PERSONS:

On or about **(date) _____ the above named (City) (County) will request the North Dakota Division of Community Services (DCS) to release funds under Title I of the Housing and Community Development Act of 1974, as amended, for the following project:

_____
(Project Title and Name)

_____
(Purpose or Nature of Project)

_____
(Location-City, County, State-of Project)

_____
(Estimated Cost of Project)

An Environmental Review Record respecting the project has been made by the above-named (City) (County) which documents the environmental review of the project. The Environmental Review Record is on file at the above address and is available for public examination and copying, upon request.

(Name of Applicant) _____ will undertake the project described above with the Community Development Block Grant funds from the DCS under Title I of the Housing and Community Development Act of 1974. (Name of Applicant) _____ is certifying to the State that (Name of Applicant) _____and (Chief Executive Officer or other Officer of Applicant approved by the State) _____, in his/her official capacity as (Office) _____, consent to accept the jurisdiction of the Federal courts if an action is brought to enforce

Sample

responsibilities in relation to environmental reviews, decision-making, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, (Name of Applicant) _____ may use the Community Development Block Grant funds, and the State will have satisfied its responsibilities under the National Environmental Policy Act of 1969. The State will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases: (a) That the certification was not in fact executed by the chief executive officer or other officer of applicant approved by the State; (b) The applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process; (c) The applicant has committed funds or incurred costs before release of funds and approval of the environmental certification by the State; or (d) That another Federal agency has submitted a written finding that the project is unsatisfactory from the view point of environmental quality. Objections must be prepared and submitted in accordance with the required procedure (24 CFR, Part 58), and may be addressed to the DCS, 400 East Broadway, Suite 50, PO Box 2057, Bismarck, ND 58502-2057. Objections to the release of funds on bases other than those stated above will not be considered by the State. No objections received after *** (date of last day in the 15-day period) _____will be considered by the by the State.

_____

Name of Chief Executive Officer of Applicant

_____

Address

*Insert date of first publication or, if applicable, first posting/mailing.

**A minimum of seven (7) days after the date of publication, or a minimum of ten (10) days after the date of posting/mailing.

***Estimate this date from the time applicant anticipates the DCS will receive request. This time period for objections received by the DCS does not run concurrently with the local seven (7) day comment period allowed the public. The 15-day objection period of the State commences the day after the DCS receives the "Request for Release of Funds and Certification".

NOTE: Calculation of comment periods may be confusing for some. If so, contact the DCS to insure the dates you plan on using are correct before publishing or posting/mailing the Notice of Intent to Request Release of Funds.

Sample

COMBINED NOTICE FOR CDBG
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52333 (11/04)

COMBINED NOTICE
NOTICE TO PUBLIC OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

*Date	Name and Address of Applicant
Telephone Number	

TO ALL INTERESTED AGENCIES, GROUPS, AND PERSONS:

The purpose of this notice is to identify two separate but related actions to be taken by the (City) (County) of _____.

On or about ***(date) the above-named (City) (County) will request the North Dakota Division of Community Services (DCS) to release Federal funds under Title I of the Housing and Community Development Act of 1974 as amended for the following project:

_____
(Project Title and Name)

_____
(Purpose or Nature of Project)

_____
(Location-City, County, State-of Project)

_____
(Estimated Cost of Project)

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and accordingly the above-named (City) (County) has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).

The reasons for such decision not to prepare such Statement are as follows:

_____
_____
_____
(set forth reasons for decision)

An Environmental Review Record respecting the within project has been made by the above-named (City) (County) which documents the environmental review of the project and more fully sets forth the reasons why such Statement is not required. This Environmental Review Record is on file at the above address and is available for public examination and copying upon request at _____ between the hours of _____ and _____.

Sample

If (applicable) No further Environmental Review of such project is proposed to be conducted prior to the request for release of Federal funds.

All interested agencies, groups, and persons disagreeing with this decision are invited to submit written comments for consideration by the (City) (County) to the (office of the undersigned) (other specified place). Comments should specify which notice, Finding of No Significant Impact, or Intent to Request Release of Funds, is being addressed. Such written comments will be received at (the address specified) on or before **(date). All such comments so received will be considered and the (City) (County) will not request the release of Federal funds or take any administrative action on the project prior to the date specified in the preceding sentence.

(Name of applicant) will undertake the project described above with Community Development Block Grant funds from the DCS under Title I of the Housing and Community Development Act of 1974. (Name of Applicant) is certifying to the DCS that (Name of Applicant/and Chief Executive Officer or other Certifying Officer of Applicant approved by the DCS), in her/his official capacity as (Office) consent to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval (Name of Applicant) may use the Block Grant funds and the State and HUD will have satisfied their responsibilities under the National Environmental Policy Act of 1969. The DCS will accept an objection to its approval only if it is on one of the following bases: (a) That the certification was not in fact executed by the certifying officer or other officer of applicant approved by the DCS; (b) That applicant's environmental review record for the project indicates omission of a required decision, finding or step applicable to the project in the environmental review process; (c) The applicant has committed funds or incurred costs before release of funds and approval of the environmental certification by the State; or (d) That another Federal agency has submitted a written finding that the project is unsatisfactory from the view point of environmental quality. Objections may be addressed to the North Dakota DCS, 1600 East Century Avenue, Suite 2, PO Box 2057, Bismarck, ND 58502-2057.

Objections to the release of funds on bases other than those stated above will not be considered by the DCS. No objection received after ****(date of last day in state's the 15-day period) will be considered by the State.

_____
(Name of Certifying Officer of Applicant)

_____
(Address)

*Date of publication or, if applicable, of posting/mailing.

**A minimum of 15 days after date of the publication, or a minimum of 18 days after the date of posting/mailing.

*** A minimum of 16 days after the date of publication or a minimum of 19 days after the date of posting/mailing.

****Estimate this date from time applicant anticipates the DCS will receive the request. The State's 15-day comment period commences the day after receipt of the applicant's Request for Release of Funds and Certification.

Comment periods begin the day after the notice is published. If you're unsure as to the appropriate length of time to allow, please contact the DCS.

Sample

EA-REQUEST FOR RELEASE OF FUNDS
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52334 (04/04)

STATE OF NORTH DAKOTA
REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION

(Pursuant to Section 104(h) of Title I of the Housing
and Community Development Act of 1974)

ENVIRONMENTAL ASSESSMENT

1. Name And Address of Recipient	2. Instrument Number
	3. Date of Request/Certification

4. Request For Release of Funds

Release of approved grant funds for the following project is requested:

PROJECT GRANTEE (If Other Than Applicant)

5. Certification. With reference to said project it is hereby certified:

That the applicant has a least fifteen (15) days prior to submitting this request for release of funds and certification, published in a newspaper of general circulation in the community affected, a notice to the public a copy of which is attached hereto) in accordance with Environmental Section of the CDBG Administrative Manual.

That the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named in the above request for release of funds.

That the level of environmental clearance carried out by applicant in connection with said project □ did □ did not require the preparation and dissemination of an environmental impact statement.

That the dates upon which all statutory and regulatory time periods for review, comment, or other response or action in regard to the aforesaid clearance commenced and expired as indicated below; that all such dates which are applicable to the aforesaid clearance are indicated below; and that with the expiration of each of the time periods indicated below, applicant is in compliance with the requirements of the Environmental Section of the CDBG Administrative Manual;

Sample

ITEM	COMMENCE MO/DAY/YR	EXPIRE MO/DAY/YR
Notice of Finding of No Significant Environmental Impact: Publication Date		XXXXXXXXXX XXXXXXXXXX
Notice of Intent to Request Release of Funds: Publication Date		XXXXXXXXXX XXXXXXXXXX
State: Comment Period 7 Days Starting after FONSI Comment Period if published or 10 days after posting/mailing.		
Combined Notice: Publication Date		XXXXXXXXXX XXXXXXXXXX
Same: Comment Period 15 Days Starting after Publication Date or 18 Days after posting /mailing		
Notice of Intent to File EIS: Publication (Notify DCS)		XXXXXXXXXX XXXXXXXXXX
Request for Release of Funds (RROF) Date: Submitted to State after Local Comment Period		XXXXXXXXXX XXXXXXXXXX
State RROF Comment Period: 15 Days Starting after FONSI Comment Period/State Receipt		
Release of Funds Date: Day After Completion of State Comment Period		XXXXXXXXXX XXXXXXXXXX
Were any public comments received at the local level?		Yes ❑ No ❑

That the undersigned officer of applicant is authorized to, and does, consent to assume the status of responsible Federal official, under the National Environmental Policy Act of 1969, insofar as the provisions of said Act apply to the State's responsibilities for environmental review, decision-making and action assumed and carried out by the applicant; that by so consenting, the undersigned officer of applicant assumes the responsibilities, where applicable, for the conduct of environmental review, decision-making, and action as to environ-mental issues, preparation of such statements on behalf of Federal agencies other than the State such agencies consent to such assumption.

That the undersigned officer of applicant is authorized to consent, personally, and on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all the aforesaid responsibility and the undersigned does so consent, on behalf of applicant and of the undersigned, in the official capacity of the undersigned.

Signature - Local Chief Official	Typed Name
Title	Date
Prepared By	Date

Sample

COMBINED NOTICE FOR CDBG-DISASTER
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52335 (11/04)

COMBINED NOTICE FOR COMMUNITY DEVELOPMENT BLOCK GRANT FOR A PRESIDENTIALLY-DECLARED DISASTER NOTICE TO PUBLIC OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

*Date	Name and Address of Applicant
Telephone Number	

TO ALL INTERESTED AGENCIES, GROUPS, AND PERSONS:

The purpose of this notice is to identify two separate but related actions to be taken by the (City) (County) of _____.

On **(date), the above-named (City) (County) has published the Notice of Finding of No Significant Impact and will request the North Dakota (DCS) to release Federal funds under Title I of the Housing and Community Development Act of 1974 as amended (PL 97-35). 24 CFR Part 58.33 allows a simultaneous 15-day comment period for the Combined Notice because these funds are needed on an immediate emergency basis due to a Presidentially-declared disaster for the following projects:

_____
(Project Title and Name)

_____
(Purpose or Nature of Project)

_____
(Location-City, County, State-of Project)

_____
(Estimated Cost of Project)

It has been determined that such request for release of funds will not constitute an action significantly affecting the quality of the human environment and accordingly the above-named (City) (County) has decided not to prepare an Environmental Impact Statement under the National Environmental Policy Act of 1969 (PL 91-190).

The reasons for such decision not to prepare such Statement are as follows:

_____
_____
_____
(set forth reasons for decision)

An Environmental Review Record respecting the within project has been made by the above-named (City) (County) which documents the environmental review of the project and more fully sets forth the reasons why such Statement is not required. This Environmental Review Record is on file at the above address and is available for public examination and copying upon request at _____between the hours of _____ and _____.

If (applicable) no further Environmental Review of such project is proposed to be conducted prior to the request for release of Federal funds.

All interested agencies, groups, and persons disagreeing with this decision are invited to submit written comments for consideration by the (City) (County) to the DCS. Comments should specify which notice, Finding of No Significant Impact, or Intent to Request Release of Funds, is being addressed. Such written comments will be received at the address listed below on or before **(date). All such comments so received will be considered and the (City) (County) will not request the release of Federal funds or take any administrative action on the project prior to the date specified in the preceding sentence.

(Name of applicant) will undertake the project described above with Community Development Block Grant funds from the DCS under Title I of the Housing and Community Development Act of 1974. (Name of Applicant) is certifying to the DCS that (Name of Applicant/and Chief Executive Officer or other Certifying Officer of Applicant approved by the DCS), in her/his official capacity as (Office) consent to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval (Name of Applicant) may use the Block Grant funds and the State and HUD will have satisfied their responsibilities under the National Environmental Policy Act of 1969. The DCS will accept an objection to its approval only if it is on one of the following bases: (a) that the certification was not in fact executed by the certifying officer or other officer of applicant approved by the DCS; (b) that applicant's environ-mental review record for the project indicates omission of a required decision, finding or step applicable to the project in the environmental review process; (c) The applicant has committed funds or incurred costs before release of funds and approval of the environmental certification by the State; or (d) That another Federal agency has submitted a written finding that the project is unsatisfactory from the view point of environmental quality. Objections may be addressed to the North Dakota DCS, 14th Floor - State Capitol, 600 East Boulevard Avenue, Bismarck, ND 58505-0170.

Objections to the release of funds on bases other than those stated above will not be considered by the DCS. No objection received after ***(date of last day in the 15-day period) will be considered by the State.

_____
(Name of Certifying Officer of Applicant)

_____
(Address)

*Date of publication or, if applicable, of posting.

**Date of publication.

***No less than 15 days after date of this publication the simultaneous 15-day comment period commences the day after publication of the applicant's Request for Release of Funds and Certification. Submit request for release of funds to the DCS the same day as publication.

Comment periods begin the day after the notice is published. If you're unsure as to the appropriate length of time to allow, please contact the DCS.

EA-REQUEST FOR RELEASE OF FUNDS DISASTER
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52336 (04/04)

STATE OF NORTH DAKOTA
REQUEST FOR RELEASE OF FUNDS AND CERTIFICATION

For Presidentially-declared Disasters or Declared Local Emergency
(Pursuant to Section 104(h) of Title I of the Housing
and Community Development Act of 1974 and 24CFR Part 58)

ENVIRONMENTAL ASSESSMENT

1. Name and Address of Recipient	2. Instrument Number
	3. Date of Request/Certification

4. Request for Release of Funds

Release of approved grant funds for the following project is requested:

PROJECT GRANTEE (If Other Than Applicant)

5. Certification. With reference to said project it is hereby certified:

That the applicant has published in a newspaper of general circulation in the community affected, a notice to the public a copy of which is attached hereto) in accordance with Environmental Section of the CDBG Administrative Manual.

That the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project named in the above request for release of funds.

That the level of environmental clearance carried out by applicant in connection with said project □ did □ did not require the preparation and dissemination of an environmental impact statement.

That the dates upon which all statutory and regulatory time periods for review, comment, or other response or action in regard to the aforesaid clearance commenced and expired as indicated below; that all such dates which are applicable to the aforesaid clearance are indicated below; and that with the expiration of each of the time periods indicated below, applicant is in compliance with the requirements of the HUD Environmental requirements.

Sample

ITEM	COMMENCE MO/DAY/YR	EXPIRE MO/DAY/YR
Combined Notice: Publication Date		XXXXXXXXXXXX XXXXXXXXXXXX
Comment Period for the FONSI and NOIRROF Commence One Day After Publication Expires 15 Days After Publication or 18 days after posting/mailing		
Release of Funds Date: Day After Completion of State Comment Period		XXXXXXXXXXXX XXXXXXXXXXXX

That the undersigned officer of applicant is authorized to, and does, consent to assume the status of responsible Federal official, under the National Environmental Policy Act of 1969, insofar as the provisions of said Act apply to the State's responsibilities for environmental review, decision-making and action assumed and carried out by the applicant; that by so consenting, the undersigned officer of applicant assumes the responsibilities, where applicable, for the conduct of environmental review, decision-making, and action as to environmental issues, preparation of such statements on behalf of Federal agencies other than the State such agencies consent to such assumption.

That the undersigned officer of applicant is authorized to consent, personally, and on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all the aforesaid responsibility and the undersigned does so consent, on behalf of applicant and of the undersigned, in the official capacity of the undersigned.

Signature Local Chief Official	Typed Name
Title	Date
Prepared By	Date

Sample

VI. Environmental Impact Statements

An ENVIRONMENTAL IMPACT STATEMENT (EIS) is required when it is determined that an activity or project will have a significant impact on the environment. This determination is made either by virtue of the criteria discussed at the beginning of Section V (indicating that the grantee should proceed directly to an EIS instead of an environmental assessment), or as a result of the environmental assessment itself.

It should be noted that CDBG funds normally will not be permitted to pay for the preparation of an EIS. (The exception to this rule will be mentioned later). The reason for this prohibition is basically a matter of cost.

Because an EIS is usually associated with large scale developments, the cost in time and money is enormous. It is not unusual for an EIS to spend many months in preparation. The dollar cost can and does run into the tens of thousands of dollars.

All of this cost arises because of the complexity of the process. There is a need to engage in extensive interagency consultation and coordination through all three levels of government. Citizen participation requirements are substantial. Finally, the scope of information gathering an analysis is extremely involved. For example, the grantee and cooperating agencies must evaluate potential impacts in such areas as:

1. Hydrology
2. Geology
3. Air Quality
4. Water Quality
5. Noise
6. Biology
7. Socio-economics
8. Energy
9. Land Use
10. Historic Preservation

It is not unusual for a final EIS to run 150 to 300 pages in length. This does not count the countless pages of supporting consultation and coordination documentation required for the Environmental Review Record (ERR). Thus, an EIS is not something, lightly entered into. In fact, there will be few CDBG grants that involve an EIS because of the cost and complexity.

However, there may be some circumstances when an activity or project may require an EIS, and where this requirement may not be difficult to satisfy. In these circumstances, CDBG funds may be permitted to cover preparation costs. These circumstances are two-fold in nature.

First, the grantee may be able to adopt a draft or final EIS already prepared by another agency, and which applies to the grantee's project situation. The only effort by the grantee would be to properly revise or amend this EIS needed.

Second, the grantee may be able to use a previously prepared EIS for its project when that EIS has already been approved or nearly approved, and does apply to the grantee's proposed project. Once again, the grantee may only need to update this EIS.

A. EIS Procedures

As mentioned above, the preparation of an EIS is both an involved and complex process. The requirements and procedures for this process are extensive. Rather than attempting to restate those requirements and procedures in this Guide, the DCS will provide the Federal regulations as needed.

While the EIS requirements are quite complexed, a very simple summary of EIS procedures is provided below, i.e., the grantee must:

1. Prepare and publish a notice of intent to prepare an Environmental Impact Statement and include a copy of the notice in the Environmental Review Record.

2. Disseminate the notice.

3. Describe the scoping (i.e., planning) approach of the project and hold a scoping meeting, if necessary.

4. If several agencies are involved in the project, choose a lead agency according to Environmental Protection Agency (EPA) guidelines.

5. Seek out public opinion by mailing out information and holding public hearings.

6. Prepare a draft Environmental Impact Statement.

7. File the draft Environmental Impact Statement with EPA, and file copies of the draft in local offices and libraries.

8. Prepare, file, and distribute the final Environmental Impact Statement.

9. File a supplemental Environmental Impact Statement when substantial changes occur in the proposed project or when significant new information becomes available.

10. Prepare a Record of Decision and have it signed and dated by the Certifying Officer and made part of the Environmental Review Record. The Record of Decision must summarize the monitoring and enforcement program for any mitigation measures called for in the Environmental Impact Statement.

11. Coordinate and integrate the Environmental Impact Statement with other environmental actions undertaken under related laws and authorities.

    To minimize duplication of effort, recipients can use prior statements and statements filed by other agencies in any of the following situations:

    a. The current project does not further alter the environment in a significant way.

    b. The prior Environmental Impact Statement was filed within five (5) years prior to the proposed project and the information is current.

    c. There is no litigation pending.

    The decision to use prior statements or those filed by other agencies must be documented in the Environmental Review Record. Failure to include such documentation may constitute grounds for non-release of funds.

    NOTE: The grantee must notify the DCS prior to beginning the preparation of an EIS. This is important since the DCS must approve the preparation of an EIS, as well as approve the use of CDBG funds for this purpose.

B. EIS Certification Process

Whether the grantee prepares a new EIS, adopts an EIS prepared by another agency, or uses a previously prepared EIS, the grantee must follow the same Certification process to the DCS. This process must be the same as explained in Section V for a FONSI resulting from an environmental assessment.

VII. Objections to Review Determinations

As noted in the previous sections of this Guide, grantees must certify to DCS the findings of their environmental reviews. With the exception of EXEMPT AND CATEGORICALLY EXCLUDED ACTIVITIES NOT SUBJECT TO 58.5 activities, the DCS is required to wait fifteen (15) days after receiving all other certification types before releasing any CDBG Activity funds. This fifteen day period is to permit public comment on the grantee's certification.

Of particular concern are any objections raised regarding the grantee's review process and/or findings. If any such objections are found to be valid, the DCS may not proceed to release funds to the affected grantee until the objections are resolved.

A. Permissible Bases for Objections

The DCS must consider objections, claiming some types of grantee non-compliance with environmental review requirements, based on any of the following grounds:

1. That the grantee's certification was not in fact executed by the grantee's Certifying Officer.

2. That the grantee failed to make one of the two findings of either a, Finding of No Significant Impact or a Finding of Significant Impact.

3. That the grantee failed to make a written determination decision regarding one of the following (as applicable):

   a. A re-evaluation of assessment findings; or

   b. Use of a prior environmental impact statement; or

   c. Providing supplemental changes to a draft or final environmental impact statement.

4. That the grantee omitted one or more procedural steps required for the preparation and completion of an environmental assessment.

5. That the grantee omitted one or more procedural steps for the conduct, preparation, and completion of an environmental impact statement.

6. The grantee or other participants in the development process has committed funds, incurred costs or undertaken activities not authorized before Release of Funds and approval of the Environmental Certification by the State.

7. That another Federal agency has submitted a written finding that the project is unsatisfactory from the viewpoint of environmental quality.

B. Procedures for Objections

Objections to a grantee's certification submitted to the DCS must follow the procedures below:

1. Be submitted in writing to the DCS.

2. Include the name, address, and telephone number of the objecting party or organization, and be signed by the person or authorized official of the agency objecting.

3. Be dated when signed.

4. Describe the basis for objection and the facts or legal authority supporting the objection.

5. State when a copy of the objection(s) was mailed or delivered to the grantee's Certifying Officer.

6. Reach the DCS within the prescribed fifteen day comment period.

C. DCS Actions

Once the DCS has received an objection that follows the procedures described in Part B above, the DCS must withhold the release of CDBG activity funds to the grantee until a satisfactory resolution is achieved:

1. The DCS will notify the grantee of the objections(s), and require that the grantee respond to that objection, in writing, to the DCS within ten (10) days.

2. If the grantee cannot adequately document that the objection is invalid, the DCS will require that the grantee properly satisfy the regulation or procedure in question, and then recertify to the DCS that all review procedures have been complied with (a second fifteen or eighteen day comment period will be required before the DCS can release CDBG funds).

3. If the grantee can document that the objection is invalid, the DCS will then notify the objecting party of this fact, and proceed to release CDBG activity funds to the grantee.

ATTACHMENT A ENVIRONMENTAL REVIEW PROCESS				
EXEMPT ACTIVITIES	CATEGORICALLY EXCLUDED ACTIVITIES	CATEGORICALLY EXCLUDED ACTIVITIES NOT SUBJECT TO 58.5	ENVIRONMENTAL ASSESSMENT	
1. Project determined to be exempt.	1. Project determined to be Categorically Excluded from NEPA environmental review.	1. Project determined to be Categorically Excluded Not Subject to 58.5.	1. Project determined to need full environmental assessment.	
2. Complete Documentation of Exemption form.	2. Complete site specific checklist of environmental related laws.	2. Complete site specific checklist of environmental related laws.	2. Complete site specific and environmental assessment checklist. Explanations must be provided for all determinations made.	
3. Division of Community Services notifies grantee of approval.	3. If activities do not impact related laws, project is exempt. Proceed to #1 under Exempt Activities.	3. Complete Categorically Excluded Not Subject to 58.5 form.	3. Environmental Assessment Finding.	
4. Grantee begins project and may draw down funds.	4. For all related laws impacted by the activity contact the appropriate State or Federal agency for clearance.	4. Division of Community Services notifies grantee of approval.	4. Finding of No Significant Impact (No EIS)	4. Finding of Significant Impact Statement (EIS Required).
	5. Grantee publishes "Notice of Intent to Request Release of Funds" local newspaper.	5. Grantee begins project and may drawdown funds.	5. Publication and distribution of Con-current Notices in local newspapers a. "Notice of Finding of No Significant Impact" and b. "Notice of Intent to Request Release of Funds"	5. Prepare Environmental Impact Statement (EIS).
	6. Grantee waits 7or 10 calendar days for comments.		6. Grantee waits 15 or 18 calendar days for comments.	6. Contact Division of Community Services
	7. Grantee transmits to DCS Request for Release of Funds and Certification.		7. Grantee transmits to DCS Request for Release of Funds and Certification.	
	8. DCS waits 15 calendar days for objections.		8. DCS waits 15 calendar days for objections.	
	9. DCS notifies Grantee of Environmental Clearance, and Release of Funds.		9. DCS notifies Grantee of Environmental Clearance, and Release of Funds.	

ATTACHMENT B ADDRESSES OF AGENCIES WITH ENVIRONMENTAL JURISDICTION	
Environmental Area	**Agency**
Historic Preservation	State Historic Preservation Office 612 E. Boulevard Ave. Bismarck, ND 58505 Phone: 328-2672 / Fax: 328-3710
Tribal Historic Preservation See Appendix H for Guidance	Tribal Historic Preservation Office (THPO) Tribal Directory Assessment Tool (TDAT) http://egis.hud.gov/tdat/tribal.aspx
Flood Hazard Protection Wetlands Protection Endangered Species	State Engineer ND State Water Commission 900 East Boulevard Ave. Bismarck, ND 58505-0850 Phone: 328-2750 / Fax: 328-3696
Wetlands Protection	Director ND Game & Fish Department 100 N Bismarck Expressway Bismarck, ND 58501 Phone: 328-6332 / Fax: 328-6352
Endangered Species	Director US Fish & Wildlife 3425 Miriam Avenue Bismarck, ND 58501-2096 Phone: 250-4481 / Fax: 355-8513
Air Quality	Environmental Health Section ND Department of Health PO Box 5520 Bismarck, ND 58506-5520 Phone: 328-5188 / Fax: 328-5200
Farmlands Protection	State Conservationist Natural Resources Conservation Service PO Box 1458 Bismarck, ND 58502-1458 Phone: 530-2000 / Fax: 530-2110
	Director of Project Development Department of Transportation Highway Building 608 East Boulevard Avenue Bismarck, ND 58505-0700 Phone: 328-2500 / Fax: 328-0310
	ND Parks & Recreation Department 1600 East Century Avenue, Suite 3 Bismarck, ND 58503-0649 Phone: 328-5357 / Fax: 328-5363

ATTACHMENT C

FONSI DISTRIBUTION LIST

1. Division of Community Services
   1600 East Century Avenue, Suite 2
   PO Box 2057
   Bismarck, ND 58502-2057
   Phone: 328-5300
   Fax: 328-2308

2. US EPA Region 8
   EPR-N
   1595 Wynkoop St.
   Denver, CO 80202-1129

3. Local Newspaper

4. Other Interested Individuals and Groups; Local, State, and Federal Agencies

5. Agencies that have a mitigation requirement.

SECTION 8 - LABOR REGULATIONS

A. Introduction

Communities implementing projects which involve construction contracts in excess of $2,000 (except rehabilitation of residential property designed for use by less than eight families) must comply with the following Federal labor laws:

- Davis Bacon Act
- Copeland Anti-Kickback Act
- Contract Work Hours and Safety Standards Acts or Fair Labor Standards Act

All construction contracts (including construction contracts paid with special assessments using CDBG funds) are required to comply with these Labor Standard Provisions.

B. Summary of Applicable Laws

1. Davis-Bacon Act

Davis-Bacon Act provides that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title (in this case the State CDBG program) shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor.

Construction contracts in excess of $2,000 awarded by recipients under the CDBG program shall include a provision for compliance with Davis-Bacon and associated Department of Labor regulations. The principal requirements are:

a. Recipients must include a copy of the current prevailing wage rate decision in each Invitation for Bids (IFB), Request for Proposal (RFP) and Purchase Order (PO) when applicable.

b. Recipients may only award contracts to eligible contractors and subcontractors who have accepted the wage rate decision and have signed a certification to pay wages on that basis, and who will comply with other labor standards.

c. Contractors must pay laborers the wage rate determined by the Secretary of Labor to be the prevailing rate in that labor market.

d. Contractors must submit weekly payrolls.

e. Recipients are required to report all suspected, reported or confirmed violations to the DCS which may investigate these alleged violations.

f. Three special classes of employees may be utilized on projects subject to Davis-Bacon Wage Rates and be compensated at less than the Davis-Bacon prevailing wages. These classes are:

(1) Apprentices - provided they are individually registered in a bona fide apprenticeship program in which the contractor participates, and which is approved by the DOL. Apprentices must also satisfy other conditions as specified in the Labor Standards Contract Provisions.

(2) Trainees - provided they are in a DOL-approved training program and they satisfy other conditions as specified in the Labor Standards Contract Provisions.

(3) Volunteers - the use of Volunteers on a CDBG project must meet the criteria found in 24 CFR Part 70. Please contact the DCS for further guidance if volunteers are going to be utilized.

When any of these employee classes appear on the Contractor's weekly payrolls, it is the Contractor's responsibility to provide the documentation necessary to permit the administrator to determine that there is compliance with the Davis-Bacon wage rate determination.

2. Copeland Anti-Kickback Act

The Copeland Anti-Kickback Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports (CPRs) by all contractors and subcontractors.

All contracts for construction, reconstruction or repair (over $2,000) must include the following prohibition:

"No contractor or subcontractor shall induce, by any means, any person employed in such publicly-funded construction, reconstruction or repair to give up any part of the compensation to which he is otherwise entitled except for authorized payroll deductions."

Recipients should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records, and to submit weekly certified payrolls, documenting compliance.

3. Contract Work Hours and Safety Standards Acts (over 100,000) or Fair Labor Standards Act

Contract Work Hours and Safety Standards Act and Fair Labor Standards Act provides that no contract work, which may require or permit any laborer or mechanic, in any workweek in which he is employed on such work, to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate pay for all hours worked in such workweek, whichever is greater. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as to the United States for liquidated damages.

All construction contracts in excess of $2,000 and other contracts in excess of $2,500 involving the employment of mechanics or laborers must comply with the following provisions of this law:

a. Contractors shall compute the wages of each laborer and mechanic on the basis of a standard workweek of 40 hours.

b. Work in excess of this standard is permitted, provided that compensation for the amount in excess of the standard is calculated at a rate not less than 1 ½ times the basic rate of pay.

c. Contractors may not require any laborer or mechanic to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his/her health or safety as determined under construction safety or health standards promulgated by the Department of Labor.

C. Grantee Administration of Labor Standards Requirements

The laws and their implementing regulations spell out a number of Federal requirements and procedures for CDBG contracting agencies. The basic steps to grantee compliance are as follows:

1. Labor Officer

The Grantee should designate an appropriate staff person to act as labor officer to insure compliance to all requirements and to be the primary contact person for the state.

2. Wage Decision Approval

At least 15 days prior to solicitation of bids, the Labor officer should complete the Wage Decision Approval form to verify the most recent wage decisions for their projects. You must receive approval from DCS prior to advertising for bids.

3. Wage Decision Modifications

Project wage decisions may be modified to keep them current. A wage decision modification may specify only the items being changed or may be in the form of a supersedeas wage decision, which replaces the entire wage decision. All actions modifying a project wage decision received by the grantee before contract award shall be effective except under the following circumstance:

For contracts entered into pursuant to competitive bidding procedures, wage decision modifications received by the contracting officer less than ten days before the bid opening shall be effective unless the contracting officer finds that there is not reasonable time available before bid opening to notify all bidders. If it is determined that sufficient time is not available in which to notify bidders, documentation to this affect must be contained in the CDBG labor files.

When advertising for bids on a CDBG funded project, the advertisement must contain a statement informing potential contractors that all work done on the project is subject to prevailing Davis-Bacon Wage Rates.

The actual wage decision must be included in all bid specifications and contract documents. If prevailing wages rates have been modified, the Grantee must notify each prospective bidder of these changes. The current wage decision must be posted in a visible location at the work site(s).

4. Contractor Clearance

Prior to award of any contract or subcontract, including housing rehabilitation contracts, the Grantee must verify the eligibility status of all contractors and subcontractors to be used. The eligibility status must be verified by checking at http://www.sam.gov. A copy of the results must be printed and placed in the file.

NOTE: All contractors must be registered if contract is over $25,000. DCS recommends all contractors register regardless of amount.

5. Additional Classifications

If after the construction contract is awarded, it is found that any classification not identified on the Wage Decision is needed, a request by the Prime Contractor for those classifications must be made to the DCS. The request must be made on the Report of Additional Classification and Rate Form. The additional classification wage decision must be posted in a visible location at the worksite(s).

The Grantee must include the March 22, 2013, memo from the U.S. Department of Labor in all contracts, subcontracts and any lower tier subcontracts and all bid documents. Inclusion by reference is unacceptable.

6. Federal Labor Standard Provisions

The Grantee must include the Federal Labor Standard Provisions in all contracts, subcontracts, and any lower tier subcontracts and in all bid documents. Inclusion by reference is unacceptable. Always use the most updated Form 4010.

7. Preconstruction Conference

The Grantee should hold a preconstruction conference with the prime contractor and all available subcontractors to explain all labor standards obligations. An attendance roster and accurate minutes from the preconstruction conference need to be kept and maintained in the Grantee files. All instructions and pertinent information for guidance on how to conduct a preconstruction conference are in Appendix F.

8. Apprentice and Trainees Required

Only apprentices and trainees, under bona fide programs, approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, can be used on the job. The correct status of all proposed apprentices or trainees should be verified prior to the start of construction.

9. Labor Standards Information

A notice of "Labor Standards Information" is required for all projects covered by these labor standards provisions. The notice must include the contract award date, project name and location, contractor's name, the number of applicable wage decisions, and the date of preconstruction conference. The Labor Standards Information form must be used to provide this information and submitted to the DCS prior to the first drawdown of funds.

10. Payroll Review and Compliance

Each contractor and subcontractor must submit weekly payrolls to the Grantee. It is recommended that the contractor use the Department of Labor Form WH-347. If this form is not used, the contractor must report all items of information requested on that form and must attach the original signed Department of Labor (DOL), Statement of Compliance. It is the Grantee's responsibility to review weekly payrolls to determine compliance with labor standards requirements. The grant administrator should initial and date each payroll as evidence of review.

Employers (prime contractors and subcontractors) must maintain the current address and full Social Security Number for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for federal labor standards compliance monitoring.

Payroll forms are compared to the wage decision to assure that wages are being paid as prescribed by law. The Compliance Statement contains certifications that:

a. the information covers the proper period and is complete and accurate;

b. each worker has been paid the proper wages and benefits and that no "rebates" have been taken; and

c. deductions are only those permitted by law and approved by the worker.

11. Field Inspections

The project administrator should understand that the enforcement of labor standards is as important as other requirements of the contract specifications and that failure to comply with the provisions of the labor standards must be corrected by the contractors and subcontractors. Failure to comply may result in the imposition of serious sanctions and penalties.

Periodic field inspections by the grant administrator at the job site should be completed to establish compliance with labor requirements, identify violations and for the following purposes:

a. Insure that the wage decision is posted in a prominent place.

b. To insure that a poster is conspicuously displayed which informs employees of their rights.

c. To conduct employee interviews in order to determine that the wages they are receiving are the same as reported on the weekly payroll report.

12. Violations

Serious violations (i.e., those representing underpayments greater than $1,000) are to be reported immediately to the DCS. Technical assistance will be provided to assure proper resolution of the issue. Violations less than $1,000 which are not willful should be dealt with as follows:

a. Require the contractor to prepare a correction payroll to make appropriate restitution to affected employees.

b. Assess liquidated damages for non-payment of overtime and require a separate correction payroll. (If the CWH & SSA applies, those violations carry a liquidated damage penalty of $10/day per violation).

c. If contractors refuse to comply with these requirements, the recipient must withhold sufficient amounts to make restitution. This amount is to be recorded on the Contractor's Obligation/Liquidation Record and the DCS is to be notified immediately.

WAGE DECISION APPROVAL

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 60437 (7/13)

Instructions: Submit to Division of Community Services (DCS) prior to advertising for bids or obtaining quotes. You must receive approval back from DCS prior to advertising for bids. Modifications issued less than ten days before the bid opening shall be effective unless the contracting officer finds that there is not reasonable time available before bid opening to notify all bidders. If it is determined that sufficient time is not available in which to notify bidders, documentation to this affect must be contained in the Community Development Block Grant (CDBG) labor files.

Recipient			Instrument Number	
If Economic Development Project - Business Name				
Project Description				
Wage Decision Number	Modification Number		Publication Date	
Construction Type ☐ Residential ☐ Building ☐ Highway ☐ Heavy (water and sewer lines only) ☐ Heavy (industrial/processing plants and refineries) ☐ Heavy (excluding sewer & water line construction & drainage projects) ☐ Heavy (including sewer & water line construction & drainage projects & excluding industrial/processing plants & refineries)				
Planned Advertising Date(s)	Planned Bid Opening Date	Planned Bid Closing Date	Planned Quote Date	Release of Funds Date
Will contract be awarded within 90 days of bid opening/quote date? ☐ Yes ☐ No If not, the wage decision MUST be updated as of the date of the award.				

Agency Providing Labor Standards Information

Agency		Labor Officer
Telephone Number	Email Address	Date

DCS approval MUST be received prior to advertising for bids or obtaining quotes.

Approved By	Date

SAMPLE

REPORT OF ADDITIONAL CLASSIFICATION AND RATE

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52337 (05/12)

General Decision Number	Modification Number	Modification Date
County		Contract Award Date
Project Name		Project Number

SUBCONTRACTOR

Name	Address	
City	State	ZIP Code
Contact Person	Phone Number	

PRIME CONTRACTOR

Name	Address	
City	State	ZIP Code
Contact Person	Phone Number	

Work Classification(s) Requested	Hourly Wage Rates	
	Basic Wage	Fringe Benefits *(if any)*

Check all the Apply

- ☐ The work to be performed by the additional classification(s) is not performed by a classification in the applicable wage decision.
- ☐ The proposed classification is utilized in the area by the construction industry.
- ☐ The proposed wage rate(s), including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage decision.
- ☐ The interested parties, including the employees or their authorized representatives, agree on the classification(s) and wage rate(s).
- ☐ Supporting documentation attached, such as a labor agreement.

Signature of Prime Contractor	Date
North Dakota Division of Community Services	Date

Additional classifications needed for work not included within the scope of classifications listed in the DOL wage decision may be added after award only as provided in the labor standards contract clauses[29 CFR 5.5 (a)(1)(ii)].

SAMPLE

Sample – Always use the most recent Federal Labor Standards Provision found at hud.gov search for HUD 4010

Federal Labor Standards Provisions

U.S. Department of Housing
and Urban Development
Office of Labor Relations

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A. 1. (i) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section l(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part

form HUD-4010 (07/2003)
ref. Handbook 1344.1

Previous edition is obsolete

of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section l(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section l(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the

journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds $100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subpara-

graph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds $100,000.

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

SAMPLE

LABOR STANDARDS INFORMATION

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52338 (10/11)

Recipient		If Economic Development Project - Business Name	
Instrument Number	Wage Decision Number	Modification Number	Publication Date

Project Description

Construction Type

- ☐ Residential
- ☐ Building
- ☐ Highway
- ☐ Heavy (water and sewer lines only)
- ☐ Heavy (industrial/processing plants and refineries)
- ☐ Heavy (excluding sewer & water line construction & drainage projects)
- ☐ Heavy (including sewer & water line construction & drainage projects & excluding industrial/processing plants & refineries)

Name and Mailing Address of Contractor(s)	License Number	Amount of Contract	EPL Clearance Date

Name and Mailing Address of Subcontractor(s)	License Number	Amount of Contract	EPL Clearance Date

Advertising Date(s)	Bid Opening Date	Bid Closing Date	Release of Funds Date

Contract Award Date	Pre-Construction Conference Date	Start of Construction Date

Procurement Method Used (check one)

☐ Small Purchase ☐ Competitive Sealed Bids ☐ Competitive Proposals ☐ Non Competitive Proposals

Number of Bids Received _____ (contact DCS if less than 2 bids are received)

Number of Quotes Received _____ (minimum of 3 required)

List Each Minority Business Enterprise	List Each Women-Owned Business Enterprise

List Section 3 Contractors

AGENCY PROVIDING LABOR STANDARDS INFORMATION

Agency	Labor Officer	Telephone Number	
Address	City	State	ZIP

Remit to DCS prior to the first draw of CDBG project funds.

SAMPLE

PAYROLL FORM
NORTH DAKOTA DIVISION OF COMMUNITY SERVICES
SFN 52339 (01/10)

U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION	PAYROLL	Form Approved Budget Bureau No. 44-R1093

Name of Contractor ☐ or Subcontractor ☐	Address	City	State	Zip Code

Payroll No.	For Week Ending	Project and Location	Project or Contract No.

(1) Name and Individual Identifying Number(e.g., Last four digits of Social Security Number) of Worker	(2) No. of Withholding Exemptions	(3) Work Classification	OT or ST	(4) Day and Date / Hours Worked Each Day							(5) Total Hours	(6) Rate of Pay	(7) Gross Amount Earned	(8) Deductions: FICA	Withholding Tax			Other	Total Deductions	(9) Net Wages Paid For Week
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SAMPLE

Date

I, _____,
(Name of signatory party) (Title)

Do hereby state:

(1) That I pay or supervise the payment of the persons employed by _____ _____ on the _____
Contractor of Subcontractor) (Building or Work)
_____; that during the payroll period commencing on the ____ day of ,20___, and ending the _____ day of 20____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned _____
(Contractor or Subcontractor)
by any persons and that no deductions have been made either directly or indirectly from the full wages earned by any persons, other than permissible deductions as defined in Regulations, Part 3 (CFR Subtitle A), issued by the Secretary of Labor under the Copeland Acts, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 357; 40 U.S.C. 276c), and described below;

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are fully registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United State Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ — In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ — Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4 (c) below.

(c) EXCEPTIONS

Exception (Craft)	Explanation

Remarks

Name and Title	Signature

THE WILFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

SAMPLE

Instructions for Completing Payroll Form, SFN 52339

General: SFN 52339 has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts.

While completion of the SFN 52339 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Under the Davis-Bacon and related Acts, the contractor is required to pay not less than prevailing wage, including fringe benefits, as predetermined by the Department of Labor. The contractor's obligation to pay fringe benefits may be met either by payment of the fringe benefits to bona fide benefit plans, funds or programs or by making payments to the covered workers (laborers and mechanics) as cash in lieu of fringe benefits.

This payroll provides for the contractor to show on the face of the payroll all monies to each worker, whether as basic rates or as cash in lieu of fringe benefits, and provides for the contractor's representation in the statement of compliance on the payroll (as shown on page 2) that he/she is paying for fringe benefits required by the contract and not paid as cash in lieu of fringe benefits. Detailed instructions concerning the preparation of the payroll follow:

Contractor or Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Payroll No.: Beginning with the number "1", list the payroll number for the submission.

For Week Ending: List the workweek ending date.

Project and Location: Self-explanatory.

Project or Contract No.: Self-explanatory.

Column 1 - Name and Individual Identifying Number of Worker: Enter each worker's full name and an individual identifying number (e.g., last four digits of worker's social security number) on each weekly payroll submitted.

Column 2 - No. of Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by each laborer or mechanic. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. An individual may be shown as having worked in more than one classification provided an accurate breakdown or hours worked in each classification is maintained and shown on the submitted payroll by use of separate entries.

Column 4 - Hours worked: List the day and date and straight time and overtime hours worked in the applicable boxes. On all contracts subject to the Contract Work Hours Standard Act, enter hours worked in excess of 40 hours a week as "overtime".

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay (Including Fringe Benefits): In the "straight time" box for each worker, list the actual hourly rate paid for straight time worked, plus cash paid in lieu of fringe benefits paid. When recording the straight time hourly rate, any cash paid in lieu of fringe benefits may be shown separately from the basic rate. For example, "$12.25/.40" would reflect a $12.25 base hourly rate plus $0.40 for fringe benefits. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. When overtime is worked, show the overtime hourly rate paid plus any cash in lieu of fringe benefits paid in

the "overtime" box for each worker; otherwise, you may skip this box. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962 if the prime contract exceeds $100,000. In addition to paying no less than the predetermined rate for the classification which an individual works, the contractor must pay amounts predetermined as fringe benefits in the wage decision made part of the contract to approved fringe benefit plans, funds or programs or shall pay as cash in lieu of fringe benefits. See "FRINGE BENEFITS" below.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of a worker's weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus "$163.00/$420.00" would reflect the earnings of a worker who earned $163.00 on a Federally assisted construction project during a week in which $420.00 was earned on all work.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deductions are involved, use the first four columns and show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction(s) contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 C.F.R., Part 3. If an individual worked on other jobs in addition to this project, show actual deductions from his/her weekly gross wage, and indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory.

Totals - Space has been left at the bottom of the columns so that totals may be shown if the contractor so desires.

Statement Required by Regulations, Parts 3 and 5: While the "statement of compliance" need not be notarized, the statement (on page 2 of the payroll form) is subject to the penalties provided by 18 U.S.C. § 1001, namely, a fine, possible imprisonment of not more than 5 years, or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

Items 1and 2: Space has been provided between items (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "*See* Deductions column in this payroll." *See* "FRINGE BENEFITS" below for instructions concerning filling out paragraph 4 of the statement.

Item 4 FRINGE BENEFITS - Contractors who pay all required fringe benefits: If paying all fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of Labor, show the basic cash hourly rate and overtime rate paid to each worker on the face of the payroll and check paragraph 4(a) of the statement on page 2 of the payroll form to indicate the payment. Note any exceptions in section 4(c).

Contractors who pay no fringe benefits: If not paying all fringe benefits to approved plans, funds, or programs in amounts of at least those that were determined in the applicable wage decision of the Secretary of Labor, pay any remaining fringe benefit amount to each laborer and mechanic and insert in the "straight time" of the "Rate of Pay" column of the payroll an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the application wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringe benefits, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringe benefits at the straight time rate. In addition, check paragraph 4(b) of the statement on page 2 the payroll form to indicate the payment of fringe benefits in cash directly to the workers. Note any exceptions in section 4(c).

Use of Section 4(c), Exceptions

Any contractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the covered worker as cash in lieu of fringe benefits. Enter any exceptions to section 4(a) or 4(b) in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid each worker as cash in lieu of fringe benefits and the hourly amount paid to plans, funds, or programs as fringe benefits. The contractor must pay an amount not less than the predetermined rate plus cash in lieu of fringe benefits as shown in section 4(c) to each such individual for all hours worked (unless otherwise provided by applicable wage determination) on the Federal or Federally assisted project. Enter the rate paid and amount of cash paid in lieu of fringe benefits per hour in column 6 on the payroll. See paragraph on "Contractors who pay no fringe benefits" for computation of overtime rate.

EMPLOYEE INTERVIEW RECORD (LABOR STANDARDS

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52341 (08/10)

CONFIDENTIAL

Project Name	Contractor or Subcontractor (Employer)		
Project Number	Employee Name		
Employee Identifying Number	Employee Phone Number		
Employee Home Address	City	State	ZIP Code

Verification of Identification ☐ Yes ☐ No	How long on this job?	Hours for starting and stopping normal work?
Daily/Weekly hours worked normally?	How many hours did you work last week?	Hourly rate of pay?
Fringe Benefits? Vacation ☐ Yes ☐ No Medical ☐ Yes ☐ No Pension ☐ Yes ☐ No Other ☐ Yes ☐ No		Do you have a pay stub with you? ☐ Yes ☐ No

What deductions other than taxes and social security are made from your pay?	
Your job classification(s) (list all)	
Your duties	
Tools or equipment used	
Are you an apprentice or trainee?	☐ Yes ☐ No
Are you paid for all hours worked?	☐ Yes ☐ No
Are you paid at least time and 1/2 for all hours worked in excess of 40 in a week?	☐ Yes ☐ No
Have you ever been threatened or coerced into giving up any part of your pay?	☐ Yes ☐ No
Employee Signature	Date
Duties observed by the Interviewer (Please be specific.)	
Remarks	

Interviewer Name (please print)	Signature of Interviewer	Date of Interview

Payroll Examination

Remarks	
Signature of Payroll Examiner	Date

SAMPLE

SECTION 9 - CIVIL RIGHTS

A. OVERVIEW

This section presents summaries of the key regulations and requirements of civil rights, fair housing and equal opportunity laws applicable to the administration of the North Dakota CDBG program.

The civil rights laws and related laws, and regulations are designed to protect individuals from discrimination on the basis of:

1. Race
2. National Origin
3. Religion
4. Color
5. Sex
6. Age
7. Disability

As they apply to the North Dakota CDBG program, these laws protect individuals from discrimination in:

1. Housing
2. Benefits created by CDBG projects
3. Employment
4. Business Opportunities

Population groups specifically protected by provisions of these laws include:

1. Minorities (specifically - Blacks, Hispanics, Asians and Pacific Islanders, American Indians and Alaskan Natives)
2. Women
3. Groups distinguished by age
4. Persons with Disabilities
5. Family Status

The applicable laws and regulations provide for:

1. Nondiscrimination
2. Equal Opportunity
3. Affirmative Action (to reduce past discrimination)

Definitions, Acronyms or Terminology

Please reference these terms for explanation of commonly used names, acronyms, and phrases used within this section.

1. Contractor-An entity selected in accordance with the procurement requirements at 2 CFR Part 200. In accordance with 2 CFR Part 200, such procurement actions must be conducted in a manner that provides for free and open competition.

2. New hires (as it relates to payrolls)-Full-time employees for permanent, temporary or seasonal employment opportunities.

3. Low-Income Person-Persons or families whose total household incomes do not exceed 80 percent of the median income for the area.

4. Very Low-Income Person-Persons or families whose total household incomes do not exceed 50 percent of the median income for the area.

5. Section 3 - See Appendix B

6. Service Area-The geographical area in which the persons benefiting from the Section 3 covered project reside.

B. CIVIL RIGHTS REQUIREMENTS - LAWS & STATUTES

Civil Rights laws applicable to North Dakota CDBG programs are set forth in the statutes and Executive Orders which follow:

Statute/Executive Order	Description
Title VI of the Civil Rights Act of 1964	No person shall be excluded from participation, denied program benefits, or subjected to discrimination of the basis of: 1. Race 2. Color, or 3. National Origin
Section 3 of the Housing and Urban Development Act of 1968, as amended	To the greatest extent feasible, employment and other economic opportunities, should be directed to: 1. Low and very low income persons, and 2. Business concerns which provide economic opportunities
Title VIII of the Civil Rights Acts of 1968, as amended (Fair Housing Act)	Prohibits discrimination in housing on the basis of: 1. Race 2. Color 3. Religion 4. Sex, or

	5. National Origin 6. Also requires HUD to administer its programs in a manner that affirmatively promotes fair housing
Section 504 of the Rehabilitation Act of 1973, as amended	No otherwise qualified individual shall, solely, by reason of his or her handicap be: 1. Excluded from participation (including employment) 2. Denied program benefits 3. Subjected to discrimination
Section 109 of the Housing and Urban Development Act of 1974, as amended	Under any program or activity funded in whole or in part under Title I or Title II of the act (regardless of contract's dollar value), no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of: 1. Race 2. Color 3. National Origin, or 4. Sex
The Age Discrimination Act of 1975, as amended	No person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age.
Executive Order 11063	No person shall, on the basis of race, color, religion, sex or national origin be discriminated against in: 1. Housing (and related facilities) provided with federal assistance. 2. Lending practices with respect to residential practices when such practices are connected with loans insured or guaranteed by the federal government.
Executive Order 11246, as amended	No person shall be discriminated against, on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally assisted construction contracts in the excess of $10,000.
Equal access to HUD-assisted or Insured Housing §5.105(a)(2)(i-ii)	Requires equal access to housing in HUD programs, regardless of sexual orientation, gender identity, or marital status. (new regulation effective 3/5/12)
Human Rights Acts of North Dakota	Prohibits discrimination on the basis of race, color, religion, sex, national origin, age, presence of any mental or physical disability, status with regard to marriage or public assistance; and protects individuals from discrimination in employment, public accommodations, housing, state, and local government services, and credit transactions.

C. STRATEGIES AND PROCEDURES

This section presents strategies and procedures for complying with various civil rights, equal opportunity and affirmative action laws, regulations and requirements outlined in the preceding section of this Chapter.

As a CDBG grant recipient you must assure that all CDBG-funded activities undertaken as part of your program are conducted in a manner which will not cause discrimination on the basis of race, creed, color, national origin, religion, sex, disabled or age.

The information that follows can be used in whole or in applicable part to assure conformity with the required civil rights laws and regulations and assist in affirmative action policies.

1. Nondiscrimination, Equal Opportunity and Affirmative Action in Employment

   a. Maintain employment data that indicates staff composition by race, sex, disabled status and national origin. (See Attachment 1)

   b. Develop or review existing personnel policies to assure compliance with nondiscrimination and equal opportunity requirements.

   c. Advertise as an equal opportunity employer.

   d. Publish an annual statement of nondiscrimination and/or include such statement in any publicity on CDBG program.

   e. Develop a network of information points that serve minority, elderly, women, disabled and ethnic groups, in addition to newspaper/public service channels.

   f. Utilize information points throughout the community to advertise employment opportunities.

   g. Develop or implement an Affirmative Action Plan.

   h. Develop a Section 3 plan.

   i. Display Equal Opportunity posters prominently.

   j. Take affirmative action to overcome the effect of past discrimination.

2. Nondiscrimination, Equal Opportunity and Affirmative Action in Contracting

   a. Advertise as an equal opportunity employer in bid solicitations.

   b. Solicit bids from minority, women and locally owned businesses.

   c. Maintain a list of locally owned businesses that were awarded contracts.

d. Require a Section 3 clause in all contracts.

e. Inform contractors of equal opportunity requirements at pre-construction conference.

f. Require contractor to submit monthly utilization reports.

g. Monitor contractor compliance at work site.

3. Nondiscrimination, Equal Opportunity and Affirmative Action in Housing

a. Information concerning housing services and activities should be disseminated through agencies and organizations which routinely provide services to protected groups.

b. Contract documents used by grantees and lending institutions participating in local programs should be reviewed and revised, if necessary, to eliminate any discriminatory intent or practice.

c. Criteria for selecting recipients of housing assistance should be evaluated for any discriminatory effect.

d. Acceptable Fair Housing Activities:

(1) Publicize that the recipient will assist persons experiencing discrimination in housing.

(2) Development and adoption of a fair housing policy with identification of methods of enforcement.

(3) Provision of housing counseling services which assist minorities and women seeking housing outside areas of concentration.

(4) Work with local real estate brokers to formulate a Voluntary Area-wide Marketing Agreement.

(5) Work with local banks to post "equal lending opportunity" advertisements.

(6) Use "equal housing opportunity" slogan and logo on city letterhead.

(7) Sponsor fair housing seminars and campaigns.

(8) Work with minority and women leaders in the area to promote housing development and increase minority and female participation.

(9) Assist local housing developers in developing outreach programs to attract minorities and females.

(10) Review zoning ordinances and comprehensive plans to insure they promote special deconcentration of assisted housing units.

(11) Create a local housing authority.

(12) Publicly advertise the city as a "fair housing city."

(13) Adopt a code enforcement ordinance which will compel landlords to keep their units in safe and sanitary condition.

4. Beneficiaries

a. Identify the needs of low- to moderate-income persons, minorities and women.

b. Develop and maintain a data base for the project area which includes information about population characteristics, i.e., sex, race, age, head of household, etc.

c. Maintain data on direct and indirect beneficiaries of the project which include above characteristics. (See Section 16)

D. FAIR HOUSING

The Federal Fair Housing Law provides that "…no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions including lenders, builders and homeowners insurance companies" (24 CFR 100.5). See http://www.hud.gov/offices/fheo/FHLaws/ -- Fair Housing Laws and Presidential Executive Orders.

Grantees must agree to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5));(E.O.12259(1-202));(24 CFR 570.601). This basically takes the form of promoting and publicizing Fair Housing laws as explained below. Grantees must also agree to develop and maintain records of the efforts taken to assure fair housing.

Fair housing laws, provisions and regulations apply to the community as a whole
-- not just to CDBG-supported housing projects –
and they are an essential part of the community's CDBG responsibilities.

1. Under the Fair Housing Act, the following actions are illegal when taken based on race, color, national origin, sex, religion, familial status, or disability:

a. Refusing to sell, rent, negotiate, or otherwise make housing unavailable

b. Falsely stating that housing is unavailable

c. Providing different services or facilities

d. Imposing different terms and conditions (including qualifications, fees, pricing, rules, etc.)

e. Advertising or making statements that express a limitation or preference

f. Steering, exclusionary zoning, blockbusting, or redlining

g. Retaliating against anyone exercising her/his rights under the Fair Housing Act (includes intimidation and coercion)

h. Refusing to provide a reasonable accommodation or modification for someone with a disability

2. Affirmatively Furthering Fair Housing

a. Analysis of Impediments to Fair Housing Choice (AI) -- In exchange for federal funds, entitlement jurisdictions are required to submit certification of affirmatively furthering fair housing to the U.S. Department of Housing and Urban Development (HUD). This certification has three required elements:

(1) Complete an Analysis of Impediments to Fair Housing Choice (AI),

(2) Take actions to overcome the effects of any impediments identified, and

(3) Maintain records reflecting the actions taken in response to the analysis.

b. HUD provides a definition of impediments to fair housing choice as:

(1) Any actions, omissions, or decisions taken because of race, color, religion, sex, disability, familial status, or national origin which restrict housing choices or the availability of housing choices; and

(2) Any actions, omissions, or decisions that have the effect of restricting housing choices or the availability of housing choices on the basis of race, color, religion, sex, disability, familial status, or national origin.

An Analysis of Impediments to Fair Housing Choice (AI) has been conducted for the State of North Dakota. The final document was issued on March 9, 2012 and is available on the Department of Commerce, Division of Community Services website at: http://www.communityservices.nd.gov/community/analysis-of-impediments-to-fair-housing/

The AI identified several private and public sector impediments to fair housing choice. Private sector impediments that were assigned a severity ranking of medium or high included discriminatory terms and conditions in rental and home purchase markets, refusal to rent, failure to make reasonable accommodations, preferential statements in advertising, and the issuance of predatory type home loans. Public sector impediments include inadequate fair housing outreach and education, lack of sufficient fair housing testing and enforcement, and NIMBYism.

The state has begun addressing these impediments primarily through outreach and education efforts. Presentations provide specific information on what fair housing is, the law, and how the Department of Labor handles specific housing complaints. They also provide an overview of the Department of Labor's relationship with HUD and how the state's laws are substantially equivalent to the Federal Fair Housing Law.

CDBG grantees are required to affirmatively further fair housing in their community in soliciting renters, determining eligibility, and in the conduct of all transactions.

c. Data and Documentation. The CDBG grantee must document the steps it has taken to promote fair housing. Keep these records in the CDBG Civil Rights File.

When developing a fair housing/affirmative marketing program, it is very important that the grantee **document all of the actions taken -- as well as the results of those actions**. If these efforts are not documented, DSC will be unable to demonstrate to HUD that grantees are meeting their fair housing obligations.

DCS and CDBG grantees with housing projects will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

d. Resources

High Plains Fair Housing Center, located in Grand Forks, ND, is a private, non-profit organization dedicated to the reduction and eradication of housing discrimination in the state:

High Plains Fair Housing Center
Michelle Rydz, Executive Director
PO Box 5222
Grand Forks, ND 58206
701-203-1077
Toll Free 866-380-2738
www.highplainsfhc.org

e. Housing Complaints

The Human Rights Division of the Department of Labor and Human Rights is responsible for enforcing the North Dakota Human Rights Act (N.D.C.C. Chapter 14-02.4) and the North Dakota Housing Discrimination Act (N.D.C.C. Chapter 14-02.5). This responsibility includes investigating complaints alleging discriminatory practices, educating the public about human rights laws, and studying the nature and extent of discrimination in North Dakota.

Complaints must be referred directly to:

North Dakota Department of Labor
Human Rights Division
600 E. Boulevard Ave., Dept. 406
Bismarck, ND 58505-0340
Phone - (701) 328-2660 locally or;
1-800-582-8032 toll free in ND

TTY (Relay ND) - 1-800-366-6888 or
Voice 1-800-366-6889
Spanish Users 1-800-435-8590
Fax - (701) 328-2031
E-mail - humanrights@nd.gov
Website – www.nd.gov/humanrights

The name(s) of complainants and the name(s) of the respondent(s) must not be disclosed to any entity other than the ND Department of Labor. DCS should, however, be notified that a complaint has been registered.

To learn more about the complaint process, use the following link.
http://www.nd.gov/labor/publications/docs/housing.pdf

E. SECTION 504

Compliance with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754) requires that local grantees shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps.

Section 504 provides that "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance". The local grantee is responsible for compliance with Section 504 by the developer in economic development programs.

1. Citizen Participation

   a. Recipients must make affirmative efforts to involve racial and ethnic minorities, people with disabilities, and female headed households in the citizen participation process. Below is a link to the ND Citizen Participation Plan:
   http://www.communityservices.nd.gov/uploads%5Cresources%5C470%5Ccitizen-participation-plan-%5Bsfn52662-pdf%5D.pdf

2. Limited English Proficiency

   a. CDBG grantees have an obligation under Title VI to reduce language barriers that can preclude meaningful access by person with limited English proficiency (LEP) to programs, services, and activities.

(1) Written translations of vital documents must be provided for each LEP language group totaling 1,000 persons or 5% of the population

3. Section 504 Non-discrimination Notice

   a. Recipients must provide a Section 504 non-discrimination notice within printed informational materials the Recipient makes available to participants, beneficiaries, applicants, and employees.

   b. Must include the name and contact number of the Section 504 Coordinator.

      (1) A sample notice can be found in the **Section 504/ADA Technical Assistance Handbook**

4. Physical Accessibility

   In new multifamily housing projects, a minimum of five percent of the total dwelling units or at least one unit, whichever is greater, must be made accessible for persons with mobility impairments. [24 CFR § 8.22(b)]

   An additional two percent (or at least one unit, whichever is greater) must be made accessible for persons with hearing or vision impairments. [24 CFR § 8.22(b)]

5. Program Accessibility

   a. A recipient must operate each housing and non-housing program or activity receiving federal assistance so that the program or activity is readily accessible to and usable by individuals with handicaps, when viewed in its entirety.

   b. A recipient is not necessarily required to make each of its existing facilities accessible to and usable by individuals with handicaps.

6. Reasonable Accommodation is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use areas.

   a. The requested accommodation must be reasonable.

   b. Does not impose an undue financial and administrative burden on the housing provider

   c. Does not fundamentally alter the nature of the housing provider's operations

   d. The determination of undue financial and administrative burden is made on a case-by-case basis.

      (1) Section 504 requires recipients to provide and pay for reasonable accommodations that involve structural modifications to units or public and common areas.

7. Equal Access Rule

HUD's **Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule** became effective on March 3, 2012.

a. Housing assisted by HUD shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status (24 CFR Section 5.015(a)(2).
b. Clarification of "family" definition to include persons regardless of actual or perceived sexual orientation, gender identity, or marital status.
c. Prohibits inquiries of an applicant or occupant's sexual orientation or gender identity for the purpose of determining eligibility or otherwise making housing available.
d. Prohibits FHA-approved lenders from basic eligibility determinations for FHA-insured loans on actual or perceived sexual orientation or gender identity.

8. Requirements for All Grantees

In order to comply with Section 504, the following actions must be initiated:

a. Each grantee shall submit an assurance to DCS that the CDBG Program will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This assurance obligates the grantee for the period during which federal financial assistance is extended. This assurance must be submitted prior to receipt of the executed contract with DCS.

b. Each grantee shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements of being accessible to individuals with disabilities. The self-evaluation will have been completed before the final request for funds of any grant award.

c. The self-evaluation shall designate all buildings and structures as "new" or "existing" depending on whether the building was constructed or altered after July 1988 (24 CFR 8.51(a)). The self-evaluation shall determine whether buildings and structures that house programs and services for the public can be approached, entered, and used by persons with disabilities. At minimum the following items should be addressed in the self-evaluation Parking – Spaces, Curbs, Ramps, Routes and Pathways - Slopes, Levels, Ramps, Notices, Entrance Ways - Widths and Heights, Interiors - Door Grasp, Pressure, Pathways, Elevators, Service - Counter Heights, Notices, and Auxiliary Services - Telephones, Restrooms, Drinking Fountains.

d. Each grantee shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Because compliance with 504 does not necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps, or require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens, a recipient may comply with the requirements of this section in its programs and

activities receiving Federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)).

e. Each grantee must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

f. Each grantee must maintain data for DCS showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs.

9. Other Section 504 Requirements, as Applicable

If structural changes to non-housing facilities will be undertaken to achieve program accessibility (see notes below), a recipient shall develop a transition plan with the assistance of interested persons, including handicapped individuals or organizations representing handicapped individuals, for those areas which cannot be made accessible administratively (24 CFR 8.21 (4)).

The construction activities identified in the transition plan must have been/must be completed within three years of completion of the self-evaluation that was before the final request for funds for any grant award made after July 1988 (24 CFR 8.21(c) 3 - see #2 above). The transition plan must be made available for public inspection, and, at a minimum, it shall:

a. Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities;

b. Describe in detail the method to be used in making the facility accessible;

c. Set forth a schedule for completion of the modifications. If the schedule exceeds one (1) year, then you must identify the actions to be taken during each year of the transition period;

d. Identify the individual responsible for implementation of the plan; and

e. Identify the persons or groups with whose assistance the plan was prepared.

NOTE: Unless the grant recipient has recently acquired a facility that was constructed prior to 1988, that will house programs and services available to the public, and intends to make physical alterations to this facility, the three year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired.

NOTE: New non-housing facilities (designed, constructed or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps (24CFR 8.32).

f. If the grantee employs fifteen or more persons:

(1) A responsible employee must be designated to coordinate the community's efforts to comply with Section 504;

(2) The community must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.

(3) The grantee shall publish a statement of compliance to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the grantee does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above. A grantee shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with DCS. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(4) The grantee must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

g. In order to assist you with Section 504 compliance, please refer to the “Section 504/ADA Technical Assistance Handbook”.

The regulation requires that you must have available a TDD or equally effective method for communicating with hearing impaired persons. North Dakota has an approved relay service which may be utilized. In order to utilize the relay system, the grantee must have a policy indicating the use of the relay system by the grantee and publish the telephone numbers in the newspaper. The numbers are: TTY Users 1-800-366-6888, Voice Users 1-800-366-6889, and Spanish Users 1-800-435-8590. This service is free of charge. Recently the number “711” has been approved by the FCC for use in contacting the relay service. This number works for both TTY and voice telephones and while it is applicable in most states, you are still required to list the “800” numbers presented above.

If you have been the recipient of prior CDBG funds and have a completed self-evaluation and if applicable, a transition plan, as mentioned above, the three year time period for completing the construction activities specified in a transition plan for most grantees has expired. For “existing” buildings and facilities that house programs and services for the public and are not accessible you must have adopted policies and/or modified practices to achieve accessibility. Prior grantees should prepare a summary of their past compliance activities.

F. SEE APPENDIX B FOR COMPLIANCE

ATTACHMENT 1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
STATE AND LOCAL GOVERNMENT INFORMATION (EEO-4)

EXCLUDE SCHOOL SYSTEMS AND EDUCATIONAL INSTITUTIONS
(Read attached instructions prior to completing this form)

A. TYPE OF GOVERNMENT
B. IDENTIFICATION AND CERTIFICATION

Name of Agency, Department or Institution		
Certification. I Certify That the Information Given in this Report Is Correct and True to the Best of My Knowledge and Was Reported in Accordance with Accompanying Instructions. (Willfully False Statements on this Report Are Punishable by Law, U.S. Code, Title 18, Section 1001.)		
Name of Person to Contact Regarding this Form		Title
Address (Number and Street, City, State, Zip Code)		Telephone Number (Area Code)
Date	Typed Name/Title of Authorized Official	Signature

C. FUNCTION

(Check one box to indicate the function(s) for which this form is being submitted. Data should be reported for all departments and agencies in your government covered by the function(s) indicated. If you cannot supply the data for every agency within the function(s), please attach a list showing name and address of agencies whose data are not included.

	1. FINANCIAL ADMINISTRATION. Tax assessing, tax billing and collection, budgeting, purchasing, central accounting and similar financial administration carried on by a treasurer's, auditor's or comptroller's office and GENERAL CONTROL. Duties usually performed by boards of supervisors or commissioners, central administrative offices and agencies, central personnel or planning agencies, all judicial offices and employees (judges, magistrates, bailiffs, etc.)		8. HEALTH. Provision of public health services, out-patient clinics, visiting nurses, food and sanitary inspections, mental health, alcohol rehabilitation services, etc. 9. HOUSING. Code enforcement, low rent public housing, fair housing ordinance enforcement, housing for elderly, housing rehabilitation, rent control.
	2. STREETS AND HIGHWAYS. Maintenance, repair, construction and administration of streets, alleys, sidewalks, roads, highways and bridges.		10. COMMUNITY DEVELOPMENT. Planning, zoning, land development, open space, beautification, preservation.
	3. PUBLIC WELFARE. Maintenance of homes and other institutions for the needy; administration of public assistance. (Hospitals and sanatoriums should be reported as items 7.)		11. CORRECTIONS. Jails, reformatories, detention homes, half-way houses, prisons, parole and probation activities.
	4. POLICE PROTECTION. Duties of a police department, sheriff's, constable's, coroner's office, etc., including technical and clerical employees engaged in police activities.		12. UTILITIES AND TRANSPORTATION. Includes water supply, electrical power, transit, gas, airports, water transportation and terminals.
	5. FIRE PROTECTION. Duties of the uniformed fire force and clerical employees. (Report any forest fire protection activities as item 6.)		13. SANITATION AND SEWAGE. Street cleaning, garbage and refuse collection and disposal. Provision, maintenance and operation of sanitary and storm sewer systems and sewage disposal plants.
	6. NATURAL RESOURCES. Agriculture, forestry, forest fire protection, irrigation drainage, flood control, etc., and Parks and Recreation. Provision, maintenance and operation of parks, playgrounds, swimming pools, auditoriums, museums, marinas, zoo, etc.		14. EMPLOYMENT SECURITY
	7. HOSPITALS AND SANATORIUMS. Operation and maintenance of institutions for inpatient medical care.		15. OTHER (Specify)

D. EMPLOYMENT DATA AS OF JUNE 30

(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL-TIME EMPLOYEES (Temporary employees not included)

Annual Salary (In Thousands 000)	Total (columns) B-K A	Male					Female				
		Non-Hispanic Origin					Non-Hispanic Origin				
		White B	Black C	Hispanic D	Asian or Pacific Islander E	American Indian or Alaskan Native F	White G	Black H	Hispanic I	Asian or Pacific Islander J	American Indian or Alaskan Native K
1 $ 0.1-7.9											
2. 8.0-11.9											
3. 12.0-15.9											
4. 16.0-19.9											
5. 20.0-24.9											
6. 25.0-32.9											
7. 33.0-42.9											
8. 43.0-PLUS											
9. $ 0.1-7.9											
10. 8.0-11.9											
11. 12.0-15.9											
12 16.0-19.9											
13. 20.0-24.9											
14. 25.0-32.9											
15. 33.0-42.9											
16. 43.0-PLUS											
17. $ 0.1-7.9											
18. 8.0-11.9											
19. 12.0-15.9											
20. 16.0-19.9											
21. 20.0-24.9											
22. 25.0-32.9											
23. 33.0-42.9											
24. 43.0-PLUS											
25. $ 0.1-7.9											
26. 8.0-11.9											
27. 12.0-15.9											
28. 16.0-19.9											
29. 20.0-24.9											
30. 25.0-32.9											
31. 33.0-42.9											
32. 43.0-PLUS											
33. $ 0.1-7.9											
34. 8.0-11.9											
35. 12.0-15.9											
36. 16.0-19.9											
37. 20.0-24.9											
38. 25.0-32.9											
39. 33.0-42.9											
40. 43.0-PLUS											
41. $ 0.1-7.9											
42. 8.0-11.9											
43. 12.0-15.9											
44. 16.0-19.9											
45. 20.0-24.9											
46. 25.0-32.9											
47. 33.0-42.9											
48. 43.0-PLUS											

D. EMPLOYMENT DATA AS OF JUNE 30 (Cont.)

(Do not include elected/appointed officials. Blanks will be counted as zero)

1. FULL-TIME EMPLOYEES (Temporary employees not included)

Annual Salary (In Thousands 000)	Total (columns) B-K A	Male					Female				
		Non-Hispanic Origin					Non-Hispanic Origin				
		White B	Black C	Hispanic D	Asian or Pacific Islander E	American Indian or Alaskan Native F	White G	Black H	Hispanic I	Asian or Pacific Islander J	American Indian or Alaskan Native K
49. $ 0.1-7.9											
50. 8.0-11.9											
51. 12.0-15.9											
52. 16.0-19.9											
53. 20.0-24.9											
54. 25.0-32.9											
55. 33.0-42.9											
56. 43.0-PLUS											
57. $ 0.1-7.9											
58. 8.0-11.9											
59. 12.0-15.9											
60. 16.0-19.9											
61. 20.0-24.9											
62. 25.0-32.9											
63. 33.0-42.9											
64. 43.0-PLUS											
65. Total Full Time (Lines 1-64)											
2. OTHER THAN FULL-TIME EMPLOYEES (Include temporary employees)											
66. Officials/Admin.											
67. Professionals											
68. Technicians											
69. Protective Serv.											
70. Para-Professional											
71. Admin. Support											
72. Skilled Craft											
73. Serv./Maint.											
74. Total Other Than Full Time (Lines 66-73)											
3. NEW HIRES DURING FISCAL YEAR (Permanent full time only) July 1 - June 30											
75. Officials/Admin.											
76. Professionals											
77. Technicians											
78. Protective Serv.											
79. Para-Professional											
80. Admin. Support											
81. Skilled Craft											
82. Serv./Maint.											
83. Total New Hires (Lines 75-82)											

SECTION 10 - ACQUISITION AND RELOCATION

Prior to acquiring real property or attempting to undertake a relocation project, a determination must be made as to whether or not the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (as amended in 1986) apply. Requirements for acquisition and relocation activities are described in the Department of Housing and Urban Development's Handbook 1378.

Whether or not particular requirements of the Act pertains, is dependent upon determining if the proposed acquisition and/or relocation activity(s) is voluntary or involuntary. If such activities have not been addressed in your grant application, or if the DCS staff has not made a determination at the time of writing the Financial Award, you must contact the DCS for guidance.

In order to provide initial guidance, however, the following federal documents are linked in this section:

HUD Handbook 1378 "Tenant Assistance, Relocation and Real Property Acquisition"
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/library/relocation/policyandguidance/handbook1378

Fixed Residential Moving Cost Schedule
http://www.fhwa.dot.gov/real_estate/practitioners/uniform_act/relocation/moving_cost_schedule.cfm

Overview of Section 104(d)
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/relocation/section104d

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)
http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/training/web/relocation/overview

Attached is HUD's URA Review that must be completed for all acquisition, demolition or rehabilitation.

URA Review

Complete for all projects involving acquisition, demolition or rehabilitation in any phase

Site Acquisition Section

1. Did the applicant own the site prior to the initiation of the current project? If so, indicate when the property was acquired and skip to question 4, below.

2. Does the purchase meet one of the voluntary acquisition exceptions of 49 CFR 24.101(b)(1)-(5) [identify which exception is being met]? If no, complete a basic acquisition policies review (see 49 CFR 24.102-24.108) and skip to question 4.

3. In obtaining site control, did applicant/buyer provide seller with voluntary, arm's length transaction information?

4. Does the project site represent undeveloped land or has the property been unoccupied for at least 90 days (prior to the purchase offer (or application if no acquisition)), with no person having been made to move for the project?

   ☐ Yes ☐ No **If yes, skip Tenant Information Section.**

Tenant Information/Relocation Section

5. Has the applicant identified all persons who moved from the site within the past three months and explained the reason for such moves?

   ☐ Yes ☐ No

6. Has the applicant identified all persons (families, individuals, businesses and nonprofit organizations) by race/minority group, and status as owners or tenants occupying the property on the date of submission of the application (or initial site control, if later)?

   Persons occupying the property include:

	# Not to be Displaced	# Temporarily Displaced	# Permanently Displaced
Households (families and individuals)			
Business and Nonprofit Organizations			
Farms			
Totals			

7. Has applicant indicated the estimated cost of relocation payments and other services and the basis for the estimate?

   ☐ Yes ☐ No

8. Are the estimated costs for relocation reasonable (note: relocation costs vary substantially, but a national average for permanent displacement is approximately $10,000/household)?

☐ Yes ☐ No

9. Has the applicant indicated the source of funds to be used to pay relocation costs?

☐ Yes ☐ No

Comments:

10. If relocation costs will be funded from sources other than HOME or CDBG, has the applicant provided evidence of a firm commitment of the funds?

☐ Yes ☐ No ☐ N/A

Comments:

11. Has the applicant identified the staff organization that will carry out the relocation activities?

☐ Yes ☐ No ☐ N/A

Comments:

12. Were all persons occupying the site issued a General Information Notice (personally acknowledged or sent certified mail, return receipt requested) at the time of application submission (or when the option to acquire the property was executed, if later)? (Obtain copies)

☐ Yes ☐ No

Comments:

13. Is the applicant prepared to issue each tenant at contract award either a Notice of Eligibility for relocation assistance (including information on comparable replacement housing) or a Notice of Non-Displacement?

☐ Yes ☐ No ☐ N/A

Comments:

14. Is the applicant/property owner prepared to issue move-in notices to all new tenants?

☐ Yes ☐ No

104(d) REVIEW – CDBG & HOME PROJECTS

1. Will the project (in any phase) demolish housing units that rent (or would rent) at or below FMR, or convert such units to a use other than lower income housing?

   ☐ Yes ☐ No (project is not subject to 104(d) – Stop here)

2. Do any of the housing units meet the definition of vacant occupiable dwelling units (see 24 CFR 42.305)?

   ☐ Yes ☐ No (explain basis for a "No" conclusion and skip to question 4)

3. Has the information required by 24 CFR 42.375(c) been made public, with a copy submitted to HUD (to be completed prior to contract execution)?

   ☐ Yes ☐ No

4. Is any tenant low- to moderate-income?

   ☐ Yes ☐ No

5. Is the applicant prepared to offer all lower income tenants to be displaced the choice of relocation assistance at 104(d) levels (see 24 CFR 42.350 and Chapter 7 of HUD Handbook 1378) or URA levels?

   ☐ Yes ☐ No (follow up with applicant prior to contract execution)

Home Opportunity Program

Sponsored By

Seller's Occupancy Certification

_____

Address of Property City, State Zip Code

Complete the table below for all individuals that have occupied the property from ninety (90) days prior to the date of the **purchase offer** to the present date:

Last Name, First Name of Occupant	Owner(s)?	Currently Residing in the Property?
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No

As indicated in the purchase offer, no tenant may be permitted to occupy the property before the sale is completed.

I hereby declare that the preceding statement and occupancy list is accurate to the best of my knowledge and belief, and is submitted for the purpose of preventing conflict with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

If I fail to provide accurate occupancy information for the above mentioned property, (Name of Subrecipient) or the _____ may demand repayment for up to amount of the cost of relocation as required by the act and any legal costs incurred.

Seller please sign below:

Seller _____ Date _____

Co-Seller _____ Date _____

SECTION 11 - PROPERTY MANAGEMENT STANDARDS

A. Purpose

This section describes the uniform standards governing the utilization of property furnished by North Dakota CDBG funds. Grantees are encouraged to use their own property management systems in conjunction with these standards.

B. Definitions

1. Real Property

Real property is land, land improvements, structures, and appurtenances. This does not include movable machinery and equipment.

2. Personal Property

Personal property is any kind of property except real property, as defined above. Personal property may be tangible (having physical existence) or intangible (having no physical existence i.e. patents or copyrights).

3. Expendable Personal Property

Expendable personal property is personal property normally used up or consumed in service. Expendable personal property is also referred to as consumable supplies or supplies.

4. Nonexpendable Personal Property

Nonexpendable personal property is tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit.

5. Acquisition Cost

Acquisition cost of nonexpendable personal property is the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges over and above the net invoice price may be included or excluded from the unit acquisition cost so long as it is consistent with the grantee's regular accounting practices.

C. Property Management Standards For Nonexpendable Property

The grantee's property management system for nonexpendable personal property must include the following requirements:

1. Property Records

   Property records must be maintained accurately and must include:

   a. A description of the property.

   b. Manufacturer's serial number, model number, or some other identification number.

   c. Acquisition date and cost.

   d. Source or origin of funds used to acquire property.

   e. Location, use, and condition of the property and the date the information was recorded.

   f. Unit acquisition cost.

   g. Ultimate disposition date, including the date of disposal and sales price or the method to determine current fair market value.

2. Property Identification

   All property acquired in connection with the North Dakota CDBG program must be clearly marked to indicate ownership.

3. Control System

   A control system must be instituted to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property must be investigated and fully documented.

4. Maintenance Schedule

   A regular maintenance schedule must be followed to keep the property in good condition.

5. Disposal of Property

   Where the grantee is authorized to sell the property, proper sales procedures must be followed which would provide for competition to the extent practicable and result in the highest possible return.

6. Property Inventory

   A physical inventory of property must be taken at the time of grant close-out and the results reconciled with the property records. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the cause of the differences. The grantee must, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

D. Use of Tangible Nonexpendable Property

1. Preferred Property Usage

The grantee must use the property in the project or program for which it was acquired for as long as it is needed, regardless of whether or not the project or program continues to be supported by the North Dakota CDBG funds.

2. Alternate Property Usage

When the property is no longer needed for the original project or program, the grantee must use the property in connection with other community development activities in the following order:

a. Other activities sponsored by the North Dakota CDBG program.

b. Other community development activities sponsored by: (1) the grantee, (2) the State of North Dakota, or (3) the Federal Government.

c. Other activities sponsored by the DCS.

d. Activities sponsored by another State agency.

3. Priority Usage

During the time that the property is maintained for use on the project or program for which it was acquired, the grantee may make it available for use on other activities so long as it does not interfere with the work on the project or program for which the property was originally acquired.

E. Acquisition and Disposition of Tangible Nonexpendable Property

1. Acquisition Process

A grantee must request permission from the DCS before acquiring any tangible nonexpendable property having net invoice unit price of $750 or more which was not approved in the grant award. Permission must be requested in writing and must include a description of the property to be acquired, the intended use of the property, the cost of the property, and the reason why the property is needed.

2. Disposal Process

A grantee may, with the permission from the DCS, dispose of tangible nonexpendable property acquired with North Dakota CDBG funds. Permission may be given when the grantee can document that a need no longer exists to maintain the property.

SECTION 12 - MONITORING
MONITORING POLICIES, GUIDELINES, AND FORMATS

A. Program Monitoring Policies and Guidelines

Monitoring and evaluation of recipients of our CDBG, HOME, and ESG funds is a requirement of the Department of Housing and Urban Development (HUD). Monitoring is the responsibility of DCS staff, grant recipients, and grant administrators. These guidelines and policies pertain to the monitoring to be performed by the DCS staff.

We are required to monitor grant recipients for proper administration of grants, to include financial administration, compliance with special conditions, and compliance with federal and state provisions. In addition, we are mandated to physically visit project sites to verify implementation, environmental mitigations, if any, and actual program beneficiaries.

Because of the large number of active grants and our limited staff resources, we received approval from the Department of HUD to institute a new process to monitor administrative records beginning in 1995. Rather than monitoring on a grant by grant basis, we will focus on the administrative agency and its processes to assure effective grant administration. Jurisdictions administering their own grants will be considered as a grant administrative agency, in the same context as a Regional Planning Council, Community Action Agency, Community Housing Development Organization, the Housing Finance Agency, or other non-profit entity.

All grant administrative entities will be scheduled for review from December through May each year unless circumstances warrant a revision to this schedule. Even if an administering agency no longer has an active grant, it will be monitored if it has not been previously monitored. Monitoring visits will be scheduled on an annual cycle. Follow-up visits will be scheduled as necessary.

To perform the monitoring, the DCS will send a team consisting of a minimum of one person to review programmatic requirements, and one to review financial records. The team will provide, in advance of its scheduled visit, a list of all grants that may be subject to partial or full review during the monitoring process. This list may include active grants, as well as closed out grants not reviewed under the DCS's previous monitoring procedures.

The team will assess how the administering entity and staff administer grants. Each entity must identify at least one person to be interviewed. That person should have general knowledge of office-wide procedures for grants management. If the entity has written policies and procedures, those should be presented as supporting documentation. The interview questions will focus only on grants management issues pertaining to their grants. Following this initial interview, the DCS staff will review the answers to the questions and subjectively identify a high, medium, or low confidence level for the procedures in place, and general knowledge of grant administration requirements. Using those rankings, or the rankings based on past monitoring visits, the staff will select the grants to be reviewed, in terms of types of activity and the number to be reviewed by each programmatic area.

As individual records are reviewed, the staff may decide to perform more in-depth monitoring if problems are identified. The intent of this is to monitor the overall process of grants management, and the knowledge and adherence to that process.

Once the DCS staff completes the monitoring, a conference call will be arranged to discuss the results. This will not be the final step in the monitoring process.

The grant administrator will have 30 days from the date of the conference call to submit documentation to clear any findings prior to a written monitoring report.

For the purpose of reporting the results of the monitoring, the following definitions will apply:

1. A “concern” will be declared for areas which are identified as not fully in compliance that don't involve funds, and for areas the DCS staff feels should be given more attention or effort to prevent non-compliance. If a concern is identified two years in a row, it will become a deficiency.

2. A “deficiency” will be declared for areas which are identified as being in non-compliance, but do not involve funds, or are consistently in non-compliance. If a deficiency is identified two years in a row, it will become a finding.

3. A “finding” will be declared if it is discovered that there is consistent or material non-compliance with any part of the grant agreement, programmatic requirements, or financial accountability.

   a) Findings that cause project costs to be ineligible include, but are not limited to, the following actions:

      - Committing or spending CDBG funds before release of funds.
      - No construction contract(s).
      - Expenditures without supporting documentation.
      - Contracting with unlicensed contractors.
      - Contracting with debarred contractors.
      - Project does not meet a National Objective.

   b) Findings that do not cause project costs to be ineligible but cannot be cleared include, but are not limited to:

      - Improper or no wage rates in contracts.
      - No labor provisions in bid solicitation.
      - No labor provisions in contracts.
      - Improper procurement.
      - Cash on hand in excess of $5,000.

c) Findings that can be cleared, including, but not limited to:

- Depositing CDBG funds in an interest bearing account.
- Not collecting and verifying contractor payrolls.
- Not requesting additional classifications.
- Not investigating/resolving labor violations.

In reporting results of monitoring, the staff will clearly describe any problems and the solution expected of the grant administrative entity. All findings and deficiencies must be responded to within 45 days of date of the monitoring report. If problems arise, the grant administrator must contact the DCS for other arrangements. Failure to respond within 45 days may result in not being able to drawdown funds, and may result in the grantee not being able to apply for and receive future funds until all findings and deficiencies are cleared.

B. Non-compliance Remedies

1. A grant administrator receiving three findings that would cause project/project expenditure(s) to be ineligible will no longer be allowed to administer CDBG grants; or

2. A grant administrator receiving three or more findings that do not cause a project/project expenditure(s) to be ineligible but cannot be cleared, will no longer be allowed to administer CDBG grants; or

3. For any three years, a grant administrator receiving three or more of the same findings will no longer be allowed to administer CDBG grants.

C. On-site Monitoring

The DCS will visit each project on-site to verify implementation according to the grant agreement, program beneficiaries, work write-ups for housing, and the results of the environmental review. Each grant administrator will be required to accompany DCS staff for all housing projects. The need to accompany staff to public facilities and economic development projects will be on a case-by-case basis.

Upon completion of on-site visits, DCS staff will prepare a report to be sent to the respective grantees and grant administrator. The definition of findings, deficiencies, and concerns will be applicable, as will be the requirement for responding to findings and deficiencies.

The results of all monitoring will be maintained in a file for each respective grant administrative entity in order to develop a history of administrative practices. This history will be used by the DCS staff, in conjunction with the initial review, to determine the scope and depth of monitoring.

D. Attached are the monitoring guides that the DCS staff will use. The first series of forms contain the general questions for overall management activities, and for each administrative area. The second series are the actual checklists that will be used when reviewing all records.

The following monitoring forms are used:

First Series

- General Overview
- Financial Overview
- Environmental Overview
- Labor Overview
- Civil Rights Overview
- Procurement Overview
- Acquisition/Relocation Overview
- Property Management Overview

Second Series

- Financial Management
- Special Conditions
- Labor
- Civil Rights
- Procurement
- Acquisition in Excess of $2,500
- Relocation - Monitoring by Grantee
- Relocation - Monitoring of Displaced Households
- Property Management
- On-site Visit
- Questions for Direct Beneficiary

SECTION 13 - COMPLAINTS AND APPEALS

A. Local Complaints

Resolving local complaints is the responsibility of the local units of government. Grantees are required by Federal regulations to establish a procedure for handling complaints that deal with local program administration, management, or operational procedures. The DCS is responsible for monitoring to insure that a judicious procedure for handling local complaints is in place and is utilized when necessary.

B. Grantee Complaints

Grantees may initiate complaints against the DCS which relate to the CDBG Program. Complaints must be forwarded to the DCS Director. The complaint will be addressed through informal communication between the parties initially. The Director will respond in writing to the complaint. The decision of the Director is final.

C. Appeals

Deviations from the DCS's established policies and procedures are appealable actions under the ND-CDBG Program. Unfunded applications are not appealable.

An appeal must be in writing, addressed to the DCS Director. The notice of appeal must indicate an appeal is intended, and must contain the relevant facts – who is involved, what the issue involves, when the issue occurred, and where the issue arose. The notice of appeal must be signed personally by the person or representative of the body or unit of government making the appeal.

1. Appeals of Deviation of Established Policies and Procedures

   a. Grantees may appeal substantive policy and procedure actions taken by the DCS or it's agent within thirty (30) days of the grant award date.

   b. The DCS Director will consider actions to be taken. The Director's decision will be final.

2. Appeals of Denied Amendments

   Amendments to grantee programs may be denied by the DCS. Grantees may appeal grant amendment denials to the Director. The appeal must be in writing and must be received within thirty (30) days of the date of the notice of denial. The Director will make the final determination concerning the appeal, and the grantee will be notified of the decision.

SECTION 14 - REPORTING

The Semi-Annual report must be submitted on a semi-annual basis by the 30th of the following month. For the period ending June 30th the report is due July 30th and for the period ending December 31st the report is due January 30th.

Each grant recipient will receive a reminder notice from the DCS of the due date of each report.

SEMI-ANNUAL PROGRESS REPORT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52342 (08/07)

CDBG SEMI-ANNUAL PROGRESS REPORT			
GRANTEE		GRANT NUMBER	
BUDGET/PROJECT PERIOD		PERIOD COVERED BY REPORT	
FROM *(Month, Day, Year)*	TO *(Month, Day, Year)*	FROM *(Month, Day, Year)*	TO *(Month, Day, Year)*
REPORT PREPARED BY		PHONE NUMBER	
PROJECT DESCRIPTION (DESCRIPTION MUST INCLUDE ANY CHANGES TO THE ORIGINALLY APPROVED DESCRIPTION)			
TYPE NAME OF CHIEF ELECTED OFFICIAL		TITLE	
SIGNATURE OF CHIEF ELECTED OFFICIAL		DATE	
DCS USE ONLY REVIEWED BY _____			

Sample

SEMI-ANNUAL PROGRESS REPORT

Answer the questions on additional sheets.

1. List those activities that have been accomplished to date. (Specify the type of activity, i.e., environmental review completed, Notice of Release of Funds received, contracts awarded, income eligibility determined, number of households rehabilitated, etc.)

2. Have any problems arisen which will delay grant completion? If yes, explain the problem and the amount of delay.

3. List activities to be accomplished in the next six months.

4. Do you anticipate requesting any amendments? If yes, explain.

5. Do you require any technical assistance from the DCS? If yes, explain.

6. Program Beneficiaries to date:

   a. Jobs Created LMI _____ Non-LMI
   b. Homes Rehabilitated LMI _____ Non-LMI
   c. LMI Special Assessments Paid
   d. Elderly _____ FHOH _____ Handicapped _____
   e. Race
      White (11) _____
      Black/African American (12) _____
      Asian (13) _____
      American Indian/Alaskan Native (14) _____
      Native Hawaiian/Other Pacific Islander (15) _____
      American Indian/Alaskan Native & White (16) _____
      Asian & White (17) _____
      Black/African American & White (18) _____
      American Indian/Alaskan Native & Black/African American (19) _____
      Other Multi-Racial (20) ____
      Of the total above, how many have a Hispanic ethnicity ____

Sample

FINANCIAL STATUS REPORT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52343 (04/07)

NORTH DAKOTA COMMUNITY DEVELOPMENT BLOCK GRANT		
Financial Status Report as of	Date Submitted	Signed by
I. RECIPIENT DATA	II. FINANCIAL STATUS	III. COMPLIANCE DATA
1) Instrument Number:	1) Total Award $	1) Report Number:
2) Recipient:	2) CDBG Receipts (+) $	2) Project Begin Date:
3) Address:	3) Program Income (-) $	3) Project End Date:
	4) CDBG Disbursements (-) $	☐ Semi-Annual ☐ Final
4) Contact:	5) EQUALS Cash Balance (=) $	
5) Telephone: (701)	6) Funds Available to Draw (1-2): $	

IV. ACTIVITY BUDGET

Activity	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds _____

Sample

V. ACTIVITY EXPENSES

ACTIVITY	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds *(if different from Budget)* _____

VI. REMAINING BUDGET BALANCE

ACTIVITY	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Locals	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds *(if different from Budget)* _____

Sample

VII. TOTAL OUTSTANDING OBLIGATIONS

ACTIVITY	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Locals	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds *(if different from Budget)* _____

Sample

INSTRUCTIONS

I. RECIPIENT DATA

1) CDBG Instrument Number
2) Recipient
3) Address
4) Contact Person
5) Telephone

II. FINANCIAL STATUS

1) Total Award - Including Approved Amendments
2) Receipts - Cash Received to Date from DCS
3) Program Income - Program Income Generated to Date
4) Disbursements - Cash Disbursements to Date
5) Cash Balance - Cash on Hand (2+3-4)
6) Funds Available to Draw (1-2)

III. COMPLIANCE DATA

1) Report Number - Numerical Order Starting with #1
2) Project Begin Date
3) Project End Date

IV. ACTIVITY BUDGET

Activity - Same as Part IV of Financial Award including approved amendments.
Amounts budgeted under each category.

V. ACTIVITY EXPENSE

Activity - Same as Budget. Formulas have been created so retyping the Activity will not be necessary.

VI. REMAINING BUDGET BALANCE

Activity - Same as Budget. Formulas have been created.

VII. OUTSTANDING OBLIGATIONS

Activity - Same as Budget. Formulas have been created so retyping will not be necessary.
Outstanding obligations under each category - dollars currently under contract which have not be paid.

SECTION 15 - GRANT AMENDMENTS

This section lists the types of grant amendments that may be requested, defines each type of amendment, describes the procedures for submitting an amendment request, and includes the form on which to request an amendment.

A. Types of Amendments

1. Extension of Time

2. Budget Revisions

3. Scope of Work

4. Special Conditions

B. Definitions

1. Extension of Time: This type of amendment must be requested when the grantee determines that all grant work cannot be completed prior to the grant expiration date.

2. Budget Revisions: This type of amendment must be requested when:

   a. A need exists for line item revisions within the administration budget which will exceed 10 percent of the total CDBG administration budget.

   b. The grantee wants to transfer administrative funds to an approved grant activity.

   c. The grantee decides not to implement an approved activity.

   d. The grantee wants to transfer unobligated funds from a completed activity to another activity.

   e. A need exists to make line item revisions which will exceed 10 percent of the total CDBG project budget, excluding administration.

3. Scope of Work

   This type of amendment must be requested when expanding or reducing the approved scope of work to be performed. For instance, if a grant was approved to rehabilitate 20 homes, but the grantee has enough funds to rehabilitate an additional 5 homes, an amendment must be submitted.

4. Special Conditions

   This type of amendment must be submitted if a grantee wishes to seek approval to modify, eliminate, or extend the time of a special condition on the grant award.

C. Procedures for Submitting and Acting on Request for Amendment

1. Request for Amendments, especially for extension of time, should be submitted no later than 30 days prior to the grant expiration date.

2. All amendments must be submitted on the Request for Amendment form and must be signed by the Chief Elected Official and the Regional Council Director.

3. If an amendment request is approved by the DCS, the Request for Amendment form will be returned reflecting signed approval. If the request is disapproved, a letter of explanation will be forwarded with the Request for Amendment form. Should the request be for an increase or decrease in the amount of total authorized funding, the approval will be transmitted on a new Part I to the Financial Award which must be signed. All approved amendments will become a part of the original Financial Award and will be subject to all applicable conditions and assurances.

   If the DCS finds that a Request for Amendment is for an action that has already taken place, the amendment will not be approved.

REQUEST FOR AMENDMENT

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52355 (11/11)

1. Recipient Name & Address	2. Instrument Number	3. Amendment Number
	4. Approved Grant Period	5. Date of Request

6. Type of Amendment

A. ☐ Special Condition B. ☐ Budget Revisions C. ☐ Scope of Work D. ☐ Extension of Time - Revised Date _____

7. Explanation for Request (Attach Additional Page if Necessary)

Approved # of Units _____ Revised # of Units _____

9. Effect of Request

a. Approved Budget	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
Total									

Source of Other Funds :

Sample

b. Additions and Deletions	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
Total									

*Source of Other Funds *(if different from Budget)* _____

c. Revised Budget	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
Total									

*Source of Other Funds *(if different from Budget)* _____

10. Submitted By (Chief Elected Official)	11. Regional Council Concurrence	12. Action Taken ***(DCS USE ONLY)***	
Signature _____ Name _____ Title _____ Date _____	Signature _____ Name _____ Title _____ Date _____	Approved ☐ Disapproved ☐	Signature _____ Name _____ Title _____ Date _____

Sample

REQUEST FOR AMENDMENT DIRECTIONS

Block 1: Enter the official mailing address of the grantee.

Block 2: Enter the DCS assigned Instrument Number from the Financial Award.

Block 3: Amendment requests are to be numerically accounted for locally. Indicate the appropriate request number.

Block 4: Enter the Approved Budget/Project Period from the Financial Award.

Block 5: Enter date of the preparation of the Request for Amendment.

Block 6: Place a mark in the appropriate space to reflect the type of amendment being requested.

Block 7: Provide a detailed explanation of the amendment, to include the reason and the results. For instance, if the request is for an increase in the number of homes to be rehabilitated, indicate the number of homes completed, the number of additional homes to be rehabilitated, the amount of funds available to rehabilitate the additional homes, and provide an explanation of why additional funds are available.

Block 8: To be completed if a change in the number of homes to be rehabilitated occurs.

Block 9: To be completed if a change in the Authorized Budget occurs.

a. Approved Budget
b. Revisions to the Budget including Additions and Deletions
c. Revised Budget

Block 10: Enter the name and title of the Chief Elected Official. This is the individual who signed the Financial Award.

SECTION 16 - GRANT CLOSE-OUT PROCEDURES

This section describes the close-out procedures to be used by the DCS and the grantee.

A. Initiation of Close-out

The grantee shall notify the DCS of grant completion through the submission of the Final Report. A grant may be contingently closed-out when all costs to be paid with grant funds have been incurred, with the exception of close-out costs such as payment for the final audit, and any unsettled third-party claims against the recipient. Costs are incurred when goods and services are received and/or contract work is performed.

B. Final Grantee Performance Report

Grantees must file a Final Performance Report within 30 days of project completion. Failure of the grantee to submit a report as required will not preclude the DCS from closing out a grant when such action is determined to be in the best interest of both parties. The failure or refusal by a grantee to comply with such requirement shall be taken into account in the performance determination by the DCS in reviewing any future grant applications from the grantee. Any excess grant amount which is otherwise authorized to be retained by the grantee must be refunded to the DCS in the event of the recipient's failure to furnish the report.

C. Close-out

A grant may be closed-out when all other responsibilities of the grantee under the grant agreement have been carried out satisfactorily, or there is no further State interest in keeping the grant agreement open for the purpose of securing performance.

Upon approval of the final report, a grant close out letter will be issued to the grantee notifying the grantee that the project is considered complete and the grant file is closed.

Annually, the DCS will survey grantees on the amount of federal fund expenditures it had in its most recent fiscal year. DCS staff will review audits of grantees expending more than $750,000 in federal funds. This may be accomplished through the grantee's submission of its audit to the Federal Audit Clearinghouse or a copy of the audit may be requested by the DCS. Corrective action plans must be submitted to the DCS for any audit finding related to CDBG Program funds.

The DCS must be notified on any audit finding relating to CDBG Program funds contained in audits that are not required to be filed with the Federal Audit Clearinghouse. Notification must take place within 90 days of the grantee's receipt of its audit.

D. Disposition of Program Income

All program income must be returned to the DCS, unless a preagreement has been made between the grentee and the DCS.

E. Disposition of Property

1. **Disposition of tangible personal property**. The grantee shall account for all tangible personal property acquired with grant funds.

2. **Disposition of real property**. Proceeds derived after the close-out from the disposition of real property acquired with grant funds are subject to the program income requirements.

F. Refund of Excess Grant Funds

The grantee shall refund to the DCS any cash advanced in excess of the final grant costs identified in the final report.

G. Grant Suspension and Termination

1. Suspension

When a grantee fails to comply with the grant award stipulations, standards, or conditions of its grant, the DCS may suspend the grant, withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action.

2. Termination

a. **Termination for Cause**. The DCS may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the grant. The DCS shall promptly notify the grantee in writing of the termination and the reasons for the termination, together with the effective date. Payments made to a grantee or a recovery by the DCS under grants terminated for cause shall be in accordance with the legal rights and liabilities of the parties. For this type of termination, the DCS will not honor any costs. If funds have been paid to the grantee, they must be repaid to the DCS.

b. **Termination for Convenience**. The DCS or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The DCS will consider all circumstances under which a grant is to be terminated and on a case-by-case basis determine if any eligible, incurred costs will be honored.

Final Report Checklist

Economic Development Projects: The report should be submitted as soon as all of the jobs have been created or retained and the final public hearing has been held.

- Final Performance Report (SFN 52344)
- Financial Status Report (SFN 52343)
- Employment Report – Job Creation (SFN 52345) or Employment Report – Job Retention (SFN 54032)
- Civil Rights Compliance Report (SFN 52350). Do not submit this form if you did not check "yes" to the displacement question on the final report cover page.
- Contract and Subcontract Activity Report (SFN 52351). For construction projects only. This form must be submitted with the Final Request for **Project Funds**.
- Labor Standards Enforcement Report (SFN 52352). If a complaint was filed against a contractor(s) or wage restitution (back pay) was paid by a contractor(s).
- Equipment Inventory (SFN 52353). If equipment was purchased.
- Confidential Job Applicant Income Survey (SFN 52665) forms. If the project created jobs.
- Confidential Job Retention Income Survey (SFN 52666) forms. If the project retains jobs.
- Final Public Hearing Notice and Minutes.

Public Facilities Area Benefit Activities: The report should be submitted as soon as the project is complete and the final public hearing has been held.

- Final Performance Report (SFN 52344)
- Financial Status Report (SFN 52343)
- Direct/Indirect Benefit Activities Report (SFN 52347) with supporting documentation
- Civil Rights Compliance Report (SFN 52350). Do not submit this form if you did not check "yes" to the displacement question on the final report cover page.
- Contract and Subcontract Activity Report (SFN 52351). For construction projects only. This form must be submitted with the Final Request for **Project Funds**.
- Labor Standards Enforcement Report (SFN 52352). If a complaint was filed against a contractor(s) or wage restitution (back pay) was paid by a contractor(s).
- Project Completion Certification (SFN 52354). For construction projects only.
- Equipment Inventory (SFN 52353). If equipment was purchased.
- Final Public Hearing Notice and Minutes.

Public Facilities Limited Clientele Activities: The report should be submitted as soon as the project is complete and the final public hearing has been held.

- Final Performance Report (SFN 52344)
- Financial Status Report (SFN 52343)
- Direct/Indirect Benefit Activities Report (SFN 52347) with supporting documentation
- Civil Rights Compliance Report (SFN 52350). Do not submit this form if you did not check "yes" to the displacement question on the final report cover page.
- Contract and Subcontract Activity Report (SFN 52351). For construction projects only. This form must be submitted with the Final Request for **Project Funds**.
- Labor Standards Enforcement Report (SFN 52352. (If a complaint was filed against a contractor(s) or wage restitution (back pay) was paid by a contractor(s).
- ADAAG Conformance Statement (SFN 19701). If the project is a removal of architectural barriers project.
- Final Public Hearing Notice and Minutes.

Housing Rehabilitation/Relocation/Creation: The report should be submitted as soon as the project is complete and the final public hearing has been held.

- Final Performance Report (SFN 52344)
- Financial Status Report (SFN 52343)
- Direct/Indirect Benefit Activities Report (SFN 52347). For creation only.
- Housing for Rehabilitation (SFN 52348). For rehabilitation projects only.
- Housing for Relocation (SFN 52349). For relocation projects only.
- Civil Rights Compliance Report (SFN 52350. Do not submit this form if you did not check "yes" to the displacement question on the final report cover page.
- Contract and Subcontract Activity Report (SFN 52351). For construction projects with 8 or more units only. This form must be submitted with the Final Request for **Project Funds**.
- Labor Standards Enforcement Report (SFN 52352. If a complaint was filed against a contractor(s) or wage restitution (back pay) was paid by a contractor(s).
- Equipment Inventory (SFN 52353). If equipment was purchased.
- Final Public Hearing Notice and Minutes.

FINAL PERFORMANCE REPORT

FINAL PERFORMANCE REPORT

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52344 (05/15)

CDBG FINAL PERFORMANCE REPORT			
RECIPIENT		INSTRUMENT NUMBER	
BUDGET/PROJECT PERIOD		PERIOD COVERED BY REPORT	
FROM *(Month, Day, Year)*	TO *(Month, Day, Year)*	FROM *(Month, Day, Year)*	TO *(Month, Day, Year)*
REPORT PREPARED BY		PHONE NUMBER	
PROJECT DESCRIPTION (DESCRIPTION MUST INCLUDE ANY CHANGES TO THE ORIGINALLY APPROVED DESCRIPTION)			
DID DISPLACEMENT OCCUR ON THIS PROJECT? IF YES, COMPLETE THE CIVIL RIGHTS COMPLIANCE REPORT FOUND IN THIS SECTION		☐ YES ☐ NO	
BY SIGNING THIS REPORT, I CERTIFY TO THE BEST OF MY KNOWLEDGE AND BELIEF THAT THE REPORT IS TRUE, COMPLETE, AND ACCURATE, AND THE EXPENDITURES, DISBURSEMENTS AND CASH RECEIPTS ARE FOR THE PURPOSES AND OBJECTIVES SET FORTH IN THE TERMS AND CONDITIONS OF THE FEDERAL AWARD. I AM AWARE THAT ANY FALSE, FICTITIOUS, OR FRAUDULENT INFORMATION, OR THE OMISSION OF ANY MATERIAL FACT, MAY SUBJECT ME TO CRIMINAL, CIVIL OR ADMINISTRATIVE PENALTIES FOR FRAUD, FALSE STATEMENTS, FALSE CLAIMS OR OTHERWISE.			
TYPE NAME CHIEF ELECTED OFFICIAL		TITLE	
SIGNATURE		DATE	

DCS USE ONLY

REVIEWED BY _____ DATE_____

☐ SECOND PUBLIC HEARING ☐ MINUTES TO PUBLIC HEARING ☐ 504 SELF EVALUATION

☐ INCOME SURVEY FORMS ☐ ADAAG FORM

Sample

FINANCIAL STATUS REPORT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52343 (04/07)

NORTH DAKOTA COMMUNITY DEVELOPMENT BLOCK GRANT		
Financial Status Report as of	Date Submitted	Signed by
I. RECIPIENT DATA	II. FINANCIAL STATUS	III. COMPLIANCE DATA
1) Instrument Number:	1) Total Award $	1) Report Number:
2) Recipient:	2) CDBG Receipts (+) $	2) Project Begin Date:
3) Address:	3) Program Income (-) $	3) Project End Date:
	4) CDBG Disbursements (-) $	☐ Semi-Annual ☐ Final
4) Contact:	5) EQUALS Cash Balance (=) $	
5) Telephone: (701)	6) Funds Available to Draw (1-2): $	

IV. ACTIVITY BUDGET

Activity	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds _____

Sample

V. ACTIVITY EXPENSES

ACTIVITY	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Local	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds *(if different from Budget)* _____

VI. REMAINING BUDGET BALANCE

ACTIVITY	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Locals	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds *(if different from Budget)* _____

Sample

VII. TOTAL OUTSTANDING OBLIGATIONS

ACTIVITY	CDBG	HOME	ESGP	HOPWA	Other Federal	State/Locals	Private	Other*	Total
Administration									
TOTAL									

*Source of Other Funds *(if different from Budget)* _____

Sample

NSTRUCTIONS

I. RECIPIENT DATA

1) CDBG Instrument Number
2) Recipient
3) Address
4) Contact Person
5) Telephone

II. FINANCIAL STATUS

1) Total Award - Including Approved Amendments
2) Receipts - Cash Received to Date from DCS
3) Program Income - Program Income Generated to Date
4) Disbursements - Cash Disbursements to Date
5) Cash Balance - Cash on Hand (2+3-4)
6) Funds Available to Draw (1-2)

III. COMPLIANCE DATA

1) Report Number - Numerical Order Starting with #1
2) Project Begin Date
3) Project End Date

IV. ACTIVITY BUDGET

Activity - Same as Part IV of Financial Award including approved amendments. Amounts budgeted under each category.

V. ACTIVITY EXPENSE

Activity - Same as Budget. Formulas have been created so retyping the Activity will not be necessary.

VI. REMAINING BUDGET BALANCE

Activity - Same as Budget. Formulas have been created.

VII. OUTSTANDING OBLIGATIONS

Activity - Same as Budget. Formulas have been created so retyping will not be necessary. Outstanding obligations under each category - dollars currently under contract which have not be paid.

EMPLOYMENT REPORT - JOB CREATION

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52345 (03/09)

COMMUNITY DEVELOPMENT BLOCK GRANT
FINAL REPORT – JOB CREATION

Project Name

1. Indicate in the table below, the number of jobs created as a result of CDBG assistance.

Type of Employment	Total Number of Jobs Created		Total Number of LMI Jobs Created*						Annual Wage Range
	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	
			0 - 30% Limit		31 - 50% Limit		51 - 80% Limit		
Officials & Managers									
Professional									
Technicians									
Sales									
Office & Clerical									
Craft Workers (skilled)									
Operatives (semi-skilled)									
Laborers (unskilled)									
Service Workers									
Totals									

*Low and moderate income (LMI) jobs are those positions filled by persons whose total household income did not exceed 80 percent of the median income for all households residing in the community at the time of being hired due to the business receiving CDBG funds.

2. Complete the table below for those positions reflected in #1.

	Total Number
a. White (11)	
b. Black/African American (12)	
c. Asian (13)	
d. American Indian/Alaskan Native (14)	
e. Native Hawaiian/Other Pacific Islander (15)	
f. American Indian/Alaskan Native & White (16)	
g. Asian & White (17)	
h. Black/African American & White (18)	
i. American Indian/Alaskan Native & Black/African American (19)	
j. Other Multi-Racial (20)	
Total	

3. Of the total above, the number with Hispanic Ethnicity

4. Number of jobs with employer sponsored health care benefits _____

5. Number of unemployed prior to taking jobs created under this assistance _____

6. If employment levels are less than initially proposed, explain reductions or indicate when proposed staffing goals will be met.

Signature of President or CEO	Date
Report Prepared By	Telephone Number of Business

Sample

EMPLOYMENT REPORT- JOB RETENTION
NORTH DAKOTA DEPARTMETN OF COMMERCE/DCS
SFN 54032 (04/07)

COMMUNITY DEVELOPMENT BLOCK GRANT
FINAL REPORT – JOB RETENTION

Project Name

1. Indicate in the table below, the number of jobs created as a result of CDBG assistance.

Type of Employment	Total Number of Jobs Retained		Total Number of LMI Jobs Retained*						Annual Wage Range
	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	
			0 - 30% Limit		31-50% Limit		51-80% Limit		
Officials & Managers									
Professional									
Technicians									
Sales									
Office & Clerical									
Craft Workers (skilled)									
Operatives (semi-skilled)									
Laborers (unskilled)									
Service Workers									
Totals									

*Low and moderate income (LMI) jobs are those positions filled by persons whose total household income did not exceed 80 percent of the median income for all households residing in the community at the time of being retained in a job due to the business receiving CDBG funds.

2. Complete the table below for those positions reflected in #1.

	Total Number
a. White (11)	
b. Black/African American (12)	
c. Asian (13)	
d. American Indian/Alaskan Native (14)	
e. Native Hawaiian/Other Pacific Islander (15)	
f. American Indian/Alaskan Native & White (16)	
g. Asian & White (17)	
h. Black/African American & White (18)	
i. American Indian/Alaskan Native & Black/African American (19)	
j. Other Multi-Racial (20)	
Total	

3. Of the total above, the number with Hispanic Ethnicity

4. Number of jobs with employer sponsored health care benefits

5. If employment levels are less than initially proposed, explain reductions or indicate when proposed staffing goals will be met.

Signature of President or CEO	Date
Report Prepared By	Telephone Number of Business

Sample

DIRECT/INDIRECT BENEFIT ACTIVITIES
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52347 (04/08)

***(Check One)*:** **DIRECT BENEFIT** ☐	**INDIRECT BENEFIT** ☐
Recipient	Instrument Number
Benefit Activity Data is being reported by (*check one)* ☐ Household ☐ Persons	
Number of Female Head of Household	Number of Elderly
Total Number of Direct or Indirect Beneficiaries	Number of Disabled
Number of Low and Moderate Income	Percent of LMI Benefit

Race/Ethnicity	Total Number	Number of Hispanic
a. White (11)		
b. Black/African American (12)		
c. Asian (13)		
d. American Indian/Alaskan Native (14)		
e. Native Hawaiian/Other Pacific Islander (15)		
f. American Indian/Alaskan Native & White (16)		
g. Asian & White (17)		
h. Black/African American & White (18)		
i. American Indian/Alaskan Native & Black/African American (19)		
j. Other Multi-Racial (20)		
Total		

If this project is Payment of Special Assessments, Construction of Rental Units, Acquisition or Construction of New Homeowner Units, Direct Financial Assistance to Homebuyers, or Short-term Rental Assistance, please refer to the instructions.

Sample

INSTRUCTIONS FOR
DIRECT/INDIRECT BENEFIT ACTIVITIES REPORT

Definition of Direct Benefit Activity: A direct benefit activity is defined as an activity which requires the beneficiary to submit an application or complete a personal record as an integral part of receiving the benefit of an activity. For example, in a housing rehabilitation program, an application is an essential part of determining need and eligibility. Other types of direct benefit activities would include relocation and payment of special assessments. Report by household.

Definition of Indirect Benefit Activity: An indirect benefit activity is defined as an activity for which an individual receives direct benefit but is not required to apply for the benefit. This would include residents on a street that is reconstructed or households hooked-up to a new water main. The activity is directed to the benefit of everyone, and no one is singled out to receive specific assistance. Other types of indirect benefit activities would include removal of architectural barrier projects, senior citizens projects, and area-wide activities in which at least 51% of the persons or households to be served are low and moderate income. In most cases, data will be reported by persons.

Grant Recipient: Enter the name of the grant recipient.

Instrument Number: Enter the instrument number assigned by the DCS.

Benefit Activity: Data is being reported by either household or persons (check one).

Number of Female Head of Household: Enter the number of female head of household served by the project.

Number of Elderly: Enter the number of elderly served by the project.

Total Number of Direct or Indirect Beneficiaries: Enter the total number of direct or indirect beneficiaries being served by the project.

Number of Disabled: Enter the number of disabled persons being served by the project.

Number of Low and Moderate Income: Enter the total number of low and moderate income persons or households being served by the project.

Percent of LMI Benefit: Enter the percent of LMI persons or LMI households benefitting. (Number of low and moderate income divided by total number of direct or indirect beneficiaries)

Race/Ethnicity: Enter the number of households or persons to benefit by race category (a-j) in the total number column. Enter the number of household or persons reported in the total number column with a Hispanic ethnicity in the number of Hispanic column.

Total: Must equal the total number of people or households in the service area.

Additional CDBG Beneficiary Data: If this project is Payment of Special Assessments, Construction of Rental Units, Acquisition/ Construction of New Homeowner Units, Direct Financial Assistance to Homebuyers, or Short-term Rental Assistance, complete the appropriate section of the form titled “Additional CDBG Beneficiary.”

ADDITIONAL CDBG BENEFICIARY DATA

Payment of Special Assessments -Supplemental A

1. Of the Total Households, the Number:

   a. Extremely Low Income (< 30% of Median) _____
   b. Low Income (31-50% of Median) _____
   c. Moderate Income (51-80% of Median) _____

Construction of Rental Units - Supplemental B

1. Of the Total Rental Units, the Number:

   a. Affordable Units _____
   b. Section 504 Accessible Units _____
   c. Units Qualified as Energy Star _____

2. Of the Total Number of Affordable Units, the Number:

   a. Units Occupied by Elderly _____
   b. Years of Affordability _____
   c. Units Subsidized with Project-based Rental Assistance by Another Federal, State Or Local Program _____

Acquisition/Construction New Homeowner Units - Supplemental C

1. Of the Total Owner Units, the Number:

   a. Affordable Units _____
   b. Years of Affordability Guaranteed _____
   c. Units Qualified as Energy Star _____
   d. Section 504 Accessible _____
   e. Households Previously Living in Subsidized Housing _____

2. Of the Number of Affordable Units, the Number:

   a. Occupied by Elderly _____
   b. Units Specifically Designated for Persons with HIV/AIDS _____
      1) of Those, the Number Specifically for Chronically Homeless _____
   c. Units Specifically Designated for Homeless _____
      1) of Those, the Number Specifically for Chronically Homeless _____

Sample

1. Of the Total Units, Specify the Following:

   a. Number of First-time Homebuyers _____
      1) of Those, the Number Receiving Housing Counseling _____
   b. Number Receiving Downpayment Assistance/closing Costs _____

Short-term Rental Assistance - Supplemental E

1. Of the Total Households Assisted, the Number:

   a. Receiving Short-term Rental Assistance (Not More than 3 Months) _____
   b. Number of Households Assisted Previously Homeless_____
      1) of Those, the Number of Chronically Homeless Households _____

HOUSING FOR REHABILITAITON

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52348 (01/12)

Households and Persons Assisted with Housing for Rehabilitation

Name of Recipient	Instrument Number

Assistance Provided by Income Group	Renters					Owners				Homeless*		Non-Homeless Special Needs (L)	Total (M)	Total Section 215 (N)
	Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or More) (C)	All Other Households (D)	Total Renters (E)	Elderly (E)	1st Time Homebuyers: With Children (G)	1st Time Homebuyers: All Others (H)	Total Homeowners (I)	Individuals (J)	Families (K)			
1. Extremely Low Income (0 to 30% MFI)**														
2. Very Low Income (31 to 50% MFI)**														
3. Other-Low Income (51 to 80% MFI)*														
4. Total-Low Income (Lines 1 + 2 + 3)														

* Homeless families and individuals assisted with transitional or permanent housing
** Or, based upon HUD adjusted income limits, if applicable

5. Additional Information	Units	6. Racial/Ethnic Composition of Low Income	Total Number	Number of Hispanic
Of the Total Units:		a. White (11)		
Affordable Units		b. Black/African American (12)		
Section 504 Accessible Units		c. Asian (13)		
Number Brought from Substandard to Standard Condition (HQS or Local Code)		d. American Indian/Alaskan Native (14)		
Number Qualified as Energy Star		e. Native Hawaiian/Other Pacific Islander (15)		
Number Brought into Compliance with Lead Safety Rules (24 CFR Part 35)		f. American Indian/Alaskan Native & White (16)		
Of the Total Affordable Units:		g. Asian & White (17)		
Years of Affordability Guaranteed		h. Black/African American & White (18)		
Number Subsidized with Project-Based Rental Assistance by Another Federal, State or Local Program		i. American Indian/Alaskan Native & Black/African American(19)		
Number Designated for Persons with HIV/Aids Including Number Receiving Assistance for Operations		j. Other Multi-Racial (20)		
Of the Units Designated for Persons with HIV/Aids, Number specifically for Chronically Homeless		k. TOTAL		
Permanently Housing Units Designated for Homeless Persons and Families, Including Units Receiving Assistance for Operations		Of the Total in 6K, Number that are Female Head of Household		
Of Permanent Housing Units Designated for Homeless Number for the Chronically Homeless				

SAMPLE

INSTRUCTIONS FOR HOUSEHOLDS AND PERSON ASSISTED WITH HOUSING FOR REHABILITATION AND RELOCATION

Definitions:

Assisted Household or Person - For the purpose of identification of goals, an assisted household or person is one which during the period covered by the annual plan will receive benefits through the investment of Federal funds, either alone or in conjunction with the investment of other public or private funds. The program funds providing the benefit(s) may be from any funding year or combined funding years. A renter is benefitted if the household or person takes occupancy of affordable housing that is newly acquired (standard housing), new rehabilitated, or newly constructed, and/or receives rental assistance through new budget authority. An existing homeowner is benefitted during the year if the home's rehabilitation is completed. A first-time homebuyer is benefitted if the home is purchased during the year. A homeless person is benefitted during the year if the person becomes an occupant of transition or permanent housing. A non-homeless person with special needs is considered as being benefitted, however, only if the provision of rental services is linked to the acquisition, rehabilitation, or new construction of a housing unit and/or the provision of rental assistance during the year. Households or person who will benefit from more than one program (e.g., a renter who receives rental assistance while occupying newly rehabilitated housing) must be counted only once. To be included in the goals, the household's housing unit must at a minimum, satisfy the HUD Section 8 Housing Quality Standards (see, e.g., 24 CFR Section 882.109).

Section 215 Affordable Housing

1. **Rental Housing**

   A rental housing unit is considered to be an affordable housing unit if it is occupied by a low income household or individual and bears a rent that is the lesser of (1) the Existing Section 8 Fair Market Rent (FMR) for comparable units in the area or, (2) 30 percent of the adjusted income of a household whose income equals 65 percent of the median income for the area, except that HUD may establish income ceilings higher or lower than 65 percent of the median because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

2. **Homeownership**

   (a) Housing that is for purchase (with or without rehabilitation) qualifies as affordable housing if it (1) is purchased by a low-income, first-time homebuyer who will make the housing his or her principal residence; and (2) has a sale price which does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act.

   (b) Housing that is to be rehabilitated, but is already owned by a household when assistance is provided, qualifies as affordable if the housing (1) is occupied by a low-income household which uses the housing as its principal residence, and (2) has a value, after rehabilitation, that does not exceed the mortgage limit for the type of single family housing for the area, as described above.

Note: These definitions apply for the purposes of enumerating the number of households assisted with housing meeting the 215 affordable housing definition regardless of the Federal funding source used in support of that housing.

General Instructions:

In completing this Table, report the number of households (or in the case of the homeless, families with children or individuals) which received assistance during the reporting period for each of the categories indicated.

The number of households assisted is to be provided by:

- Income category (i.e., very low-income at or below 30 percent income [Line 1]; very low-income above 30 percent of income, but at or below 50 percent of income [Line 2]; and other low-income [Line 3]);
- Housing type (i.e. renters [Columns A through D] and homeowners--both existing homeowners [Column F], and first-time buyers [Columns G and H]).

The number of homeless families with children or individuals assisted (Columns J & K) shall only be provided by income category. All persons who were homeless prior to being provided transitional or permanent housing assistance are to be reflected in Column J & K, even if the assistance resulted in them becoming renters or homeowners.

Of the total number of very low or other low-income households or homeless persons assisted (Column M), the number of households which occupied units meeting the "Section 215 Affordable Housing" criteria is to be entered in Column N.

The sum of the numbers entered in each line under Column E (Total Renters) and Column I (Total Homeowners) and Column J & K (Homeless) and Column L (non-homeless persons with special needs) should always equal the number entered under Column M (Total Goals).

Column M, Line 4 reflects the total number of low-income households and persons assisted during the reporting period. The grantee must break out that total number by racial\ethnic composition and enter the totals for each of the six racial\ethnic groups indicated on Line 5 (Racial\Ethnic Composition of Total Assisted Household-Line 4, Column M).

Specific Instructions:

Renters Assisted:

Column A-Elderly 1 or 2 Member Renter Households.

Line 1-Enter the number of **extremely low-income** 1 or 2 member elderly renter households with incomes **at or below 30 percent** of the median income for the area, as adjusted by HUD, who were assisted during the performance period (elderly renter households with more than 2 members should be entered under Columns B, C, or D, as appropriate.)

Line 2-Enter the number of **very low-income** 1 or 2 member elderly renter households with incomes **above 30 percent, but at or below 50 percent** of the median income for the area, as adjusted by HUD, who were assisted during the performance period (elderly renter households with more than 2 members should be entered under Columns B, C, or D, as appropriate.)

Line 3- Enter the number of **other low-income** 1 or 2 member elderly renter households assisted during the performance period (elderly renter households with more than 2 members should be entered under Columns B, C, or D, as appropriate.)

Line 4-Enter the sum of Lines 1, 2, and 3.

Columns B, C, and D.

Columns B through D are to be filled out in the same manner as Column A. Columns B through C pertain to renter households with 2 or more members of the household related by blood, marriage, or adoption, and excludes 1 or 2 person elderly households. Column D are for all other renter households not entered under Columns B through C.

Column E-Total Renters

Enter for each Line the sums of Columns A, B, C, and D.

Homeowners Assisted:

Column F-Elderly Assisted.

Enter the number of homeowners which, at the time of receiving assistance, are elderly. Column F is to be filled out for Lines 1, 2, 3, and 4 in the same manner as the preceding columns.

Columns G and H-First-time Homebuyers Assisted.

For Column G enter the number of households assisted to become first-time homebuyers (unless the persons were homeless prior to being assisted) who have minor children residing with the household. For Column H enter the number of households assisted to become first-time homebuyers without minor children residing with the household.

Column I-Total Homeowners.

Enter for each line the sums of Columns F, G and H.

Homeless Assisted:

Columns J and K-For Lines 1, 2, and 3, enter the total number of homeless families with children or individuals assisted with transitional and/or permanent housing during the reporting period and enter the total of these three lines on Line 4.

Column L-For Lines 1, 2, and 3, enter the total number of non-homeless persons with special needs who received supportive services <u>and</u> occupied newly acquired, newly rehabilitated, or newly constructed affordable housing and/or received rental assistance.

Total Households and Homeless Families with Children/Individuals Assisted:

Column M-Total Households and Homeless Families/Individuals Assisted.

Line 1-Enter the total number of very low-income households and homeless families with children/ individuals (with incomes at or below 30 percent of median income for the area, as adjusted by HUD) in Column M. This total is derived by adding Line 1 totals from Column E, Column I, and Columns J, K & L.

Line 2-Enter the total number of very low-income households and homeless families/individuals (with incomes above 30 percent, but at or below 50 percent of median income for the area, as adjusted by HUD) in Column M. This total is derived by adding Line 2 totals from Column E, Column I, and Columns J, K & L.

Line 3-Enter the total number of other low-income households and homeless families/individuals in Column M. This total is derived by adding Line 3 totals from Column E, Column I, and Columns J, K & L.

Line 4-Enter the total number of low-income households and homeless families/individuals in Column M. This total is derived by adding Line 3 totals from Column E, Column I, and Columns J, K & L.

Column N-Number of Households Occupying Units Meeting the Section 215 Definition.

Line 1-Enter the total number of very low-income households with incomes at or below 30 percent of the median income for the area, as adjusted by HUD, from Line 1, Column M that occupy housing units meeting the definition of "Section 215 Affordable Housing."

Line 2-Enter the total number of very low-income households with incomes above 30 percent, but at or below 50 percent of the median income for the area, as adjusted by HUD, from Line 2, Column M that occupy housing units meeting the definition of "Section 215 Affordable Housing."

Line 3-Enter the total number of very low-income households from Line 3, Column M that occupy housing units meeting the definition of "Section 215 Affordable Housing."

Line 4-Enter the sum of Lines 1, 2, and 3, Column M.

Line 5-For Line 5, identify the number of Hispanic households, as well as the number of non-Hispanic households by the five non-Hispanic racial/ethnic categories identified below, which were assisted during the reporting period. The State's entered amounts must total Line 4, Column M.

Additional Information:

Enter the additional information required.

Racial/Ethnic Composition of Low Income:

Total Number - enter the total number from #4, Column M, by race category.

No. of Hispanic - enter the number of people reported in the Total Number Column with a Hispanic ethnicity.

Of the total in 6K., number that are Female Head of Household

HOUSING FOR RELOCATION

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52349 (04/07)

Households and Persons Assisted with Housing for Relocation

Name of Recipient	Instrument Number

Assistance Provided by Income Group	Renters					Owners				Homeless*			Total (M)	Total Section 215 (N)
	Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or More) (C)	All Other Households (D)	Total Renters (E)	Existing Homeowners (F)	1st Time Homebuyers: With Children (G)	1st Time Homebuyers: All Others (H)	Total Homeowners (I)	Individuals (J)	Families (K)	Non-Homeless Special Needs (L)		
1. Very Low Income (0 to 30% MFI)**														
2. Very Low Income (31 to 50% MFI)**														
3. Other-Low Income (51 to 80% MFI)*														
4. Total-Low Income (Lines 1 + 2 + 3)														

* Homeless families and individuals assisted with transitional or permanent housing
** Or, based upon HUD adjusted income limits, if applicable

5. Racial/Ethnic Composition of Low Income	Total Number	No. of Hispanic
a. White (11)		
b. Black/African American (12)		
c. Asian (13)		
d. American Indian/Alaskan Native (14)		
e. Native Hawaiian/Other Pacific Islander (15)		
f. American Indian/Alaskan Native & White (16)		
g. Asian & White (17)		
h. Black/African American & White (18)		
i. American Indian/Alaskan Native & Black/African American (19)		
j. Other Multi-Racial (20)		
k . Total		
Of the total in 5K., number that are Female Head of Household		

6. Rehabilitation Activity by Household

Plumbing _____ Electrical _____ Heating _____ Weatherization _____ Other _____

Sample

NSTRUCTIONS FOR HOUSEHOLDS AND PERSON ASSISTED WITH HOUSING FOR REHABILITATION AND RELOCATION

Definitions:

Assisted Household or Person - For the purpose of identification of goals, an assisted household or person is one which during the period covered by the annual plan will receive benefits through the investment of Federal funds, either alone or in conjunction with the investment of other public or private funds. The program funds providing the benefit(s) may be from any funding year or combined funding years. A renter is benefitted if the household or person takes occupancy of affordable housing that is newly acquired (standard housing), new rehabilitated, or newly constructed, and/or receives rental assistance through new budget authority. An existing homeowner is benefitted during the year if the home's rehabilitation is completed. A first-time homebuyer is benefitted if the home is purchased during the year. A homeless person is benefitted during the year if the person becomes an occupant of transition or permanent housing. A non-homeless person with special needs is considered as being benefitted, however, only if the provision of rental services is linked to the acquisition, rehabilitation, or new construction of a housing unit and/or the provision of rental assistance during the year. Households or person who will benefit from more than one program (e.g., a renter who receives rental assistance while occupying newly rehabilitated housing) must be counted only once. To be included in the goals, the household's housing unit must at a minimum, satisfy the HUD Section 8 Housing Quality Standards (see, e.g., 24 CFR Section 882.109).

Section 215 Affordable Housing

1. **Rental Housing**

   A rental housing unit is considered to be an affordable housing unit if it is occupied by a low income household or individual and bears a rent that is the lesser of (1) the Existing Section 8 Fair Market Rent (FMR) for comparable units in the area or, (2) 30 percent of the adjusted income of a household whose income equals 65 percent of the median income for the area, except that HUD may establish income ceilings higher or lower than 65 percent of the median because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

2. **Homeownership**

   (a) Housing that is for purchase (with or without rehabilitation) qualifies as affordable housing if it (1) is purchased by a low-income, first-time homebuyer who will make the housing his or her principal residence; and (2) has a sale price which does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act.

   (b) Housing that is to be rehabilitated, but is already owned by a household when assistance is provided, qualifies as affordable if the housing (1) is occupied by a low-income household which uses the housing as its principal residence, and (2) has a value, after rehabilitation, that does not exceed the mortgage limit for the type of single family housing for the area, as described above.

Note: These definitions apply for the purposes of enumerating the number of households assisted with housing meeting the 215 affordable housing definition regardless of the Federal funding source used in support of that housing.

General Instructions:

In completing this Table, report the number of households (or in the case of the homeless, families with children or individuals) which received assistance during the reporting period for each of the categories indicated.

The number of households assisted is to be provided by:

- Income category (i.e., very low-income at or below 30 percent income [Line 1]; very low-income above 30 percent of income, but at or below 50 percent of income [Line 2]; and other low-income [Line 3]);

- Housing type (i.e. renters [Columns A through D] and homeowners--both existing homeowners [Column F], and first-time buyers [Columns G and H]).

The number of homeless families with children or individuals assisted (Columns J & K) shall only be provided by income category. All persons who were homeless prior to being provided transitional or permanent housing assistance are to be reflected in Column J & K, even if the assistance resulted in them becoming renters or homeowners.

Of the total number of very low or other low-income households or homeless persons assisted (Column M), the number of households which occupied units meeting the "Section 215 Affordable Housing" criteria is to be entered in Column N.

The sum of the numbers entered in each line under Column E (Total Renters) and Column I (Total Homeowners) and Column J & K (Homeless) and Column L (non-homeless persons with special needs) should always equal the number entered under Column M (Total Goals).

Column M, Line 4 reflects the total number of low-income households and persons assisted during the reporting period. The grantee must break out that total number by racial\ethnic composition and enter the totals for each of the six racial\ethnic groups indicated on Line 5 (Racial\Ethnic Composition of Total Assisted Household-Line 4, Column M).

Specific Instructions:

Renters Assisted:

Column A-Elderly 1 or 2 Member Renter Households.

Line 1-Enter the number of **very low-income** 1 or 2 member elderly renter households with incomes **at or below 30 percent** of the median income for the area, as adjusted by HUD, who were assisted during the performance period (elderly renter households with more than 2 members should be entered under Columns B, C, or D, as appropriate.)

Line 2-Enter the number of **very low-income** 1 or 2 member elderly renter households with incomes **above 30 percent, but at or below 50 percent** of the median income for the area, as adjusted by HUD, who were assisted during the performance period (elderly renter households with more than 2 members should be entered under Columns B, C, or D, as appropriate.)

Line 3- Enter the number of **other low-income** 1 or 2 member elderly renter households assisted during the performance period (elderly renter households with more than 2 members should be entered under Columns B, C, or D, as appropriate.)

Line 4-Enter the sum of Lines 1, 2, and 3.

Columns B, C, and D.

Columns B through D are to be filled out in the same manner as Column A. Columns B through C pertain to renter households with 2 or more members of the household related by blood, marriage, or adoption, and excludes 1 or 2 person elderly households. Column D are for all other renter households not entered under Columns B through C.

Column E-Total Renters

Enter for each Line the sums of Columns A, B, C, and D.

Homeowners Assisted:

Column F-Existing Homeowners Assisted.

Enter the number of homeowners which, at the time of receiving assistance, owned their existing homes. Column F is to be filled out for Lines 1, 2, 3, and 4 in the same manner as the preceding columns.

Columns -G and H-First-time Homebuyers Assisted.

For Column G enter the number of households assisted to become first-time homebuyers (unless the persons were homeless prior to being assisted) who have minor children residing with the household. For Column H enter the number of households assisted to become first-time homebuyers without minor children residing with the household.

Column I-Total Homeowners.

Enter for each line the sums of Columns F, G and H.

Homeless Assisted:

Columns J and K-For Lines 1, 2, and 3, enter the total number of homeless families with children or individuals assisted with transitional and/or permanent housing during the reporting period and enter the total of these three lines on Line 4.

Column L-For Lines 1, 2, and 3, enter the total number of non-homeless persons with special needs who received supportive services <u>and</u> occupied newly acquired, newly rehabilitated, or newly constructed affordable housing and/or received rental assistance.

Total Households and Homeless Families with Children/Individuals Assisted:

Column M-Total Households and Homeless Families/Individuals Assisted.

Line 1-Enter the total number of very low-income households and homeless families with children/ individuals (with incomes at or below 30 percent of median income for the area, as adjusted by HUD) in Column M. This total is derived by adding Line 1 totals from Column E, Column I, and Columns J, K & L.

Line 2-Enter the total number of very low-income households and homeless families/individuals (with incomes above 30 percent, but at or below 50 percent of median income for the area, as adjusted by HUD) in Column M. This total is derived by adding Line 2 totals from Column E, Column I, and Columns J, K & L.

Line 3-Enter the total number of other low-income households and homeless families/individuals in Column M. This total is derived by adding Line 3 totals from Column E, Column I, and Columns J, K & L.

Line 4-Enter the total number of low-income households and homeless families/individuals in Column M. n N-Number of Households Occupying Units Meeting the Section 215 Definition.

Line 1-Enter the total number of very low-income households with incomes at or below 30 percent of the median income for the area, as adjusted by HUD, from Line 1, Column M that occupy housing units meeting the definition of "Section 215 Affordable Housing."

Line 2-Enter the total number of very low-income households with incomes above 30 percent, but at or below 50 percent of the median income for the area, as adjusted by HUD, from Line 2, Column M that occupy housing units meeting the definition of "Section 215 Affordable Housing."

Line 3-Enter the total number of very low-income households from Line 3, Column M that occupy housing units meeting the definition of "Section 215 Affordable Housing."

Line 4-Enter the sum of Lines 1, 2, and 3, Column M.

Line 5-For Line 5 identify the number of Hispanic households, as well as the number of non-Hispanic households by the five non-Hispanic racial/ethnic categories identified below, which were assisted during the reporting period. The State's entered amounts must total Line 4, Column M.

Racial/Ethnic Composition of Low Income:

Total Number - enter the total number from #4, Column M by race category.

No. of Hispanic - enter the number of people reported in the Total Number Column with a Hispanic ethnicity.

Of the total in 5K., number that are Female Head of Household.

Rehabilitation Activity by Household:

Enter the total number of households by specific category of rehabilitation activity.

NOTE: Other Accomplishments for rehabilitation activities that do not result in a housing unit being brought up to standard condition (e.g., emergency rehab or weatherization programs), activities undertaken without Federal funds, or activities assisting homeless and non-homeless persons with special needs and not linked to the provision of supportive, transitional or permanent housing, may be reported separately at the bottom of this table or on a separate page

CIVIL RIGHTS COMPLIANCE REPORT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52350 (06/12)

NORTH DAKOTA CDBG PROGRAM CIVIL RIGHTS COMPLIANCE REPORT DISPLACEMENT OF LOW AND MODERATE INCOME HOUSEHOLDS		
1. Recipient	2. Instrument Number	
3. Attach Narrative Description of Actions Taken to Mitigate Adverse Effects		
4. Community or Project Area (indicate if activity is city-wide or is in a designated target area. If a target area, indicate location)		
5. Low and Moderate Income Households Displaced During the Program	Total Number	Total Hispanic
a. White (11)		
b. Black/African American (12)		
c. Asian (13)		
d. American Indian/Alaskan Native (14)		
e. Native Hawaiian/Other Pacific Islander (15)		
f. American Indian/Alaskan Native & White (16)		
g. Asian & White (17)		
h. Black/African American & White (18)		
i. American Indian/Alaskan Native & Black/African American (19)		
j. Other Multi-Racial (20)		
Totals		
6. Low and Moderate Income Households Relocated During the Completed Program		
(Displaced Households Relocating Out of the Community or Project Area)	Total Number	Total Hispanic
a. White (11)		
b. Black/African American (12)		
c. Asian (13)		
d. American Indian/Alaskan Native (14)		
e. Native Hawaiian/Other Pacific Islander (15)		
f. American Indian/Alaskan Native & White (16)		
g. Asian & White (17)		
h. Black/African American & White (18)		
i. American Indian/Alaskan Native & Black/African American (19)		
j. Other Multi-Racial (20)		
Totals		
(Displaced Households Remaining in the Community or Project Area)	Total Number	Total Hispanic
a. White (11)		
b. Black/African American (12)		
c. Asian (13)		
d. American Indian/Alaskan Native (14)		
e. Native Hawaiian/Other Pacific Islander (15)		
f. American Indian/Alaskan Native & White (16)		
g. Asian & White (17)		
h. Black/African American & White (18)		
i. American Indian/Alaskan Native & Black/African American (19)		
j. Other Multi-Racial (20)		
Totals		

SAMPLE

INSTRUCTIONS FOR COMPLETING DISPLACEMENT OF LOW AND MODERATE INCOME HOUSEHOLDS

1. Recipient. City or County

2. Instrument Number. State Assigned Number

3. Narrative. Describe actions to assist displaced persons to remain in neighborhood when they prefer, and to mitigate adverse effects resulting from displacement.

4. Community or Project Area. Indicate if activity is city-wide or is in a designated target area. If in a target area, indicate location.

5. Low and Moderate Income Households Displaced. Enter amount for each category (a-j) in the total number column. Enter amount for each category (a-j) with Hispanic origin in total Hispanic column.

6. Low and Moderate Income Households Relocated. Enter the number of displaced households relocating out of the community or project area for each category (a-j) in total number column and enter the amount for each category (a-j) with Hispanic origin in total Hispanic column. Enter the number of displaced households remaining in the community or project area for each category (?-?). In the total number column and enter the amount for each category (?-?) with Hispanic origin in the total Hispanic column.

CONTRACT AND SUBCONTRACT ACTIVITY

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52351 (08/13)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
CONTRACT AND SUBCONTRACT ACTIVITY

(1) Recipient Name		(2) Quarter Reporting (Check which is Applicable)	(3) Date Submitted
(4) Contact Person	(5) Phone	☐ Oct-Dec ☐ Jan-Mar ☐ Apr-Jun ☐ Jul-Sep	(6) Instrument Number

Amount of Contract (7)	Section 3 Contractor (8)	Type of Trade (1-3)* (9)	Business Code (10)		Contractor Federal ID Number (11)	Subcontractor Federal ID Number (12)	ND Contractor License Number (13)	Name (14)	Street	City	State	Zip
			1-6**	Y/N								

* 1. Construction
2. Education/ Training
3. Other

** 1. White
2. Black Americans
3. Native Americans
4. Hispanic Americans
5. Asian/Pacific Americans
6. Hasidic Jews

Sample

INSTRUCTIONS

This report is to be used by grantees to report contract and subcontract activities under the Community Development Block Grant and HOME program. Grantees should also include contracts entered into by recipients of HOME rehabilitation assistance. Business racial/ethnic code is to be used to designate the racial/ethnic character of the business entity receiving a contract or subcontract. To be classified in a particular racial/ethnic category, a business entity must be 51% or more owned and controlled by the racial/ethnic groups members of the category. When a business is not 51% or more owned and controlled by a single racial/ethnic group, enter the code for the group which seems most appropriate.

The contractor's ID Number is to be shown on all prime contracts and on all subcontracts. On subcontracts, the sub-contractor's ID Number is also to be shown. When entering a subcontract show only the amount of the subcontract and the "type of trade" and "business racial/ethnic code" of the subcontractor. The form is to be completed as follows:

1. Recipient Name. Enter the name of the unit of government or grant recipient submitting report of contract/subcontract activity.

2. Quarter Reporting. Check which quarter is applicable.

3. Date Submitted. Enter date the report is submitted to Area Office.

4. Contact Person. Enter name and phone number of person responsible for maintaining and submitting contract data.

5. Telephone Number. Enter the telephone number.

6. Instrument Number. Enter the DCS Community Development Block Grant or HOME Identification Number.

7. Amount of Contract. Enter the dollar amount of the contract or subcontract. Round the figures to the nearest thousand dollars. If subcontractor ID Number is provided, the dollar figure would be for the subcontract only – not the prime contract.

8. Section 3 Contractor. If the unit of local government or grant recipient received an award of $200,000 and awarded any single contract in excess of $100,000 the contract would be a Section 3 covered contract. If the contact was not a Section 3 covered contract, indicate with an N/A. If it is a Section 3 covered contract, enter Yes, if a Section 3 contractor was hired or no if a Section 3 contractor was not hired. (Refer to your Administrative or Pre-Construction manual for the definition of a Section 3 contractor.

9. Type of Trade. Enter the numeric code (1 through 3) which best indicates the contractor's/ subcontractor's service. If Subcontractor ID Number is provided, the type of trade code would be for the subcontractor only – not the prime contractor. The other category includes supply, professional services and all other activities except construction and education/ training activities.

10. Business Code. Enter the code (1 through 10) which indicates the ethnic background of the contractor/subcontractor, also enter in Y (yes) or N (no) if the business is a women business enterprise. If the Subcontractor ID Number is provided, the code would apply to the Subcontractor not the prime contractor.

11. Prime Contractor Federal ID Number. Enter Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HOME or CDBG funds. Note that the Employer Number must be provided for each contract/ subcontract award.

12. Subcontractor Federal ID Number. Enter Employer (IRS) Number of the Subcontractor as the unique identifier for each subcontract awarded from HOME or CDBG funds. When Subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.

13. ND Contractor License Number. Enter the North Dakota Contractor License Number for each contractor/subcontract that worked on the project.

14. Contractor/Subcontractor Name and Address. Enter the name and address information for each firm receiving con-tract/subcontract activity. This information need be provided only one time on each report for each firm.

PROJECT COMPLETION CERTIFICATION
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52354 (08/02)

COMMUNITY DEVELOPMENT BLOCK GRANT
PROJECT COMPLETION CERTIFICATION

This form needs to be completed and submitted with the Final Report for all projects that would not normally require an on-site visit by the DCS. (i.e., water, sewer, and lagoon projects)

I certify that the City/County of _____
Community Development Block Grant project, Instrument # _____
for _____
has been completed according to the Financial Award Activity Description. Construction commenced on _____ and was completed on _____.

Sample

Mayors Signature	General Contractors Signature	Date
Mayor	General Contractor	Date
If Applicable Engineers Signature	Engineering Firm	Date

LABOR STANDARDS ENFORCEMENT REPORT
NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS
SFN 52352 (05/02)

This form must be completed for all construction projects

LABOR STANDARDS ENFORCEMENT REPORT	
Recipient	Instrument Number
1. List employers (contractors) against whom labor complaints were received:	
Employer/Contractor	Federal ID Number

2. List cases referred to HUD or DOL for investigation or a 5.11 hearing:

Employer/Contractor	Federal ID Number	To HUD or DOL	Invest or Hear

3. Number of workers for whom wage restitution was disbursed _____.

4. Total amount of wage restitution disbursed _____.

5. Total amount of liquidated damages collected _____.

Sample

EQUIPMENT INVENTORY

NORTH DAKOTA DEPARTMENT OF COMMERCE/DCS

SFN 52353 (04/05)

CDBG/HOME
EQUIPMENT INVENTORY

Company	Address	City

Equipment Description	Manufacturer	Model Number	Serial Number	Date of Purchase	Purchase Price	Location	Verification Date

Sample

EQUIPMENT VERIFICATION

For a project that involves the use of CDBG funds to purchase equipment, the recipient is responsible for verifying the purchase. At a minimum, verification procedures must include one on-site visit to determine that the purchase of equipment was made in accordance with the Financial Award and loan agreements. In addition, the recipient must develop and maintain (for three years following grant close-out) equipment inventory records identifying the equipment purchased with CDBG funds.

In order to provide guidance on the type of inventory record to develop and maintain, we have developed a CDBG Equipment Inventory form. This form is to be submitted to the Division of Community Services (DCS) with the Final Report. The following information is to be documented on the inventory form:

- Equipment Description
- Manufacturer
- Model Number
- Serial Number
- Date of Purchase
- Purchase Price
- Location
- Verification Date

SAMPLE FORM OF ORDINANCE
CODE OF CONDUCT

CAVEAT

This sample is for purposes of illustration only. Grantees are directed to develop and adopt individualized Conduct Codes as specified in OMB Circular A-102, Attachment O, Paragraph 7.

PURPOSE

The purpose of this Code of Conduct is to ensure the efficient, fair, and professional administration of federal grant funds in compliance with federal Office of Management and Budget (OMB) Circular A-102, Attachment O, Paragraph 7 and other applicable federal and state standards, regulations, and laws.

APPLICATION

This Code of Conduct applies to all officers, employees, or agents of the (City of/County) engaged in the award or administration of contracts supported by federal grant funds.

REQUIREMENTS

No officer, employee, or agent of the (City of/County) shall participate in the selection, award, or administration of a contract supported by federal 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

has a financial or other interest in the firm selected for award.

The (City of/County) officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or subcontractors.

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 the (City's/County's) officers, employees, or agents, or the contractor's, potential contractors, subcontractors, or their agents.

EFFECTIVE DATE

This ordinance shall be effective upon publication.

Passed this _____ day of _____, _____.

(Signature)

Mayor- (Typed Name)

ATTEST:

(Signature)

_____
Clerk - (Typed Name)

APPENDIX B

Section 3 Compliance

Revised 3/4/2015

Prepared By

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EQUAL HOUSING OPPORTUNITY

ALTERNATIVE FORMATS FOR DISABLED PERSONS ARE AVAILABLE UPON REQUEST

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North Dakota Department of Community Services (DCS) does not discriminate on the basis of race, color, creek, national origin, sex, religion, marital status, status with regard to public assistance, disability, familial status, or sexual or affectional orientation in the provision of services.

Introduction

Section 3 is a provision in the Housing and Urban Development Act of 1968 with a goal of providing economic opportunities to “Section 3 Residents” and “Section 3 Business Concerns” where “Section 3 Covered Assistance” from HUD is expended on a “Section 3 Covered Project.”

Section 3 applies to certain federally funded activities and the entities involved in them. See Attachment B for a depiction of how, when, where, and to whom Section 3 applies.

Chapter 1 – Section 3

1.01 What is a Section 3 Covered Project?

For DCS's purposes, construction or rehabilitation of housing (including reduction of lead-based paint hazards) or other public construction such as street repair, sewage line repair or installation, updates to facades, etc.

1.02 What is a Section 3 Business Concern?

A business that can provide evidence that they meet one of the following criteria:

- At least 51% owned by Section 3 residents,
- At least 30% of its F.T. employees are Section 3 residents, or were Section 3 residents within 3 years of their first employment with the company,
- Provide evidence of a commitment to subcontract more than 25% of the dollar award of all subcontracts to business concerns that meet the first two bullets.

A business must complete Attachment F - Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability for DCS to determine whether or not it is a Section 3 business.

1.03 What is Section 3 Covered Assistance?

With respect to DCS's programs, it is assistance provided under most HUD funding expended for housing and community development assistance, which includes housing rehabilitation, housing construction, or other public construction.

1.04 What is a Section 3 Covered Contract?

A contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. It does not include contracts for the purchase of supplies and materials without installation.

1.05 What is a Section 3 Resident?

A resident of the metropolitan statistical area or Non-metropolitan County in which the Section 3 covered assistance is expended who is either:

- A public housing resident; or
- A low or very low-income person.

To determine if a resident meets the Section 3 definition, the resident must complete and submit the Resident Employment Opportunity Data form (Attachment G) to the employer.

1.06 Reporting Requirements

Owners are required to collect a Section 3 Data Form from each contractor and subcontractor working on Section 3 covered projects. The forms will cover the period from July 1 of each year (the beginning of our program year) to either the completion of the project, or June 30 of the following year, whichever occurs first. The data form is attached as Attachment L.

1.07 What is a Recipient?

A "recipient" is any entity that receives Section 3 covered assistance either directly from HUD or from another recipient.

Examples of recipients would be:

- Nonprofits
- Local Governments
- Developers who receive Section 3 covered assistance from DCS and are not doing any of the construction themselves, but are contracting with others to conduct construction.

1.08 Who is not a Recipient?

- Contractors are not recipients. Contractor means any entity contracted by a Recipient to perform construction.
- The ultimate beneficiary under a HUD program is not a recipient. An example of an "ultimate beneficiary" is a:
  - A tenant living in an assisted property.

1.09 Who is Affected?

- Recipients of more than $200,000 of Section 3 covered assistance; and,
- Their contractors and subcontractors with contracts of more than $100,000 for housing construction, and public construction **regardless of the source of funds to pay the contract**. See Attachment B.

For example, an owner (recipient) combines $300,000 HOME funds with $120,000 of project reserves for a total project cost of $420,000. Even though the recipient chooses to pay the $120,000 contract for heating system replacement with project reserves, that heating contractor is subject to Section 3.

1.10 Numerical Goals aka Safe Harbor

DCS is evaluated according to how well it, its sub-recipients, and contractors and subcontractors meet the following numerical goals with respect to Section 3 covered projects:

- 30% of aggregate *new* hires of recipients, contractors, and subcontractors for the year are Section 3 residents.

- At least 10% of the total dollar amount of all Section 3 covered contracts for construction-type work is awarded to Section 3 business concerns.
- At least 3% of the total dollar amount of all other Section 3 covered contracts is awarded to Section 3 business concerns; for example, architectural or accounting services required by a construction contract.

1.11 Recipient Responsibilities

DCS and its sub-recipients are recipients for purposes of Section 3. As recipients, we and they are responsible for the actions specified in 24 CFR 135.32:

- Complying with Section 3 in their own operations and in the operations of their contractors and subcontractors.
- Implementing procedures designed to notify Section 3 residents about training and employment opportunities and Section 3 covered businesses about contracting opportunities generated by Section 3 covered assistance.
- Notifying potential contractors of the Section 3 requirements and incorporating the Section 3 Clause in §135.38 in all solicitations and contracts.
- Facilitate the training and employment of Section 3 residents and the award of contracts to Section 3 business concerns by undertaking activities such as described in the Appendix to part 135 (see Attachment D).
- Obtain the compliance of contractors and subcontractors and do not enter into contracts when it has notice or knowledge that a contractor has violated part 135.
- Document steps taken to comply with part 135, the results of actions taken and impediments.
- DCS, having distributed funds to local governments and/or owners/developers, must attempt to reach the numerical goals of §135.30; must inform the local government and/or owners/developers of Section 3 requirements; assist them and their contractors to meet Section 3's requirements and objectives; and monitor the performance of local governments with respect to the objectives and requirements of part 135.

At time of project selection DCS will provide this Section 3 Guide packet that includes Attachments A-L to assist the owner in complying with Section 3 requirements.

1.12 Contractor/Subcontractor Responsibilities

- If the contractor/subcontractor must hire ***new*** employees to complete the project or needs to subcontract portions of the work to another business, they are required to direct their newly created employment and subcontracting opportunities to Section 3 residents and Section 3 business concerns to try to reach the numerical goals specified above.

- Undertake, document, and report to the recipient their efforts to offer training and employment opportunities to Section 3 residents when hiring is required for the project; and their efforts to award contracts to Section 3 business concerns.

- Report to the recipient their hiring and contracting results.
- Include the "Section 3 Clause" in all their Section 3 covered contracts.

Recipients must provide Attachment E (Contractor/Subcontractor Section 3 Compliance Checklist) to prospective contractors before bidding, but no later than acceptance of a contractor's bid, to make them aware of all their Section 3 responsibilities.

1.13 Sec. 135.38 Section 3 Clause

All Section 3 covered contracts shall include the Section 3 clause contained in Attachment H in their bid package and contracts.

Attachment Index

Attachment A	Attachment Guide for Section 3
Attachment B	How, When, Where and To Whom Section 3 Applies
Attachment C	Recipient Section 3 Compliance Checklist
Attachment D	Appendix to Part 135
Attachment E	Contractor/Subcontractor Section 3 Compliance Checklist
Attachment F	Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capacity
Attachment G	Resident Employment Opportunity Data
Attachment H	Section 3 Clause
Attachment I	Contractor/Subcontractor Section 3 Compliance Plan
Attachment J	Contractor Compliance Plan
Attachment K	Contractor Compliance Activity Report
Attachment L	Section 3 Data

Attachment A

Section 3 – Attachments Guide for Section 3

ATTACHMENT & NAME	WHO RECEIVES	WHEN GIVEN	WHO & WHEN RETURNS
Attachment A – Attachments Guide for Section 3	• Owner/Developer • Contractor • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • A copy of the Guide and all attachments must be included in all bid packages	• Owner/Developer • Contractor • Return the signed original with bid package (HOME) or with Labor Standards Information (CDBG)
Attachment B – how, when, where, and to whom Section 3 applies	• Owner/Developer • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • Include in bid package	• Owner keeps for reference
Attachment C – Recipient Section 3 Compliance Checklist	• Owner/Developer • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • Include in bid package • Include in all contracts	• Owner/Developer • Returns the signed original with the bid package (HOME) or with Labor Standards Information (CDBG)
Attachment D – Appendix to Part 135 – Examples of efforts to offer training and employment opportunities to Section 3 residents; Examples to Efforts to award contracts to Section 3 Business Concerns; and	• Owner/Developer, • Contractor, Subcontractor • Management and administrative jobs* • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • Contractors – include with bid package • Management and administrative jobs* • Include with bid package	• Owner/Developer • Contractor, Subcontractor and • Management and administrative jobs* • Return the signed original with the bid packages
Attachment E – Contractor/ Subcontractor Section 3 Compliance Checklist	• Owner/Developer • Contractor / Subcontractor • Management and administrative jobs* • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • Include with bid package	• Contractor, Subcontractors • Management and administrative jobs* • Return the signed original with the bid packages (HOME) Labor Standards Information (CDBG)
Attachment F – Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability	• Owner/Developer • Contractors and Subcontractor • Management and administrative jobs* • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • Include in bid package	• Contractor, Subcontractor returns with bid package • Management and administrative jobs • Return when contract signed, if applicable
Attachment G – Resident Employment Opportunity Data	• Owner /Developer • General Contractor • Management and administrative jobs* • Local Government	• With the Section 3 Owner's Guide – include with the selection letter • Include in bid package	• Contractor, Subcontractor and • Submit with Energy Draw

Attachment H– Section 3Clause	• Owner/Developer • Contractor and Subcontractor • Management and administrative jobs*	• With the Section 3 Owner's Guide – include with the selection letter • Include in the bid package and contracts	• Include in all bid packages and contracts and subcontracts over $100,000 • All Contractor and Subcontractors
Attachment I – Contractor/ Subcontractor Section 3 Compliance Plan	• Owner/Developer • Contractor and Subcontractors • Management and administrative jobs*	• With the Section 3 Owner's Guide – include with the selection letter • Include in the bid package	• Contractor, Subcontractors • Management and administrative jobs* • Return the signed original with the bid packages (HOME) • Labor Standards Information (CDBG)
Attachment J – Contractor Compliance Form	• Owner/Developer • General Contractor and Subcontractors • Management and administrative jobs*	• With the Section 3 Owner's Guide – include with the selection letter • Include in the bid package	• Contractor, Subcontractors • Management and administrative jobs* • Return the signed original with the bid packages
Attachment K – Contractor Compliance Activity Report	• Owner/Developer • Contractor	• With the Section 3 Owner's Guide – include with the selection letter • Include in the bid package	• Owner • Contractor • Return the signed original with the bid packages • Update and returned at project completion or June 30, whichever occurs first – final draw funds will not be released without this document
Attachment L – Section 3 Data	• Owner/Developer • General Contractor and Subcontractors • Management and administrative jobs*	• With the Section 3 Owner's Guide – include with the selection letter • Include in the bid package	• Owner • Contractor • Management and administrative jobs* • Returned at project completion or June 30, whichever occurs first – final draw funds will not be released without this document

*Definitions per 24 CFR 135:

Contractor means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a Section 3 covered project.

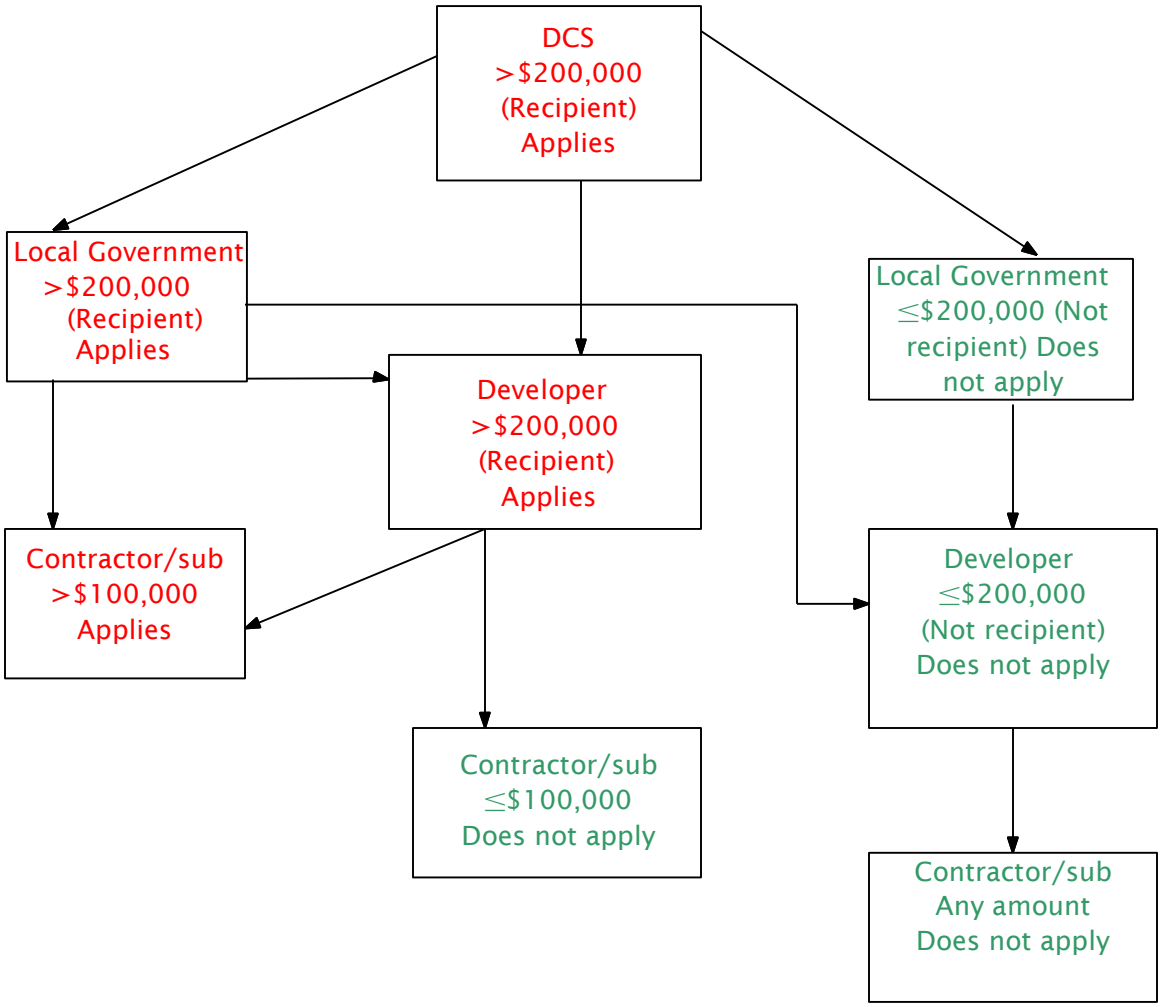
Employment opportunities generated by section 3 covered assistancemeans all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in § 135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection with section 3 covered projects (as described in § 135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write–ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

Grant Administrator	Title	Date
Signature	Title	Date

*This forms needs to be submitted with the Labor Standards Information form.

Attachment B

Applicability of Section 3 to Recipients, Contractors and Subcontractors



Section 3 requirements do not apply to "ultimate beneficiaries," therefore homebuyers and homeowners are not affected, though they should be encouraged to employ section 3 business concern

Attachment C

Recipient
(Owner/Developer) Section 3 Compliance Checklist

As a recipient of this HUD assistance in excess of $200,000, you are required to comply with Section 3. As a recipient of HUD assistance, you are obligated to meet the safe harbor goals even if none of your contracts exceed $200,000.

Section 3 requires that you and your contractors and subcontractors with contracts of more than $100,000 who hire or award contracts associated with the project take steps so that low– and very low–income residents and Section 3 business concerns have an opportunity to benefit from the project.

Described below are steps you must take to ensure that you comply with Section 3 and against which you will be evaluated. Please initial each of the following items:

1. Include the Section 3 clause in your contracts.

2. Develop a list of Section 3 business concerns to use in selecting your contractors and to distribute to your contractors and persons you provide funds under this program. HUD Section 3 website has a sample of a form a business can complete for DCS to determine whether it is a Section 3 business. https://portalapps.hud.gov/Sec3BusReg/BRegistry/AmISection3.action;jsessionid=cM2ZzGSai-qdT9NJ1OmDobfS1PUKBUCBrQtxUKbyWVhYFOmbcj3c!2065546051

3. Require your contractors and subcontractors to provide you copies of subcontracts over $100,000 showing inclusion of the Section 3 Clause and retain them for later review by DCS, HUD, or their representatives.

4. If you hire employees for the project, provide documentation of your efforts to identify and provide training and employment opportunities to Section 3 residents. See the attached "Attachment D" for examples of acceptable methods.

5. If you award contracts for more than $100,000 you must take steps to provide contracts to Section 3 business concerns and document your efforts. See Attachment D for examples of acceptable steps you can take.

6. If you or your contractors and their subcontractors encounter impediments in hiring Section 3 residents or awarding contracts to Section 3 business concerns, provide DCS a written explanation of the impediments before any contracts are signed for the project.

7. Assemble items 3–5 above and retain them for review by DCS, HUD, or their representatives.

8. Collect from your contractors and subcontractors with contracts over $100,000 a completed "Section 3 Data Form" (Attachment L) regarding each entity's efforts and success in providing training and employment opportunities to Section 3 residents, and contracting with Section 3 business concerns.

9. Submit the Section 3 Data Forms to DCS after the bids have been received but before construction contracts are signed. If new subcontractors are hired, each subcontractor over $100,000 must complete Attachment L and submit prior to contract being signed.

City/County	Title	Date
Signature	Title	Date

Developer	Title	Date
Signature	Title	Date

Attachment D

Appendix to Part 135

A. Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents

1. Entering into ''first source'' hiring agreements with organizations representing Section 3 residents.

2. Sponsoring a HUD–certified ''Step–Up'' employment and training program for Section 3 residents.

3. Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other Section 3 residents in the building trades.

4. Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in § 135.34) reside.

5. Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the Section 3 covered project.

6. Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD–assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

7. Sponsoring (scheduling, advertising, financing or providing in–kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the Section 3 covered project.

8. Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2 persons reside and in the neighborhood or service area in which a Section 3 project is located.

9. Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

10. Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the Section 3 covered project.

11. Consulting with State and local agencies administering training programs funded through JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

12. Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

13. Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the Section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified Section 3 residents with the training and employment positions that the HA or contractor intends to fill.

14. For an HA, employing Section 3 residents directly on either a permanent or a temporary basis to perform work generated by Section 3 assistance. (This type of employment is referred to as ''force account labor'' in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

15. Where there are more qualified Section 3 residents than there are positions to be filled, maintaining a file of eligible qualified Section 3 residents for future employment positions.

16. Undertaking job counseling, education and related programs in association with local educational institutions.

17. Undertaking such continued job training efforts as may be necessary to ensure the continued employment of Section 3 residents previously hired for employment opportunities.

18. After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a specific number of public housing or other Section 3 residents to be trained or employed on the Section 3 covered assistance.

19. Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

B. Examples of Efforts to Award Contracts to Section 3 Business Concerns:

1. In determining the responsibility of potential contractors, consider their record of Section 3 compliance as evidenced by past actions and their current plans for the pending contract.

2. Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.

3. Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

4. For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

5. Providing written notice to all known Section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the Section 3 business concerns to respond to the bid invitations or request for proposals.

6. Following up with Section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

7. Coordinating pre–bid meetings at which Section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

8. Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

9. Advising Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

10. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.

11. Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by Section 3 business concerns.

12. Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

13. Developing a list of eligible Section 3 business concerns.

14. For HAs, participating in the ‘‘Contracting with Resident–Owned Businesses’’ program provided under 24 CFR part 963.

15. Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident–owned businesses.

16. Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to Section 3 business concerns.

17. Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

18. Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

19. Actively supporting joint ventures with Section 3 business concerns.

20. Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

Primary	Title	Date
Signature	Title	Date

Secondary	Title	Date
Signature	Title	Date

Attachment E
Project ID

Contractor/Subcontractor
Section 3 Compliance Checklist

This project requires that contractors and subcontractors with contracts of more than $100,000 who hire or award contracts associated with the project must take steps so that low– and very low– income residents and Section 3 business concerns have an opportunity to benefit from the project. Described below are steps you must take to ensure that you comply with Section 3 and against which you will be evaluated. Please initial each item below:

1. Provide the recipient (the entity that contracted with you to perform work) copies of subcontracts over $100,000 showing inclusion of the Section 3 Clause.

2. If you hired employees for the project, provide the recipient (DCS, Owner/Developer or Local Government) documentation of your efforts to identify and provide training and employment opportunities to Section 3 residents. See the attached "Attachment D" for examples of acceptable methods.

3. If you award contracts for more than $100,000 you must take steps to provide contracts to Section 3 business concerns and document your efforts. See the attached "Attachment D" for examples of acceptable steps you can take.

4. If you encounter impediments in hiring Section 3 residents or awarding contracts to Section 3 business concerns, provide the recipient a written explanation of the impediments prior to awarding any contracts.

5. If you were unable to meet your numerical goals of 30% new hires, 10% of the total dollar amount of all Section 3 covered contracts for building trades work in connection with housing rehabilitation, housing construction and other public construction and 3% of the total dollar amount of all other section 3 covered contracts to Section 3 businesses, demonstrate why it was not feasible to meet the numerical goals. Obtain items 1–4 above from each entity that you subcontracted with for more than $100,000 and provide it to the recipient (DCS, Owner/Developer or Local Government).

6. You and each of your subcontractors with contracts over $100,000 must complete a "Section 3 Data Form" (Attachment L) regarding each entity's efforts and success in providing training and employment opportunities to Section 3 residents, and contracting with Section 3 business concerns. You must collect the forms and submit them to the recipient (DCS, Owner/Developer or Local Government) after the bids have been received but before construction contracts are signed. If new subcontractors are hired, submit the forms before their contracts are signed.

Print Name	Title	Date
Signature	Title	Date

Attachment F

Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability

Name of Business			
Address	City	State	ZIP Code

Type of Business

☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Joint Venture

Are you claiming Section 3 status for your business?

☐ Yes (If yes, complete the form and attach all applicable documentation.)

☐ No (If no, sign and date this form.)

Attached is the following documentation as evidence of status:

For business claiming status as a Section 3 resident–owned enterprise:

☐ Copy of resident lease ☐ Copy of receipt of public assistance

☐ Copy of evidence of participation in a public assistance program ☐ Other evidence

For business entity as applicable:

☐ Copy of Articles of Incorporation ☐ Certificate of Good Standing

☐ Assumed Business Name Certificate ☐ Partnership Agreement

☐ List of owners/stockholders and % ownership of each ☐ Corporation Annual Report

☐ Latest Board minutes appointing officers ☐ Additional documentation

☐ Organization chart with names and titles and brief function statement

For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 businesses:

☐ List of subcontracted Section 3 business (es) and subcontract amount.

For business claiming Section 3 status, claiming at least 30 percent of their workforce are currently Section 3 residents or were Section 3 eligible residents within 3 years of date of first employment with the business:

☐ Copy of Articles of Incorporation ☐ List of employees claiming Section 3 Status

☐ PHA/IHA Residential lease less than 3 years from day of employment ☐ Other evidence of Section 3 status less than 3 years from date of employment

Evidence of ability to perform successfully under the terms and conditions of the proposed contract:

☐ Current financial statement ☐ List of owned equipment

☐ Statement of ability to comply with public policy ☐ List of all contracts for the past two years

Print Name	Title	Date
Signature	Title	Date

Attachment G

Resident Employment Opportunity Data

Eligibility for Preference

Eligibility for Preference

A Section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a Section 3 resident, as defined in Section 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

Certification for Resident Seeking Section 3
Preference in Training and Employment

I, _____ am a legal resident of the _____ and meet the income eligibility guidelines for a low– or very–low–income person as published on the reverse.

My permanent address is:

_____

I have attached the following documentation as evidence of my status:

☐ Copy of Lease ☐ Copy of Receipt of Public Assistance

☐ Copy of Evidence of Participation in a Public Assistance Program ☐ Other Evidence

Print Name	Title	Date
Signature	Title	Date

SECTION 3 INCOME LIMITS

All residents of public housing developments of the Housing Authority qualify as Section 3 residents. Additionally, individuals residing in the County of _____ meet the income limits set forth below can also qualify for Section 3 status.

A picture identification card and proof of current residency is required.

Eligibility Guideline		
Number in Household	Very Low Income	Low Income
1 individual		
2 individuals		
3 individuals		
4 individuals		
5 individuals		
6 individuals		
7 individuals		
8 individuals		

Attachment H

Section 3 Clause

All Section 3 covered contracts shall include the following Section 3 clause:

1. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD–assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low– and very low–income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

3. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

4. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

5. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

6. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self–Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian–owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

Print Name	Title	Date
Signature	Title	Date

Attachment I

Contractor/Subcontractor Section 3 Compliance Plan

1. The undersigned Contractor/Subcontractor for the _____ project hereby agrees to implement at least the following steps directed at increasing the utilization of Section 3 residents and Section 3 business in accordance with 24 CFR Subpart A Part 135.1To attempt to recruit from within the project area Section 3 residents through: local advertising media, signs placed at the proposed site for the project and community organizations and public or private institutions operating within or serving the project area.

2. To seek the assistance, where necessary, in implementing a Section 3 compliance plan.

3. To maintain a list of all Section 3 area residents who have made application for employment either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

4. To maintain and provide the information requested during the closeout report.

5. To include this Section 3 compliance plan in all bid documents and to require all bidders to submit a Section 3 compliance plan including utilization goals and the specific steps planned to accomplish these goals.

6. In the case of a general contractor, to insure that all Section 3 business concerns within the project area are notified of pending sub–contractual opportunities.

7. To require all subcontractors to complete the Contractor Compliance Form before awarding any contracts.

8. To maintain records, including copies of correspondence, memoranda, etc., which document all the steps taken to recruit Section 3 residents and Section 3 subcontractors from within the project area.

9. To provide the information requested on Contract Compliance Activity Report related to contractors and subcontractors notified and selected and the number of women and minority employees, the number of vacant positions and the positions filled with lower income project area residents.

As officers and representatives of _____
Name of Contractor/Subcontractor

We, the undersigned, have read and fully agree to this Section 3 Compliance Plan, and become a party to the full implementation of this program.

Print Name	Title	Date
Signature	Title	Date

Attachment J

Contractor Compliance Form
Section 3

THIS FORM MUST BE COMPLETED BY ALL GENERAL CONTRACTORS AND SUBCONTRACTORS PROVIDING BIDS		
Development Name	Address	
City	State	ZIP Code

SECTION I. CONTRACTOR INFORMATION		
Name	Address	
City	State	ZIP Code
Type of Business	North Dakota License Number	
Section 3 Business? ☐ Yes ☐ No	Women Business Enterprise (WBE)? ☐ Yes ☐ No	Minority Business Enterprise MBE? ☐ Yes ☐ No
Bidding as a: ☐ General Contractor ☐ Sub-Contractor, indicate General Contractor Name:		
Current Number of Employees	Current Number of Women Employees	Current Number of Minority Employees

If minority employees enter racial/ethnic code from below:						
Code Number	1	2	3	4	5	6

Racial/Ethnic Codes

1. White
2. Black/African American
3. American Indian/Alaskan Native
4. Asian
5. Native Hawaiian/Pacific Islander
6. Hispanic/Latino

Total Dollar Amount of Bid (if exceeds $100,000, complete Section II)	$

SECTION II. NEW HIRES WHEN BID EXCEEDS $100,000 (must comply with section 3 requirements)		
	Number of New Hires	Number of New Hires that are Section 3 Residents
Number of employees to be hired for this contract		
Number of professionals to be hired for this contract		
List Professional trade hired:		
Number of technicians to be hired for this contract		
List technician trade hired:		
Number of office/clerical to be hired for this contract		
Number of construction by trade to be hired for this contract		
List below each type of trade for which there were new hires. Add trades as necessary		
Plumber:		

Electrician:		
Carpenter:		
Masonry:		
Laborers:		
Other (specify):		
Total Number of Section 3 Trainees to be hired for this contract		
Number of Low–Income Project Area Residents (L.I.P.A.R.) to be hired for this contract		
1. Construction Contracts:		
a. Total dollar amount of all contracts awarded on the project	$	
b. Total dollar amount of contracts awarded to Section 3 businesses	$	%
c. Percentage of the total dollar amount that was awarded to Section 3 businesses		
d. Total number of Section 3 businesses receiving contracts		
2. Non–Construction Contracts:		
a. Total dollar amount all non–construction contracts awarded on the project/activity	$	
b. Total dollar amount of non–construction contracts awarded to Section 3 businesses	$	
c. Percentage of the total dollar amount that was awarded to Section 3 businesses		%
d. Total number of Section 3 businesses receiving non–construction contracts		

SECTION III. SUMMARY

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low-and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

☐ Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located or similar methods.

☐ Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.

☐ Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.

☐ Other; describe below.

I hereby certify that it is the policy of the undersigned to comply with all existing laws prohibiting discrimination in all aspects of employment due to race, color, creed, sex, age, religion, national origin, marital status, receipt of public assistance or disability.

This shall be accomplished substantially by the following actions: Nondiscrimination in RECRUITING, HIRING, TRAINING, PROMOTING, SUBCONTRACTING, DEMOTION, LAYOFF, and/or TERMINATION.

General Contractor/Subcontractor Signature	Date

DCS does not discriminate on the basis of race, color, creed, national origin, sex, religion, age, disability, marital status, status with regard to public assistance, sexual orientation or familial status, in the employment and/or the provision of services.

Attachment K

Section 3
Contract Compliance Activity Report

Development Name		Address	City	State	ZIP Code
Contact Person	Telephone Number	Address	City	State	ZIP Code

Contractor Name & Address	Type of Business/ Trade	WBE (Yes/No)	MBE (Yes/No)	MBE Ethnic Code (See Reverse)	Section 3 Contract (Yes/No)	Section 3 Business (Yes/No)	Type of Contractor (General or Sub)	Bid Accepted (Yes/No)	$ Amt. of Bid	# of Pos. Currently Filled	# of Women in Non-Traditional Jobs	# of Minorities Ethnic Code (See Reverse)	# of New Positions to be filled for this Contract	# of L.I.P.A.R .
									$					
									$					
									$					
									$					
									$					
									$					
									$					
									$					
Total(s) Where Applicable														

Complete for All Contractors	Complete for Responding Contractors	Complete for Section 3 Contractors
Owner's Name (Print)	Owner's Signature	Date
General Contractor's Name (Print)	General Contractor's Signature	Date

The information required on the reverse page is to be provided for all contractors (i.e., generals and sub-contractors) that were contacted for the project. The following information is provided to assist you in responding to the information asked for in an accurate manner. (Attach additional sheets, if necessary)

IMPORTANT CONTRACT COMPLIANCE INFORMATION AND DEFINITIONS

DEFINITIONS:

- **W/MBE** - woman or minority owned business (i.e., having 51% ownership in the actual work of the business)

- **MINORITY -** member of one of the following racial/ethnic groups:

  BLACK/AFRICAN AMERICAN (non-Hispanic) - a person having origins in any of the black racial groups of Africa.

  AMERICAN INDIAN or ALASKAN NATIVE - a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

  ASIAN - a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, for example: Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine, Thailand and Vietnam.

  NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER – a person having origins in any of the original peoples of Hawaii, Guan, Samoa or Pacific Islands.

  HISPANIC OR LATINO - a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race.

- **L.I.P.A.R.** - lower income project area residents; low-income individuals residing within the Section 3 determined project area.

RACIAL/ETHNIC CODES:

1 – White
2 – Black/African American
3 – American Indian or Alaskan Native
4 - Asian
5 – Native Hawaiian or Other Pacific Islander
6 – Hispanic or Latino

Attachment L

Section 3 Data

SECTION I. NEW HIRES WHEN BID EXCEEDS $100,000 (must comply with section 3 requirements)		
	Number of New Hires	Number of New Hires that are Section 3 Residents
Number of employees to be hired for this contract		
Number of professionals to be hired for this contract		
List Professional trade hired:		
Number of office/clerical to be hired for this contract		
Number of construction by trade to be hired for this contract		
List below each type of trade for which there were new hires. Add trades as necessary		
Plumber:		
Carpenter:		
Electrician:		
Masonry:		
Laborers:		
Other (specify):		
Total Number of Section 3 Trainees to be hired for this contract		
Number of Low–Income Project Area Residents (L.I.P.A.R.) to be hired for this contract:		

SECTION: II. CONTRACT	
1. Construction Contracts:	
a. Total dollar amount of all contracts awarded on the project	$
b. Total dollar amount of contracts awarded to Section 3 businesses	$
c. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
d. Total number of Section 3 businesses receiving contracts	
2. Non–Construction Contracts:	
a. Total dollar amount all non–construction contracts awarded on the project/activity	$
b. Total dollar amount of non–construction contracts awarded to Section 3	$
c. Percentage of the total dollar amount that was awarded to Section 3 businesses	%
d. Total number of Section 3 businesses receiving non–construction contracts	

SECTION: III. Summary
Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low–and very low–income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.) Attempted to recruit low–income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located or similar methods. Participated in a HUD program or other program which promotes the training or employment of Section 3 residents. Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns. Other; describe below.

I hereby certify that it is the policy of the undersigned to comply with all existing laws prohibiting discrimination in all aspects of employment due to race, color, creed, sex, age, religion, national origin, marital status, receipt of public assistance or disability.

This shall be accomplished substantially by the following actions: Nondiscrimination in RECRUITING, HIRING, TRAINING, PROMOTING, SUBCONTRACTING, DEMOTION, LAYOFF, and/or TERMINATION.

Owner/Professional/General Contractor/Subcontractor Signature	Date

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low– and very–low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self–monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A–108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

APPENDIX C

CIVIL RIGHTS –PROVISIONS

CONSTRUCTION CONTRACTS

The provisions on the following pages must be included in the contracts.

PROFESSIONAL SERVICES CONTRACTS

The provisions on the following pages must be included in all professional services contracts.

For Section 3 covered projects refer to Appendix B.

Equal Employment Opportunity.

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

a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the city setting forth, the provisions of this non-discrimination clause.

b. The Consultant will in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.

c. The Consultant will cause the foregoing provisions to be inserted in all sub-contracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

Civil Rights Act of 1964.

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Section 109 of the Housing and Community Development Act of 1974.

a. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Section 504 Handicapped (if $2,500 or Over) Affirmative Action for Handicapped Workers.

a. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

e. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

f. The contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

CONSTRUCTION BID DOCUMENTS AND CONTRACT DOCUMENTS

The documents on the following page must be included in all bid packages and construction contracts, if applicable.

*Remember to include all applicable Labor provisions in the bid documents.

For Section 3 covered projects refer to Appendix B.

SPECIAL EQUAL OPPORTUNITY PROVISIONS

Activities and Contracts Not Subject to Executive Order 11246, as Amended.

(Applicable to Federally assisted construction contracts and related subcontracts $10,000 and under)

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

a. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure the applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this nondiscrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

c. Contractors shall incorporate foregoing requirements in all subcontracts.

Section 109 of the Housing and Community Development Act of 1974. (All Contracts).

a. No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

24 CFR Part 135 §135.38. This clause **must** be included in all Section 3 covered Contracts and Subcontracts.

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed; and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (24 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (I) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

<u>Segregated Facilities (All Contracts Over $2,000).</u>

The Contractor or Subcontractor will not maintain any facility which is provided for their employees in a segregated manner or permit their employees to perform their services at any location under their control where segregated facilities are maintained except that separate or single user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

Section 504 Handicapped (If $2,500 or Over).

Affirmative Action for Handicapped Workers

a. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individuals without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

b. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

c. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

d. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

e. The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

f. The contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

Executive Order 11245 (Contracts/Subcontracts $10,000 and Above).

1. Section 202 Equal Opportunity Clause

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

a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

b. The contractor will, in all solicitations or advertisement's for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The contractor will comply with all provisions of Executive Order 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

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

f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The contractor will include the provisions of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

2. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding $10,000.)

   a. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

   b. If this is a Section 3 project, the goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation in for each trade	Goals for female participation in each trade
	Insert goals for each year	Insert goals for each year

   These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

   The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based in its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform through-out the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive.

   Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

   c. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

   d. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

Standard Federal Equal Employment Opportunity **Construction** Contract Specifications (Executive Order 11246).

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any persons to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regard less of race);

      (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

    b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

    c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organizations and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and pro-viding written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct his recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7A through p of these Specifications provided that the con-tractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

HOUSING CONTRACT PROVISION

Lead-Based Paint

Any grants or loans for the rehabilitation of residential structures with assistance from the Department of Housing and Urban Development shall include provisions for the elimination of lead-based paint hazards under Subpart J of HUD Lead-Based Paint Regulations 24 CFR Part 35. If lead-based paint hazards are identified in a structure receiving assistance, contractors, subcontractors and/or their employees must show documentation that they have completed one of the HUD or EPA approved courses listed under 24 CFR Part 35.1330 (4).

APPENDIX D

WHAT A COMMUNITY/COUNTY SHOULD CONSIDER BEFORE BIDDING NORTH DAKOTA COMMUNITY DEVELOPMENT BLOCK GRANT CONSTRUCTION CONTRACTS

CDBG Grantee Implementation Tips

North Dakota Community Development Block Grant program's construction bid packages for water and sewer infrastructure improvement projects will differ considerably from the bid packages most localities normally use. Many of these differences stem from the mandatory federal requirements that accompany the use of these program funds. Local CDBG recipients should take special care to make sure that their CDBG construction bid package includes every- thing required. This article will address compliance with federal regulations that relate to bid specifications and bid letting for CDBG contract construction projects.

An architect or engineer will normally prepare the technical bid packages which will include bid specifications, CDBG related terms and conditions, and applicable state and local bid requirements. The bid specifications must provide a clear and accurate description of the technical requirements for materials, products and/or services to be provided and under which the work is to be performed.

The grantee or engineer must also prepare CDBG related terms and conditions for inclusion in the bid document. These terms and conditions refer to Labor Standards Provisions and Equal Opportunity Regulations.

The first requirement is that the Grantee utilize an applicable wage rate decision. Ten days before bid opening the grantee should contact the Division of Community Services to make sure that the wage decision is current. If modifications have been published, the grantee must secure these and include them in construction contracts. When construction contracts have been awarded, the grant administrator and the contractors need to determine if any additional wage classifications are required. This can be done by completing and submitting to the DCS a Request for Additional Classification found in Section 8.

Other terms and conditions that the grantee must prepare and include in the bid documents are:

- Davis-Bacon, if the contract is over $2,000. (Davis-Bacon deals with wages, payment schedules, and working conditions)
- Contract work hours and safety standards
- Conflict of interest
- Access to Records
- Copeland Anti-Kickback Act
- 2 CFR Part 200
- Architectural barriers, if applicable
- Flood insurance, if in a flood plain
- Clean air and water, if over $100,000
- Section 3

The grantee must insure contractor compliance with these provisions by securing contractor certification of compliance with Davis-Bacon. Additionally, the grantee must include the following provisions for equal opportunity compliance:

- The Housing and Community Development Act of 1968, Section 3
- The Housing and Community Development Act of 1974, Section 109
- Civil Rights Act 1964, Title VI
- Civil Rights Act 1968, Title VIII
- Executive Order 11246, as amended by Executive Order 11375
- The Age Discrimination Act of 1975
- Section 504 of the Rehabilitation Act of 1973

Copies of these requirements are available from the Division of Community Services.

The equal opportunity procedures are designed to compliment the labor standards provisions. In addition, a Certificate of Equal Opportunity Compliance and Certification that Segregated Facilities are not maintained must be included in the bid package and included in the project file.

With all provisions and regulations included in the Bid Document, the grantee is ready to advertise for bid. If deductible alternatives are requested, the Bid Document must specify the method and order in which the alternatives will be applied in determining the low bid. Drawings must clearly show the alternative. It is highly desirable to use alternatives when it is perceived the bids will be close to or slightly exceed funds available. The use of alternates can save projects from being unduly delayed and being rebid.

Once the Bid Documents are prepared, the grantee must advertise. Bids must be solicited by public advertising. The advertisement must be published once a week for three weeks in a general circulation newspaper in the area. Complex projects normally need a longer advertising period to allow bidders sufficient time to prepare bids. The city can also solicit bids if it maintains a bidders list.

If bid documents are amended during the advertisement period, addenda must be sent to all bidders which have obtained bid documents. No addenda may be issued within seventy-two hours of bid opening, or in accord with State law. If an addenda is necessary within the 72-hour period, the bid opening date must be extended exactly one week.

All bids received should be logged in with the time/date of receipt, name of contractor, and procurement number and must remain sealed and in a safe place until bid opening.

The Public Bid Opening should be conducted in a business-like manner. Each bid must be read aloud during the bid opening meeting and the apparent low bidder determined. However, the bids should be reviewed for both technical and legal responsiveness, the bidder's responsiveness, and the capacity to furnish products and/or services required.
The grantee must award the contract within 30 days of bid opening or reject all bids.

PROCUREMENT DO'S

- ALWAYS USE ACTUAL COST IN YOUR CONTRACTING (DO NOT USE A FIXED-COST + A PERCENTAGE OF THE CONSTRUCTION COST OR A PERCENTAGE OF THE CONSTRUCTION COST)

- USE COMPETITIVE NEGOTIATION IN SECURING ARCHITECTURAL OR ENGINEERING SERVICES UNLESS LOCAL FUNDS ARE USED FOR THESE SERVICES.

  IN YOUR FILES, DOCUMENT:

  1) which method you used,

  2) why you used it as compared to another method,

  3) which contractors you selected, which ones you rejected and why, and

  4) the basis for the cost or price.

APPENDIX E

MINORITY AND WOMEN'S BUSINESS ENTERPRISES

A. Introduction

The Minority and Women's Business Enterprise (M/WBE) Appendix of this Manual was compiled from current information provided by the North Dakota Department of Transportation. It contains minority-owned (MBE) and women-owned (WBE) businesses recognized in North Dakota in highway and other related construction fields.

This appendix should be used to bring minority and women-owned businesses to the bidder's table.

Inclusion of an enterprise in this appendix is for informational purposes only and does not constitute the endorsement of those listed. Exclusion of any names of possible MBEs or WBEs does not necessarily mean that those firms are not bona fide MBE/WBE business enterprises.

B. Determination of a Bona Fide Minority and/or Women's Business

For the purpose of this MBE/WBE section an MBE is a business at least 51 percent owned by a minority group member or other MBEs. A WBE is a business at least 51 percent owned by one or more women. An MBE or WBE is bona bide if the minority group member or woman's ownership interests are real, substantial, continuing, and in good faith, and not created solely to meet MBE or WBE requirements. Periodic updates of the DBE Roster will be distributed to grant administrators.

Application for certification forms may be made to Civil Rights Division, North Dakota Department of Transportation, 608 East Boulevard Avenue, Bismarck, ND 58505-0700 or to the Native American Business Enterprise Center, United Tribes Technical College, 3315 University Drive, Bismarck, ND 58504.

All bid announcements and requests for quotes need to be emailed to the Civil Rights Division, ND Department of Transportation (ND DOT) and the Native American Business Enterprise Center, United Tribes Technical College (UTTC). This will allow grantees to reach a larger number of MBE/WBEs. The ND DOT and UTTC will forward your email to their MBE and/or WBE rosters.

The email addresses are:

civilrights@nd.gov
lstockert@uttc.edu

PRECONSTRUCTION CONFERENCES:

A HUD GUIDEBOOK

Developed By:

U.S. Department of Housing and Urban Development

In Cooperation With

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PRECONSTRUCTION CONFERENCES:

A HUD GUIDEBOOK

PRECONSTRUCTION CONFERENCES: OVERVIEW

Introduction

The main goal in conducting a preconstruction conference is to help the contractor and subcontractors understand what they must do. . .

- To get the funds they have earned released on time and in full;
- To avoid violating labor standards, provisions, and possible civil or criminal prosecution.

Your Goal

Sometimes contractors or subcontractors avoid their labor standards responsibilities intentionally. Those who do so risk the consequences of being caught. At the conference you will make known to them the severe penalties they will suffer if caught. Your main objective, however, is to prevent those violations which result from contractor ignorance or misunderstanding.

One way of helping contractors and subcontractors meet their contract obligations is to. . .

- Familiarize them with each provision
- Explain what the provisions mean
- Find out and answer their questions concerning these provisions and the reporting requirements that exist because of the provisions

This Guide presents one way to do that. Using a question and answer format, each Labor Standard provision is presented and interpreted.

Organization

The Guide is divided into two parts:

- Planning a Preconstruction Conference
- Conducting a Preconstruction Conference

PLANNING A PRECONSTRUCTION CONFERENCE

PLANNING A PRECONSTRUCTION CONFERENCE

Introduction

Before conducting a preconstruction conference, you should plan what you want to do and how you want to do it. Listed below are some of the activities which you should complete before conducting a preconstruction conference.

Procedure Overview

Step 1	Identify conference participants
Step 2	Reserve a meeting room
Step 3	Notify participants
Step 4	Prepare the materials
Step 5	Organize your presentation
Step 6	Set up the room for participants

What To Do

STEP 1 Identify conference participants

Identify conference participants who should attend. Your list of mandatory participants will vary depending on. . .

- Contractor's experience with Federal contract requirements
- How effective the contractor has been in meeting labor standards requirements in the past

Conference should minimally include:

- The Prime Contractor
- HUD staff representing:
  - Labor standards
  - Architectural and Engineering Branch
  - Fair Housing and Equal Opportunity

A prudent contractor will see that his/her major subcontractors attend the meeting.

Optional participants include:

- Project Superintendent
- Payroll Clerk
- Major Subcontractors

STEP 2 Reserve a meeting room

Reserve a meeting room large enough to seat people who should attend.

STEP 3 Notify participants

Notify participants by phone or letter. Identify:

- Purpose of conference
- Date of conference
- Time conference will start and end
- Location (provide directions, if needed)

STEP 4 Prepare the materials

Prepare the materials you will use, including:

- Notes
- Printed materials (poster, payroll samples)
- Supplies or equipment (blackboard, flip-charts, handouts)
- Roster of expected participants

For a list of suggested items to include, see page 2 of the Planning Guide (Exhibit 1).

STEP 5 Organize your presentation

There are a variety of ways to organize and present the facts contractors and subcontractors need to know. Three effective ways are presented in the next chapter. Each model presents an alternative way to:

- Acquaint the participants with the labor standards provisions
- Clarify, one provision at a time:
  - What the main points of each provision are
  - What the contractor has to do
  - What HUD has to do
- Share experiences from the past - good and bad

STEP 6 Set up the room for participants

- Arrange the tables and chairs. An open U-shape will encourage participation and discussion. If you prefer to minimize discussion, set the room up in traditional classroom style.
- Pass out participant materials.

Planning Checklist	A Planning Guide you may use or adapt to help plan your Preconstruction Conference is included in the Appendix (see Exhibit 1).

CONDUCTING A PRECONSTRUCTION CONFERENCE

- How to Plan and Present
- Facts You Should Cover
- How to Prepare Helpful Minutes

HOW TO PLAN AND PRESENT

CONDUCTING A PRECONSTRUCTION CONFERENCE

How to Plan and Present

How to Plan

Effective meetings nearly always have these characteristics in common. Each "presentor" decides in advance:

- ☐ What to cover.
- ☐ What sequence to cover materials in. (Remember, the sequence should make sense from the contractor's point of view)
- ☐ How to document what occurs in Preconstruction Conference Minutes. (A simple approach is included in this chapter.)

How to Present

Getting Started

Most effective leaders start meetings by. . .

- ☐ Introducing all people who will present materials
- ☐ Explaining the purpose of the meeting and time frames
- ☐ Explaining or passing out an agenda. (Let people know what you plan to cover, and in what order.)

NOTE: Remember to pass around a roster for all meeting participants to sign. You'll need this for the minutes. A form you can use or adapt is shown in the Appendix (Exhibit 2).

Covering Content

You can cover the material for a Preconstruction Conference in many different ways. Three effective models follow.

MODEL I - FOR NEW OR INEXPERIENCED CONTRACTORS	
TASK	ACTIVITY
1	Introduce yourself and any other people who will present materials
2	Explain purpose of meeting and time frames
3	Pass out roster
4	Prepare to read questions and provisions included in the section of this chapter called "Facts You Should Cover". Ask participants to. . . • Listen • Make notes if they have questions
5	After each provision has been read. . . • Summarize the main points • Explain, where applicable, a local case where the provision was important or ignored • Ask if participants have questions (if a question is raised, make a note of it for your minutes) • Answer questions • Pass out handouts, where appropriate

MODEL II - FOR CONTRACTORS WHO ARE EXPERIENCED OR CONTRACTORS WITH COMPLIANCE PROBLEMS	
TASK	ACTIVITY
1	Introduce yourself and any other people who will present materials
2	Explain purpose of meeting and time frames
3	Pass out roster
4	Ask the first question included in the section "Facts You Should Cover"
5	Ask if anyone in the meeting can explain the answer
6	Listen carefully to their answers. Make sure you understand what they mean
7	Clarify any points they missed or confused
8	Reinforce answer by reading the provision that applies
9	After each question and provision. . . • Tell a "war story" illustrating attempts to get around the provision or misunderstandings contractors have acted on regarding the provision • Ask if participants have questions (if a question is raised, make a note of it for your minutes) • Answer the question • Pass out handouts, where appropriate

MODEL III	Mix and match Models I and II. Use Model I if you don't believe there is a misunderstanding. Use Model II on questions you think people may misunderstand.

FACTS YOU SHOULD COVER

Facts You Should Cover

Overview

Facts you should cover in every Preconstruction Conference begin on the next page. The facts are organized in a Question and Answer format, arranged in logical, bite-size chunks.

Each issue is addressed in this way. The leader presents. . .

- A commonly-asked question about labor standards compliance
- The provision that answers the question
- A plain-English interpretation of the provision's main points
- The law or regulation on which the provision is based
- If applicable, handouts needed to further explain the issue

Facts You Should Cover

The Question WHAT ARE PREVAILING WAGES AND WHO GETS THEM?

The Provisions

a. All mechanics and laborers, including apprentices and trainees, employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations, 29 CFR Part 3), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

b. The Contractor shall pay to all laborers and mechanics employed on the project not less than the wages prevailing in the locality of the project, as predetermined by the Secretary of Labor of the United States pursuant to the Davis-Bacon Act (Title 40, U.S.C., Secs. 276a-276a-5).

The transporting of materials and supplies to or from the site of the Project or Program to which this Contract pertains by the employees of the Contractor or of any subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the Project or Program to which this Contract pertains by persons employed by the Contractor or by any subcontractor, shall, for the purposes of this Contract, and without limiting the generality of the foregoing provisions of this Contract, be deemed to be work to which these Federal Labor Standards Provisions are applicable.

Facts You Should Cover

The Question (Continued) WHAT ARE PREVAILING WAGES AND WHO GETS THEM?

Note these main points:

The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the locality. Prevailing wages are computed by the Department of Labor and are issued in the form of a Federal Wage Determination.

Your contract includes a Federal Wage Determination. The Wage Determination lists each classification of worker you will use on this project and the rates you must pay each classification.

Handout: Provide participants with a copy of the Wage Determination for the project. If a copy is unavailable, show the same in Exhibit 3.

Your Wage Determination covers:

THESE WORKERS:

- Laborers
- Mechanics
- Apprentices
- Trainees

WHILE DOING THIS WORK:

- All work at site
- Work transporting materials to and from site
- Manufacturing or furnishing of articles, supplies, or equipment on-site

Authority to require this is published in:
Title 29 Code of Federal Regulations, Part 5.5(1)(a)

Facts You Should Cover

The Question HOW FREQUENTLY ARE YOU REQUIRED TO PAY WAGES?

The Provision

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are subject to the provisions of Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Facts You Should Cover

The Question (Continued) HOW FREQUENTLY ARE YOU REQUIRED TO PAY WAGES?

Note these main points:

- ☐ You must pay wages. . .
  - At least once a week
  - In full
- ☐ You can only make deductions permitted by the Secretary of Labor.

  Handout: List of permissible deductions included in the Appendix (see Exhibit 4).

Authority to require this is published in:
Title 29 Code of Federal Regulations
Part 3.10 (Copeland "Anti-Kickback" Act)
Part 5.5(a)(1)

CONDUCTING A PRECONSTRUCTION CONFERENCE

Facts You Should Cover

The Question — HOW CAN YOU USE WORKERS NOT LISTED ON THE WAGE DETERMINATION?

The Provision

> Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract will be classified or reclassified conformably to the wage determination by the Local Public Agency or Public Body, and a report of the action taken shall be submitted by the Local Public Agency or Public Body, through the Secretary of Housing and Urban Development, to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question accompanied by the recommendation of the Local Public Agency or Public Body shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

Note these main points:

- ☐ Please take time now to review the Wage Determination for this project.

1. Make sure all classifications you intend to use are covered: plumbers, electricians, equipment operators, etc.

2. Make sure any subclassifications you intend to use are specified.

   Example: If you think carpenters in the area are paid different rates for finish work than for rough work, make sure all these subclassifications are listed on the wage determination.

3. If you want to use helpers, check to see if they are on the determination.

4. If classifications you intend to use are not included, request them now. We will assist you to get the classifications so long as the request is consistent with local prevailing practices.

Facts You Should Cover

The Question (Continued) — HOW CAN YOU USE WORKERS NOT LISTED ON THE WAGE DETERMINATION?

Handouts:

- Copy of the Wage Determination for the project
- Request for assistance in adding a wage classification (Exhibit 5)
- Request for Determination and Response to Request (Exhibit 6)
  - blank
  - sample
- Report of Additional Classification and Rate (Exhibit 7)

If you need laborers or mechanics not listed on the Wage Determination after work begins, you must follow these procedures:

1. Report your suggested classification and rate to HUD. Supporting data must also be submitted. HUD will submit your request to the Department of Labor (DOL) so long as the rate seems reasonable.

   The correct form to use is shown in the Appendix (Exhibit 7).

2. Wait until DOL decides the classification and wage rate. The decision will be reported to the contracting agency in writing within a 30-day period.

   Should you disagree with the decision, you can appeal.

Authority to require this is published in:
Title 29 CFR Part 5.5(1)(ii)

Facts You Should Cover

The Question CAN YOU HIRE ANYBODY YOU WANT?

The Provisions

> The contractor shall not subcontract any part of the work covered by this Contract or permit subcontracted work to be further subcontracted to contractors who are ineligible under the provisions of any applicable regulations issued by the Secretary of Labor, United States Department of Labor, or the Secretary of Housing and Urban Development.

You can, for the most part, hire anyone you wish. The only exceptions are these:

- ☐ You cannot hire any contractor or subcontractor who has been suspended or debarred. It is your responsibility to ensure that subcontractors you intend to use are eligible. Further, your contracts with such subcontractors must contain a certification of eligibility clause. Where subcontractors are found to be ineligible, those subcontractors will be immediately terminated and the matter will be referred to the Department of Labor.

- ☐ You are not to hire any person under age 16.

Authority to require this is published in:
Title 29 CFR Part 5.5(a)(10)

Facts You Should Cover

The Question WHAT DO YOU HAVE TO TELL YOUR WORKERS ABOUT THEIR WAGES?

The Provision

> The applicable wage poster of the Secretary of Labor, United States Department of Labor, and the applicable wage determination decisions of said Secretary of Labor with respect to the various classification of laborers and mechanics employed and to be employed upon the work covered by this Contract, and a statement showing all deductions, if any, in accordance with the provisions of this Contract, to be made from wages actually earned by persons so employed or to be employed in such classifications, shall be posted at appropriate conspicuous points at the site of the work.

Note these main points:

You are required to. . .

- Display the Secretary of Labor's Wage Poster in a conspicuous place
- Display the Secretary of Labor's Wage Determination in a conspicious place at the job site

Failure to do this can be interpreted as a breach of contract.

Handout: A copy of the Wage Poster is included in the Appendix (Exhibit 8).

Authority to require this is published in:
Title 29 CFR Part 5.5(1)

Facts You Should Cover

The Question WHAT IF YOU WANT TO HIRE APPRENTICES OR TRAINEES?

The Provisions

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subdivision (b) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

Trainees. Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall

The Question (Continued)

WHAT IF YOU WANT TO HIRE APPRENTICES OR TRAINEES?

> not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

Note these main points:

- If you want to hire apprentices or trainees and to pay them less than journeymen wages, they must be enrolled in an apprenticeship or training program approved by the Department of Labor (or State Apprentice Council recognized by the Department of Labor). Written evidence of their enrollment must be submitted to the contracting officer.

- In addition, the terms for hiring apprentices or trainees must be set forth in the pay schedule accompanying the certificate approving the program. You must, of course, abide by the terms in the schedule.

  Example: An approved program will state the proportion of apprentices (or trainees) you can hire, given the size of your whole workforce. You cannot exceed these ratios and continue to pay lower than journeymen wages to the excess apprentices or trainees.

- You must pay trainees or apprentices no less than the percentage of journeymen wages specified for the apprentice's stage of training.

Facts You Should Cover

The Question (Continued)

WHAT IF YOU WANT TO HIRE APPRENTICES OR TRAINEES?

The Department of Labor will approve certain State-run apprentice and trainee programs. However, the Department of Labor has authority to withdraw approval from State-run training programs. Should this occur, you will be notified by certified letter. You must then. . .

- Begin paying the trainees full wages required for the classification of work they do (as listed on the wage determination)

OR

- Appeal the decision. You may appeal within 30 days after receiving written notice and you can continue to pay reduced wages until a decision is made.

Exception: DOL approval is not required for trainees you hire who are part of a program you can show was. . .

- Approved by the Department of Labor before August 20, 1975:
  - for purposes of the Davis-Bacon and related Acts
  - was established by agreement of organized labor and management and/or
  - was recognized by DOL under Executive Order 11246, as amended

(In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Department of Labor.)

Authority to require this is published in:
Title 29 CFR 5.5(a)(4)(i)(ii)
Title 29 CFR 5.8(c)(5.16)

Facts You Should Cover

The Question

WHEN DO YOU HAVE TO PAY OVERTIME?

The following provision applies:

The Provision

a. Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week.

Note this point:

- ☐ You must pay time and a half for all hours worked in excess of 40 per week.

  Time and a half means one and one-half times the base hourly rate you pay in wages (excluding fringe contributions you make) in cash or kind.

  There are strict penalties for failing to pay overtime when it is due. These penalties will be explained before this meeting is complete.

Authority to require this is published in:
Title 40 USC, Sections 327-332
Title 29 CFR, Part 5.5(b)(1)

Facts You Should Cover

The Question WHEN DO YOU HAVE TO PAY FRINGE BENEFITS?

The Provision

> If the Contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing fringe benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this Contract: Provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. A copy of any findings made by the Secretary of Labor in respect to fringe benefits being provided by the Contractor must be submitted to the Local Public Agency or Public Body with the first payroll filed by the Contractor subsequent to receipt of the findings.

Note these main points:

If the wage determination lists fringe benefits, you must pay to the employee in cash or fringe benefits an amount which equals the total of the basic rate and fringes appearing on the determination. Any combination of cash payments and fringes is allowed, provided that the part you provide in benefits is. . .

- Explained to all employees in writing
- Administered through a third party or through an actuarially sound, enforceable, unfunded commitment. (The Secretary of Labor may require unfunded plans to be held in a separate, special account.)
- If the employee works overtime, the premium must be computed on the basic hourly rate shown on the determination, even if the employer pays less than this amount in cash because of increased fringes.

Any Department of Labor decision to add, delete, or modify fringe benefits must be attached to the next payroll and sent to HUD.

> Authority to require this is published in:
> Title 29 CFR 5.5(a)(1)(iv)
> Subpart B (5.22)(5.23)(5.28)

Facts You Should Cover

The Question

WHAT IF YOU WANT YOUR WORKERS TO BUY THEIR OWN FRINGE BENEFITS?

The Provision

> The Local Public Agency or Public Body shall require, whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Local Public Agency or Public Body, shall be referred, through the Secretary of Housing and Urban Development, to the Secretary of Labor for final determination.

Note these main points:

If the wage determination includes fringe benefits, you can either. . .

- Provide those benefits

  OR

- Provide the value of those benefits in cash (the value on the wage determination)

If the wage determination lists fringe benefits but does <u>not</u> include their dollar value, and you intend to pay employees in cash for fringe benefits, you must. . .

- Request HUD to decide the hourly cash equivalent

  AND

- Pay the equivalent amount

If you disagree with the amount, you can appeal the decision.

> Authority to require this is published in:
> Title 29 CFR 5.5(a)(1)(iii)
> Title 29 CFR 5.5(a)(3)(ii)

Facts You Should Cover

The Question — WHAT IF A WORKER DISPUTES THE WAGE RATE OR CLASSIFICATION ON YOUR PAYROLL?

The Provision

> Claims and disputes pertaining to wage rates or to classifications of laborers and mechanics employed upon the work covered by this Contract shall be promptly reported by the Contractor in writing to the Local Public Agency or Public Body for referral by the latter through the Secretary of Housing and Urban Development to the Secretary of Labor, United States Department of Labor, whose decision shall be final with respect thereto.
>
> (In addition. . .)
>
> No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

Note these main points:

- If an employee tells you he thinks he is improperly classified or underpaid, and you cannot agree on the matter, you must report the dispute to HUD in writing. Before doing this, however, you may want to refer to DOL Manual of Operations "Construction Wage Determinations," dated April 1986, pages 59 and 60.
- HUD will work with you to settle the matter informally.
- Please remember: You must refrain from firing or discriminating against anyone because they complain about their wage rate or classification.

Authority to require this is published in:
Title 29 CFR Part 6

Facts You Should Cover

The Question

WHAT WAGE INFORMATION DO YOU HAVE TO REPORT TO HUD?

The Provision

The Contractor and each subcontractor shall prepare his payroll on forms satisfactory to and in accordance with instructions to be furnished by the Local Public Agency or Public Body. The Contractor shall submit weekly to the Local Public Agency or Public Body certified payrolls of the Contractor and of the subcontractors, it being understood that the Contractor shall be responsible for the submission of payrolls of all subcontractors. Each such payroll shall contain the "Weekly Statement of Compliance" set forth in Section 3.3 of Title 29, Code of Federal Regulations. The payrolls and basic payroll records of the Contractor and each subcontractor covering all laborers and mechanics employed upon the work covered by this contract shall be maintained during the course of the work and preserved for a period of 3 years thereafter. Such payrolls and basic payroll records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions or costs anticipated of the types described in Section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. In addition, whenever the Secretary of Labor has found under Section 5.5(a)(1)(iv) of Title 29, Code of Federal Regulations, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor or subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Contractor and each subcontractor shall make his employment records with respect to persons employed by him upon the work covered by this Contract available for inspection by authorized representatives of the Secretary of Housing and Urban Development, the Local Public Agency or Public Body, and the United States Department of Labor. Such representatives shall be permitted to interview employees of the Contractor or of any subcontractor during working hours on the job.

Facts You Should Cover

The Question (Continued) WHAT WAGE INFORMATION DO YOU HAVE TO REPORT TO HUD?

Note these main points:

The first week after the start of construction, you must submit several "one-time only" reports. In addition, you must submit three reports the week after construction starts. These three reports must be prepared and submitted every week thereafter until the project is complete.

Handout - Exhibit 9

This checklist summarizes your report requirements. It shows. . .

- What reports you must submit
- When you submit them
- How many copies you must provide

Handouts - Exhibits 6, 10, 11, 12, 14

Your folder contains sample and blank copies of most reports you are required to submit:

- Sample payroll reports
- Sample minutes (copy of today's minutes will be sent to you by mail)
- Blank example of Weekly Subcontractors on-site report
- Sample and blank Request for Determination
- Sample of apprentice certificate with ratio schedule (use State apprentice forms where applicable)

The Prime Contractor is fully responsible for providing HUD with all reports required from subcontractors.

Example: If the subcontractor should fail to provide HUD with the required reports, any penalties or sanctions would apply to the Prime Contractor.

Payroll reports must be accurately and properly completed. The examples in your folder show how to report a variety of situations you will encounter (see Exhibit 10).

Your payroll reports will be reviewed by a specialist. If the report does not comply with the required standards, you will be notified and given 30 days to correct the error.

Handouts - Exhibit 13

- Notice to correct payroll
- List of common payroll deficiencies

Continued. . .

Facts You Should Cover

The Question (Continued) WHAT WAGE INFORMATION DO YOU HAVE TO REPORT TO HUD?

Handouts

Review content on sample completed payrolls. Samples cover. . .

- How to complete demographic section
- How to report apprentice wages
- How to report hours of overtime worked by employees doing work on several Federal projects
- How to enter straight time
- How to enter overtime
- How to report hours of work when employee does work on more than one classification during the week
- How to report a change of address
- How to report time spent working on other jobs

Facts You Should Cover

The Question WHAT ARE YOUR EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS?

The Provision

> Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

Notes:

This provision is enforced by the U.S. Department of Labor.
This provision is not applicable on Indian reservations.

Authority to require this is published in:
Executive Order 11246 as amended
29 CFR Part 30

Facts You Should Cover

The Question — WHAT DOES HUD DO TO ASSURE COMPLIANCE?

The Provision

> Reorganization Plan No. 14 of 1950 provides that to assure coordination of administration and consistency of enforcement of the labor standards provisions of various designated acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures which shall be observed by these agencies, and cause to be made by the Department of Labor such investigations, with respect to compliance with and enforcement of such labor standards, as he deems desirable.

Note these main points:

Federal regulations require HUD or its designee to monitor your compliance with Federal Labor Standards.

The Department uses a variety of means to assure compliance, including:

☐ Conducting Spot Checks

During such checks, you must permit compliance personnel to. . .

- Interview employees at the work site
- Take written statements from employees
- Document observations
- Examine your payroll records
- Examine your records relating to. . .
  - Fringe benefits
  - Apprentice registration
  - Trainee certifications
  - Contracts
  - Time logs

Facts You Should Cover

The Question (Continued) WHAT DOES HUD DO TO ASSURE COMPLIANCE?

- Investigating Complaints

During such investigations you must permit compliance personnel to perform tasks involved in spot checks so that the facts can be established. These Federal Officers or their designees are obliged to report the facts objectively. These officers cannot reveal to you, without a written release. . .

- The complainant's identity
- All or part of a written statement

Remember: Federal officers or their designees are not to be interfered with.

Authority to require this is published in:
Title 29 CFR, Part 5

Facts You Should Cover

The Question WHAT IF YOU UNDERPAY YOUR WORKERS?

The Provision

In case of underpayment of wages by the Contractor or by any subcontractor to laborers or mechanics employed by the Contractor or subcontractor upon the work covered by this Contract, the Local Public Agency or Public Body in addition to such other rights as may be afforded it under this Contract shall withhold from the Contractor, out of any payments due the Contractor, so much thereof as the Local Public Agency or Public Body may consider necessary to pay such laborers or mechanics the full amount of wages required by this Contract. The amount so withheld may be disbursed by the Local Public Agency or Public Body, for and on account of the Contractor or the subcontractor (as may be appropriate), to the respective laborers or mechanics to whom the same is due or on their behalf to plans, funds, or programs for any type of fringe benefit prescribed in the applicable wage determination.

(Overtime compensation required. . .)

In the event of any violation of the clause set forth in paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in paragraph (a), in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (a).

(c) Withholding for liquidated damages. The Local Public Agency or Public Body shall withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for liquidated damages as provided in the clause set forth in paragraph (b).

The Question (Continued)

WHAT IF YOU UNDERPAY YOUR WORKERS?

> (d) Subcontracts. The Contractor shall insert in any subcontracts the clauses set forth in paragraphs (a), (b), and (c) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

Note these main points:

If a contractor or subcontractor underpays laborers or mechanics, HUD will notify the Prime Contractor in writing. (Remember, the Prime Contractor is responsible for seeing to it that all subcontractors comply with these contract provisions.)

Notice of a violation typically looks like this:

Handout: Exhibit 13, including:

- Cover Letter
- Checklist of Violations

If the problem is not promptly corrected, these options are open to the Prime Contractor and HUD:

- The Prime Contractor and HUD can agree to put a sum in escrow until the issue is settled (the simplest and least expensive option for the Contractor)

OR

- HUD can, where necessary, withhold the amounts necessary to fully pay the wages owed. These funds are normally withheld from amounts released to the owner or the prime contractor. In addition, HUD can - if there is no appeal - disburse money to. . .

  - Laborers
  - Mechanics
  - Plans, funds, or programs providing fringe benefits described in the Wage Determination

Facts You Should Cover

The Question (Continued) WHAT IF YOU UNDERPAY YOUR WORKERS?

- All subcontracts made by the contractor (or by subcontractors with lower-tier subcontractors) are subject to these provisions. Each contractor and subcontractor is responsible for inserting these clauses into all contracts involving this project if laborers or mechanics will perform work. Incorporation by reference is not permitted.

Authority to require this is published in:
Contract Work Hours and Safety Standards Act,
Title 40, USC, Sections 327-33
Title 29, CFR 5.5(a)(2)(7)
Title 29, CFR 5.5(b)(2)(3)

Facts You Should Cover

The Question — WHAT CAN HAPPEN IF YOU DON'T FULLY COMPLY WITH THE LABOR STANDARDS?

The Provision

> The Contractor shall include or cause to be included in each subcontract covering any of the work covered by this Contract, provisions which are consistent with these Federal Labor Standards Provisions and also a clause requiring the subcontractors to include such provisions in any lower tier subcontracts which they may enter into, together with a clause requiring such insertion in any further subcontracts that may in turn be made.
>
> In addition to the causes for termination of this Contract as herein elsewhere set forth, the Local Public Agency or Public Body reserves the right to terminate this Contract if the Contractor or any subcontractor whose subcontract covers any of the work covered by this Contract shall breach any of these Federal Labor Standards Provisions. A breach of these Federal Labor Standards Provisions may also be grounds for debarment as provided by the applicable regulations issued by the Secretary of Labor, United States Department of Labor.

Note these main points:

If you or your subcontractors seriously violate any of these labor standards, HUD can. . .

- Delay payment of money owed to you, the Prime Contractor
- Set aside or disburse, from money owed to you, the amounts needed to pay. . .
  - Wages or fringe benefits
  - Uncompensated overtime
  - Liquidated damages
- Terminate the contract
- Initiate criminal proceedings
- Debar you from working on similar projects for up to one year
- Debar you from working on any Federal projects for up to three years
- Assess liquidated damages (unless violations were inadvertent)

Facts You Should Cover

The Question (Continued) — WHAT CAN HAPPEN IF YOU DON'T FULLY COMPLY WITH THE LABOR STANDARDS?

The Prime Contractor is. . .

- Responsible for the correctness and timely submission of all subcontractor's payrolls

AND

- Liable for violations or underpayments to workers by subcontractors

Contractors should collect, review, and forward subcontractor's payrolls, since failure to submit payrolls promptly, preferably within 7 days after the close of a work week, is a violation. The Prime Contractor should check subcontractor payrolls received against his own time sheets to make certain that all subcontractors have submitted payrolls and that their submission covers all workers who were at the job site. Before submitting subcontractor payrolls, the Prime Contractor should check them to see that they are complete and accurate. If payrolls are not submitted on time, or if they are incorrect, HUD may withhold advances, draws, or final payments until all are received.

You have the right to appeal such decisions.

Authority to require this is published in:
Title 29 CFR, 5.6(a)(i)
Title 29 CFR, 5.6(a)(2)(3)(4)

HOW TO PREPARE HELPFUL MINUTES

How to Prepare Helpful Minutes

Introduction

If you plan your conference in advance and organize your presentation effectively, you can use pre-formatted minutes like those shown in Exhibit 11.

This approach has several advantages:

- It serves as a checklist of the main labor standards topics for the Prime Contractor and for subcontractors.
- The minutes can be expanded, shortened, or modified to meet the requirements of your office.

APPENDIX

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EXHIBIT 1

PRECONSTRUCTION CONFERENCE: PLANNING GUIDE

Check ☑ when each of these tasks is complete.

Confirmed. . .

_____ Need for preconstruction conference
_____ When conference should be scheduled
_____ Who should attend

MANDATORY PARTICIPANTS	RECOMMENDED PARTICIPANTS	ACCEPTABLE DATES

Reserved Room. . .

Location _____
Times _____

Notified Participants. . .

WHO WAS NOTIFIED	METHOD		INFORMATION CONVEYED
	PHONE	WRITING	
			• Purpose of conference
			• Date of conference
			• Time starting
			• Time ending
			• Location
			• Directions
			• Intention to attend

Checked overtime provisions. Contract is covered by. . .

_____ Contract Work Hours and Safety Standards Act (applies to many, but not all, HUD programs)
_____ Standard overtime provisions of Fair Labor Standards Act (over 40 hours per week)

Prepared participant folders containing. . .

_____ Wage Determination for the project
_____ SF-308 (blank and completed Request for Wage Determination)
_____ Wage Poster
_____ Blank Payroll Forms WH-347 and Instruction
_____ Samples of Completed WH-347s
_____ List of Permissible Deductions
_____ Weekly Report of Contractor's On-Site Form
_____ Prime Contractor's Report Requirements
_____ Other

_____

_____

_____ Paper
_____ Pencils

Prepared materials used by leader while conducting the conference. . .

_____ Notes, printed materials, and supplies

_____

_____

_____

_____ Equipment

_____

_____

_____ Handouts

_____

_____

_____ Roster of expected participants

Organized presentation (see section on "How to Plan and Present" for suggestions)

Arranged room

_____ Tables and chairs provided
_____ Ashtrays
_____ Folders passed out

EXHIBIT 2

PRECONSTRUCTION CONFERENCE ROSTER

PROJECT NUMBER:

NAME OF PRIME CONTRACTOR:

PROJECT NAME:

PROJECT LOCATION:

TODAY'S DATE:

NAME OF FIRM	ADDRESS OF FIRM	YOUR NAME	TITLE	PHONE

EXHIBIT 3

GENERAL DECISION ND950026 03/17/95 ND26
General Decision Number ND950026

Superseded General Decision No. ND940026

State: North Dakota

Construction Type:
HEAVY

County(ies):
BURLEIGH

HEAVY CONSTRUCTION PROJECTS (Including Sewer & Water Line Construction & Drainage Projects)

Modification Number	Publication Date
0	02/10/1995
1	03/17/1995

COUNTY(ies):
BURLEIGH

* ENGI0049B 09/01/1994

	Rates	Fringes
POWER EQUIPMENT OPERATORS:		
GROUP 1	12.50	4.00
GROUP 2	12.35	4.00
GROUP 3	12.10	4.00
GROUP 4	11.95	4.00
GROUP 5	11.10	4.00
GROUP 6	9.80	4.00

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1:
All Terrain Vehicle Cranes 80 tons and over and Hydro Cranes 80 tons and over Crane Operator with 135' Boom and over Derrick (Guy & Stiff Leg) Gantry Crane Operator Helicopter Operator (Construction Work Only) Mole Operator, or Tunnel Mucking Machine Power Shovel and /or other Equipment with Shovel Type Controls 3-1/2 Cu. Yd. Mfg. Rated Capacity & Over Travelling Tower Crane

GROUP 2:
All Terrain Vehicle Cranes over 20 tons and up to 80 tons and Hydro Cranes 20 tons up to 80 tons Dredge Operator over 12" Finish Motor Grader Creter Crane Crane Operator up to 135' boom Master Mechanic: The inclusion of the classification of Master Mechanic in this Agreement does not mean that a Master Mechanic must be employed, but if employed, that he shall perform manual work Equipment Dispatcher

Power Shovels up to 3-1/2 cu. yd. Mon-O-Rail Hoist Operator Front End Loader Operator over 8 cu. yd. Tugboat Backhoe Operator 3 cu. yds. and over

GROUP 3:
All Terrain Vehicle Cranes - thru 20 tons and Hydro Cranes thru 20 tons Drill Rigs, Heavy Duty Rotary or Churn or Cable Drill Front End Loader Operator 3 cu. yd. up thru 8 cu. yd. Locomotive, all types. Mechanic, Heavy Duty. Pipeline Wrapping, Cleaning & Bending Machine Operator. Power Actuated Horizontal Boring Machine Over 6" Operator. Refrigeration Plant Engineer. Slip Form Operator (Paving) (Concrete). Tandem Pushed Quad 9 or similar. Asphalt Paving Machine Operator. Asphalt Plant Operator. Motor Grader Operator. Crushing Plant Operator, Gravel Washing, and Screening Plant Operator Automated Grade Trimmer. Backhoe Operator over 1/2 cu. yd. up to 3 cu. yd. Boom Truck, Hydraulic - 8 tons and over. Cableway Operator Roto Milling Machine (surface planer) 43" and over. Concrete Batch Plant Operator Concrete Mixer Paving Machine Operator Concrete Paver - Bridge Decks Concrete Pump, Concrete Belt Placer, Dozer Operator Scraper Operator Tractor with boom

attachment, Trenching Machine Operator, over 100 H.P. Dredge Operator or Engineer up thru 12" Paving Breaker - Non Hydro Hammer Type Power Actuated Horizontal Boring Machine over 6" Operator

GROUP 4:
Asphalt Paving Screed Operator concrete Spreader Operator, Backhoe up thru 1/2 cu. yd. Greaser Motor Grader Operator (Haul Road) Paving Breaker Hydro Hammer Type Console Board Operator Push Tractor Roller, Steel, and Rubber on Hot Mix Asphalt Paving Rotomill Operator (up to 42") Self-Propelled Traveling Soil Stabilizer Slip Form, Curb and Gutter Operator Distributor Operator (bituminous) Traeching Machine Operator. 40 H.P. - 100 H.P. Truck Mechanic Forklift Operator Sheepsfoot Packer with Dozer Attachment - 100 H.P. and over Front End Loader 1-1/2 cu. yds. up to 3 cu. yds. (Standard Mfg. Rating) Gravel Screeding Plant Operator (not crushing or washing) Logitudinal Float and Spray Operator Pugmill Operator Shouldering Machine Tamping Machine Operator Tie Tamper and Ballast Machine Well Points

GROUP 5:
Boom Truck A-Frame or Hydraulic 3 to 8 tons broom - Self-Propelled Concrete Saw (Power Operated) Front End Loader Operator up to 1-1/2 cu. yds. Mobile Cement Mixer Off Road Hauler Power Actuated Augers and Boring Machine Operator - Up thru 6" Roller, (on other than Hot Mix Asphalt Paving) Sand and Chip Spreader - Self Propelled Truck Crane Oiler Vibrating Packer Operator (Pad type) (Self-propelled) Water Spraying Equipment -

Self Propelled Sheepsfoot Roller on Compactor - Self Propelled

GROUP 6:
Brakeman or Switchman Form Trench Digger (power) Crane Oiler Gunite Operator Gunall Pick-up Sweeper, 1 yd. and Over Hopper Capacity Tractor Pulling Compaction or Areating Equipment Scissor Jack (self-propelled), Platform Lift Trenching Machine Operator, Under 40 H.P. Curb Machine Operator (Manual) Dredge or Tugboat Deck Hand Paint Machine Striping Operator Stump Chipper Operator Straw Mulcher and Blower

---

SUND2006A 03/02/1990

	Rates	Fringes
CARPENTERS	9.64	
CEMENT MASONS/CONCRETE FINISHERS	8.20	
ELECTRICIANS	14.00	1.90+10.5%
LABORERS:		
GROUP 1	5.75	
GROUP 2	5.80	
GROUP 3	5.95	
GROUP 4	6.10	
LINE CONSTRUCTION:		
Lineman, Cable Splicer	15.50	1.00+7 1/2%
Line Equipment Operator	13.95	1.00+7 1/2%
Groundman	8.93	1.00+7 1/2%

LABORERS

GROUP 1: General Construction Laborer; Sack Shaker (cement and mineral filler); Pipe Handler; Drill Runner Tender; Salamander Heater and Blower Tender

GROUP 2: Semi Skilled Laborer; Bulk Cement Handler; Conduit Layer, telephone or electrical; Form Setter (pavement); Gas, electric or pneumatic tool operator; Chipping Hammer, Grinders and Paving Brakers (tamper-dirt Concrete Vibrator Operator; Chain Saw Operator; Concrete Saw Operator; Concrete Curing Man (not water); (Bituminous Worker (Shoveler, Dumper Raker and Floater); Kettleman (bituminous or lead); Concrete Bucket Signalman; Power Buggy Operator; Brick and Mason Tender; Multiplaate Pipe Layer; Culvert Pipe Layer; Concrete Finisher Tender, Carpenters Tenders

GROUP 3: Caisson Worker; Bottom Man (sanitary sewer, storm sewer, water, and gas lines); Concrete Mixer Operator (One bag capacity); Motar Mixer

GROUP 4: Pipe Layers (sanitary sewer, storm sewer, water and gas lines); Drill Runner (includes Wagon Churn or Air Track); Powderman, gunite and sandblast, Nozzleman, reinforcing steel setter/tiers

TRUCK DRIVERS:

Single Axle	8.57	1.00
Tandem	8.69	1.00
Agitator Dumpcrete; Lowboy; Off road heavy duty end dumps, 20 yards and under; Tandem, Semi	9.00	1.00
Euclid, over 20 yards	9.77	1.00

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

---

Requests for additional classifications and wage rates may be submitted to the contracting officer after award, and may be approved only if: (1) the work to be performed by the classification requested is not performed by a classification in the wage determination; (2) the classification is utilized in the area by the construction industry; and (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination (for the given area and type of construction). (See 29 CFR 5.5(a)(v)).

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

END OF GENERAL DECISION

PERMISSIBLE PAYROLL DEDUCTIONS

The following payroll deductions may be made without requesting approval:

a) Any deduction made in compliance with the requirements of Federal, State, or local law.

Examples: Federal withholding taxes
State withholding taxes
Federal Social Security taxes

b) Any deductions of sums previously paid to the employee as a bona fide prepayment of wages when prepayment is made without discount or interest.

Example: A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of advanced funds.

c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of. . .

- The contractor
- The subcontractor
- Any affiliated person

OR

- When collusion or collaboration exists

d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer, or representatives of the employer, or both for the purpose of providing (from principal, or income, or both). . .

- Medical or hospital care
- Pensions or annuities on retirement
- Death benefits
- Compensation for injuries, illness, accidents, sickness, or disability

OR

- For insurance for any of the foregoing

- Unemployment benefits
- Vacation pay
- Savings accounts

OR

- Similar payments for the benefit of employees, their families and dependents, so long as. . .

  - The deduction is not otherwise prohibited by law
  - It is. . .

    (1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done

    AND

    Such consent is not a condition either for the obtaining of or for the continuation of employment,

    OR

    (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees

  - No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

  - The deductions shall serve the convenience and interest of employees.

EXHIBIT 6

NOTICE TO ALL EMPLOYEES

Working on Federal or Federally Financed Construction Projects

MINIMUM WAGES

You must be paid not less than the wage rate in the schedule posted with this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 a week. There are some exceptions.

APPRENTICES

Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

PROPER PAY

If you do not receive proper pay, contact the Contracting Officer listed below:

or you may contact the nearest office of the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division has offices in several hundred communities throughout the country. They are listed in the U.S. Government section of most telephone directories under:
U.S. Department of Labor
Employment Standards Administration

WH Publication 1321
Revised January 1986

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

EXHIBIT 5

REPORT OF ADDITIONAL CLASSIFICATION AND RATE
NORTH DAKOTA OFFICE OF INTERGOVERNMENTAL ASSISTANCE

Report of Additional Classification and Wage
Rate to Wage Decision Number: _____

*Trade Classification	Contract Award Date
Project Name	Project Number

Complete one of the following paragraphs A-D to document that the classification and wage rate are prevailing in the area for your type of construction.

A. As Prime Contractor I have surveyed the following contractors (in the area) and have found the classification of work at the following rate of pay and fringe benefits (where applicable):

Contractor/Location (city/state)	Base Rate	Fringe Benefits
_____	_____	_____
_____	_____	_____
_____	_____	_____
Proposed Prevailing Rate _____	Plus Fringe Benefit of	_____

B. I am currently under a labor agreement and this classification has a base rate of _____ and fringe benefit of _____, according to our contract.

Copy of contract enclosed ☐; copy of union contract has been provided to your office _____.

C. I am not under a union agreement or the union agreement does not state the requested classification and rate proposed; however, the employee and/or his/her representative have agreed that this classification is prevailing and has the following prevailing base rate of _____ and fringe benefits of _____.

Employee _____	or Representative _____	
Title _____		

D. Attached are signed statements from the Secretary of the Trade Association representing contractors (e.g., AGC, ABC) and the Secretary of the Building Trades Council having jurisdiction (representing Labor), stating the classification is prevailing and the prevailing minimum wage rate.

_____ (Signature of Prime Contractor)	_____ Date
_____ North Dakota Office of Intergovernmental Assistance	_____ Date

*Additional classifications needed for work not included within the scope of classifications listed in the DOL wage decision may be added after award only as provided in the labor standards contract clauses [29 CFR 5.5 (a)(1)(ii)].

EXHIBIT 7

PRIME CONTRACTOR'S REPORT REQUIREMENTS

WHAT		WHEN		WHERE	
SEND THIS MANY COPIES	OF THIS. . .	ONE-TIME	PERIODIC	DIRECT QUESTIONS TO. . .	SEND TO. . .
	Prime Contractor's Certified Payroll Form (WH-347)	The first week after work on project begins	Every week until project is officially complete		
	Certified copies for all subcontractors		Every week until project is officially complete beginning the week after sub becomes active		
	Names, other than owner or officer, authorized to sign payrolls for contractor (if any)	The first week after work on the project begins			
	Names, other than owner or officer, authorized to sign payrolls for subcontractors (if any)	The first week after work on the project begins (whether active or not)			
	Preconstruction Conference Minutes (copy signed by owner or officer)	The first week after work on the project begins			
	Weekly Report of Subcontractors on site	The first week after work on the project begins			

EXHIBIT 7 (CONTINUED)

SEND THIS MANY COPIES	OF THIS. . .	ONE-TIME	PERIODIC	DIRECT QUESTIONS TO. . .	SEND TO. . .
	Decision to hire new subcontractor not yet approved for work on this contract	Immediately			
	Decision to hire classification of worker not on Wage Determination	Immediately			
	Need for a decision on cash value of fringe benefits	Immediately			
	Disputes from workers regarding wages, fringes, or classification	As soon as problem occurs, notify HUD in writing			

EXHIBIT 8

How to Complete Payroll Forms

(Front section)

For subcontractors only:
- enter IRS number on first payroll

Check correct box

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Form Approved, Budget Bureau No. 44-R1093

IRS # 24 169475

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☒: Atholton Electric

ADDRESS: 1407 Orange Place Columbia Maryland

PAYROLL NO.: 14

FOR WEEK ENDING: April 9 1982

PROJECT AND LOCATION: Kings Village

PROJECT OR CONTRACT NO.: 47966420

Payrolls must be numbered sequentially. Write the word "Final" after the number on your last payroll

Enter days and week work was performed.

OVERTIME
- hours on this project contract exceeding 40 per week
- total overtime

SPECIFY...
- types of deductions
- total deductions withheld

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	O. OR S.	(4) DAY AND DATE: W 13	T 14	F 15	S 16	S 17	M 18	T 19	TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	(8) DEDUCTIONS: FICA	WITH-HOLDING TAX	STATE TAX	Health	OTHER Pension	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
Lee Buskey 715 Washington Place Baltimore, Md 238 668864		Mason	O							8	8	15.00	520.00	42.00	36.24	4.50	2.62	1.31	85.67	434.33
			S	8	8	8	8		8		40	10.00								
			O																	
			S																	
			O																	
			S																	

STRAIGHT TIME
- hours worked on this contract up to 40 per week
- total straight time

Address and social security number are required...
- the first time the worker's name appears on the payroll
- whenever the employee moves to a new address

Fill in the classification exactly as it appears on the determination.

If classification is for a power equipment operator, indicate type, size, horsepower.

Enter gross, each deduction, and net. Check your figures; subtract the total amount withheld from the total gross. The answer should equal the total in Column 9.

How to Complete Payroll Forms
(back section)

Section must be fully completed including list of deductions subtracted from wages

Date March 15, 1982

I, Paul A. Johnson, Owner

do hereby state

(1) That I pay or supervise the payment of the persons employed by Johnson Construction Company on the Meadow Lake Project

that during the payroll period commencing on the 8 day of March, 19 82, and ending the 14 day of March, 19 82, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said Johnson Construction Company from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

health
pension
union dues

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That carpenters, apprentices

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

X In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(b) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS

NAME OF SIGNER	TITLE
Paul A. Johnson	Owner

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE OFFENDER TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.

write in names of trades benefits were paid to

indicate type of benefit payment (a or b)

Signature must be...
in ink
original (no stamps or xerox)
authorized to sign

How to Report...

- when employee works on multiple projects

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Form Approved, Budget Bureau No. 44-R1093

IRS # 24-169423

NAME OF CONTRACTOR [X] OR SUBCONTRACTOR [ ]: Johnson Construction Company

ADDRESS: 121 North Avenue Barstowe Pa.

PAYROLL NO.: 13

FOR WEEK ENDING: March 13

PROJECT AND LOCATION: Berlyn, PA Meadow Lake

PROJECT OR CONTRACT NO.: 034-0001

(1) Name, Address, and Social Security Number of Employee	(2) No. of Withholding Exemptions	(3) Work Classification	O.T. or Sp.	(4) Day and Date W 8	T 9	F 10	S 11	S 12	M 13	T 14	(5) Total Hours	(6) Rate of Pay	(7) Gross Amount Earned	(8) Deductions: FICA	Withholding Tax	Health	Pension	Other	Total Deductions	(9) Net Wages Paid for Week
George David		Class I Unskilled Labor	O										122.40					UNION DUES IAF 84		
			•	8	2	8					18	6.80	312.40	22.31	39.09	6.25	3.12		71.74	240.66

George David

- spent time on other projects (see column 7)

Column 7 shows...

amount earned doing work on this contract → 122.40 / 312.40

amount earned on this project
PLUS
amount earned on all other projects during the week

- specific type of laborer classification is shown whenever wage determination

No addresses or social security numbers appear because information was provided on a previous payroll.

How to Report...

- apprentice wages
- overtime involving Contract Work Hours and Safety Standards Act
- overtime on multiple Federal projects

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Form Approved, Budget Bureau No. 44-R1093

IRS #24-169433

NAME OF CONTRACTOR ☒ OR SUBCONTRACTOR ☐: Johnson Construction Company

ADDRESS: 121 North Avenue Barstowe Pa.

PAYROLL NO.: 13 | FOR WEEK ENDING: March 13 | PROJECT AND LOCATION: Berlyn, PA Meadow Lake | PROJECT OR CONTRACT NO.: 034-0001

(1) Name, Address, and Social Security Number of Employee	(2) No. of Withholding Exemptions	(3) Work Classification	Code No.	(4) Day and Date: W 8	T 9	F 10	S 11	S 12	M 13	T 14	(5) Total Hours	(6) Rate of Pay	(7) Gross Amount Earned	(8) Deductions: FICA	Withholding Tax	Health	Pension	Other	Total Deductions	(9) Net Wages Paid for Week
Keenan Prohop		Apprentice Carpenter* 1st 6 mo. 40%	O	* Carpenters Joint Apprenticeship Prog. Approved by PA. Apprenticeship Training Council									71.40							
			H				4		8	8	20	3.57	142.80	7.68	12.60	9.00	1.31	UNION DUES 4.20	34.79	108.01
Robert Staunton		Carpenter	O							8	8	13.38	107.04							
			H										167.04	34.00	72.00	9.00	6.41	UNION DUES 4.20	125.61	312.23

Keenan Prohop
- shows apprentice classification
- shows step percentage
- identifies program (only required on first payroll entry. Remember to keep the approved certificate of program registration on file.)

Robert Staunton
- although Staunton only worked 8 hours on this contract, he is entitled to 8 hours overtime. That is because Staunton worked 40 hours on other Federally funded projects this week.

How to Report...

- time and wages if employee works on more than one classification during the week
- when an employee moves

James Jones		Carpenter	°										232.80	20.37	58.20	7.14	3.57	UNION DUES 3.20	87.48	260.84
			•	8		8	4		3		23	8.92	148.34							
James Jones		Class I Unskilled Laborer	°																	
			•				4					6.80								
Robert Austin 824 Woodlawn St Darby PA 212-44-5619		Carpenter	°										356.80	20.87	54.50	7.14	3.57	UNION DUES 3.20	89.28	267.52
			•	8	8	8			8	8	40	8.92								

James Jones
Since Jones worked at more than one classification during the week:
- use 2 lines, one for each classification

Robert Austin
- Since Austin moved last week, report his new address and his social security number.

PRECONSTRUCTION CONFERENCE MINUTES

PROJECT NUMBER:

NAME OF GENERAL CONTRACTOR:

PROJECT NAME:

LOCATION:

DATE AND PLACE OF CONFERENCE:

CONTRACT AMOUNT:

CONFERENCE ATTENDEES: See attached roster.

HUD personnel explained each of the topics listed below. Each topic was covered in the following way:

- The statutory provisions relating to each topic were cited.
- The main points of each provision were explained in plain English.
- Questions concerning the provisions were solicited and answered. (These questions are referenced below.)

TOPICS COVERED	QUESTIONS ASKED BY PARTICIPANTS
What prevailing wages are, and who gets them.	
How frequently wages must be paid.	
How to add new classifications to the Wage Determination.	
Who contractors can hire.	
What contractors have to tell employees about their wages.	

TOPICS COVERED	QUESTIONS ASKED BY PARTICIPANTS
When and how to hire apprentices and trainees.	
When contractors must pay overtime.	
When contractors have to pay fringe benefits.	
How contractors can get employees to buy their own fringe benefits.	
What to do when worker disputes a classification or wage rate.	
Contractor's report requirements.	
Contractor's equal opportunity obligations.	
What HUD does to assure compliance with Labor Standards provisions.	
How HUD notifies Contractor in case of violations.	
Sanctions HUD can apply if contractor underpays employees.	

Date _____

_____
(Labor Relations Officer)

COMPLETE AND SUBMIT WEEKLY ON THE FIRST OF EACH WEEK THAT THE SUBCONTRACTORS ARE ACTIVELY EMPLOYED IN THE ACTUAL CONSTRUCTION OF PROJECT. THE REPORT COVERS THE PREVIOUS WEEK. IF NONE, STATE NONE.

_____
General Contractor

WEEKLY REPORT OF SUBCONTRACTORS ON JOB SITE

PROJECT NAME: WEEK ENDING:

PROJECT NUMBER:

FIRM NAME	MON.	TUES.	WED.	THURS.	FRI.	SAT.

_____
Superintendent

Form 5.6SL-3 (3-5-82)

HOW TO CORRECT PAYROLL ERRORS

HUD will notify you by phone or letter if an error is found in your payroll.

Adjustments should be made as follows:

- If the gross amount of wages due a workman does not exceed $10.00, pay the money directly to the employee and report the payment on a supplemental payroll.
- If the gross amount exceeds $10, then provide statement from employee showing payment was received and send to HUD.

U.S. Department of Housing and Urban Development
Washington D.C. Area Office, Region III
Universal North Building
1875 Connecticut Avenue NW.
Washington, D.C. 20009

October 10, 1983

Abelson and Johnson, General Contractors
715 North Charles
Washington, D.C. 20016

Dear Mr. Johnson:

Please take immediate steps to correct the payroll submitted by your contractor, Barton Electric. The deficiencies described on the attached list must be corrected within 30 days.

As General Contractor for this project, you are responsible for making sure revised payrolls are. . .

- Corrected promptly
- Reviewed by you (or another officer of the firm) before they are sent

If you have questions or concerns, please phone me at 202-752-5728. Please remember: prompt correction of deficiencies is essential. HUD can, if necessary, withhold payment of mortgage proceeds until the deficiencies are corrected.

Sincerely,

Faron Brethwaite
Labor Relations Officer

Contractor/Subcontractor_____ Date_____
Project Name_____
Payroll Number_____ Payroll Date_____

The attached payroll is incorrect. Please submit a revised payroll within 30 days that corrects the deficiencies listed below.

IF BOX IS CHECKED	CORRECT YOUR PAYROLL TO. . .
☐	Show employee's hourly rate of pay.
☐	State employee's job classification.
☐	Show "daily number of hours worked" for employee.
☐	Reflect hours worked in each classification during the week.
	You can either. . .
☐	• Provide workman's signature next to work classification shown, or
☐	• Attach daily time slips, showing split hours, signed by workman
☐	Correct gross amount earned.
☐	Provide employees' addresses and Social Security numbers when listed for the first time.
☐	Furnish IRS Employee Identification Number.
☐	Provide all payrolls since week ending on_____.
☐	Have payrolls reviewed by Prime Contractor.
	Reminder: Prime Contractor must review all payrolls. Payrolls must be submitted every week until all work subcontractor will provide is completed. If no work was done, Prime Contractor will mark payroll in one of these ways:
☐	• "No Work Performed since week ending_____ (signature).
☐	• "Final Payroll"_____ (signature).
☐	Submit supplemental payrolls showing hourly shortage, weekly hours, gross, deductions, net due, and photocopies of front and back of cancelled checks as proof of restitution.
☐	Identify "other" deductions on payroll.
☐	Attach computer codes to payroll.
☐	Submit original payrolls with original signature on payroll certification (duplicates were submitted).
☐	Provide payroll number.
☐	Show how fringes were paid (item 4-A, 4-B, or payroll certif.).
☐	Show dates worked that were omitted.
☐	Show the following job classification_____as being used, although not listed on wage decision.
☐	Provide apprentice certificates for these employees.
☐	Show apprentice wage rate step.
☐	Provide evidence showing that ratio of apprentices to journeymen meets Department of Labor requirements. Provide copy of union agreement.
☐	Miscellaneous

Note to Subcontractor: Revised payrolls must be reviewed by the Prime Contractor before they are sent to HUD.

Apprenticeship Agreement

Bureau of Apprenticeship and Training

U.S. Department of Labor

Employment and Training Administration

Warning: This agreement does not constitute a certification under Title 29, CFR, Part 5 for the employment of the apprentice on Federally financed or assisted construction projects. Current certifications must be obtained from the Bureau of Apprenticeship and Training or the recognized State Apprenticeship Agency shown below.

The program sponsor and apprentice agree to the terms of Apprenticeship Standards incorporated as part of this Agreement. The sponsor will not discriminate in the selection and training of the apprentice in accordance with the Equal Opportunity Standards in Title 29 CFR Part 30.3, and Executive Order 11246.

Privacy Act Statement: The information requested herein is used for apprenticeship program statistical purposes and may not be otherwise disclosed without the express permission of the undersigned apprentice. Privacy Act of 1974 (P.L. 93-579).

This agreement may be terminated by either of the parties, citing cause(s), with notification to the registration agency, in compliance with Title 29, CFR, Part 29.6.

Part A: To be completed by sponsor

1. Sponsor (Name and address) Program No. _____

2a. Trade (The work processes listed in the standards are part of this agreement)

2b. DOT symbol

3. Term (Hrs., Mos., Yrs.)

4. Probationary period (Hrs., Mos., Yrs.)

5. Credit for previous experience (Hrs., Mos., Yrs.)

6. Term remaining (Hrs., Mos., Yrs.)

8. Date apprenticeship begins (indenture date)

9. Related instruction a. Number of hours per year _____

b. Method
- ☐ Classroom
- ☐ Shop
- ☐ Correspondence

c. Source
- ☐ Voc. Ed.
- ☐ Sponsor
- ☐ Other

d. Apprentice wages for related instruction
- ☐ Will be paid
- ☐ Will not be paid

10. Apprenticeship wages: The apprentice schedule of pay shall be listed for each advancement period.

	Period 1	2	3	4	5	6	7	8	9	10
b. Term (Hrs., Mos., Yrs.)										
c. Percent										

11a. Signature of committee (if applicable) Date Signed

11b. Signature of committee (if applicable) Date Signed

12. Signature of authorized representative (Employer/Sponsor) Date Signed

13. Name and address of sponsor designee to receive inquiries (if applicable)

Part B: To be completed by apprentice

14. Name (Last, first, middle), and address (No., Street, City, County, State, Zip Code) Social Security number

15. Date of birth (Mo, day, Yr)

16. Sex (X one)
- ☐ Male
- ☐ Female

17. Apprenticeship school linkage
- ☐ Yes
- ☐ No

18. Race/Ethnic Group (X one)
- ☐ White (Not Hispanic)
- ☐ Black (Not Hispanic)
- ☐ Hispanic
- ☐ Am. Indian or Alaska Native
- ☐ Asian or Pacific Islander
- ☐ Information not available
- ☐ Not elsewhere classified

19. Veteran Status
- ☐ Vietnam era veteran (8/15/64 to 5/7/75)
- ☐ Other veteran
- ☐ Non Veteran

C # _____

20. Highest education level (X one)
- ☐ 8th grade or less
- ☐ 9th to 12th grade
- ☐ GED
- ☐ High School Graduate

21. Signature of apprentice Date

22. Signature of parent/guardian (if minor) Date

Part C: To be completed by registration agency

23. Registration agency and address

24. Signature (Registration agency) Date registered

ETA 671 (rev. 12/85)

APPENDIX G

Sample Request for Audit Proposal

Summary Letter

INTERESTED PARTIES:

You are invited to submit a proposal in accordance with the requirements of Request for Proposal # _____ for the (____year) audit of the (_____City/County_____). If interested, please contact (_____name and address of designated office_____) attention: (_____name and title of designated official_____) by (____date_____).

Enclosure 1

Instructions to Offerors

1. Requests for any information concerning this solicitation are to be referred to (_____name and title of designated official_____), (__phone number_____) The (_City/County__) expects to make a decision of contract award by (___date____).
2. A total of (number of copies__) of each proposal must be addressed to (_____ name and address of designated office), attention: (_____ name and title of designated official_____), by (_____time_____), (__month___), (___day_), (___year___).
3. The proposal must be signed by an official authorized to bind the Offeror and it shall contain a statement to the effect that the proposal is firm for a period of at least sixty (60) days from the date of the receipt by the (_____City/County_____).
4. The Offeror's proposal must adequately address the Technical Proposal Instructions as well as the Business Proposal.
5. The (_____City/County_____) intends to award the contract based on the Offeror's proposal as submitted. Therefore, the proposal should be submitted initially on the most favorable terms, from both a price and technical standpoint. The (___City/County_____reserves the right to reject all proposals.

Enclosure 2

Proposed Contract Provisions

I. Scope of Services

The Offerer shall conduct a financial and compliance audit of the entire (___City/County___) unless the election is made to cover only each department which received Federal financial assistance during the fiscal year.

II. Statement of Work

A. The Offeror, through the audit process, shall determine:

1. If the financial statements present fairly the financial position and are in accordance with generally accepted accounting principles.

2. If there is an internal control system in place which will provide assurance that Federal funds are being properly accounted for.

3. If there has been compliance with laws and regulations for each major Federal assistance project that may have a material effect upon the financial statements.

B. The Offeror shall apply its own audit standards and procedures and those developed by the American Institute of Certified Public Accountants (AICPA), "Generally Accepted Auditing Standards", and those developed by the US General Account Office, "Standards for Audit of Governmental Organization, Programs, Activities and Functions", and AICPA "Audits of State and Local Government Units", industry audit guide. The Offeror shall be familiar with the Single Audit Act and Circular A-128. It shall be determined that the CDBG/HOME program complies with rules and regulations as described in the CDBG/HOME Program Statement and CDBG/HOME Administrative Manual.

III. Standards of Reporting

A. The audit report shall include a statement that the audit was made in accordance with the provisions of Circular A-128.

B. The Offeror shall identify the statements examined and the period covered, identify the various programs under which the organization received Federal and State funds along with the awards received.

C. The Offeror shall perform sufficient work to issue an opinion as to whether the financial statements are in accordance with generally accepted accounting principles, consistently applied, and present fairly the financial position for the period ended.

D. The Offeror's report shall identify compliance and internal controls designed to provide reasonable assurance that Federal programs comply with laws and regulations:

- Including comments on weaknesses and noncompliance with systems of internal control.

- Any comments on corrective action taken or planned.

IV. Exit Conference

The Offeror shall hold an "Exit Conference" with representatives of the (_____(City /County_____) to discuss the audit report.

V. Specific Terms and Conditions

A. Access to Working Papers

The authorized representatives of the (_____City/County_____), its cognizant agency or its designees, and the General Accounting Office or its designees shall have free and unrestricted access to the work papers, records, other supportive documentation, and reports prepared or in the process of being prepared in connection with audits performed under this contract for three (3) years from date of submission or until any litigation has been resolved, if later.

B. Funding Limitation

This RFP will result in an amount payable based on time expended not to exceed a maximum of total price bid.

C. Key Personnel

All audit work is to be performed directly by the contracting firm or individual, and no function shall be subcontracted to any firm or individual. The Offeror shall not under any circumstances remove or direct key persons without prior written authorization by the (____City/County____). The key personnel are as follows:

Name	Title
_____	_____
_____	_____

Enclosure 3

Minimum Qualification to Bid

1. The auditor or audit staff assigned to perform the audit must possess adequate professional proficiency for the work required.

    a. The Offeror must be a Certified Public Accounting firm licensed on or before December 31, 1970.

2. The Offeror must be completely independent from the proposed work scope.

Enclosure 4

Technical Proposal Instructions

The Offeror shall submit a separate enclosure entitled" Technical Proposal Instructions". It shall be organized according to the specified criteria below, and shall include, but not be limited to, the following:

A. Personnel Qualifications and Experience

- Resumes covering the qualifications of the proposed staff
- Education accomplishments
- Years and types of experience
- Experience in auditing Federally-assisted programs

B. Organizational Resources and Project Management Plan

- Description of the organizational structure of the firm

- Staffing plan for fulfilling the contract

- Provide a list of the firms clients for which audit services of this nature have been provided including names and telephone numbers of the clients representative for reference contracts.

C. Understanding the Scope of Work and Approach to Audit

- A narrative must be included to demonstrate the Offeror's technical understanding of the work to be performed.

- The Offeror must include a statement specifying that the firm will meet the audit deadline.

Enclosure 5

Business Proposal

The Offeror shall submit a pricing proposal to include:

A. The Offeror's total audit fee

B. Data should be included to support the fee which is adequate to establish the reasonableness of the Auditor's overall bid.

Evaluation Procedures

Enclosure 6 is an example of a method of evaluating proposals. The evaluation formula and the values assigned to the criteria given are for illustration only. The City/County should design formulas and criteria that meet their own needs.

Although cost is a significant factor, it should not be the dominant factor. Cost should be given more importance when all the other evaluation criteria are relatively equal.

Enclosure 6

Evaluation Procedures

Each proposal will be evaluated based on the following criteria and evaluation formula.

A. Technical Factors

1. Responsiveness of the proposal in clearly stating an understanding of the work to be performed.

   - Appropriateness and adequacy of proposal procedures
   - Necessity of procedures
   - Reasonableness of time estimates
   - Appropriateness of assigned staff levels
   - Timeliness of expected completion

2. Technical experience of the firm

3. Qualification of staff

4. Size and structure of the firm

B. Cost Factors

1. Cost of work to be performed

Total scores will be determined by adding the points received for technical qualifications **(maximum of 75 points)** to the points received for the cost of the audit **(maximum of 25 points)**. The total score will be determined by the following formula:

$$\frac{\text{Technical Score for this Firm}}{\text{Highest Technical Score Received}} \text{ X (75) = Technical Score}$$

$$\frac{\text{Lowest Bid of All Bids}}{\text{Cost of Bid for this Firm}} \text{ X (25) = Cost Score}$$

While the total score will be significant factor, the City/County receives the right to make a final selection.

U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:

All Regional Directors
All Field Office Directors
All CPD Division Directors
All Regional Environmental Officers
All Responsible Entities
All Housing Directors
All PIH Division Directors
All Program Environmental Clearance Officers

Notice: CPD-12-006

Issued: June 15, 2012

Expires: This Notice is effective until amended, superseded, or rescinded.

Cross References:

SUBJECT: Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58

I. Purpose

The "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," 24 CFR Part 58, outlines the review process for many projects assisted with HUD programs, including those funded through CDBG, HOME, HOPE VI, HOPWA, Emergency Shelter Grants, certain Indian Housing programs, Public Housing Capital Fund, and Economic Development Initiative grants, and certain loans guaranteed by HUD. Part 58 covers many environmental areas, including historic resources. It references the "Section 106" review process for historic resources, which requires federal agencies to consult with federally-recognized Indian tribes on projects that may affect historic properties of religious and cultural significance to tribes. Under Part 58, local, state, or tribal governments become Responsible Entities (REs) and assume the federal agency's environmental review authority and responsibility for projects within their jurisdiction, including those for which they are grantees. The RE must consult with tribes to determine whether a proposed project may adversely affect historic properties of religious and cultural significance, and if so, how the adverse effect could be avoided, minimized or mitigated. This applies to projects on and off tribal lands. This Notice clarifies the steps that REs should follow in the tribal consultation process. Following this protocol ensures compliance with the requirement for certification of tribal consultation on the Request for Release of Funds and Certification (form HUD 7015.15).

II. Background

Section 106 of the National Historic Preservation Act (*16 U.S.C. 470f*) and its implementing regulations (36 CFR Part 800) direct federal agencies to undertake an open, consultative process to consider the impact of their projects on historic and archeological resources. The review must

be completed before an agency approves and/or commits funds to a project. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE), acting as HUD, consults with the State Historic Preservation Officer (SHPO), local government, individuals and organizations with demonstrated interest, the public, and representatives of federally-recognized Indian tribes and Native Hawaiian Organizations, including Tribal Historic Preservation Officers (THPOs). This Notice focuses on tribal consultation and project impacts to historic properties of religious and cultural significance to tribes. If a project includes activities that may affect such properties, the RE must consult with tribes to identify the property(ies) and consider ways to avoid, minimize or mitigate possible adverse effects to them. For guidance on consulting with Native Hawaiian Organizations, see "Consultation with Native Hawaiian Organizations in the Section 106 Review Process: A Handbook" published by the Advisory Council on Historic Preservation in June 2011.

Effective tribal consultation begins at the earliest possible stages of a project and is carried out to meet project timeframes. It fosters meaningful dialogue that strives to protect historic properties of religious and cultural significance to tribes. As noted in 36 CFR 800.2(c)(2)(ii)(B): "Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights." Additional guidance on working with tribal representatives is available. REs may engage cultural resource specialists to assist in the process as needed, but REs remain ultimately responsible for initiating consultation with tribes.

Further details on the Statutory and Regulatory Requirements for tribal consultation are included in Section VI. Definitions are included in Section VII.

III. Required Actions by Responsible Entities

A. Determine if Section 106 Review is Required

Not all projects require Section 106 review. Some are exempted through regulation or Programmatic Agreements between the RE and the SHPO. If Section 106 review is not required, tribal consultation is not required.

1. Exempt Activities

If project activities are limited to those listed in 24 CFR 58.34 (a) (1-11) as Exempt Activities and those listed in 24 CFR 58.35 (b), as Categorical Exclusions not subject to §58.5, no further review and no consultation are required. The listed Activities and Exclusions have "No Potential to Cause Effects." Examples include: maintenance activities, tenant-based rental assistance, operating costs, affordable housing pre-development costs, studies and plans.

2. Programmatic Agreement

If the funded activity is covered by an existing Programmatic Agreement (PA), the PA may contain more Exempt activities in addition to the ones above. [Link to PA database] Follow the review process in the PA, including appropriate tribal consultation. If the PA does not

contain a section on tribal consultation, and the activity is not Exempt, follow the process in III. C., below.

3. Projects Involving Multiple Federal Agencies
If the project involves multiple federal agencies, the RE may defer to another federal agency as the lead agency to undertake the Section 106 review. Generally, the agency with the largest stake in the project acts as the lead agency. Document the lead agency agreement in writing and retain it in the Environmental Review Record (ERR). The agreement must contain provisions for appropriate tribal consultation. If adverse effects are involved, the RE must sign the Memorandum of Agreement that resolves the adverse effect(s). Contact the HUD Federal Preservation Officer to discuss questions about a specific case.

B. Determine if Tribal Consultation is Required

Not all projects that require Section 106 review require consultation with Indian tribes. Consultation with federally-recognized tribes is required when a project includes activities that have the potential to affect historic properties of religious and cultural significance to tribes. These types of activities activities include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

1. Checklist on When to Consult With Tribes
Use the When to Consult With Tribes Under Section 106 checklist (Appendix A) to determine if the project includes types of activities that have the potential to affect historic properties of religious and cultural significance. [Link to checklist] If not, tribal consultation is not required. Keep a copy of the checklist in the Environmental Review Record (ERR). If needed, you may seek technical assistance from the HUD Field Environmental Officer (FEO). If consultation is required, follow the steps below.

Through written agreement with a tribe, an RE may modify the process outlined below. [See 36 CFR 800.2(c)(2)(ii)(E)] An RE may also choose to incorporate into their consultation effort any relevant provisions in existing agreements between SHPOs and tribes and in other SHPO and THPO written guidance regarding tribal consultation.

C. Consult With Tribes

If a project includes the types of activities that may affect historic properties of religious and cultural significance, the RE must consult with the relevant tribe(s) to identify any such properties in the project's Area of Potential Effect (APE). If they are present, consultation continues with evaluation of the eligibility of the properties for the National Register of Historic Places and assessment of the possible effects of the project on Register-eligible properties. The goal is to avoid adverse effects if possible.

Steps 1-4 below correspond to the steps commonly used to describe the Section 106 process in other guidance: Initiate Consultation (Step 1); Identify and Evaluate Historic Properties (Step 2); Assess Effects (Step 3); and Resolve Adverse Effects (Step 4). For the sake of efficiency, Steps

2, 3 and 4 may be treated together in consultation discussions and comments. [See 36 CFR 800.3(g) Expediting consultation]

Step1. Identify federally-recognized tribes with an interest in the project area and initiate consultation

The RE can use the Tribal Directory Assessment Tool (TDAT) to identify tribes with a current or ancestral interest in the county where the project is located. TDAT is a web-based directory of federally-recognized tribes and their geographic areas of interest. Tribes may have an interest in counties far from their current location, counties where the tribe lived centuries or millennia ago.

a. Tribal Directory Assessment Tool (TDAT)
Type the project address into the locator box in TDAT and it will return a list of tribes with interest in the area, with contact names, addresses, e-mail addresses, fax numbers and phone numbers. You can export the list as an Excel spreadsheet for mail merge in g. below. If TDAT shows no federally-recognized tribes with an interest in the area, document the result in the ERR; consultation is complete unless a previously unidentified, federally-recognized tribe expresses a desire to consult.

b. Tribe as Grant Recipient
If a tribe is a grant recipient in a HUD project and assumes the role of RE and conducts the Section 106 review, that tribe is responsible for inviting other tribes to consult if other tribes also have a religious or cultural interest in the project area. Additional guidance is available.

c. Non-federally Recognized Tribes
Although REs are only required to consult with federally-recognized tribes, the RE may invite non-federally recognized tribes with a demonstrated interest in the project to consult as additional consulting parties. They may also participate as members of the public. [See pages 9-11 of *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*]

d. Contact federally-recognized tribe(s) and invite consultation
Once the RE has identified tribes with a potential interest in the project area, the RE mails a letter to each tribe to invite consultation. The letter(s), on RE letterhead, may be transmitted by email. Keep a copy of the letter(s) in the Environmental Review Record (ERR) for monitoring purposes.

e. Historic Properties of Religious and Cultural Significance
The letter that invites consultation should contain a request for assistance in identifying historic properties of religious and cultural significance in the project area - archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association - and any initial concerns with impacts of the project on those resources.

f. Tribal Historic Preservation Officer (THPO)
Some tribes have both a tribal leader and a Tribal Historic Preservation Officer (THPO) listed in TDAT. Send letters to both and ask that the tribe's response indicate a single point of contact if possible. On tribal lands, a THPO may have assumed authority for Section 106 review in lieu of the State Historic Preservation Officer (SHPO). On non-tribal lands, the THPO may have been delegated by the tribe to represent them in Section 106 reviews, but their participation does not take the place of consultation with the SHPO. [See page 6 of *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*]

g. Template Letter
Send a letter to the tribe(s) using TDAT contact info mail merged with the template letter. The RE may customize the template letter if desired. [Link to template letter]

You must add a description of the project into the letter by editing the template. The description should include, as applicable: the location and size of the property; type of project; type and scale of new building(s) or structures; construction materials; number of housing units; depth and area of ground disturbance; introduction of visual, audible or atmospheric changes; or transfer, lease or sale of property. [Link to sample project descriptions]

The RE -- not a contractor, lender, sponsor, sub-recipient or other grantee -- must sign the letter to the tribe(s). The RE is required to conduct government-to-government consultation.

h. Map
Enclose a map showing the location of the project and the Area of Potential Effect (APE), which may be larger than the project property. For urban sites, a map generated from a site like Google Earth is preferred. [Link to Google Earth] For rural sites, a USGS topographic map is preferred. [Link to topo map site]

i. Timeframes
HUD's policy is to request a response to the invitation to consult within 30 days from the date the tribe receives the letter. For gauging the beginning and end of the 30 day period, an RE may assume that an emailed letter is received on the date it is sent. For a hard copy letter, an RE may send the letter certified mail, or, if mail delivery is predictable and reliable, the RE may assume a 5-day delivery period, and assume that the period ends 35 days after the letter is mailed.

If a tribe wishes to be a consulting party, the tribe must provide within 30 days an indication of their desire to consult. The tribe does not need to actually provide information about historic properties of religious and cultural significance within 30 days; that may take longer. If a tribe responds that they do not want to consult, document the response in the ERR. If a tribe does not respond to the invitation to consult within 30 days, the RE should document the invitation and lack of response in the ERR; further consultation is not required.

j. Tiered Review

If a project is utilizing a Tiered review, consultation should usually begin in the Tier 1 broad level review. If a tribe expresses interest in further consultation on specific sites, the Tier 1 review should include a written strategy for continuing consultation on site specific reviews in Tier 2. [See 24 CFR 58.15]

Step 2. Consult with the tribe(s) to identify and evaluate historic properties of religious and cultural significance

Theoretically, the consultation process first identifies potential historic properties, then evaluates which ones are eligible for the National Register of Historic Places, and then assesses the impact(s) of the project on those resources. In practice, those efforts often occur simultaneously. It is important to remember though, that only historic properties of religious and cultural significance that are eligible for or listed on the National Register are protected under Section 106. If no such properties are present, refer to the "No Historic Properties Affected" finding in Step 3 below.

a. Consultation Meeting(s)

After receiving a response that a tribe wants to consult, contact the tribe(s) to arrange further consultation which may take place by phone, web meeting, or face-to-face meeting. Try to accommodate a tribe's preferences as to meeting location and method of communication. If needed, a site visit is an eligible project expense. If more than one tribe wants to consult, consult jointly if possible. Integrate tribal consultation with consultation with other non-tribal parties, including the SHPO, as possible and appropriate. Recognize that some tribes may not want to consult jointly, particularly where there are concerns for confidentiality of information.

b. Evaluation of Historic Properties for the National Register of Historic Places

Gather information on known historic properties from the tribe, SHPO, consultants, and other repositories. Discuss with the tribe whether known properties appear eligible for the National Register of Historic Places. HUD acknowledges that tribes possess special expertise in evaluating the eligibility of religious and cultural properties for the National Register. Generally, if the RE disagrees with a tribe's opinion, the RE or the tribe may ask the Advisory Council on Historic Preservation to enter the consultation. The tribe may also ask the Council to request the RE to obtain a formal determination of eligibility from the Keeper of the National Register.

c. Surveys to Identify Additional Historic Properties

If a convincing case is made by the tribe(s) and/or SHPO that National Register eligible historic properties potentially exist on the site, and that they may be affected by the project, the grantee may approve funding for an archeological survey as part of the project. Consult HUD's HP Fact Sheet #6, Guidance on Archeological Investigations in HUD Projects. [Link to HP Fact Sheet #6]

Sometimes, consultation results in modification of project plans to avoid potential effects on historic properties of religious and cultural significance. If effects are avoided, e.g. by designating a sensitive area as undisturbed green space, it is generally not necessary to fully identify and document resources with an archeological survey.

An RE is not required to pay for consultation. However, an RE may choose to negotiate payment to a tribe for detailed survey documentation on historic properties of religious and cultural significance to the tribe, similar to payment to a consultant. If agreed upon ahead of time, this payment may be an eligible project expense.

d. Confidentiality of Information
Tribes may be hesitant to share information on the location, character, and use of historic properties of special religious and cultural significance. Discuss with the tribe(s) ways to protect confidentiality of such information. The RE should strive to ensure confidentiality when requested. 36 CFR 800.11(c) outlines a formal process for obtaining federal authority to withhold sensitive information, in the event that practical means or state authority are not available.

Step 3. Consult with the tribe(s) to evaluate the effects of the project on identified and potential historic resources

After discussing the possible effects of the project on historic properties of religious and cultural significance to tribes, the RE determines the appropriate finding: "No Historic Properties Affected"; 'No Adverse Effect"; or "Adverse Effect". The RE will also be consulting with other parties, like the SHPO, to determine effects of the project on these and other types of resources, like historic buildings with no tribal association. It is desirable to consolidate findings of effect for all types of historic properties in one letter. Ultimately, a project has one overall finding of effect. Tribes have 30 days to object to a finding of effect.

a. Criteria of Adverse Effect
Consult with the tribe(s) and other consulting parties to apply the Criteria of Adverse Effect, and determine if the project may have an adverse effect.

b. "No Historic Properties Affected" Finding
If there are no known or potential historic properties in the project area that are listed on or eligible for the National Register of Historic Places, or if such properties exist but there will be no effect on them, notify the tribe(s) and other consulting parties of your determination of "No Historic Properties Affected." Describe which of the above circumstances applies. It is not necessary to fully identify and document resources if they will not be affected by the project.

c. "No Adverse Effect" Finding
If the project will have an effect, but it will not be adverse, notify the tribe(s) and other consulting parties of your determination of "No Adverse Effect." They have 30 days to object. If a tribe objects, the RE should consult to resolve the objection. The tribe or the RE may also ask the Advisory Council on Historic

Preservation to review the determination. The request must be made within the 30-day period and must include the documentation listed in 36 CFR 800.11 (e).

d. "Adverse Effect" Finding
If the project will affect National Register listed or eligible historic properties in any of the ways outlined in the Criteria of Adverse Effect, notify the tribe(s) and other consulting parties of your determination of "Adverse Effect" and consult to resolve the adverse effects. Typical activities that could adversely affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

Step 4. Consult to resolve adverse effects

If there are possible "Adverse Effects", consult with the tribe(s) and other consulting parties to consider alternatives that would avoid or minimize adverse effects, including possible mitigation measures.

a. Notification of Advisory Council
The RE must notify the Advisory Council on Historic Preservation (ACHP) about the adverse effect and give them an opportunity to enter the consultation. The Council will decide whether to enter the consultation based on established criteria that include whether a project "Presents issues of concern to Indian tribes or Native Hawaiian organizations." The Advisory Council must respond within 15 days of receipt of the request. [See link to on-line ACHP notification system – pending]

b. Consideration of Alternatives
Consult with the tribe(s) and other consulting parties about possible ways to modify a project to avoid adverse effects. If initial discussion does not resolve the issue(s), a site visit with consulting parties and project developers is often helpful. An agreed upon alternative may be stipulated with "conditions" in a revised "No Adverse Effect" finding for the project.

c. Consideration of Mitigation Measures
If adverse effects cannot be fully resolved, and there is a compelling need for the project to proceed despite the adverse effect(s), consider ways to mitigate or compensate for the harm to the historic property(ies). Mitigation measures may include data recovery, documentation, research, publication, education, interpretation, curation, off-site preservation, and/or monitoring and may relate to the specific resource that is being affected, or other historic properties in a similar location or of a similar type.

d. If needed, prepare and execute a Memorandum of Agreement (MOA)
An MOA stipulates the agreed upon measures to minimize and/or mitigate adverse effects. It is a legally binding document that obligates all named parties

to the agreement. The RE is responsible for ensuring that the measures required by the MOA are satisfactorily carried out. Model language is available. At the discretion of the RE, where deemed necessary, an MOA may also be used to codify agreed upon measures to avoid an adverse effect, in conjunction with a conditional "No Adverse Effect" finding.

e. Execution of the MOA
The MOA must be executed prior to the decision point for the project -- as applicable, prior to the dissemination or publication of public notices required by 24 CFR Part 58 (e.g., notice of finding of no significant impact (§58.43), and notice of intent to request the release of funds (§58.70)). The RE should send a digital copy of the MOA to the HUD Field Environmental Officer (FEO) who will file it in the MOA file in the central HUD shared drive. A copy must also be provided to the Advisory Council on Historic Preservation and the consulting tribe(s).

f. Signatories to the MOA
The Responsible Entity may invite the tribe(s) to sign the MOA as a consulting party. The tribal leader and the THPO may sign the MOA. For projects on tribal lands, if the tribe has a THPO who has assumed Section 106 responsibilities for the tribe, the THPO must be a signatory.

HUD does not sign Section 106 agreement documents covered by 24 CFR Part 58. HUD does sign agreements covered by 24 CFR Part 50. If a project is subject to both, HUD may sign as long as the agreement states the appropriate program reference. [See CPD Memo on HUD Environmental Regulations and Section 106 Agreement Documents]

g. Completion of MOA requirements
The RE must ensure that the stipulations and mitigation measures in the MOA are carried out and inform the tribe(s) of completion. Document completion in the Environmental Review Record (ERR).

h. Termination of Consultation
If consulting about properties on tribal lands, a THPO may determine that further consultation will not be productive and terminate consultation. Likewise, an RE, SHPO, or, if participating, the Advisory Council on Historic Preservation, may terminate consultation. Termination of consultation is detailed at 36 CFR 800.7. A tribe that is consulting about properties off tribal lands may decline an invitation to sign an MOA, but does not have a right to terminate consultation under 36 CFR 800.7.

IV. Record of Compliance

Include evidence of compliance with this protocol in the Environmental Review Record (ERR), including notes, letters, e-mails, reports, etc.

Failure to consult with tribes per this protocol may lead to HUD issuing a finding of non-compliance with 36 CFR Part 800, the regulations that implement Section 106. If HUD makes a finding, HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the RE which may include terminating grants where appropriate and repayment of funds expended with non-federal funds. (See 24 CFR 58.77)

A. Request for Release of Funds (RROF) (Form 7015.15)

REs and grantees must certify on the Request for Release of Funds and Certification (form HUD 7015.15) that they have consulted with federally-recognized tribes per this protocol. [See Part 2, #3 of form]

V. Discoveries During Construction

Whenever previously unknown below ground historic properties of religious and cultural significance are discovered during construction, excavation in the area of the resources must immediately stop until tribal consultation can occur. The RE must notify tribes (including the THPOs), the Advisory Council on Historic Preservation, and the SHPO within 48 hours of the discovery. [See 36 CFR 800.13(b)] Contact the tribes identified in Step 1 and reenter consultation which should take place under an accelerated timeframe. A site visit with the RE, tribe(s), and SHPO (as appropriate) is recommended to resolve any potential adverse effect(s) to the historic property(ies) of religious and cultural significance.

A. Human Remains

If the discovery includes human remains, they should be respectfully covered over and secured, and the RE should contact law enforcement authorities as well as tribes and other consulting parties. If the human remains are determined to be Indian burials, the RE should follow the guidance in the "**Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects**."

B. Native American Graves Protection and Repatriation Act (NAGPRA)

In undertakings on federal or tribal lands, the Native American Graves Protection and Repatriation Act (NAGPRA) *(25 U.S.C. 3001 et seq)* requires that cultural items excavated or inadvertently discovered be returned to their respective peoples. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. More information is available.

VI. Statutory and Regulatory Requirements

Federal law directs federal agencies to consult with tribes when there is a potential for a federally-funded project to affect a historic property of religious and cultural significance to tribes.

Section 106 of the National Historic Preservation Act (*16 U.S.C. 470f*) requires that prior to approving the expenditure of funds for a project, a federal agency must take into account the effect of the undertaking on historic resources.

Section 101 (d)(6)(A) and (B) of the National Historic Preservation Act identifies the types of properties to be considered and the obligation to consult. The Act provides that properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion in the National Register of Historic Places. In carrying out its responsibilities under Section 106 of the Act, a Federal agency is required to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such properties. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE) assumes the role of the Federal agency, including tribal consultation. [See 24 CFR 58.4]

The regulations that implement Section 106 of the Act, 36 CFR Part 800 – "Protection of Historic Properties," define "Indian tribe" as federally-recognized tribes, and limit the need to consult to projects that have the potential to affect historic properties of religious and cultural significance to tribes.

36 CFR 800.2 (c)(2)(ii)
Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.
Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking…

36 CFR 800.3
(a) *Establish undertaking*. The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.
(1) *No potential to cause effects*. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

Therefore, the consultation process outlined in this Notice starts by first establishing whether the project includes a type of activity that has the potential to affect historic properties of religious and cultural significance to tribes. If it does, it outlines the steps to consult with tribes to identify and evaluate resources, and to assess the effects of the project on the resources.

VII. Definitions

Definitions of some of the terms used in this Notice may be found in 24 CFR Part 58 and 36 CFR Part 800, "Protection of Historic Properties", and are repeated here for convenience.

The definition of ***Responsible Entity*** is found in 24 CFR 58.2(a)(7).

Responsible Entity. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

Definitions of some other parties in the Section 106 process are found in 36 CFR 800.16.

Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

State Historic Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Other relevant definitions found in 36 CFR 800.16 include:

Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

Eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Memorandum of agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with §800.14(b).

Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

Acronyms Used in This Notice

ACHP	Advisory Council on Historic Preservation (federal)
APE	Area of Potential Effect
CPD	Community Planning and Development Office
ERR	Environmental Review Record
FEO	Field Environmental Officer
HUD	U.S. Department of Housing and Urban Development
MOA	Memorandum of Agreement
NAGPRA	Native American Graves Protection and Repatriation Act
PA	Programmatic Agreement
RE	Responsible Entity
REO	Regional Environmental Officer
RROF	Request for Release of Funds and Certification
SHPO	State Historic Preservation Officer
TDAT	Tribal Directory Assessment Tool
THPO	Tribal Historic Preservation Officer

Appendix A

When To Consult With Tribes Under Section 106 Checklist

Yolanda Chávez
Deputy Assistant Secretary for Grant Programs

Appendix A

When To Consult With Tribes Under Section 106

Section 106 requires consultation with federally-recognized Indian tribes when a project may affect a historic property of religious and cultural significance to the tribe. Historic properties of religious and cultural significance include: archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association. The types of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

If a project includes any of the types of activities below, invite tribes to consult:

- ☐ **significant ground disturbance (digging)**
  Examples: new sewer lines, utility lines (above and below ground), foundations, footings, grading, access roads

- ☐ **new construction in undeveloped natural areas**
  Examples: industrial-scale energy facilities, transmission lines, pipelines, or new recreational facilities, in undeveloped natural areas like mountaintops, canyons, islands, forests, native grasslands, etc., and housing, commercial, and industrial facilities in such areas

- ☐ **incongruent visual changes**
  Examples: construction of a focal point that is out of character with the surrounding natural area, impairment of the vista or viewshed from an observation point in the natural landscape, or impairment of the recognized historic scenic qualities of an area

- ☐ **incongruent audible changes**
  Examples: increase in noise levels above an acceptable standard in areas known for their quiet, contemplative experience

- ☐ **incongruent atmospheric changes**
  Examples: introduction of lights that create skyglow in an area with a dark night sky

- ☐ **work on a building with significant tribal association**
  Examples: rehabilitation, demolition or removal of a surviving ancient tribal structure or village, or a building or structure that there is reason to believe was the location of a significant tribal event, home of an important person, or that served as a tribal school or community hall

- ☐ **transfer, lease or sale of a historic property of religious and cultural significance**
  Example: transfer, lease or sale of properties that contain archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, plant and animal communities, or buildings and structures with significant tribal association

- ☐ **None of the above apply**

_____	_____	_____
Project	**Reviewed By**	**Date**

When To Consult With Tribes Under Section 106

Section 106 requires consultation with federally-recognized Indian tribes when a project may affect a historic property of religious and cultural significance to the tribe. Historic properties of religious and cultural significance include: archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association. The types of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

If a project includes any of the types of activities below, invite tribes to consult:

- ☐ **significant ground disturbance (digging)**
  Examples: new sewer lines, utility lines (above and below ground), foundations, footings, grading, access roads

- ☐ **new construction in undeveloped natural areas**
  Examples: industrial-scale energy facilities, transmission lines, pipelines, or new recreational facilities, in undeveloped natural areas like mountaintops, canyons, islands, forests, native grasslands, etc., and housing, commercial, and industrial facilities in such areas

- ☐ **incongruent visual changes**
  Examples: construction of a focal point that is out of character with the surrounding natural area, impairment of the vista or viewshed from an observation point in the natural landscape, or impairment of the recognized historic scenic qualities of an area

- ☐ **incongruent audible changes**
  Examples: increase in noise levels above an acceptable standard in areas known for their quiet, contemplative experience

- ☐ **incongruent atmospheric changes**
  Examples: introduction of lights that create skyglow in an area with a dark night sky

- ☐ **work on a building with significant tribal association**
  Examples: rehabilitation, demolition or removal of a surviving ancient tribal structure or village, or a building or structure that there is reason to believe was the location of a significant tribal event, home of an important person, or that served as a tribal school or community hall

- ☐ **transfer, lease or sale of a historic property of religious and cultural significance**
  Example: transfer, lease or sale of properties that contain archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, plant and animal communities, or buildings and structures with significant tribal association

- ☐ **None of the above apply**

_____	_____	_____
Project	**Reviewed By**	**Date**