

**NOTICE TO BIDDERS – REQUEST FOR QUALIFICATIONS**

**BOROUGH OF LITTLE FERRY - REBID**

Notice is hereby given that sealed bids will be received by the Borough Clerk of the Borough of LITTLE FERRY in the County of Bergen, State of New Jersey, in the Borough Council Meeting Room located in the Borough Hall at 215 - 217 Liberty Street, LITTLE FERRY, New Jersey on **Thursday, July 9, 2015 by 10:00 a.m.**, prevailing time, and at that time and place publicly opened and read for

**ENGINEERING SERVICES – Design & Construction Management Services of Losen Slote  
Pump Station Self Cleaning Grate**

The RFP is on file and open to public inspection at the Borough Clerk's Office and may be obtained at the office of the Borough Clerk at 215 - 217 Liberty Street, LITTLE FERRY, NJ 07643, 201-641-9234 ext. 654, between the hours of 9:00 am and 4:00 pm, prevailing time, Monday through Friday, excluding legal holidays. The RFQ is also available on the Borough's website at [www.littleferrynj.org](http://www.littleferrynj.org).

Responses may be submitted by mail, but will be considered only if received on or before such date and time. The Borough of Little Ferry will not be responsible for bids received after the deadline.

The Borough reserves the right to reject any and all bids, to waive immaterial informalities, and/or to accept the bid which, in the opinion of the Borough, will be in the best interest of the Borough, all in accordance with the New Jersey Public Contract Law N.J.S.A. 40A:11-1 et. seq.

Barbara Maldonado  
Borough Clerk  
Borough of LITTLE FERRY



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

OFFICE OF THE COMMISSIONER

Mail Code 401-07

P.O. Box 402

Trenton, NJ 08625-0402

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CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

May 12, 2015

James J. Tedesco III, County Executive  
Bergen County  
One Bergen Plaza  
Floor 5 Room 580  
Hackensack, NJ 07601

Re: Flood Hazard Risk Reduction and Resiliency Grant Program Application

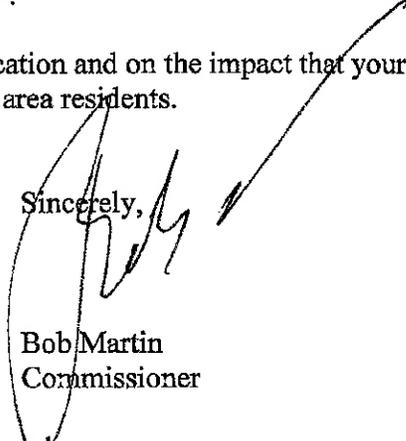
Dear County Executive Tedesco:

I am pleased to inform you that the Department of Environmental Protection (DEP) has conditionally approved your request for a grant under the Flood Hazard Risk Reduction and Resiliency Grant Program of up to \$652,970 for the Losen Slote self-cleaning grate project. This grant is contingent upon the completion by your office of DEP provided training and assistance in order to meet the requirements set by the United States Department of Housing and Urban Development (HUD) under this HUD-funded grant program.

This grant is funded through a HUD Superstorm Sandy Community Development Block Grant for Disaster Recovery (CDBG-DR). To ensure compliance with CDBG-DR requirements and steady progress with constructing this needed infrastructure, my staff from the Department's Office of Flood Hazard Risk Reduction Measures will be contacting you shortly to set up the necessary training and assistance required by HUD.

Congratulations on the success of your grant application and on the impact that your project will have on alleviating the risk to life and property for area residents.

Sincerely,

  
Bob Martin  
Commissioner

cc: Mauro D. Ragusso, Mayor of Little Ferry Borough

**Borough of Little Ferry  
Request for Qualifications  
Engineering Services for Installation of a Self-Cleaning Grate  
at the Losen Slote Storm Water Pump Station**

The Borough of Little Ferry is seeking statements of qualification for a firm/individual to provide supportive engineering services in regards to the installation of a Self –Cleaning Grate (Grate) at the Losen Slote Storm Water Pump Station. The Borough has been conditionally awarded an approximate \$652,000 grant through the New Jersey Department of Environmental Protection (DEP) for this project. A copy of the submitted grant information and conditional award letter is included with this RFQ.

Responses must address both the general criteria and mandatory minimum requirements. All responses will be treated as confidential until read aloud.

Responses must be sent to:  
Office of the Borough Clerk  
ATTN: Barbara Maldonado  
Borough Clerk  
215 -217 Liberty Ave  
Little Ferry, NJ 07643

All responses must be received by  
and opened and read:  
10:00 AM, Thursday, July 9, 2015

All responses shall be opened and announced publicly, immediately thereafter by the Borough Clerk. Responses will then be reviewed by the governing body and appointment(s), subject to receipt of funding and Mayor and Council approval.

The Borough has structured a procurement process that seeks to obtain the desired results while establishing a competitive process to assure that each person and/or firm is provided an equal opportunity to submit a submission.

If a possible respondent is interested in touring the existing facility that can be arranged by emailing the Borough Administrator Michael Capabianco at [m-capabianco@littleferrynj.org](mailto:m-capabianco@littleferrynj.org)

The Mayor and Council reserve the right to select qualified contractors in their sole discretion, which shall be exercised in accordance with their sole judgment as to the public interest. Those responding to the RFQ are required to comply with the provisions of NJSA 10:5-21 et seq. and NJAC 17:27-1 et seq. if applicable. The Mayor and Council reserve the right to reject all bids.

**INSTRUCTIONS**

The Borough is seeking proposals for the engineering services related to installation of a self-cleaning grate at the Losen Slote Storm Water Pump Station.

The Borough has draft bid specifications that the selected consultant shall review in conjunction with Borough staff. At a minimum, an Environmental Assessment is required by DEP; it is important to note that the DEP funding is pass-through funds from HUD as related to Sandy Recovery so Federal rules and regulations (CDBG-DR) will apply.

The Borough has determined that following list of permits *may be* required. This is not an exhaustive list:

- DEP In-Water Waterfront Development Permit
- DEP Tidelands License
- DEP Flood Hazard Permit
- Meadowlands Flood Hazard Area Individual Permit
- Federal Consistency Determination
- US Army Corp of Engineers permit
- Water Quality Certificate

To summarize, the Borough is seeking a qualified consultant to perform the following:

- Completion of bid specification (include attend bid opening and review of responses)
- Permitting; completion of
- Construction management including Section 3 monitoring
- Grant closeout
- Other activities will be billed at a time & material rate as per the response

Please note the scoring criteria below. It is most beneficial to respondents to prepare a clear and concise narrative on how your organization can complete this project as quickly as possible. The grant is conditionally approved pending the completion of appropriate environmental reviews; it is strongly recommended that respondents detail their expertise in completing these document.

The Pump Station is located within the Meadowlands Commission with the Commission, DEP and the Army Corps all have some aspect of jurisdiction over the waterway and land use. The Pump Station is owned, operated and maintained solely by the Borough of Little Ferry.

### **Ranking and Rating**

The Borough, in part, will utilize a ranking and rating system (scoring) for review of respondent's proposals. This scoring system will not disqualify the Borough from exercising the right to select qualified contractors in their sole discretion, which shall be exercised in accordance with their sole judgment as to the public interest. The ranking and rating system, more details on each section will appear below, will be scored upon the following:

- 10 points for cost (not-to-exceed price); please break down design/permitting and construction management services to total the not-to-exceed price).

- 15 points Section 3 Plan that address both the preference for Section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (Section 3 strategy), as disclosed in proposals submitted by all business concerns (Section 3 and non-Section 3 business concerns). It shall be required that the disclosure of the contractor's Section 3 strategy to comply with the Section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable Section 3 strategy. The contract award shall be made to the responsible firm (either Section 3 or non-Section 3 business concerns) whose proposal is determined most advantageous, considering price and all other factors specified in the RFP.
- 8 points for experience monitoring Section 3 compliance
- 7 points for recent documented training on Section 3 compliance for construction projects
- 5 points for documented experience in working with the regulatory bodies within the last 5 years and a description of how your organization's workflow/work process can complete this project expeditiously
- 10 points for a narrative (one paragraph is acceptable) on DEP's workflow in permit review
- 10 points for staff assigned to the project and their relevant experience; please list ongoing and completed flood mitigation projects assigned staff has worked on over the last 3 years
- 10 points for understanding of permitting and construction work via provision of a draft project timeline (assume an August 1 start date). Please explain how your organization will handle design and permitting. Will they be done simultaneously? Separate timelines are acceptable to meet this standard
- 10 points for experience in complying with the provisions of CDBG-DR funds
- 15 points for knowledge of DEP's ArcGis Screening Tool

Bonus points will be awarded for:

- DBE, MBE, WBE, 8a, ESBE, or Veterans Certification (2 points: Note: Certification must be provided at initial submission)

Further details required as per the ranking and rating system

- Cost – total lump sum in a not-to-exceed price
- Please state what permits you believe will be required and the length of time it will take for our organization to complete the application process (this can be in the timeline)
- Please state all CDBG and CDBG-DR projects that you have worked on in the last two years. Please provide a statement of your understanding and ability to follow CDBG and CDBG-DR regulations. A blanket statement of "We will comply..." will not earn points.
- Application points will be based upon completeness of proposal, easiness of reading and finding information, etc.
- Exhibit 2 contains Section 3 information that will be, or could be, dependent on situation, required

The respondent agrees to the requirements in Exhibit 1 by submitting a proposal.

**RESPONSE FORMAT**

Only paper copies in sealed envelopes will be accepted; faxed or emailed proposals will be rejected. Please include a digital version of the proposal on a flash drive, CDROM or other media; this media will not be returned. For ease of the use during the public opening of the proposals, please state your proposed cost after the cover letter. It can be included elsewhere in the proposal but we are requesting this for simplicity's sake. If this is not done, no points will be deducted.

## Exhibit 1

Policies, procedures and regulations the respondent agrees they will adhere to by submitting a proposal

**EXHIBIT 5-5**  
**CDBG COMPLIANCE PROVISIONS**  
**FOR**  
**PROFESSIONAL SERVICES CONTRACTS**

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1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**  
(applicable to contracts and subcontracts above \$10,000)

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 advertisements 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 September 24, 1965, as amended, and 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, as amended, 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 non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, 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, as amended, 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 A and the provisions of paragraphs A through G 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, as amended, 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. **CERTIFICATION OF NONSEGREGATED FACILITIES**  
(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. **CIVIL RIGHTS**

The Contractor shall comply with the provisions of 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.

4. **SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds 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 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

5. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES**

- 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 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 (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).

6. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**  
(applicable to contracts and subcontracts over \$10,000)

- A. The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap 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 handicapped 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 handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 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 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.

7. **SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

8. **AGE DISCRIMINATION ACT OF 1975**

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

9. **CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

(applicable to contracts and subcontracts exceeding \$100,000)

The Contractor and all subcontractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended.

In addition to the foregoing requirements, all nonexempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or subcontractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c-8) and Section 308 of the Federal Water Pollution

Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

**10. FLOOD DISASTER PROTECTION**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93-234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

**11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

The State of New Jersey, the Department of Housing and Urban Development, 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 this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the State's final closeout of the grant.

**12. INSPECTION**

The authorized representative and agents of the State of New Jersey and the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

**13. REPORTING REQUIREMENTS**

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.

**14. CONFLICT OF INTEREST**

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED**

(applicable to contracts and subcontracts of \$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 that 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 non-discrimination 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.

**16. PATENTS**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

**17. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copyright purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

**18. TERMINATION FOR CAUSE**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

**19. TERMINATION FOR CONVENIENCE**

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

**20. ENERGY EFFICIENCY**

The Contractor shall comply with 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 (Public Law 94-163).

**21. SUBCONTRACTS**

- A. The Contractor shall not enter into any subcontract with any subcontractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contacting programs by any agency of the United States Government or the State of New Jersey.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any subcontractor and the Owner.

**22. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Contractor represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

**23. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

**25. CHANGES**

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

**26. PERSONNEL**

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

**27. ANTI-KICKBACK RULES**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**28. ASSIGNABILITY**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

**29. INTEREST OF CONTRACTOR**

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**30. POLITICAL ACTIVITY**

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

**32. DISCRIMINATION DUE TO BELIEFS**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

**33. CONFIDENTIAL FINDINGS**

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

**34. LOBBYING**

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

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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**SANDY CDBG-DR**

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**APPROVAL**



Stacy Bonnaffons  
Assistant Commissioner



Howard McCoach  
Director, Sandy Recovery Division

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**PURPOSE:**

To outline the policies and procedures for the Department of Community Affairs to document compliance with Conflict of Interest requirements and HUD's implementing regulations found at 24 CFR 570.611 (CDBG Other Program Requirements: Conflict of Interest), 24 CFR 85.36(b)(3) (Procurement), 24 CFR 84.42 (Code of Conduct) and 24 CFR 570.489(h) (CDBG Program Administrative Requirements for States).

**POLICY:**

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advise the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided. "No employee ... of the grantee shall 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...the employee, any member of his (her) immediate family, his or her partner...has a financial or other interest in the firm selected for award" (24 CFR 85.36(b) (3)). Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the "Stafford Act") as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternative requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

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**DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:**

None.

**I. CONFLICT OF INTEREST APPLICABILITY**

In the procurement of supplies, equipment, construction, and services by recipients and sub recipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110 apply. In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of 24 CFR 570.611 apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its sub recipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

**II. CONFLICT OF INTEREST REQUIREMENTS**

Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons<sup>1</sup> who exercise or have exercised any functions or responsibilities with respect to CDBG-funded activities, or who are in a position to participate in a decision making process or to gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with who they have family or business ties, during their tenure or for one year thereafter.

Further, no employee, officer or agent of the grantee or sub grantee shall 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 there is a financial or other interest in the firm selected for award by:

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<sup>1</sup> Applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub recipients which are receiving federal funds.

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- (i) the employee, officer or agent of the grantee or sub grantee,
- (ii) any member of his or her immediate family,
- (iii) his or her partner, *or*
- (iv) an organization which employs, or is about to employ, any of the above

### **III. SOLICITATION OF GRATUITIES**

The State's or sub grantee's officers, employees or agents shall not solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements.

The State and its sub 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 or conduct must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the State's and its sub grantee's officers, employees, or agents, or by contractors or their agents. HUD may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

### **IV. EXCEPTIONS**

Upon the written request of the recipient, HUD may grant an exception to the conflict of interest prohibition on a case-by-case basis when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

- A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

In determining whether to grant a requested exception after the recipient has satisfactorily met these requirements of paragraph, HUD shall consider the cumulative effect of the following factors, where applicable:

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- Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
- Whether an opportunity was provided for open competitive bidding or negotiation;
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
- Whether the interest or benefit was present before the affected person was an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or sub recipients which are receiving federal funds;
- Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- Any other relevant considerations.

#### **V. WRITTEN STANDARDS**

The State must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

The State of New Jersey State Ethics Commission administers and enforces the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. Pursuant to section 21(k) of the Conflicts Law, the Commission is authorized to promulgate, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., such rules and regulations as may be necessary to effectuate the purposes of the statute.

Section 21(o) of the Conflicts Law directs the Commission to prepare, and ensure distribution to each State officer and employee and special State officer and employee in the Executive Branch, a plain language ethics guide designed to provide a clear and concise summary of the laws, regulations, codes, orders, procedures, advisory opinions and rulings concerning applicable ethical standards. The goal of the guide is to promote ethical day-to-day decision making, to give

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general advice regarding conduct and situations, to provide easy reference to sources, and to explain the role, activities and jurisdiction of the Commission. Each State officer and employee and special State officer and employee must certify that he or she has received the guide, reviewed it and understands its provisions.

## VI. STATE CONFLICT OF INTEREST GUIDELINES

The following is contained in the “State of New Jersey Plan Language Guide to New Jersey’s Executive Branch Ethics Standards”:

*As a State officer or employee or special State officer or employee, you are prohibited from acting in your official capacity in any matter in which you have a direct or indirect personal or financial interest that might be expected to impair your objectivity or independence of judgment. As a practical matter, this means that you should not participate, even informally, on a matter in which you have a personal or financial interest.*

- *You could have an incompatible personal or financial interest through such things as:*
- *A purchase, sale, lease, contract, option, or other transaction;*
- *Property or services; and*
- *Employment or negotiations for prospective employment.*

*Your relationship to a party involved in the matter, such as a relative, cohabitant, or person who is providing funds, goods or services to you.*

*The Conflicts Law contains an exception that permits you to represent yourself in negotiations or proceedings concerning your own interest in real property.*

### ***Prohibitions on Contracts with a State Agency***

***Special State Officers and Employees.*** *You may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with the State agency with which you are affiliated if you have any duties or responsibilities in connection with the purchase or acquisition of property or services. This prohibition also applies to your partners and to any corporation that you control, or in which you own or control more than 1% of the stock. The*

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*prohibition does not extend to other State agencies.*

***State Officers and Employees.*** You, along with your partners or any corporation you control or in which you own or control more than 1% of the stock, may not knowingly undertake or execute any contract, agreement, sale or purchase valued at \$25 or more with any State agency, whether or not it is the agency for which you work.

***Limited Exceptions to these Prohibitions.*** Three categories of contracts are exempt from the general prohibition on contracting with the State. However, before entering into a contract falling within any of these categories, approval must first be obtained from the Commission. The three categories are:

- *Those purchases, contracts, agreements, or sales that are made after public notice and competitive bidding. The Commission typically approves such contracts unless the contract in question is with the State employee's own agency. In these situations, the Commission has determined that such contracts raise the issue of an appearance of impropriety under section 23(e) (7) of the Conflicts Law.*
- *Those contracts that may be awarded without public advertising and competitive bidding pursuant to N.J.S.A. 52:34-9 and N.J.S.A. 52:34-10. (See attached.)*
- *Any contract of insurance entered into by the Director of the Division of Purchase and Property, Department of Treasury, pursuant to N.J.S.A. 52: 27B-62.*

*In addition, there are two statutory exemptions that do not require advance approval by the Commission:*

- *Contracts for the development of scientific or technological discoveries or innovations: Section 19.1 of the Conflicts Law excepts contracts for the development of scientific or technological discoveries or innovations in which the State agency has a property right, if the State agency has a procedure in its supplemental code of ethics authorizing these contracts that minimizes actual conflicts of interest, and the contract complies with the code procedure.*
  - *Certain rental agreements with State agencies: Section 19.2 of the Conflicts Law excepts rental agreements with a State agency that operates a facility which rents space or provides services to assist small businesses employing fifty people or less, pursuant to the same terms and conditions as those offered to members of the public generally.*
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***Prohibitions on Representing Parties other than the State.*** *There are severe restrictions on your ability (and that of any partnership, corporation, or firm in which you have an interest) to represent, appear for, or negotiate on behalf of a person other than the State in connection with any cause, proceeding, application, or other matter, including a negotiation concerning the acquisition or sale of property of any sort, pending before any State agency. See N.J.S.A. 52:13D-15 and 16.*

*Representation does not only involve personally appearing before a State agency on behalf of an individual or entity. Under Commission precedent, representational activities also include:*

- *correspondence to a State agency on behalf of a third party;*
- *telephone calls to a State agency on behalf of a third party; and*
- *a State employee's signature on an application or other document submitted to a State agency on behalf of a third party (e.g., an engineering report).*

*You should carefully review these restrictions or consult with your ELO if you are considering taking any action on behalf of another person or entity that might be considered representing, appearing for, or negotiating on behalf of that person or entity in opposition to the State or before a State agency.*

*For special State officers or employees, the restriction on representing parties other than the State is limited to their own agencies.*

***Advisory Opinions.*** *If you think that you may have a conflict of interest, you should ask your ELO or the Commission for an opinion. These cases are frequently very fact-sensitive, and the Commission decides each individually. See Advisory Opinions, below, for information on how to find advisory opinions that the Commission has issued on this topic and on how to request an advisory opinion concerning your particular circumstances.*

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**APPROVAL:**   
Stacy Bonnaffons  
Assistant Commissioner

  
Howard McCoach  
Director, Sandy Recovery Division

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(Note: Is further clarification of DCA Policy Number: 1.10.15, adopted April 2004, and Revised October 2007 as it relates specifically to Government Debarment and Suspension Policies for CDBG-DR funded programs and activities.)

**PURPOSE:**

To outline the policies and procedures for the Department of Community Affairs to document compliance with the administrative requirements at 24 CFR 85.35 which prohibit grantees and sub grantees from making any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR Part 2424.

**POLICY:**

This policy states the requirements for Government-wide Debarment and Suspension (Nonprocurement). Each program that administers federal funds must annually document that Recipient Organizations and their Principals have not been Suspended or Debarred. In addition, prior to entering into any HUD-funded agreement, the Department of Community Affairs must check all contractors, subcontractors (including sub-tier contractors), consultants, and sub recipients against the System for Award Management (SAM), found at <https://www.sam.gov>. The purpose of this process is to protect the public interest and ensure the integrity of Federal and State programs by conducting business only with responsible persons. The Department of Community Affairs requires all of its sub recipients to verify annually that no contractors who have been debarred by either the State or Federal government are receiving contracts utilizing CDBG-DR funds.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the "Stafford Act") as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternative requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the

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Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

**DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:**

None.

**I. GENERAL REQUIREMENTS**

Federal funds granted by the US Department of Housing and Urban Development may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any contractor or sub recipient during any period of debarment, suspension, or placement of ineligibility status. Prior to entering into any HUD-funded agreement, the grantee must check all contractors, subcontractors (including sub-tier contractors), consultants, and sub recipients against the System for Award Management (SAM), found at <https://www.sam.gov>.

A debarment sanction means that an individual, organization and its affiliates are excluded from conducting business with any Federal Agency government-wide. Depending upon the outcome of an investigation or legal proceeding, a suspension may lead to debarment. Debarment is the most serious compliance sanction and is generally imposed for a three-year period. However, debarment can be imposed for a longer period of time, if determined to be necessary to protect the public interest.

**II. APPLICABLE REGULATIONS AND REQUIREMENTS**

The administrative requirements at 24 CFR 85.35 prohibit grantees and sub grantees from making any award or permitting any award (sub grant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR Part 2424.

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HUD policies and procedures concerning debarment and suspension are contained at 2 CFR Part 180 and 2 CFR Part 2424.

- 2 CFR Part 180 provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement programs and activities.
- 2 CFR Part 180 Sub Part B describes which contracts are covered, including procurement and non-procurement contracts.
- 2 CFR Part 2424 adopts the OMB guidance on non-procurement debarment and suspension, and supplements it with HUD-specific clarifications and additions.
- 2 CFR Part 2424 Sub Part B expands the covered contracts to include any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered non-procurement transaction.

### **III. FEDERAL DEBARMENT AND SUSPENSION PROCEDURES**

In general, the grantee must check the eligibility of every entity (contractor, sub grantee, consultant, etc.), and the principals and/or owners of those entities, prior to entering into an agreement and dispersing funds. The grantee must also document that eligibility and debarment status was checked, including the date the check was made.

To check the suspension and debarment status of a firm and/or individual, the grantee must search the SAM. The following steps outline the process for checking the debarment or suspension status of a company or individual:

1. Go to <https://www.sam.gov> and select "Search Records".
-

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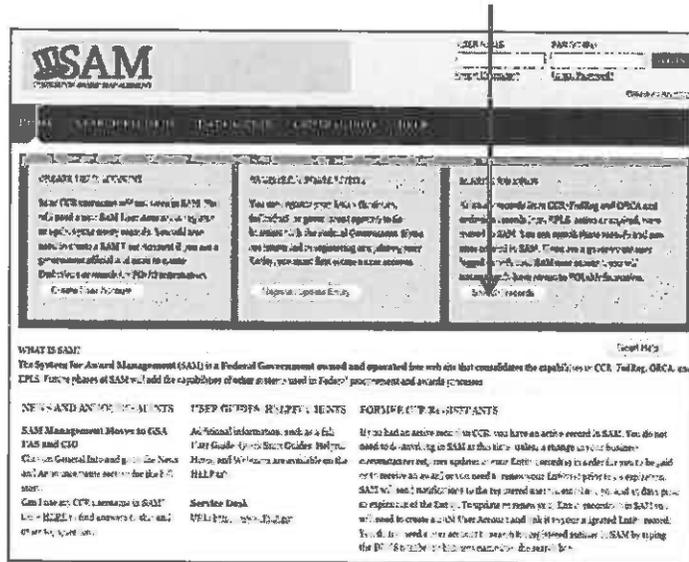
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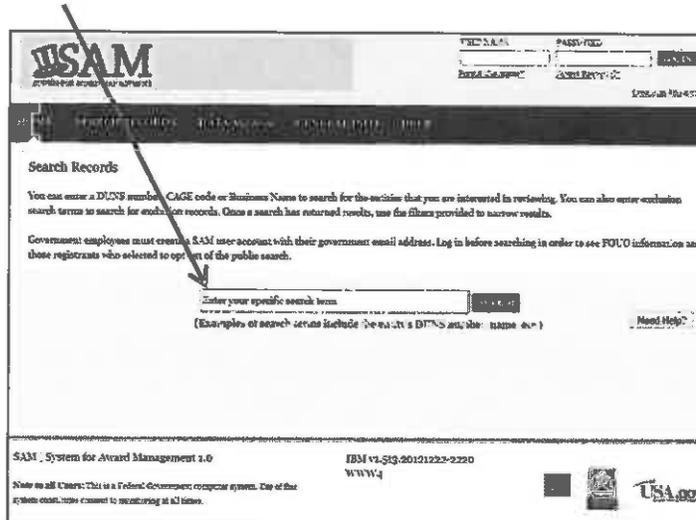
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2. In the search box, type the name of the company or individual you are looking for.



3. In the event that a company is registered in the CCR system, you will get a result with a company name. If the "Has Active Exclusion" indicates "No", the company is not excluded from Federal participation. If "Yes", do not proceed with the proposed

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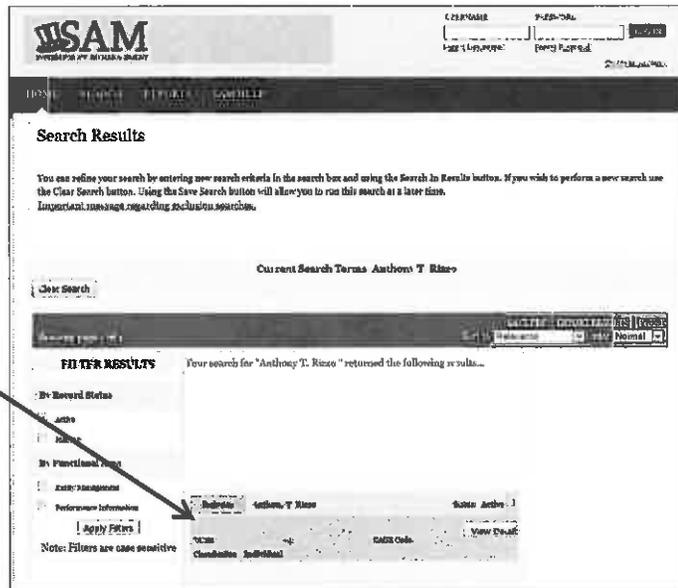
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transaction with the excluded company. In the event that a company is not registered in the CCR system, you will receive a message indicating “No records found for current search”.

4. Print and initial the web page search results documenting that the proposed recipient is not on the SAMS list and place copies in the grant agreement legal file.
5. The same search procedure should be followed for individual names. Once you search the company/organization name, repeat the process for all principals, owners, and partners affiliated with the company.

Example of individual who IS excluded:



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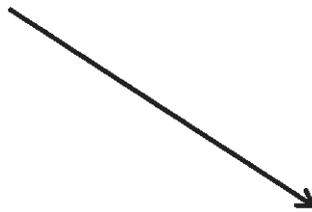
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Example of individual who **IS NOT** excluded and is not in CCR:



**ISAM**  
INTERNAL SECURITY ASSESSMENT MANAGEMENT

SEARCH RESULTS

You can refine your search by entering new search criteria in the search box and using the Search In Results button. If you wish to perform a new search use the Clear Search button. Using the Save Search button will allow you to run this search at a later time. Inappropriate messages regarding inclusion/exclusion.

Current Search Terms: Linda Benedetto (last)

Clear Search

Showing page 1 of 1

**FILTER RESULTS** No records found for current search

**By Record Status**

- Active
- Inactive

**By Functional Area**

- Cash Management
- Performance Evaluation

Apply Filters

Note: Filters are case sensitive

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Example of Organization that **IS** excluded:

The screenshot shows a search results page from a government website. The page title is "Search Results". Below the title, there is a message: "You can refine your search by entering more search criteria in the search box and using the Search In Results button. If you wish to perform a new search use the Clear Search button. Using the Save Search button will allow you to run this search at a later time. Important message regarding exclusion searches." The current search terms are "skipworth plumbing". There is a "Clear Search" button. Below the search bar, there is a "FILTER RESULTS" section with the following options: "By Record Status" (Active, Inactive), "By Functional Area" (Entity Management, Performance Information), and "Apply Filters". A note states "Note: Filters are case sensitive". The search results table shows one entry: "Skipworth Plumbing, Inc" with a "View Details" link.

Business	Entity	Entity ID
Skipworth Plumbing, Inc		4

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Example of Organization that IS NOT excluded:



**SAM**  
SYSTEM FOR AWARD MANAGEMENT

USER ID: [ ] PASSWORD: [ ]  
Create Account | Forgot Password | Create

HOME | SEARCH RECORDS | DATA ACCESS | GENERAL INFO | HELP

### Search Results

You can refine your search by entering new search criteria in the search box and using the Search In Results button. If you wish to perform a new search, use the Clear Search button. Using the Save Search button will allow you to run this search at a later time.  
**Important message regarding exclusion searches.**

Current Search Terms: City of Santa Maria

Clear Search

1 - 2 of 2 records (1)

**FILTER RESULTS** Your search for "City of Santa Maria" returned the following results...

**By Record Status**

Active  
 Inactive

**By Functional Area**

Entity Management  
 Performance Information

Apply Filters

Entity	Status	View Details
SANTA MARIA, CITY OF DUNS: 00999999 Is Active Exclusion: No	Entity: Active	View Details
PACIFICA CITY OF DUNS: 00999999 Is Active Exclusion: No	Entity: Active	View Details

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#### **IV. ADDITIONAL STATE AND FEDERAL DEBARMENT AND SUSPENSION PROCEDURES**

Any contractor or subcontractor hired by a subrecipient or state agency will be required to be reviewed for determination if they are an "excluded party". Ultimately, DCA must ensure that this done, each and every time a contract is awarded, whether it is for "contract administration" or it's a builder hired to reconstruct or rehabilitate a residential property. If sub recipients have contractors receiving CDBG-DR funds in for any activity, project or program, then they will need to review for "excluded parties".

A standard protocol for DCA Sandy Recovery Division monitoring of all program partners (whether its internal or external – EDA, NJRA, NJ MHFA) will be the determination if the review for "excluded parties" was conducted prior to award and execution of contract.

In addition to checking SAMS, the following must be completed:

1. The proposed recipient's debarment and suspension status must be checked on the State of New Jersey Debarment website found at <http://www.nj.gov/treasury/debarred>.
2. Once it is determined that the proposed recipient is not debarred or suspended from receiving an award, as determined by the Federal and State websites, the status of the proposed award may be changed from "In Staff Review" to "Staff Review Complete" via the SAGE system.
3. Print and initial the web page search results documenting that the proposed recipient is not on either list and place copies in the grant agreement legal file.
4. Include a signed and dated **Certification** form regarding debarment and suspension in each contract that is funded with Federal dollars.

#### **V. ANNUAL RE-CERTIFICATION**

On an annual basis the departmental Integrity Monitor will re-verify contractor state and federal eligibility based on a search of state (<http://www.nj.gov/treasury/debarred>) and federal (<https://www.sam.gov>).

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**EXHIBIT 1**

**Debarment and Suspension Certification**

GRANT/LOAN AGREEMENT NUMBER \_\_\_\_\_  
DEBARMENT AND SUSPENSION CERTIFICATION FOR FEDERALLY FUNDED  
CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned (authorized official signing for the applicant organization) certifies to the best of his or her knowledge and belief, that the applicant, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any State of NJ or Federal Department or agency;
- (b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

RECIPIENT: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

DATE: \_\_\_\_\_

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**SUBJECT:** National Environmental Policy Act (NEPA) Environmental Review

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**APPROVAL:**



Stacy Bonnaffons  
Assistant Commissioner



Howard McCoach  
Director, Sandy Recovery Division

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**PURPOSE:**

The Department of Community Affairs (DCA) is receiving CDBG-DR grant funds from the U.S. Department of Housing and Urban Development (HUD). DCA is the Responsible Entity in terms of compliance with HUD's Environmental Review Regulations at 24 CFR Part 58. These regulations provide instructions and guidance to recipients of HUD grant funds, where the recipient assumes the responsibility for compliance with the National Environmental Policy Act (NEPA) and other related Federal laws and authorities.

This document outlines the policies and procedures for DCA to document compliance with the HUD Environmental Review Regulations at 24 CFR Part 58.

**POLICY:**

It is DCA's policy as Responsible Entity to comply fully with the requirements of 24 CFR Part 58 and all related Federal laws and authorities for the CDBG-DR grant funds. DCA will maintain Environmental Review Records that cover all funded applications under the approved Action Plan programs.

**IMPLEMENTATION:**

DCA has executed a Memorandum of Agreement (MOA) with the New Jersey Department of Environmental Protection (DEP) that delegates preparation of Environmental Review Records associated with the CDBG-DR grant to DEP.

The Environmental Review Record (ERR) for the CDBG-DR grant must be organized to document compliance with all regulatory requirements. These requirements, including laws, regulations and links to other resources, may be found by clicking on:  
<http://www.hud.gov/offices/cpd/energyenviron/environment/index.cfm>

In order to meet the requirements for CDBG-DR Program (Robert T. Stafford Disaster Relief

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and Emergency Assistance Act of 1974 commonly referred to the “Stafford Act”) as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternate requirements. Note that wherever a conflict occurs between the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the later shall take precedence.

**DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:**

**1. Exemptions Covered under 24 CFR 58.34(a)(10):**

The U.S. Department of Housing and Urban Development (HUD) issued a Memorandum on May 16, 2008 titled Exemptions for Disasters and Imminent Threats which provides guidance for the use of the exemption at 24 CFR 58.34(a)(10). To be eligible for the exemption, the responsible entity must be able to document the presence of certain conditions that meet the intent of the exemption.

**2. Release of Funds When State Carries out Activity:**

In the regular CDBG program, the State distributes CDBG funds to units of general local government (“UGLGs” or “local government”) and takes on HUD’s role in receiving environmental certifications from the grant recipients and approving releases of funds. Under the Disaster Relief Appropriations Act Notice, the State is assuming the role of compliance with Federal laws and authorities and distributing funds directly to subrecipients and/or subgrantees. Therefore when the State plans to carry out an activity directly, the State must submit the certification and request for release of funds, where applicable, to HUD for approval per 24 CFR 58.4.

**3. Adoption of Another Agency’s Environmental Review Record:**

In accordance with the Disaster Relief Appropriations Act, recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without public comment, any environmental review, approval, or permit performed by a Federal agency for the same project, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by HUD. The State must notify HUD in writing of its decision to adopt another agency’s environmental review. The State must retain a copy of the review in its environmental records. HUD issued a memorandum on March 4, 2013 entitled *Adoption of FEMA and other Federal Environmental Reviews and Processing for Hurricane Sandy*

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*Supplemental Appropriation* that provides guidance on adopting the reviews prepared by other Federal agencies.

**4. Release of Funds:**

In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a request for release of funds and certification, immediately approve the release of funds for an activity or project assisted with allocations under the Disaster Relief Appropriations Act Notice if the recipient has adopted an environmental review, approval or permit under section 3, above, or the activity or project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

**5. Historic Preservation Reviews:**

To facilitate expedited historic preservation reviews under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), a Programmatic Agreement has been executed between FEMA, the New Jersey State Historic Preservation Officer, New Jersey State Office of Emergency Management, Advisory Council on Historic Preservation, and five Tribes. DCA and DEP will follow the stipulations in the Programmatic Agreement to ensure an efficient process of meeting Section 106 requirements.

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**SUBJECT:** Labor Standards Provisions of Davis-Bacon Act and “Related Acts”

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**APPROVAL:**



Stacy Bonnaffons  
Assistant Commissioner



Howard McCoach  
Director, Sandy Recovery Division

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**PURPOSE:**

To outline the policies and procedures for the Department of Community Affairs to document compliance with Labor Standards Provisions of the Davis-Bacon Act and “Related Acts”.

**POLICY:**

The Davis-Bacon Act (DBA) was first enacted in 1931 and amended in 1935 and 1964. Its purpose is to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels. However, since its inception in 1931, the reach of the DBA requirements has been extended by Congress through what are called “Related Acts”. A partial list, including 60 “Related Acts” (DBRA), is published in Part 5 of the 2011 version of Title 29 Code of Federal Regulations (CFR). These “Related Acts” often involve the award of grants, loans, loan guarantees or insurance from federal agencies to units of local government such as states, counties, cities and joint powers authorities.

In some cases certain CPD programs contain waivers and alternative requirements, relevant statutory provisions for grants provided under the Federal Notice issued for that program. In order to meet the requirements for Community Development Block Grant Disaster Recovery (CDBG-DR) Program (Robert T. Stafford Disaster Relief and Emergency Assistance act of 1974 commonly referred to the “Stafford Act”) as well as the Disaster Relief Appropriations Act of 2013 (78 FR 14329 – published March 5, 2013 and the clarifying guidance published on April 19, 2013) the following section has been added to describe any waivers or alternate requirements for this crosscutting element. Note that wherever a conflict occurs between the crosscutting requirements and the special requirements as noted in the Stafford Act and the Disaster Relief Appropriations Act of 2013, the latter shall take precedence.

**DISASTER RECOVERY WAIVERS OR ALTERNATE REQUIREMENTS:**

None.

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## **I. DAVIS BACON AND RELATED ACTS (DBRA) OVERVIEW**

The Davis-Bacon Act (DBA) was first enacted in 1931 and amended in 1935 and 1964. Its purpose is to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels. Originally DBA applied only to contracts awarded directly by a unit of the federal government, such as the U.S. Department of Housing and Urban Development (HUD) or the U.S. Department of Energy (DOE). However, since its inception in 1931, the reach of the DBA requirements has been extended by Congress through what are called “Related Acts” such as:

- Housing and Community Development Act of 1974, which includes the Community Development Block Grant (CDBG) program and the Section 108 Loan Guarantee;
- Cranston-Gonzalez National Affordable Housing Act, which includes the HOME Investment Partnerships (HOME) program;
- Housing and Economic Recovery Act of 2008 (HERA), which includes the Neighborhood Stabilization Program (NSP1);
- Economic Development Initiative (EDI);
- Brownfields Economic Development Initiative (BEDI); and
- American Recovery and Reinvestment Act of 2009 (ARRA), which includes the Community Development Block Grant-Recovery (CDBG-R) and the Neighborhood Stabilization Program (NSP2) programs.

A partial list, including 60 “Related Acts” (DBRA), is published in Part 5 of the 2011 version of Title 29 Code of Federal Regulations (CFR). These “Related Acts” often involve the award of grants, loans, loan guarantees or insurance from federal agencies to units of local government such as states, counties, cities and joint powers authorities. These units of local government will then award contracts for the construction, demolition, alteration or repair of housing, infrastructure, public and private facilities using federal funds pursuant to the related Act of Congress appropriating those funds. Those “Related Acts” awarding funds through HUD will be

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discussed throughout this chapter to build the expertise of program staff charged with implementing projects funded in whole or in part with federal grants, loans and loan guarantees.

Pursuant to the U.S. Department of Labor (DOL) regulations found at 29 CFR Part 5, the term “Labor Standards” includes the following:

- Prevailing wage requirements of DBRA;
- The Fair Labor Standards Act of 1938, as amended (FLSA), which includes minimum wage, overtime pay, recordkeeping and child labor standards affecting most workers;
- Contract Work Hours and Safety Standards Act (CWHSSA), which provides for overtime for all hours over 40 in a week; and
- Copeland Anti-Kickback Act which prohibits of kickbacks of wages and back wages from employees to employers.

## **II. DBRA PREVAILING WAGE REQUIREMENTS**

DBRA requires the payment of prevailing wage rates to all laborers and mechanics working on Federally-assisted construction projects. The specific Davis-Bacon requirements are included in the Federal Labor Standards Provisions (HUD-4010) which, in summary, obligates the contractor to:

- Pay all laborers and mechanics who are employed or working upon the site of the work, unconditionally and not less often than once a week (bi-weekly and semi-monthly pay intervals are not permitted on DBRA projects);
  - Pay all laborers and mechanics the full amount of hourly wages and bona fide fringe benefits prescribed for their work classification as shown in the wage determination applicable to the contract;
  - Not withhold or otherwise deduct or rebate any part of wages due except as permitted by the Copeland Anti-Kickback Act (29 CFR Part 3);
  - Provide the grantee with Certified Payroll Reports (CPR) that accurately set forth certain information, including the employee’s name and identifying number, hours (or fractions thereof) worked by each employee in each respective work classification by day, date,
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regular and overtime, the total regular and overtime hours worked, the prevailing wage rate, gross pay for “this job” and “all jobs,” authorized payroll deductions, net pay, and attach a properly executed Statement of Compliance; and

- Retain all records for a period of three (3) years subsequent to the last day that laborers or mechanics perform work at the site of construction.

The Federal Labor Standards Provisions include clauses that provide for remedies in the event of a violation, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These clauses enable the grantee to enforce the DBRA requirements.

**A. Fair Labor Standards Act of 1938** - The FLSA affects most employment in the United States, regardless of DBRA or any other applicable statute. FLSA contains the federal minimum wage rates, overtime and child labor requirements.

- **Minimum Wage:** Effective July 24, 2009, the federal minimum wage is \$7.25 per hour, but in many cases, employees are subject to a higher minimum wage by virtue of a state or local statute requiring the payment of a higher minimum wage rate.
- **Overtime:** Covered nonexempt<sup>1</sup> employees must receive overtime pay for hours worked over 40 per workweek.<sup>2</sup> Hours may not be averaged over two (2) or more weeks. The rate of pay for overtime is one and one-half times an employee’s regular rate of pay over 40 hours in a workweek.
- **Hours Worked:** Hours worked includes all time during which an employee is required to be on the employer’s premises, on duty, or at a prescribed workplace.
- **Recordkeeping:** Employers must display an official poster outlining the requirements of the FLSA. Employers must also keep employee time and pay records.
- **Child Labor:** The child labor provisions of FLSA are designed to protect the educational opportunities of minors and to prohibit their employment in jobs and under conditions detrimental to their health or well-being.

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<sup>1</sup> An exempt employee pursuant to Section 13(a)(1) of FLSA is a bona fide executive, administrative, professional or outside sales employee, as determined by certain tests related to job duties. Exempt employees do not receive overtime but must be paid a minimum salary of \$455 per week, regardless of actual hours worked.

<sup>2</sup> A workweek is defined as any fixed and regularly recurring period of 168 hours, which is seven (7) consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day.

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**B. Contract Work Hours and Safety Standards Act** - The CWHSSA applies to federally-assisted construction contracts over \$100,000, providing most workers on federally-assisted contracts the right to receive time and one-half for overtime hours worked. There are certain exemptions to this requirement as prescribed in the Act. CWHSSA also prohibits unsanitary, hazardous, or dangerous working conditions on federally-assisted and federally-financed and assisted construction projects.

**C. Copeland Anti-Kickback Act – Prohibits Kickbacks of Wages to Employers** - The Copeland Anti-Kickback Act makes it a federal crime for anyone to require any laborer or mechanic employed on a federal or federally-assisted<sup>3</sup> project to kickback (i.e. give up or pay back) any part of their wages. This law requires every employer to submit weekly CPRs and regulates permissible payroll deductions. According to 29 CFR §3.5, the following payroll deductions are permissible without application to or approval of the Secretary of Labor:

- Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. 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 the advanced funds.
- Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either 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 to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents: Provided, however, that the following

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<sup>3</sup> Except contracts for which the only federal assistance is a loan guarantee.

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standards are met:

- The deduction is not otherwise prohibited by law;
  - It is either:
    - 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
    - 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 the employee.
  - Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.
  - Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
  - Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
  - Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.
  - Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, that a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.
  - Any deduction not more than for the “reasonable cost” of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of
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1938, as amended, and Part 531. When such a deduction is made the additional records required under 29 CFR 516.25(a) shall be kept.

- Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either:
  - 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 employment or its continuance; or
  - Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

According to the DOL website, [www.dol.gov](http://www.dol.gov), “Any contractor or subcontractor who induces an employee working on a covered contract to give up any part of the compensation to which he or she is entitled is subject to a \$5,000 fine, or imprisonment for up to five years, or both. Willful falsification of the statement of compliance may subject the employer to civil or criminal prosecution and may be cause for contract termination or debarment. Contractors may challenge determinations on debarment before an Administrative Law Judge. Decisions of Administrative Law Judges may be appealed to the Administrative Review Board. Final Board determinations on debarment may be appealed to and are enforceable through the federal courts. Civil and criminal sanctions are pursued through the federal courts.”

Department of Community Affairs, Sandy Recovery Division policy on “Debarment and Suspension” provides additional guidance with regard to policy and procedures required by grantee and subrecipients on this topic.

### **III. APPLICABILITY TO CDBG-DR PROJECTS**

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the U.S. Department of Labor) to all laborers and mechanics on Federal government construction projects in excess of \$2,000. Specifically for CDBG-DR program projects, Davis-Bacon Related Acts will apply when CDBG-DR pays in whole or in part for any direct costs of construction;

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**AND** the project meets one of the following thresholds:

- Residential (housing): Property has 8 or more units
- Non-residential: Any construction work valued at more than \$2,000

Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

**IV. SUBRECIPIENT AND OTHER FUNDED ENTITY RESPONSIBILITY**

Each Subrecipient, as well as other Funded Entities shall be required to administer and enforce the labor standards requirements set forth in Section 570.605 of the regulations of the Housing and Community Development Act of 1974. Each Subrecipient or other Funded Entity shall comply with process steps and procedures as detailed in the "Labor Standards Flowchart".

**V. APPOINT LABOR STANDARDS COMPLIANCE OFFICER**

The Grantee will designate a Labor Standards Compliance Officer to ensure compliance with all applicable labor standard requirements. The Labor Standards Compliance Officer will be appointed prior to the start of any construction activity and his/her name specified in Subrecipient and other Funded Entity program guidelines, policy and procedures and contracts, agreements or memorandum of understandings for use of CDBG-DR funds.

**VI. LABOR STANDARDS ENFORCEMENT FILE**

The Subrecipient or other Funded Entity shall establish and maintain a "Labor Standards Enforcement" file for each construction project subject to labor standards provisions. All documentation must be available for the CDBG-DR DCA review. Such documentation shall include requests for wage decisions, bid documents containing applicable wage decisions and labor standards provisions, verification of contractor eligibility, executed construction contracts containing applicable wage and labor standards provisions, pre-construction conference minutes, notification of start of construction, weekly payrolls, apprentice registration records, on-site employee interviews and copies of correspondence, memoranda and forms relating to the administration and enforcement of labor standards provisions.

**VII. SECURE WAGE RATE DETERMINATIONS**

Grantees awarding any construction contract in excess of \$2000 shall obtain current Federal and

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State prevailing wage rates. The higher of the two wage rates shall be the wage rate used. Nothing, however, shall prohibit the payment of more than the prevailing wage rate to any workman employed on the construction project.

**A. Wage Determinations** - Federal prevailing wage rates shall be obtained from the Wage Determinations Online system: <http://www.wdol.gov/>

State prevailing wage rates may be obtained from the New Jersey Department of Labor, Office of Wage and Hour Compliance at:

[http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing\\_wage\\_determinations.html](http://lwd.dol.state.nj.us/labor/wagehour/wagerate/prevailing_wage_determinations.html)

Applicable prevailing wage rates are those wages and fringe benefits in effect on the date the contract is awarded. All pre-determined rate increases listed at the time the contract is awarded must also be paid, beginning on the dates specified.

Rates may change between the time of issuance of the determination and the award of the contract. Therefore, verification must be made to insure that the rates contained in the determination are prevailing rates in effect for the specific location the work is being performed prior to the award of the contract.

**B. Wage Determination Posting** - Contractors and sub-contractors shall post the prevailing wage rates for each craft and classification in a prominent and easily accessible place at the site of the work, or at such places as are used by them to pay workers.

**A. Force Account Labor** - Laborers and mechanics employed by a Subrecipient (State agency or unit of local government) will not be considered laborers and mechanics employed by a contractor or sub-contractor when performing construction work financed by the CDBG-DR Program and shall not be subject to prevailing wage requirements which are otherwise applicable.

## VIII. PREPARE BID DOCUMENTS

The Subrecipient or other Funded Entity are required to ensure that all bid specifications include all applicable Federal and State wage rate determinations and the required labor standards provisions).

## IX. VERIFY CONTRACTOR ELIGIBILITY

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The Subrecipient or other Funded Entity prior to award of any contract, review the current eligibility status of all contractors **and** sub-contractors to be used on any construction project to ensure that they are “not excluded” from participation in Federally funded projects. Subrecipients or other Funded Entities must use the Federal System for Awards Management (SAM) to review and verify contractor and subcontractor eligibility. The SAM system is accessed at the following location: <https://www.sam.gov/portal/public/SAM/>

#### **X. EXECUTE CONSTRUCTION CONTRACT**

The Subrecipient or other Funded Entity will ensure that construction contract documents include all applicable wage determinations and labor standards provisions. Applicable wage rates are those in effect ten (10) days prior to bid opening, provided the construction contract is awarded within ninety (90) days of bid opening. All predetermined State labor rate increases listed at time of contract award must also be paid, beginning on the dates specified.

The “Federal Labor Standards Provisions” **must** be made part of all construction contracts.

#### **XI. CONDUCT PRE-CONSTRUCTION CONFERENCE**

The Subrecipient and other Funded Entities shall hold a pre-construction conference with the principal contractor and all available sub-contractors prior to the start of construction. At the pre-construction conference responsibilities and obligations regarding the Federal labor standards provisions contained in the contract documents will be discussed. Meeting minutes shall be prepared and retained in the Subrecipient or other Funded Entity’s files for each pre-construction conference. The pre-construction conference meeting minutes report will contain:

- Project name, location, and description
- Name of Contractor(s)
- Contract amount
- Date and place of conference
- Conference attendees
- Summary of items covered

(See Pre-Construction Checklist for Contractors)

#### **XII. NOTIFICATION TO DCA OF START OF CONSTRUCTION**

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The Subrecipient and other Funded Entities shall notify the designated DCA Disaster Recovery Division program representative of start of construction for any covered project. Start of construction means the beginning of initial site clearance and preparation; provided those activities are pursued diligently and are followed without appreciable delay by other construction activities.

### **XIII. USE OF APPRENTICES AND TRAINEES**

**A. Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the US Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or are employed in the 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 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 the 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 for the classification of work s/he actually performed. The contractor or sub-contractor will be required to furnish to the Labor Standards Compliance Officer of the Subrecipient or other Funded Entity written evidence of the registration 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 not be less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination. Written evidence of apprentice registration shall consist of a copy of an Apprenticeship Standards/Apprenticeship Agreement Joint Approval form.

**B. Trainees** - Trainees (Except as provided in 29 CFR Part 5.16) 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 from the US Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The

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ratio of trainees to journeyman shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his/her 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 Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined for the classification of work s/he actually performed.

The contractor or sub-contractor will be required to furnish the Labor Standards Compliance Officer of the Subrecipient or other Funded Entity written evidence of certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training 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.

**C. Equal Employment Opportunity** - The utilization of apprentices, trainees and journeyman under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

#### **XIV. COMPLIANCE MONITORING - CONSTRUCTION SITE VISITS**

Visits to the construction site by the Labor Standards Compliance Officer are an integral part of the compliance monitoring process. Careful observation of on-going construction work and asking questions of the workers involved may help to determine whether or not it is necessary to make a more detailed audit of payrolls and time-sheets. Progress reports, contractors' apprenticeship agreements and similar data, together with interviews of employees (recorded) (<http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formId=12BF5D0E2DC4484685256CBC0062F375&viewType=DETAIL>) may be sufficient to develop information as to whether there is compliance with the Federal labor standards provisions.

The Labor Standards Officer will be required to ensure that wage determination decisions and other required material pertaining to the required labor standards provisions are posted by the contractor at the worksite in a prominent and accessible place. The Labor Standards Officer will be required to have **photographic evidence** that the required Department of Labor poster (<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>) and the prevailing wage determination for each project is conspicuously displayed which informs employees of their rights.

#### **XV. COMPLIANCE MONITORING – WEEKLY PAYROLL REVIEW**

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It is the responsibility of each contractor and sub-contractor to submit weekly certified payrolls for project work (<http://www.dol.gov/whd/forms/wh347.pdf>). . If no work is performed by a contractor or sub-contractor during a given work week, weekly payrolls need not be submitted. Initial and final payrolls must be so marked by each contractor and sub-contractor. Payrolls shall be completed and submitted no later than seven (7) work days following completion of the work week. The Subrecipient or other Funded Entity are required to “date stamp” weekly certified payroll submissions to evidence prompt submission.

It is the responsibility of the Grantee's Labor Standards Officer to verify that proper wage and fringe benefit rates are being paid by all contractors and sub-contractors. The proper wage and fringe benefit rate for a particular job classification must be equal to or greater than the highest of the corresponding Federal or State prevailing wage rate and fringe benefit rate. Fringe benefits paid to approved plans, funds or programs must be verified by the Labor Standards Officer.

HUD policy affords prevailing wage protection for all laborers and mechanics regardless of contractual relationship. There is no exception to this protection for self-employed sub-contractors. The most frequent occurrence of self-employed workers involves mechanic/trade classifications. These mechanics may be represented as sole proprietors, self-employed mechanics, partners or corporate officers - all with no direct employees engaged in covered work. Certified payrolls reporting single or multiple owners (e.g., partners) certifying that they have paid to themselves the prevailing wage for their craft may not be accepted. These mechanics must be carried on the certified payroll of the contractor for whom they are working.

Owners of businesses working with their crew on the same job site may certify to the payment of their own prevailing wages in conjunction with the prevailing wages paid to their employees. This exception to reporting standards does not suggest that such owners are not likewise entitled to prevailing wages for their labor. Rather, it accepts the wage payment certification on weekly payroll reports by the owner for his/her own wages as that certification accompanies the certification offered for the payment of prevailing wages to his/her employees. Such owners need only list their name, work classification including “owner”, and the daily and total hours worked. Such owners do not need to list a rate of pay or amounts earned.

Contractor weekly payrolls and other basic records will be reviewed by the Labor Compliance Officer of the Subrecipient or other Funded Entity as part of the established compliance enforcement activity on every construction project. Submitted payrolls shall be examined to assure compliance with labor standards to establish that only classifications appearing on the wage determination are used. Additionally, the Labor Compliance Officer has check for disproportionate employment of laborers, helpers, apprentices or trainees in relation to the entire

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workforce of a contractor or subcontractor. All certified payrolls, employee interviews, photographs and any other materials shall be maintained and provided for review and monitoring at the request of the DCA Sandy Recovery Division, HUD of the Department of Labor at any time during the normal three (3) year term in which records must be maintained.

**A. Payroll Forms** - Contractors shall be required to use Department of Labor Form WH-347, Payroll Form and instructions on completing Form WH-347. If a contractor requests to use an alternative payroll of his/her own choice, such requests must be submitted to the Labor Compliance Officer and approved in writing by DCA Sandy Recovery Division.

**B. Fringe Benefits** - The required weekly statement of compliance, Form WH-347, page 2, includes statements concerning the payment of the basic hourly wage rates.

*Grantees and contractors are urged to obtain HUD publication "A Contractor's guide to Prevailing Wage Requirements for Federally Assisted Construction". The guide may be downloaded from the following HUD web site:*

<http://www.hud.gov/offices/adm/hudclips/guidebooks/HUD-LR-4812/4812-LR.pdf>

**C. Payrolls Must Be Obtained and Examined Promptly - Payroll Retention** - The Subrecipient or other Funded Entity's Labor Compliance Officer shall require the submission of all payrolls each week. The payrolls shall be examined upon receipt so that all necessary corrective action may be initiated before the problem multiplies, and may be accomplished while the workers are still available. Payrolls must be retained for three (3) years by the Subrecipient or other Funded Entity following completion of the project and then may be destroyed unless an investigation, disputed compliance action, or appeal remains outstanding. Clearance shall be obtained from the DCA Sandy Recovery Division prior to such destruction. Contractors and sub-contractors must retain their basic payroll records (payroll register, individual earning cards, etc.) for the same three (3) year period.

**D. Employee Information** - Effective January 18, 2009, payrolls shall not report employee addresses or full Social Security Numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee's name and an individually identifying number, usually the last 4 digits of the employee's SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting

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agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor’s records. DOL has modified form WH- 347, Payroll, to accommodate these reporting requirements.

**E. Incomplete Payrolls** - Except where falsification is suspected, an incomplete payroll shall be returned to the prime contractor for completion. In most cases it will be better to require the prime contractor to supply the missing information by means of a new or supplemental payroll or a supplemental statement. If a payroll is false, it shall not be returned to the contractor. A report of such findings shall be referred to the DCA Sandy Recovery Division.

**F. “No work” payrolls.** “No work” payrolls may be submitted whenever there is a temporary break in work on the project, for example, if a contractor or subcontractor is not needed on the project right now but will be returning to the job in a couple of weeks.

However, if a contractor or subcontractor will not be working on the project for an extended period of time, they should inform Labor Compliance Officer about the break in work and provide an approximate date of return to the project. If payrolls are numbered consecutively or if notice has been provided to the Labor Compliance Officer, “no work” payrolls will not be required.

**G. Classification and Wage Rates.** Classification and wage rates reported on the payroll shall be compared with the corresponding items on the applicable wage determination decision to determine whether the rate reported is at least equal to the rate required by the decision. If a lesser wage rate is found, the Subrecipient or other Funded Entity must request in writing the contractor to begin paying the required wage rate immediately and to make restitution to workers for past underpayments.

**H. Deductions** - Deductions shall be reviewed for any non-permissible deductions. Permissible deductions include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life pay, defraying costs of apprenticeship or similar programs. Questions regarding permissible fringe benefits must be referred to the Labor Compliance Officer for determination. All benefits not paid in cash must be documented with written verification from the contractor or sub-contractor.

**I. Piece-work.** Some employees are hired on a piece-work basis. The employee’s earnings are determined by a factor of work produced. Employers may calculate weekly earnings based upon piece rates provided the weekly earnings are sufficient to satisfy the wage rate requirement based upon actual hours, including any overtime, worked. Accurate time records must be maintained for any piece-work employees. If the weekly piece rate earnings are not sufficient, the employer must re-compute weekly earnings based upon the actual hours worked and the rate on the wage decision for

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the work classification(s) involved.

**J. Signature** - The statement of compliance must be signed by the owner, officer, or designated employee of the contractor. Written authority must be furnished by the owner or officer of the contractor when a designated employee signs the payrolls.

**K. Requests by Outside Parties for Payrolls** - In order to protect the personal privacy interests of employees, copies of weekly payrolls containing the individual's salary, work hours, claimed exemptions and tax status, and address shall not be released to outside parties and may be withheld under Exemption 6 of the Freedom of Information Act unless any identifiers are first deleted.

#### **XVI. COMPLIANCE MONITORING – EMPLOYEE INTERVIEWS**

The Labor Compliance Officer shall be responsible for employee interviews. Employee interviews shall be sufficient in number to establish the degree of accuracy of the records and the nature and extent of violations, if any. They shall also be representative of all classifications of employees on the project. Employees shall be encouraged to produce pay stubs or pay envelopes which document the wages received.

**A. Confidentiality** - The employee shall be informed that the information given is confidential, and that his/her identity will be disclosed to the employer only with the employee's written permission, and that s/he is being interviewed by an employee of the grantee.

**B. Place of Interview** - Employees currently employed may be interviewed during working hours on the job, provided that the interview can be properly and privately conducted on the premises. In cases of falsification of records, fear of reprisals, or intimidation, it may be advisable to conduct the interview elsewhere, such as in the employee's home, at the Subrecipient or other Funded Entity's office, or other suitable place where it may be arranged.

**C. Initiating the Interview** - The Labor Compliance Officer shall begin the interview by introducing himself or herself to the worker and shall confirm their identity by showing the worker proper credentials. The Labor Compliance Officer shall explain that the project is being constructed with the assistance of the Federal government, that the payment of prevailing wages on Federally-assisted construction projects is required by law, and that the purpose of the interview is to obtain information for use in determining whether the required wages are being paid. The Labor Compliance Officer shall inform the worker of the specific location at which the applicable wage determination decision is posted at the project site.

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**D. Mail Interviews** - Employees and former employees may be interviewed by mail.

**E. Interview Time** - If the interview is conducted on the job site it shall be arranged to cause the least inconvenience to contractors and subcontractors.

**F. Oral Interview Statements** - An employee interview need not be recorded in a signed statement when it serves merely to confirm what the records reveal, and it is not otherwise indicative of a violation, assuming no violation has been alleged and the records are adequate.

**G. Interview Form** - Employee interviews are to be recorded on Form HUD-11, Record of Employee Interview.

**H. Comparison of Payrolls and Interviews** - Grantees must ensure that:

1. Construction contractors designate the job classification of employees listed on the payroll.
2. The hourly rate includes the fringe amount as listed in the wage determination governing the project. Fringe benefits paid to approved plans, funds or programs must be verified in writing.

## **XVII. COMPLIANCE MONITORING – VIOLATIONS AND CORRECTIVE ACTION**

When any violation of labor standards requirements results in an underpayment of wages to employees, the Subrecipient or other Funded Entities must take corrective action. Where wage adjustments become necessary, the Labor Compliance Officer must notify the prime contractor (the one responsible for the correction of all violations) in writing to make such adjustments. Should the violations not be corrected within thirty (30) calendar days of notification, the Labor Compliance Officer upon written notice to the contractor may withhold amounts due the contractor as may be necessary to ensure payment of laborers and mechanics the rate of pay which should have been received by such laborers and mechanics and to cover liquidated damages under the Contract Work Hours and Safety Act (CWHSSA), if any and if applicable. Only an amount necessary to ensure payment of back wages and/or liquidated damages shall be withheld.

Failure to ensure that proper wages are paid during the course of the project will result in the Subrecipient or other Funded Entity bearing the burden of restitution whether or not sufficient funds remain in the grant budget.

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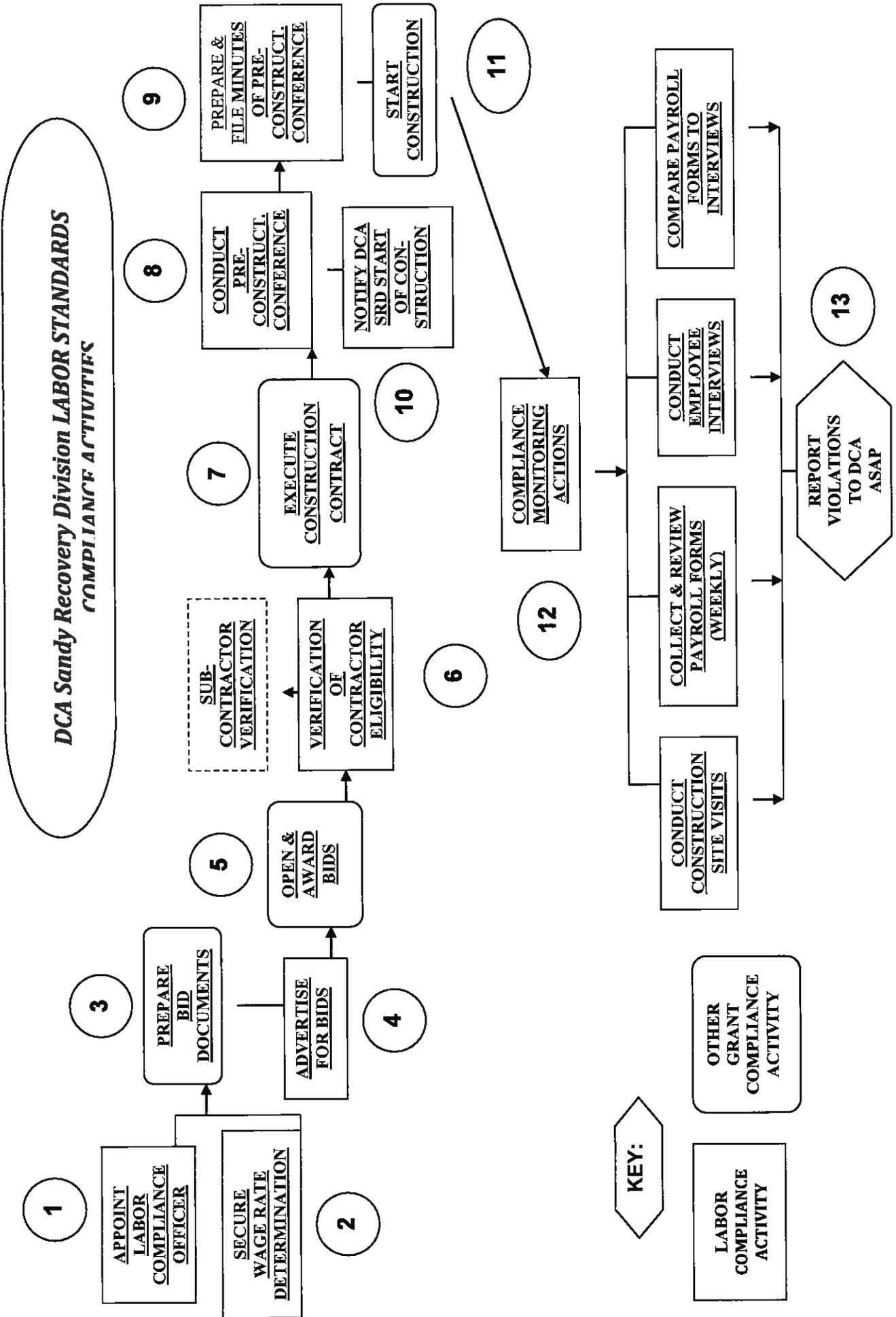
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#### **XVIII. MONITORING VISITS**

During the monitoring visit the DCA Representative will:

- A. Meet with the Subrecipient or other Funded Entity’s Labor Compliance Officer.
- B. Review the Subrecipient or other Funded Entity’s Labor Standards Enforcement file and complete the Labor Standards Monitoring Checklist.

EXHIBIT 1



**EXHIBIT 2**  
**CDBG-DR Program**  
**Labor Standards Monitoring Checklist**

*Subrecipient/Funded Entity*  
**Agreement #: «Agreement»**

*Date: «Date»*  
**Program Representative: «ProgramRep»**

1. Contract Identification

**Project Name** \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Description of Work \_\_\_\_\_

Bid Opening Date \_\_\_\_\_

Contract Award Date \_\_\_\_\_

Contract Amount \_\_\_\_\_

Start of Construction \_\_\_\_\_

Force Account Used \_\_\_\_\_

2. Contract Documents And Administration

Yes    No    N/A    N/R

- |    |   |       |       |                          |       |
|----|---|-------|-------|--------------------------|-------|
| A. | Prevailing wage rates in bid specification?             | _____ | _____ | _____                    | _____ |
| B. | Notification of contractor eligibility in the file?     | _____ | _____ | _____                    | _____ |
| C. | Prevailing wage rates in contract?                      |       |       |                          |       |
|    | Date of State decision                                  |       |       | Date of Federal decision |       |
| D. | Are minutes of pre-construction conference in the file? | _____ | _____ | _____                    | _____ |

3. Payroll Review

- |    |  |       |       |       |       |
|----|--|-------|-------|-------|-------|
| A. | Payrolls submitted weekly?   | _____ | _____ | _____ | _____ |
| B. | Payrolls numbered consecutively?<br>(initial, second, etc., final) | _____ | _____ | _____ | _____ |

**EXHIBIT 2**  
**CDBG-DR Program**  
**Labor Standards Monitoring Checklist**

		<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>N/R</u>
C.	Payrolls signed by employer or authorized representative?	_____	_____	_____	_____
D.	Statement of Compliance prepared for each payroll?				
E.	Proper wages paid based upon a random sample of listed job classifications?	_____	_____	_____	_____
F.	Were proper fringe benefits paid?	_____	_____	_____	_____
G.	Were fringe benefits paid to approved plans or programs verified?	_____	_____	_____	_____
H.	Apprenticeship/Trainee registration certification from US Dept. of Labor?	_____	_____	_____	_____
I.	If not, are journeyman rates being paid?	_____	_____	_____	_____
J.	Record of additional classifications? (not covered in wage decisions)	_____	_____	_____	_____
K.	Is payroll review correspondence in file?	_____	_____	_____	_____
4.	<u>Employee Interviews</u>				
A.	Were employee interviews conducted by the grantee?	_____	_____	_____	_____
B.	Were a representative number of trades covered?	_____	_____	_____	_____

**EXHIBIT 2**  
**CDBG-DR Program**  
**Labor Standards Monitoring Checklist**

5. Assessment Of Subrecipient/Funded Entity Labor Standards Administration

A. Has the Subrecipient or Funded Entity have designated a Labor Compliance Officer? \_\_\_\_\_

Name: \_\_\_\_\_

B. Does the Subrecipient/Funded Entity maintain full documentation attesting to the administration and enforcement of labor standards as indicated below:

	<u>Yes</u>	<u>No</u>	<u>N/A</u>	<u>N/R</u>
a. Labor standards enforcement file for each construction project?	_____	_____	_____	_____
b. Is the labor standards enforcement file organized to enable review based on chronological events?	_____	_____	_____	_____
c. Is all labor standards enforcement documentation maintained at the same location?	_____	_____	_____	_____
C. Is there a need for technical assistance?	_____	_____	_____	_____

Comments And Findings

## EXHIBIT 3

### Federal Labor Standards Provisions

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 I(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

## EXHIBIT 3

### Federal Labor Standards Provisions

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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 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 I(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 I(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) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Website at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request 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 contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (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 provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

## EXHIBIT 3

### Federal Labor Standards Provisions

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(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

## EXHIBIT 3

### Federal Labor Standards Provisions

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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 in 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 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 the individual 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 subparagraph (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.

**EXHIBIT 3**  
**Federal Labor Standards Provisions**

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**(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 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, (Public Law 91-54, 83 Stat 96). 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 subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.



## Exhibit 2

Section 3 information (Utilization Plan is required, others Certifications  
as required)

New Jersey Department of Community Affairs  
Sandy Recovery Division: HUD CDBG-DR Funds  
Section 3 Bid Documents

**Contents**

A. Section 3 Contract Clause for Covered Contracts .....3

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#### **A. Section 3 Contract Clause for Covered Contracts**

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 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 24 CFR 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 (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).

**B. Section 3 Utilization Plan**

*Business Opportunities Funded by the New Jersey Department of Community Affairs for Low and Very Low Income Area Residents*

<b>Company Name</b> _____	
<u>Goals</u>	
<ul style="list-style-type: none"> <li>• Thirty percent (30%) of the aggregate number of new hires are Section 3 residents;</li> <li>• Ten percent (10%) of the total dollar amount of the contract is awarded to Section 3 business concerns</li> <li>• Three percent (3%) of the total dollar amount of all covered non-construction contracts are awarded to Section 3 business concerns</li> </ul>	
Total Current Employees	
Total Anticipated New Hires	
Total Anticipated New Hires that are Section 3 Residents	
<b>Percentage of Section 3 New Hires</b>	<b>%</b>
Total Dollar Amount of Contract	\$
Total Dollar Amount of Construction Sub-contracts to be Awarded	\$
Total Dollar Amount of Construction Sub-contracts to be Awarded to Section 3 Business Concerns	\$
Total Dollar Amount of Non-construction Sub-contracts to be Awarded	\$
Total Dollar Amount of Non-construction Sub-contracts to be Awarded to Section 3 Business Concerns	\$
<b>Percentage of Contract Going to Section 3 Business Concerns</b>	<b>%</b>
Number of Technical Trainings to be Provided Annually	
(Note: These amounts may change due to increases and decreases in contract value. All changes should be reflected on the monthly reports.)	

The contractor hereby agrees to the following:

- To comply with all the provisions of Section 3 as set forth in 24 CFR 135

- To commit to employing qualified Section 3 residents for thirty percent (30%) of its new hires
- To commit to awarding ten percent (10%) of the total dollar amount of all sub-contracts for construction, and three percent (3%) of the total dollar amount of for non-construction (professional service) contracts, to Section 3 business concerns
- Any positions provided to Section 3 business concerns or residents are necessary to the successful completion of the contract
- A status report will be provided at the time of each payment request, which will identify the contractor's progress in meeting the Section 3 goals established in the utilization plan. If the goals have not been met, the report will identify any other economic opportunities which the contractor has provided, or intends to provide, in order to meet the Section 3 goals.

As an attachment to this Section 3 utilization plan, describe ways in which your company will perform outreach to the Section 3 community.

\_\_\_\_\_

(Contractor's Signature and Title)

\_\_\_\_\_

(Date)

Sworn & Subscribed Before:

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Signature of Notary Public)

Date Commission Expires \_\_\_\_\_

**C. Section 3 Certification for Subrecipients Receiving More than \$200,000**

*Certification Regarding Section 3 of the Housing and Urban Development Act of 1968, 24 CFR Part 135*

In accordance to Section 3 requirements for awards exceeding \$200,000, the undersigned certifies, to the best of his or her knowledge that as an applicant, this agency or its key employees:

- a) Will ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.
- b) Will ensure that notices about funding availability and for competitively awarded assistance involving housing rehabilitation, construction or other public construction. The notice must include a statement that one of the purposes of the assistance is to give job training, employment, contracting and other economic opportunities to Section 3 residents and Section 3 business concerns. In addition, if the above threshold is met the requirements also apply to contractor and subcontractor contracts that exceed \$100,000. If no contracts exceeding \$100,000 are awarded, the undersigned is responsible for carrying out the Section 3 obligations set forth at 24 CFR 135.32. (See "HUD Section 3" section of the Small Cities Program Handbook at <http://www.nj.gov/dca/divisions/dhcr/offices/cdbg.html>).
- c) Will ensure the use of the Section 3 clause in all covered bid solicitations and contracts, and monitor contractors for compliance with all provisions.
- d) Will collect information, document actions taken and submit cumulative reports at least quarterly to SRD while the program is underway as required by the NJ CDBG-DR Sandy Recovery Division.

The applicant agrees that by submitting this certification, it will obtain from all its sub-grantees and contractors a certification that includes paragraphs (a) to (d) above as required.

Name of Agency:
Name and Title of Official Signing for Agency:
Signature of the Above Official:
Date Signed:

**D. Certification of Bidder Regarding Section 3 and Segregated Facilities**

Name of Prime Contractor: \_\_\_\_\_

Project Name: \_\_\_\_\_

The undersigned hereby certifies that

(a) Section 3 provisions are included in the Contract.

(b) If contract equals or exceeds \$100,000, HUD form 60002<sup>1</sup> will be submitted to the designated subrecipient point of contact within 10 days of the end of each calendar quarter, as well as with the final pay estimate.

(c) No segregated facilities will be maintained.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title of Signer (Print or Type)

\_\_\_\_\_  
Date

<sup>1</sup> [http://www.mhdc.com/rental\\_production/section3/documents/ftp/Form\\_60002\\_Summary\\_Report.pdf](http://www.mhdc.com/rental_production/section3/documents/ftp/Form_60002_Summary_Report.pdf)

**E. Section 3 Business Concern Certification Form**

*Certification for Business Concerns Seeking Section 3 Preference in Contracting and  
Demonstration of Capability*

Name of Business

---

Address of Business

---

Type of Business:  Corporation     Partnership     Sole Proprietorship     Joint  
Venture

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
- Organization chart with names and titles and brief function statement
- Additional documentation

**For business claiming Section 3 status by subcontracting 25 percent of the dollar awarded to qualified Section 3 business:**

- List of subcontracted Section 3 business(es) and subcontract amount, including signed contracts if a relationship has already been established or a letter of intent to hire the Section 3 business(es) mentioned.



**Section 3 Business Concern Certification Page 2**

**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:**

- o List of all current full-time employees
- o List of employees claiming Section 3 status
- o PHA/IHA Residential lease less than 3 years from date of first employment
- o Other evidence of Section 3 status less than 3 years from date of first employment

**Evidence of ability to perform successfully under the terms and conditions of the proposed contract:**

- o Current financial statement
- o Statement of ability to comply with public policy
- o List of owned equipment
- o List of all contracts for the past two years

\_\_\_\_\_  
(Authorizing Name and Signature)

(Corporate Seal)

Attested by: \_\_\_\_\_

**F. Section 3 Resident Certification Form**

***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 24 CFR Part 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. Additional documentation supporting eligibility will be submitted upon request. )

*Certification for Resident Seeking Section 3 Preference in Training and Employment*

I, \_\_\_\_\_, am a legal resident of the  
\_\_\_\_\_  
\_\_\_\_\_ and meet HUD's income eligibility  
guidelines for a low- or very low-income person.

I am currently employed by: \_\_\_\_\_

My date of first employment with this company was: (month/year) \_\_\_\_\_

My permanent address is:  
\_\_\_\_\_  
\_\_\_\_\_

I have attached the following documentation as evidence of my status:

<input type="checkbox"/> Copy of lease	<input type="checkbox"/> Copy of receipt of public assistance
<input type="checkbox"/> Copy of Evidence of participation	<input type="checkbox"/> Other evidence

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed name)

## Section 3 Resident Certification Page 2

### SECTION 3 INCOME LIMITS

All residents of public housing developments of the

\_\_\_\_\_ Housing Authority qualify as Section 3 residents.

Additionally, individuals residing in the \_\_\_\_\_ (City/County) of \_\_\_\_\_ who 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		

The HUD income limits can be found at <http://www.huduser.org/portal/datasets/il.html>

**Sample self-cleaning grate that the Borough is interested in installing**

## Section [INSERT SECTION NUMBER]

### MECHANICALLY CLEANED HEAVY DUTY FlexRakes (R) ONLY - 304 SSSL

#### PART 1 – GENERAL

##### 1.1 SUMMARY

- A. This section includes the furnishing of a front-cleaning, front-return link driven mechanically cleaned rake only assembly and any auxiliary equipment or accessories to be installed in the location as indicated on the drawings and as specified herein.

Number of units: [ 1 ]

Equipment location: [Outside]

- B. All equipment supplied under this section shall be furnished by Duperon Corporation who shall coordinate with the Contractor, the design, fabrication, delivery, installation and testing of the screening components. Duperon Corporation shall have the sole responsibility for the coordination and performance of all components of the screenings system with the performance and design criteria specified herein.
- C. The Contractor shall be responsible to coordinate all details of the screening equipment with other related parts of the Work, including verification that all existing bar screen size, clear openings, bar configuration, structures, piping, wiring, and equipment components are compatible. The Contractor shall be responsible for all structural and other alterations in the Work required to accommodate the equipment differing in dimensions or other characteristics from that contemplated in the Contract Drawings or Specifications.

IMPORTANT NOTE: Any reference to brand name(s) or brand name components are for example only. The Borough can accept great or equivalent to brands and or models. Please provide documentation of equivalency. Final determination of equivalency rests solely with the Borough of Little Ferry.

IMPORTANT NOTE: Site inspections can be requested by contacting the Department of Public Works at 201-641-0023 between 8:30 AM to 2:30 PM. No site inspection shall occur within fifteen (15) days of the bid due date.

##### 1.2 RELATED SECTIONS

- A. The following list of related sections is provided for the convenience of the Contractor and is for reference only to support commonly referenced sections that are in-general applicable to all equipment supplied. (For complete list of sections see specification index.)
1. All sections of Division 1 including but not limited to Submittal Procedures, Shop Drawings, Product Data and Samples, Operating and maintenance information, Protection of Materials and Equipment, Installation, Testing, and Commissioning, Instruction of Operations and Maintenance Personnel, and Spare Parts Maintenance Manuals.
  2. Section [ ]-Anchorage
  3. Section [ ]-Coating Systems
  4. Section [ ]-General Requirements for Equipment
  5. Section [ ]-Electric Motors
  6. Section [ ]-Control Panels

##### 1.3 REFERENCE STANDARDS

- A. American National Standards Institute (ANSI)
- B. American Society for Testing and Materials (ASTM)
- C. American Welding Society (AWS)

- D. American Institute of Steel Construction (AISC)
- E. American Bearing Manufacturers Association (ABMA)
- F. American Gear Manufacturers Association (AGMA)
- G. National Electrical Manufacturers Association (NEMA)
- H. Underwriters Laboratory (UL)

#### **1.4 SUBMITTALS**

- A. The equipment manufacturer shall submit the following items:
  - 1. (6) Sets of General Arrangement drawings that illustrate the layout of the equipment, equipment weight, principal dimensions with related verifications required for installation including anchorage locations. Other related data including descriptive literature, Electrical Control Drawings, Catalog Cut Sheets for individual components and Drive Motor Data.
  - 2. A list of recommended Spare Parts including any Special Tools required for routine maintenance of the equipment is provided in Section 2.5.
  - 3. (6) Sets of O & M Manuals including As-Built Drawings of the Mechanically Cleaned Bar Screen Arrangement, Controls and Accessories shall be provided in digital format after equipment ship for inclusion in the Close-Out Submittal process.
  - 4. For sites that have (3) ft or greater head differential, equipment manufacturer shall provide Structural Certification from licensed Civil engineer.

#### **1.5 QUALITY ASSURANCE**

- A. To assure quality and performance: All equipment furnished under this Section and related sections shall be of a single manufacturer who has been regularly engaged in the design and manufacture of the equipment and demonstrates, to the satisfaction of the Engineer, that the quality is equal to equipment made by those manufacturers specifically named herein. And the screen manufacturer shall have at least 25 installations of the specified model of mechanically cleaned bar screen equipment that has been in successful operation, at similar installations, for at least five (5) years.
- B. The equipment furnished shall be fabricated, assembled, installed and placed in proper operation condition in full conformity with approved drawings, specifications, engineering data, and/or recommendations furnished by the equipment manufacturer.

#### **1.6 WARRANTY**

- A. Manufacturer shall provide a written one year standard warranty from the date of use of the mechanically cleaned bar screen equipment to guarantee that there shall be no defects in material or workmanship in any item supplied.

### **PART 2 – PRODUCTS**

#### **2.1 MANUFACTURERS**

- A. Screens shall be as manufactured by Duperon Corporation, 1200 Leon Scott Court, Saginaw, Michigan, TF 800.383.8479. The screens shall be the FlexRake® Only Model, Heavy Duty; or equivalent.

## 2.2 BASIS OF DESIGN

- A. The mechanically cleaned rake only shall have a head sprocket only, with no sprockets, bearings, idlers, or similar drive components under water to trap the chain. Equipment featuring reciprocating rake arms or lower bearings/sprockets/tracks below the water is not acceptable.
- B. The mechanically cleaned rake only shall be designed to run continuously (24/7), without operator.
- C. The equipment shall have multiple scrapers on the bar screen at one time cleaning continuously from bottom to top, the entire width of the bar screen. The drive output shaft rotation shall be constant and in one direction in order to reduce maintenance and increase product life. Units which have single raking arms or that require cycle times shall not be allowed. Cleaning mechanisms that utilize shock absorbers, springs or other dampening or hydraulic actuations are unacceptable.
- D. The link system shall have jam evasion capability by flexing around and collecting large objects such as a 2 X 4, bowling ball and surges of solids at peak loading times without overloading and shutting down the unit. The link system shall be such that it bends in one direction only which allows it to become its own lower sprocket and frame and shall have a 3,000 pound lifting capacity.
- E. Designs employing the use of endless moving media or cables and hydraulic cylinders to remove debris from the channel and units utilizing proximity or limit switches for reverse cycles are not acceptable.
- F. Equipment utilizing a greater than 2 HP motor or two or more motors to complete a screen cleaning cycle is not acceptable.
- G. The design shall be such to ensure that all maintenance can be accomplished at the operating floor level or above. No part of the drive system including sprockets shall be located below the water surface at maximum design flow.
- H. Design Conditions:

Existing Site Information:	
Channel Width:	9 ft
Channel Height:	Each Channel Height 12.83 ft
Bar Opening Size:	2.25 inch
Angle of Installation:	30 degrees from vertical
Average Water Level:	TBD, To Be Determined *
Maximum Water Level:	TBD, To Be Determined *
Maximum Head Differential:	1.00 ft
Equipment Location:	Outdoors
Outdoor Installation:	
Site Access Constraints:	TBD, To Be Determined
Installation Area (Envelope) Classification:	Unclassified/Class I Div I *
Collection and Conveyance	
Containment Height:	<i>Below deck</i>
Containment method:	
	• To be field verified

## 2.3 COMPONENTS

- A. **Existing Bar screen assembly:** The existing barscreen assemblies in the channel are to remain. The new Duperon FlexRakes, or equivalent, are to be utilized with the existing barscreens.
  - 1. **Side Fabrication:** The screen framework shall be 304 stainless steel bent plate with minimum of 3/16 inch cross section.. Horizontal members shall be of stainless steel bent plate or stainless steel pipe. Support members and frame shall adequately support the bar screen based on site specific requirements.

2. **Dead Plate:** Dead plate shall be 0.25 inch thick 304 stainless steel. The dead plate shall be flat and true; span the entire width of the unit; and transition from top of existing screen bars to discharge point mounted to side fabrications.
  3. **Discharge Chute:** The discharge chute shall be 11ga. (0.12 inch) 304 stainless steel. The discharge chute shall be bolted to the dead plate and shall be designed to allow debris to be transferred from discharge point into the debris containment.
  4. **Link Slides:** Link slide assembly shall be provided per manufacturer standard design and shall be constructed of UV Stable UHMW PE rollers and 304 stainless steel supports and components.
- B. Return Guide/Closeouts:** Return guide/Closeouts shall be 304 stainless steel and shall assure proper alignment of scrapers as they enter the bar screen and assure that there is no space wider than the clear opening between bars to prevent passage of larger solids than allowed through the screen. Return guide/Closeouts shall be designed to utilize the existing channel recess with anchorage included at or above the low water line.
- C. Debris Blade:** A 304 stainless steel and UV Stable UHMW-PE debris blade assembly, which does not require a separate drive, shall be installed if applicable to assist in removing debris from the scraper on the mechanically cleaned bar screen unit as recommended by the manufacturer.
- D. Link System:** The link system shall be stainless steel castings and have a minimum ultimate strength of 60,000 lbs with a minimum cross section of 1.5 inches and weighing a minimum of 4.5 lbs each.
1. 304 stainless steel link system includes 304 stainless steel retaining rings and 304 stainless steel pins.
- E. Scrapers:** Scrapers shall be spaced 42 inches apart. To provide long product life the scraper shall move at no greater than 28 inches per minute at standard operating speed of ½ rpm allowing for approximately 1 debris discharge per 2 minutes. Scrapers shall be a minimum 0.75 inch thick, UV Stable UHMW-PE with a serrated edge and penetrate the screen bars a minimum of 1.00 inch. Per manufacturer recommendations a minimum of (4) brush assemblies will be included on each unit. Brush strips of rigid polypropylene fibers a minimum of 10 inches in length shall be attached to scrapers with 11 ga 304 strips and 316 SSTL fasteners as recommended by Rake Manufacturer.
- F. Drive Head:** The Drive Head shall be located at the top of the mechanically cleaned bar screen.
1. **Drive Unit:** Each mechanically cleaned bar screen unit shall operate independently and shall have its own drive unit and driven components. Drive Assembly shall be a 304 stainless steel welded fabrication including the ends, drive sprockets and shaft components.
    - a. Gearbox shall be shaft-mounted, right angle type and include spiral bevel gearing. It shall have at least a 1.52 or greater service factor based on machine torque requirements. The gearbox shall not be vented to the outside atmosphere. The gearbox shall be grease filled. Oil filled gearboxes are not allowed.
    - b. The motor shall be AC induction type, inverter duty, 3 phase 240/480 volt and mounted to the gear reducer. The motor shall be ½ hp, designed for 1800 RPMs base speed and rated for wash down duty environments. The motor shall have an TEFC enclosure. Service factor shall not exceed 1.0 with 1600V, Class F insulation rated for temperatures up to 40 degrees C and 1600 volts and be optimized for IGBT type inverters. The motor must be UL listed and designed for continuous operation.
    - c. All drive head components shall be of components available in the United States.
  2. **Bearing:** Bearing shall be greased ball bearing type, non self-aligning, sealed and lubricated and shall have a 24/7/365 L10 life of 20 years when in compliance with stated O&M recommendations.

3. **Speed Reducer:** Speed reducer shall be a double-reduction, cycloidal style and shall comply with all applicable AGMA standards. The speed reducer shall have a gear ratio of 809:1

G. **Standard Coating:** All non-stainless drive components shall be coated in strict accordance with the paint manufacturer's specification. Surface Preparation shall be done in accordance with SSPC-SP-10 Near White. The three-part coating system shall be manufactured by Tnemec, or equivalent, as follows: Prime Coat Series 90-97 Tneme Zinc at 2.5-3.5 mils DFT, Intermediate Coat Series 27 F.C. Typoxy at 3.0-5.0 mils DFT, and Top Coat Series 1075U Endura-Shield II at 2.0-3.0 mils DFT. Standard color is 11SF Safety Blue. Material shall meet all state and federal VOC and other regulatory requirements.

Alternatives: Any alternate products must provide certified test reports when submitting products other than those specified herein the specification. Test reports shall indicate the test method, system and requirements for those products being submitted, and shall meet or exceed the test criteria and performance values of the specified coatings herein.

## 2.5 SPECIALTY TOOLS, SPARE PARTS AND LUBRICATION

A. Manufacturer shall provide any specialty tools and recommend spare parts required for maintaining the equipment as follows:

1. Drive Clevis Pin (1)
2. Snap/Retaining Rings (10)
3. Link Clevis Pins (4)
4. Scraper Bolts (4)
5. Scraper Nuts (4)
6. Snap Ring Tool (1)
7. Never Seez, 3 oz. tube (1)

B. Manufacturer shall provide a 5-year supply of lubrication required for maintaining all bar screen components.

## PART 3 – EXECUTION

### 3.1 INSTALLATION

A. Equipment shall be installed in strict conformance with the manufacturer's installation instructions, as submitted with Shop Drawings, Operation and Maintenance Manuals and/or any pre-installation checklists. Installation shall utilize standard torque values and be installed secure in position and neat in appearance. Installation shall include any site preparation tasks as required by the engineer or manufacturer; such as unloading, touch-up painting, etc. and any other installation tasks and materials such as wiring, conduit, controls stands as determined by the customer and/or specified by the manufacturer.

B. **Mounting Anchor Bolts:** Mounting Anchor bolts and nuts shall be 304 stainless steel and furnished for each item of equipment by the rake only manufacturer.

1. Mounting Anchor bolt template drawings shall be included in the submittal to permit verification of the location to be provided in the new structural elements provided by others.
2. Mounting Anchor bolt sizes, quantity and requirements will be indicated on the submittal drawings. Quantity is site specific but typically each Rake Only assembly requires (4)

### **3.2 ONSITE TECHNICAL ASSISTANCE – START UP**

- A.** Manufacturer shall provide services to include Installation Certification and Start-Up for (4) bar screens, broken down as (1) day for Start-Up and (1) day for Training. For the remaining (4) bar screens the above will repeat. Manufacturer shall be given minimum 14 days notification prior to the need for such services. To assure the best outcome for the Owner and Contractor, the Contractor shall provide certification for completion of the PRE-COMMISSIONING CHECKLIST.