

Introductions

The webinar is presented today by:

Charlie Philion, Community Developer

Steve Aiello, Economic Developer

And also participating:

Chris Leo, Vice President, OCR

Jason Purvis, Senior Community Developer

Andrew Griffin, Community Developer Trainee



NYS CDBG Program

- Audio will be available over the phone only. Please dial in to the conference call using the phone number, access code and audio pin displayed in your GoToWebinar menu.
- Please mute your line.
- A PDF of the presentation has been provided by email prior to the presentation.
- Use the Questions feature on your GotoWebinar toolbar to submit questions. We will respond to questions at the end of the presentation.

A screenshot of the "Questions" window in a GotoWebinar interface. The window has a title bar with a minus sign, the word "Questions", and a close button. Below the title bar is a large empty text area for entering a question. At the bottom of the window, there is a smaller text input field containing the placeholder text "[Enter a question for staff]", a "Send" button, and vertical scroll bars on the right side.

The presentation was provided to all registered participants prior the webinar and will be made available to the OCR website with notes.

Use the Questions feature on your GotoWebinar toolbar to submit questions.

We will respond to the most common questions at the end of the presentation.

All questions and answers will be made available on the OCR website by February 7, 2014.

NYS CDBG Program

General Program Requirements

- National Objective Compliance
- Getting Started
- General Program Administration
- Environmental Review
- General Regulatory Compliance Procedures
- Financial Management
- Reporting Requirements
- Procurement
- Labor Standards Compliance
- Property Acquisition and Management
- Displacement, Relocation and Replacement



Project Specific Requirements

- Economic Development and Small Business Assistance
- Public Facilities and Public Infrastructure.

Funds Disbursement Procedures

File Maintenance

Helpful Hints



The program today will begin with the general CDBG program requirements identified here, then the presentation will move on to the project specific requirements, first for economic development and small business assistance and then the requirements for public facilities and public infrastructure.

There has been an overwhelming response to housing rehabilitation and home ownership assistance applications, these are in the process of being reviewed and a housing webinar will be held later in the year following housing assistance awards.

NYS CDBG Program

Program Roles and Responsibilities

- OCR Roles and Responsibilities
 - Responsible to HUD for reporting and meeting National Objective Compliance
 - Disbursement of NYS CDBG funds as requested
 - Monitoring of projects
 - Technical assistance throughout the implementation of the project

- Your Roles and Responsibilities
 - Communicate with your Developer
 - Timely expenditure of funds and reporting as required
 - Implement the project as proposed in the application
 - Maintenance and retention of all project files
 - Ultimate responsibility falls to the local unit of government that has submitted the application, not the consultant, engineer or other service providers, including subrecipients



This is a basic outline of the roles and responsibilities for everyone involved in the administration of the CDBG grant award.

National Objective Compliance

All activities within the CDBG program must meet an eligible national objective as defined by the Housing and Community Development Act 1974 at Section 105(c)(3). For the purpose of the NYS CDBG program, this compliance is demonstrated through LMA, LMJ or LMCMC or LMC

- LMA
 - At least 51% of the beneficiaries are low-and moderate income.
 - Applies to most public water and sewer projects
- LMJ
 - For economic development projects, jobs are made available to and taken by LMI persons
- LMCMC
 - In certain instances, when a business owner is LMI, jobs will meet this criteria
- LMC
 - Applies to some projects such as senior center, where the beneficiaries are presumed to low-income.



All activities within the CDBG program must meet an eligible national objective as defined by the Housing and Community Development Act 1974 at Section 105(c)(3).

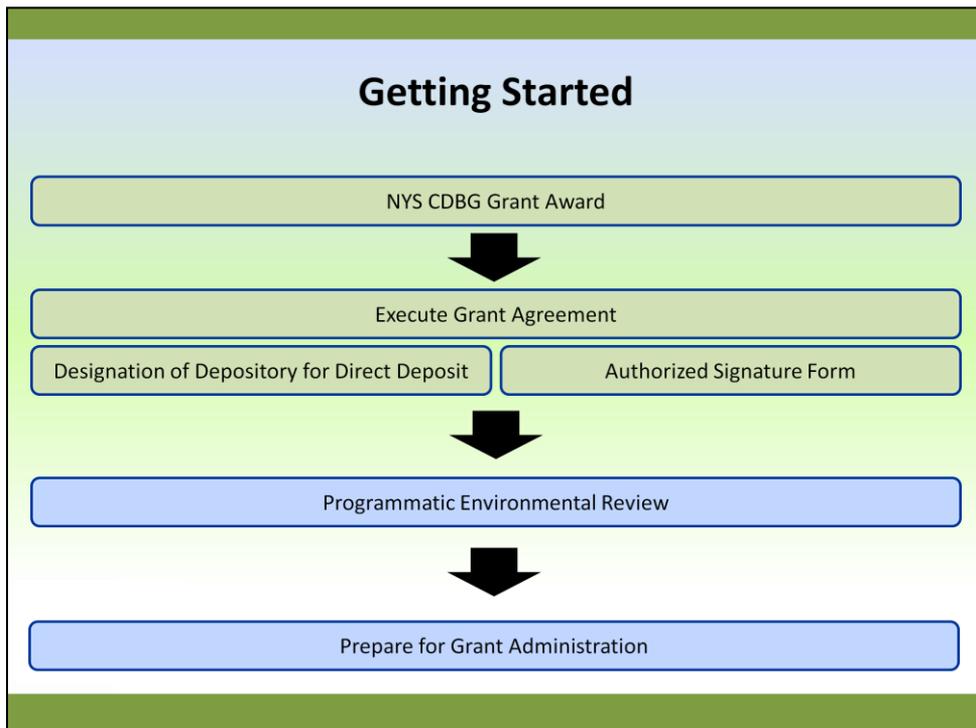
For the purpose of the NYS CDBG program, this compliance is demonstrated through

LMA or low-and moderate income area benefit. Most public infrastructure projects meet this national objective, having demonstrated in the application that at least 51% of the beneficiaries or users are low-and moderate income

LMJ or low-and moderate income jobs. Most economic development, small business assistance and microenterprise assistance activities meet this national objective by making jobs available to and taken by LMI persons

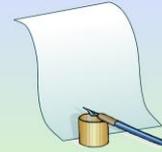
LMCMC, some microenterprises will meet this national objective when the microenterprise business owner qualifies as LMI.

LMC or limited clientele is a presumption of benefit. Some activities, such as a senior center will meet this national objective



Here is a basic outline of the initial grant administration steps, and what we're about to discuss.

Getting Started



Grant Agreement

Grant agreements are issued following Housing Trust Fund Corporation Board approval.

The grant agreement is a contract between the Recipient and the Housing Trust Fund Corporation and will include:

- Standard terms and conditions for regulatory compliance
- Schedule A
 - Outlines any conditions (such as clarification of activity detail, surveys, financial commitments) that must be met prior to execution of the grant agreement.
- Schedule B
 - Outlines the proposed budget, proposed accomplishments and beneficiaries.
- Schedule C
 - Description of the environmental review process



Grant Agreement:

- Must be submitted within 45 days of OCR's issuance of the grant agreement.
- Both copies must be signed by the chief elected official.
- Both copies of the grant agreement must be submitted in their entirety, including all schedules.

Schedule A:

- Outlines any conditions (such as clarification of activity detail, surveys, financial commitments) that must be met prior to execution of the grant agreement.
- The grant agreement will not be executed until the Schedule A conditions are submitted and approved by OCR.

Schedule B:

- Outlines the proposed budget, proposed accomplishments and beneficiaries.
- Review the Schedule B and if there are any issues notify your

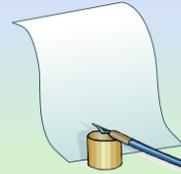
Developer immediately.

- May be revised if there are Schedule A conditions.

Schedule C:

- Description of the environmental review process.

Getting Started



Executing the Grant Agreement

- Must be returned within 45 days of being issued by OCR
- Must be signed by the Chief Elected Official
 - Required Forms:
 - Form 1-1 Authorized Signature
 - Form 1-2 Designation of Depository
 - These documents are needed to electronically transfer funds
 - Form 7-2 Program Schedule Form
 - Form 8-1 Project Team
- The grant agreement establishes the two year time frame, from the date of award, without a guarantee of extension to expend all funds and report all accomplishments



Executing the Grant Agreement

- The Grant Agreement must be submitted within 45 days of OCR's issuance of the grant agreement.
- Both copies must be signed by the chief elected official.
- Both copies of the grant agreement must be submitted in their entirety, including all schedules.

With the copies of the Grant Agreement, Recipients need to submit four forms: Form 1-1 Authorized Signature, Form 1-2 Designation of Depository Form, Form 7-2 Program Schedule Form, and Form 8-1 Project Team.

To complete form 1-1 the designation of authorized signatures the recipient required to:

- Designate who can request funds from OCR.
- Provide at least one signature of a municipal employee or municipal official. Two signatures recommended. One may be that of a non municipal employee, consultant or engineer. However the Chief Elected Official CANNOT be an authorized

signatory.

- CEO must review and sign form AFTER (cannot be the same date) designated signatories are determined.
- The more signatories authorized the less likely for delays.
- Signatures are verified as part of the request for funds approval process – if a name is changed, please update the form.
- The person or persons signing the checks for expenditure of CDBG funds cannot be an authorized signatory.
- Submit form with the original signature; no photo copies!

To complete form 1-2 the designation of depository the recipient is required to:

- Establish a separate non-interest bearing checking account
- Must be established to allow for the transfer of NYS CDBG funds to the Recipient.
- Municipal Account cannot be held by a subrecipient or consultant.
- Municipality must maintain possession of the account including the checkbook and bank statements at all times.
- Must be used for the deposit and disbursement of NYS CDBG funds only.
- Do not Co-mingle any non-CDBG funds including local general funds or CDBG program income funds in the same bank account.
- If a current account is established for other CDBG funds, this account may be used for this project. The original form must still be submitted

To complete form 7-2 the program schedule form the recipient will establish:

- The identification and schedule of major milestones which may include:
 - Environmental review record
 - Release of funds
 - Schedule of construction or purchase of equipment
 - Estimated completion date
- Description of the expenditure schedule

To complete form 8-1 project team the recipient must identify:

- Specific local grant contacts as applicable

General Program Administration

Establish Administrative File Maintenance

- Establish the files for the project as soon as possible per the OCR Grant Administration Manual and the labels on the OCR website.
- Labels and instructions can be found at:
 - <http://www.nyshcr.org/Forms/NYS-CDBG/>

Establish Third Party Responsibilities

- Consultants/Engineers
- Subrecipients
- Intergovernmental Agreement



Administrative File Maintenance

Recipients must establish the files for the project as soon as possible per the OCR Grant Administration Manual and the labels on the OCR website. The file labels are located at <http://www.nyshcr.org/Forms/NYS-CDBG/>.

- If you're not sure what needs to be included in a file, contact your Developer.

Third Party Responsibilities

Recipients must establish a Policies and Procedures Manual, which outlines the responsibilities of all involved parties including third parties and municipal employees.

Consultants/Engineers

- Must be retained in compliance with federal procurement policy at 24CFR85.36.
 - Consultants must be retained through an RFP
 - Engineers can be retained through an RFP or an RFQ.
 - Do not use a Request for Qualifications (RFQ) for the

selection of a consultant; the RFQ is restricted to procurement for architect and engineering services.

- A written contract must be signed which outlines all of the responsibilities of each party.
- Ultimate responsibility falls on the Municipality so be aware of what your consultant/engineer is required to provide.
- Consultants already under contract – contact your developer to determine if it meets the procurement requirements; may need to procure again.
- Develop oversight measures to be sure consultant/engineer is performing according to contract/scope of work.

Subrecipients

- A subrecipient is defined at 24 CFR 570.500(c) as a public or private nonprofit agency, authority or organization, or an entity receiving CDBG funds from the Recipient to undertake the activity directly.
- Can be designated.
 - Non-profit does not equal subrecipient.
 - Funds must flow through a subrecipient, if not then they fall under consultant and procurement is required.
 - Must have a written subrecipient agreement – must be submitted to OCR prior to first draw for services.
 - Recipients must conduct a monitoring of all subrecipients. At a minimum, at least one formal monitoring must be conducted and a formal report issued.
- Ultimate responsibility falls on the Recipient, so be aware of what the subrecipient is required to provide.
- Consultants cannot act as subrecipients.
- Refer to OCR GAM Chapter 1 Getting Started for further guidance on using a subrecipient.

Intergovernmental Agreement

- Should be in place when working with a local governmental agency such as the County Planning Office or Sewer and Water Authority.
- Submit to OCR for compliance with CDBG regulations prior to first request for funds

Environmental Review Record

GET STARTED NOW!

The environmental review process, which will result in the submission of an environmental review record and ultimately, a release of funds should begin immediately upon notification of the NYS CDBG grant award.

Do not incur any project costs until the environmental review record is complete and a request for release of funds has been approved by OCR.

- Costs associated with establishing and completing the ERR and release of funds may be requested for reimbursement **AFTER** the release of funds has been approved.
 - Any cost incurred, including, but not limited to construction, purchase of equipment, inventory, working capital, purchase orders for material, or labor costs will be deemed ineligible when these costs are incurred prior to a release of funds issued by OCR.
 - When in doubt, don't. Contact your developer with any questions.



Recipients must establish the Environmental Review Record (ERR) as soon as possible.

The ERR includes:

- Designation of a certifying officer
- Project Description
- National Environmental Policy Act (NEPA) designation
 - Exempt activities
 - Categorically excluded A activities
 - Categorically excluded B activities
 - Other
- State Environmental Quality Review Act (SEQRA) designation
 - Type I Action
 - Type II Action
 - Unlisted Action
 - For SEQR short and long forms, please be sure to use the updated forms available from the DEC website.

Expect to submit the ERR and RROF within 90 days of award. If there will be delays, notify your Developer.

ERR must include all activities related to the project regardless of funding sources (such as ESD, EFC, USDA).

All costs related to Construction, Program Delivery or other non-Exempt activities **cannot be incurred** prior to Release of Funds.

If the project is an Unlisted or Type I activity under SEQRA, OCR requires a coordinated review and the Recipient should make contact with OCR as soon as possible for its consent for the Recipient (or other Involved Agency) to act as Lead Agency.

The environmental review must be completed and submitted to OCR and a Release of Funds or Concurrence Determination received prior to requesting any funds from OCR. For projects requiring a request for release of funds, the Recipient must receive a Release of Funds from OCR prior to incurring any costs for non-exempt activities such as construction.

Environmental Review Record

Establish the Environmental Review Record (ERR)

- ERR includes:
 - Designation of certifying officer
 - Project Description
 - Compliance with National Environmental Policy Act (NEPA)
 - Exempt activities
 - Categorically excluded A activities
 - Categorically excluded B activities
 - Other
 - Compliance with State Environmental Quality Review Act (SEQRA)
 - Type I Action
 - SEQR Long Form required
 - Unlisted Action
 - SEQR Short Form required
 - Type II Action



Recipients must establish the Environmental Review Record (ERR) as soon as possible.

The ERR includes:

- Designation of a certifying officer
- Project Description
- National Environmental Policy Act (NEPA) designation
 - Exempt activities
 - Categorically excluded A activities
 - Categorically excluded B activities
 - Other
- State Environmental Quality Review Act (SEQRA) designation
 - Type I Action
 - Type II Action
 - Unlisted Action
 - For SEQR short and long forms, please be sure to use the updated forms available from the DEC website.

Expect to submit the ERR and RROF within 90 days of award. If there will be delays, notify your Developer.

ERR must include all activities related to the project regardless of funding sources (such as ESD, EFC, USDA).

All costs related to Construction, Program Delivery or other non-Exempt activities **cannot be incurred** prior to Release of Funds.

If the project is an Unlisted or Type I activity under SEQRA, OCR requires a coordinated review and the Recipient should make contact with OCR as soon as possible for its consent for the Recipient (or other Involved Agency) to act as Lead Agency.

The environmental review must be completed and submitted to OCR and a Release of Funds or Concurrence Determination received prior to requesting any funds from OCR. For projects requiring a request for release of funds, the Recipient must receive a Release of Funds from OCR prior to incurring any costs for non-exempt activities such as construction.

Environmental Review Record

Establish the Environmental Review Record (ERR) (cont'd)

- Form 2-5 and 2-5A Statutory Checklist
 - Identifies areas of Statutory or Regulatory Compliance
 - Source or compliance documentation must be provided
 - Statutory Checklist that are submitted without source or compliance documentation will be rejected, which could result in a delay of approval for release of funds.
- Form 2-6 Environmental Assessment
 - Identifies areas of regulatory compliance of categories that may have a potentially significant impact
 - Statutory Checklist that are submitted without source or compliance documentation will be rejected, which could result in a delay of approval for release of funds.
- Form 1-3 Request for Release of Funds or Request for Concurrence



Form 2-5 and 2-5A Statutory Checklist

Under 24 CFR 58.5 and 58.6, CDBG Recipients must review their projects using the same regulations HUD would otherwise be subject to under the National Environmental Policy Act. The Statutory Checklist covers Federal laws, regulations and Executive Orders (see 24 CFR 58.5) that may impact your project. The Checklist is an important piece of the Environmental Review Record since it records the results of the review of statutes, regulations and Executive Orders outlined in 24 CFR 58.5 and 58.6 of the CDBG Environmental Review regulations. Depending on the level of review required for the project, completion of the Statutory Checklist may not be required. In cases where it is required, compliance means that the Recipients must follow detailed procedures required by the particular law, regulation, or Executive Order. Recipients are strongly encouraged to check individual regulations directly for applicability and compliance measures.

Form 2-6 Environmental Assessment

The major purpose of the Checklist is to allow a more detailed analysis to focus on those categories of potentially significant impact. This can avoid a lot of

wasted energy in data collection, analysis and report writing for categories which have no potential for significant impact and require no mitigation efforts or ones for which the analyst has already done the work on previous projects. Assuming there is a file of solid environmental information about the community, the Checklist is intended to be filled out in a few hours - no more than a day even for projects with many potential effects. More time may be needed later for thorough analysis where the Checklist review indicates either potential impacts or where insufficient data is readily available. Judgments at this stage should be based upon available data with perhaps the addition of a few well-placed phone calls or a site visit if the area is unfamiliar to the analyst.

Form 1-3 Request for Release of Funds and Concurrence Letters

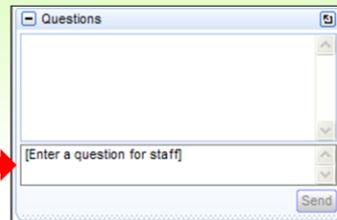
All NYS CDBG funded activities **MUST** receive an approval of release of funds or concurrence from OCR prior to incurring any project costs for non-exempt actions.

A release of funds is issued when an environmental review has been required to publish a Notice of Intent to Request Release of Funds (NOI/RROF) or a combined Finding of No Significant Impact NOI/RROF (FONSI/NOI/RROF)

NYS CDBG Program

As a reminder:

- Audio is available over the phone only. If you can hear the audio portion, please dial in to the conference call using the phone number, access code and audio pin displayed in your GoToWebinar menu.
- Please mute your line.
 - **Do not place this call on hold - music or messages will be transmitted to all participants**
- Use the Questions feature on your GotoWebinar toolbar to submit questions. We will respond to questions at the end of the presentation.



The presentation was provided to all registered participants prior the webinar and will be made available to the OCR website with notes.

Use the Questions feature on your GotoWebinar toolbar to submit questions.

We will respond to the most common questions at the end of the presentation.

All questions and answers will be made available on the OCR website by February 7, 2014.

General Regulatory Compliance

All Recipients of CDBG funds must maintain evidence of the following:

- Civil Rights
- Fair Housing
- Section 504
- Conflict of Interest



These requirements apply to ALL projects, regardless of the type of activity being undertaken

Civil Rights

- Must maintain evidence on Recipient Employment and Project Beneficiaries.
- EEO documentation in personnel policies/procedures.
- Must maintain records of Race, Income, Female Head of Household Status, Handicap Status, Age for employees and beneficiaries of CDBG funds.

Fair Housing

- Appoint a Fair Housing Officer.
- Establish procedures to affirmatively further Fair Housing (fair housing plan, posters etc.).

Section 504

- If you have a self-evaluation, keep a copy in these files.
- Document any changes you have made to facilities or procedures to

ensure accessibility by handicapped persons including physical, mental, hearing, or visual impairments

- Establish written grievance procedures - Applies to Recipients with 15 or more employees
- Section 3 – if the Recipient received \$200,000 or more in CDBG funds for the project, the hiring of employees to work on the project is subject to Section 3 requirements. If the Recipients enter into contracts, either prime or sub, of \$100,000 or more are also subject to Section 3 requirements.
- Must make every effort to ensure Section 3 business concerns and residents are afforded the opportunity to bid on the project or be hired for the project.
- Section 3 business concern – businesses that are 51% owned by Section 3 residents; at least 30% of the full-time permanent employees are Section 3 residents; or businesses that provide evidence of a commitment to subcontract more than 25% of the dollar amount to businesses that meet the definition of a Section 3 Business Concern.
- Section 3 Residents – Residents of public housing or individuals that reside in the metropolitan area or non metropolitan county in which the Section 3 covered assistance is expended and whose income do not exceed the local HUD income limits for low or very low-income households.

4. Conflict of Interest

- Procurement – a prohibited conflict. If determined that there is the appearance of conflict of interest according 24CFR570.489(g) and (h) and 24CFR85.36(b)(3) then the recipient cannot enter into a contract funded by CDBG with the firm or person.
- Assistance to beneficiaries – Determination issued by municipal Attorney.
- A request for a waiver to an apparent conflict of interest must be approved by OCR

Financial Management

Guidance for general financial management

- General Financial Management
- Accounts Management/Documentation
- Program Delivery vs. Program Administration
- Indirect vs. Direct Costs
- Program Income



General Financial Management

- Maintain all appropriate financial records per the General Municipal Law and in accordance with NYS Audit & Control for Municipalities.
- Municipality is responsible for the expenditure of funds – not consultant or subrecipient.
- NYS CDBG funds are drawn down from OCR as costs are incurred and funds must be expended within 3-5 days of funds being deposited into designated account. Payment must go directly to beneficiaries and/or vendors and cannot be transferred to another account.
- Expended funds refer to the direct payment of NYS CDBG funds to the vendor identified on 1-4A Disbursement Summary.
- If prepaying project costs through local funds, do not transfer any local funds into the NYS CDBG account. When NYS CDBG funds are deposited into the account, show the transfer to the local funds for reimbursement.

Accounts Management/Documentation

- Must document expenditure of funds from contracts to invoices, to requests

for funds, to deposit of funds, to transfer of funds, to cancelled checks for payment.

Program Delivery

- These are generally costs that can be attributed directly to the delivery of the specific proposed activities

Program Administration

- Generally, these are administrative costs associated with salaries, wages, and related costs of the grant recipient's staff, the staff of local public agencies, or other staff, including consultants and subrecipients engaged in program administration for the awarded NYS CDBG grant award

Indirect vs. Direct Costs – If municipality or subrecipient is billing for administrative services

- Indirect – require a cost allocation plan that must be submitted prior to the request for administrative funds. Items not allowed – dues, subscriptions, non-CDBG related conferences. These would need to be charged as direct costs, if attributable to CDBG projects.
- Direct – costs directly related to administration/program delivery of the awarded CDBG project – staff time, travel costs related to the project, etc.

Program Income

- If program income has been received from prior NYS administered CDBG or HUD administered CDBG programs, Recipient must submit a Program Income Plan to OCR.
- Must use program income prior to requesting project/activity funds from OCR.
- Cannot use CDBG funds to reimburse any program income funds used on a project regardless of the intended use of the program income.
- Program Income must be maintained in a separate, interest bearing checking account.

For further guidance on financial management, please refer to Chapter 3, Financial Management of the OCR GAM

Reporting Requirements

Types of reporting requirements

- Annual Performance Reports (APR)
 - For all housing activities, use Form 3-1
 - For all public infrastructure and facility activities, use Form 3-2
 - For all economic development, small business and microenterprise assistance activities, use Form 3-3
- Project Status Reports
 - Form 3-4
- Federal Assistance Expenditure Reports
 - Form 9-1
- Single Audits
- Labor Compliance Report
- M/WBE and Section 3 Reporting



Annual Performance Reports

- Due every year on January 10 regardless of whether or not accomplishments are being reported.
- The APR is specific to the activity being undertaken
 - Form 3-1 is only for housing activities
 - Form 3-2 is only for public infrastructure and public facility activities
 - Form 3-3 is only for Economic Development, Small Business and Microenterprise Activities

Status Reports

- Due every year on July 10.
- The status report is a mid-year snapshot that should reflect overall project status

Federal Assistance Expenditure Reports

- Due 60 days after the end of a Recipient's fiscal end date and is a report to determine whether or not a Recipient expended \$500,000 or more in **ALL** Federal funds (not just CDBG).

Audits

- May be required if more than \$500,000 from **ALL** sources of Federal funds were expended in a Recipient's previous fiscal year; due 9 months after the fiscal end date.

Labor Compliance Report

- This is a semi-annual report which tracks compliance with Davis-Bacon Federal Prevailing Wages
- Any project determined to be subject to Davis Bacon must submit the report
 - Reporting Periods are
 - April 1 to September 30
Report is due no later than October 10
 - October 1 to March 31
Report is due no later than April 10

Minority and Women's Business Enterprise and Section 3 Reporting

- Reports are issued by the Office of Fair Housing and Equal Opportunity

Procurement

Types of Procurement

- Small Purchase
- Sealed Bids
- Competitive Proposals
- Non-competitive/Single-Source



All procurement must be in compliance with Federal Procurement policies at 24 CFR85.36

If the Federal and Local policies have different standards, the stricter of the two policies prevails. For example, Federal procurement has a threshold of \$100,000 for Small Purchase, however, most municipalities in NYS have lower thresholds for this. If the local threshold for small purchase is \$10,000, that must be followed.

Small Purchase

Those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$100,000 in the aggregate. Price or rate quotations shall be obtained from an adequate number of qualified sources. **This should not be used for retaining the professional services of an architect, auditor, engineer or consultant for your NYS CDBG project.**

Sealed Bids

Bids are publicly solicited and a firm fixed-price contract (lump sum or unit price)

is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid method is the preferred method for procuring construction

Competitive Bids

The phrase “procurement by competitive proposals” is often used interchangeably with the frequently used term “Competitive Negotiation.” This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. The method for soliciting competitive proposals is the publication of a Request for Proposal (RFP). Procurement by competitive proposals is the appropriate procurement procedure for retaining professional services such as an architect, auditor, or engineer for your NYS CDBG project.

When a Recipient receives only one response to a competitive solicitation, the procurement process should be reviewed by OCR to determine whether it was unduly restrictive or tailored to a particular contractor or supplier. The burden of proof will be on the Recipient to demonstrate that it made reasonable efforts to assure maximum open and free competition and that its procurement procedures did not have the effect of unnecessarily restricting competition.

Noncompetitive/ Single Source Proposals

Noncompetitive negotiation is procurement through solicitation of a proposal from only one source or, after solicitation of a number of sources; competition is determined to be inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is unfeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

1. The items or services required are only available from a single source;
2. A public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods;
3. After solicitation from a number of sources, competition is determined to be inadequate, and OCR authorizes the noncompetitive method. In all cases, noncompetitive negotiation which will involve NYS CDBG funds must have prior approval from OCR. Recipients must contact their OCR Community/Economic Developer.

A cost analysis must be provided including the projections of the data, and the evaluation of the specific elements of costs and profits.

Procurement

Contract Requirements

- Contract Provisions
 - Exhibit 4-1 contains specific contract provisions that may apply to the contract that the Recipient or sub-recipient is entering into. Please review these with your Developer to determine which provisions may apply.
- Minority and Women's Business Enterprises (M/WBE)
 - Contact ESDC at <http://www.esd.ny.gov/MWBE.html> for the purpose of developing a list of M/WBE firms and conducting a direct outreach or solicitation to these firms
- Section 3 Rider
 - Must be included in its entirety

For further guidance on procurement and bidding requirements, please refer to the OCR Grant Administration Manual, Chapter 4, Procurement which can be found at:

<http://www.nysocr.org/Programs/NYS-CDBG/GrantAdministration.htm>



Contract Provisions

The OCR GAM, Chapter 4, Exhibit 4-1 provides a list of required contract provisions. The Recipient is responsible for ensuring that the appropriate provisions are included in all procurement.

Minority and Women's Business Enterprises (M/WBE)

- Recipient must demonstrate that a good faith effort to solicit M/WBE firms. This shall include a statement in all IFB's, RFP's and RFQ's that states "Municipality Name strongly encourages Minority and Women's Business Enterprises to apply"
- Contact ESDC at <http://www.esd.ny.gov/MWBE.html> for the purpose of developing a list of M/WBE firms and conducting a direct outreach or solicitation to these firms.
 - Reporting on M/WBE is required of all Recipients of NYS CDBG funds.

Section 3

- For any contract in excess of \$100,000, Recipients must ensure that Section 3 Business concerns are solicited and that attempts are made

to hire Section 3 residents for any new hires.

- Reporting on Section 3 is required of all Recipients of NYS CDBG funds.

Labor Standards Compliance

General Labor Standards Requirements

- Davis Bacon - applicable to any construction projects over \$2,000 in total cost
 - Refer to the 8 Step Labor Standards Administration , Chapter 5 in the OCR GAM to assist in determining Davis-Bacon applicability
- Compliance
 - Labor Standards Compliance Officer
 - Federal wage decisions from OCR and State wage decisions
 - Included wage rates in bid specifications
 - Maintain copies of weekly payroll verified
 - Conduct appropriate number of employee interviews



All bid specifications for construction must be submitted to your Developer for review of compliance with CDBG regulations prior to releasing the project for bid. This must occur prior to requesting any NYS CDBG funds for construction activities.

Davis Bacon - applicable to construction projects over \$2,000 total cost.

- Reporting on Davis-Bacon compliance will be required of all Recipients of NYS CDBG funds.

Compliance

- Designate a Labor Standards Compliance Officer
- Obtain Federal wage decisions from OCR and State wage decisions from or DOL and submit copies to OCR – use higher of the two wages and document
- Include labor standards compliance information including wage rates in bid specifications – Submit copy to OCR
- Maintain copies of weekly payroll verified and signed by the Labor Standards Compliance Officer
- Conduct appropriate number of employee interviews, complete

interviews on Form HUD-11, available on the HUD website,
www.hud.gov/offices/adm/hudclips/forms/files/11.doc.

Property Acquisition

Property Acquisition and Management

- Applies only when the Recipient, in this case, the local government, directly purchases:
 - Real Property
 - Equipment



Recipients are responsible for any property acquired in whole or in part with NYS CDBG funds. Recipients must:

- Maintain a physical inventory of all property, both real property and equipment;
- Reconcile property records at least once every two years;
- Maintain a control system to ensure safeguards to prevent loss, damage, or theft of property. Any loss, damage, or theft must be investigated;
- Develop adequate maintenance procedures to keep property in good condition; and
- Establish proper sales procedures that will ensure the highest possible return when the sale of real property is necessary.

Displacement and Relocation



Displacement and Relocation Assistance

- Anti-Displacement and Relocation Assistance Plan
 - Required for any project that has the potential to cause displacement, relocation or replacement (i.e. HR projects)
- To ensure compliance with the URA, recipients should reference the HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition (www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm) and 49 CFR Part 24 for detailed information on the specific displacement, relocation and acquisition requirements.



Recipients who undertake NYS CDBG-assisted activities that involve displacement, permanent relocation, demolition or conversion of residential units occupied by low-income households are responsible for complying with all regulations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), and Section 104(d) of the Housing and Community Development Act of 1974, as amended, and all implementing regulations.

The primary purpose of these laws is to ensure that when NYS CDBG-funded projects result in the demolition or conversion of units, all affected persons receive the proper relocation assistance and benefits. The acquisition requirements of the federal relocation and acquisition regulations apply in most instances, including when a property is acquired by a nonprofit or for-profit entity that has received a loan or grant from your NYS CDBG project.

Project Specific Requirements- Economic Development and Small Business

Grant and Loan Requirements

- Recipients must establish grant/loan requirements, which include:
 - Terms of the grant/loan and interest rate, if applicable
 - CDBG reporting requirements
 - Number of jobs to be created/retained and the number of low-mod
 - Time of performance
 - Davis-Bacon and other important compliance provisions
 - Required clauses from Grant Administration Manual Exhibit 4-1
 - Repayment, recapture, and other default mechanisms



Recipients must develop general procedures for the Economic Development project. The first of these general procedures is the establishment of grant/loan requirements.

- The Recipient must draft either a loan agreement, grant agreement or both, depending on how the funds will be provided to the business. These agreements must include the specific terms, such as the repayment term, payment amount, and interest rate, if applicable. They must also include the number of jobs to be created/retained and the number of low- to moderate- income jobs out of the total number. The agreement should include the time of performance. CDBG contracts are 24 months from the date of award, and all aspects of the project, including job creation must happen during that timeframe. The agreements should include references to compliance with Davis-Bacon and any other applicable regulatory requirements, including the required clauses from the Grant Administration Manual Exhibit 4-1. The agreements should also discuss what happens if the company defaults on any of the terms of the agreement, such as immediate repayment, conversion of a grant to a loan, or other default mechanisms as determined by the Recipient's legal counsel to be advisable.
- At any time during the development of these agreements, Recipients are

welcome to contact OCR staff with any questions. Once completed, Recipients must submit a copy of the loan/grant agreement to the OCR for review prior to closing with the business.

Project Specific Requirements- Economic Development and Small Business

Monitoring the Business Procedures

- Recipients must establish procedures for monitoring the business, which should include:
 - Site visits
 - Desk monitoring
 - Monitoring file maintenance



Monitoring of the business must occur regularly throughout the project.

- Therefore, Recipients must establish procedures for monitoring the business. This monitoring should include site visits where the Recipient actually visits the company's project location and observes the progress of the project. Monitoring should also include what we call "desk monitoring" where the Recipient maintains frequent contact with the business and receives regular status updates.
- In addition to monitoring the project/business, the Recipient must be able to show at a monitoring visit that it has adequately monitored the business. Therefore, the Recipient must maintain documentation of monitoring of the business in the project file over the 24 month contract period, or longer, if the project is not completed on schedule. This includes emails, photos, meeting notes, etc. Whatever you have that can show that you have been keeping track of the project and have been ensuring that it moves forward without delay, to the greatest extent possible.

Public Infrastructure and Facility

Public Facilities Policies and Procedures

- Program Implementation Plan
 - Establish a program implementation plan that outlines responsibilities of all involved parties.
- File maintenance
 - Follow the guidance provided, recommended file labels are provided on the OCR website at http://www.nyshcr.org/Forms/NYS-CDBG/PF_Labels.pdf
- Eligibility Requirements and Approved Project Design
 - Documentation of the uses of all NYS CDBG funds involved in the project to ensure that CDBG funds are expended only on eligible uses.



Following these steps may ensure a more thorough and complete implementation process and compliance with applicable CDBG rules and regulations and can assist with ensuring that CDBG funds are expended on eligible activities.

The program implementation plan will clearly outline responsibilities for everyone involved. For further information and guidance, please refer to the OCR Grant Administration Manual Chapter 1, Getting Started. Also, refer to Exhibit 1-1, Program Manual Guidance, also contained within Chapter 1.

The manual can be found by going to: www.nyshcr.org/Programs/NYS-CDBG/GrantAdministration.htm

Public Infrastructure and Facility

Public Facilities Policies and Procedures, continued

- National Objective Compliance
 - Income Survey
 - Census Data
- OCR Site Inspection
 - Project activities completed as indicated in application for assistance
 - Required elements documentation
 - Project Sign
 - Wage rates posted at work site
 - Labor posters, etc



At the time of application, all public infrastructure and facility projects met National Objective Compliance by demonstrating that at least 51% of all beneficiaries are low-and moderate income.

This was demonstrated through an income survey or census data.

If an income survey was utilized to demonstrate eligibility, the Recipient is required to retain the surveys and must be able to produce all surveys at the time of monitoring, this is the only evidence that exists that the project is eligible for NYS CDBG assistance.

Failure to produce the surveys may result in all costs being deemed ineligible use of funds, and all expended funds may be subject to recapture.

At the time of monitoring, OCR will conduct an on-site inspection to review the work that has been completed, this must be consistent with all activities described in the application.

The Recipient must maintain evidence that a project sign was on-site, and that

all applicable wage rates and required labor posters were posted. The best way to document this is by taking pictures.

Funds Disbursement Procedures

Recipients must determine local procedures for the funds disbursement process, including the submission of Requests for Funds Form 1-4 and 1-4A which include:

- Processes to ensure that funds are only used for eligible uses as identified in the approved budget
- Processes to ensure that funds are disbursed on a pro-rata basis when leveraging other funds
- Processes to ensure that leveraged funds are expended as proposed in the application
- Provide cost documentation which could include:
 - Contractor invoices, pay applications
 - Purchase Orders
 - Certified payroll (when applicable)
- Specific to economic development activities, submit 1-4B



Recipients must also develop procedures for the funds disbursement process to the business, which include:

- Processes to ensure that funds are only used for eligible uses
- Processes to ensure that funds are disbursed on a pro-rata basis, which means that CDBG funds are placed at no greater risk than leveraged funds to the greatest extent possible.
- Processes to ensure that leveraged funds are expended as proposed in the original application

Things to include in your funds disbursement process to ensure that these three rules are followed are:

- The review of expenses prior to submission to the OCR to ensure that CDBG funds are only expended on eligible uses;
- The maintenance of copies of the approved plans and documentation of the sources and uses of all funds;

- The request for documentation of all project costs as they are expended, so that leveraged funds are accounted for and pro-rata disbursement can be followed.

File Maintenance

- Project description and design.
- All bid specifications and packets must be submitted electronically to OCR for compliance with NYS CDBG regulations prior to releasing the project for competitive bid.
- Evidence of proper procurement including bid specifications, contractors notified, evidence of M/WBE compliance, etc.
- Construction files include evidence of proper inspection, permits, liens and warranties, copies payments.



Refer to the OCR GAM, <http://www.nyshcr.org/Forms/NYS-CDBG/> and follow the file maintenance labels specific to the activity being undertake.

Additional Program Requirements-Certification

- Identify and remediate environmental hazards
- Minority and Women-Owned Businesses (MWBE)
<http://www.esd.ny.gov/mwbe.html>
- Title VI of the Civil Rights Act of 1964. As amended (42 U.S.C. 2000d et seq.)
- The Fair Housing Act (42 U.S.C. 3601-3620)
- Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259)
- Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101)
- Affirmative Marketing
- Americans With Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, 225)
- Section 3 of the Housing and Urban Development Act of 1968
- Davis Bacon Related Acts



Here are some additional program requirements you should read about and become familiarized with. They are very important when implementing a project.

Helpful Hints

- Refer to the Grant Administration Manual, <http://www.nyshcr.org/Programs/NYS-CDBG/GrantAdministration.htm> for further guidance on implementing the CDBG project.
- Use the file labels that we provide on our website
- Make sure that you and the business are familiar with the job reporting forms
- Ask first, contact your Developer!
- It is better to ask permission than ask for forgiveness.



Refer to the Grant Administration Manual for further guidance on establishing and maintaining all project. The manual is periodically updated and it is the responsibility of the Recipient to monitor these changes.

Use the file labels that we provide on our website. They will be extremely helpful in ensuring that you have the proper files.

Recipients must make sure that they are up-to-date with their projects at all times. This includes when you have a subrecipient or consultant administering the project. As indicated earlier in the presentation, the ultimate responsibility falls on the Recipient.

Contact your Developer. This cannot be stressed this enough. The assigned developer is here to help.

It is better to ask permission than ask for forgiveness.

Questions?

If you have any further questions following the conclusion of this webinar, submit your questions to ocrinfo@nyshcr.org or contact the Office of Community Renewal at 518-474-2057

Please visit the OCR website at: <http://www.nyshcr.org/Programs/NYS-CDBG/>

