



DEPARTMENT OF  
**HOUSING**



# CDBG-DR

## CONTRACT AND SUBRECIPIENT AGREEMENT MANUAL

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PUERTO RICO DEPARTMENT OF HOUSING  
CDBG-DR PROGRAM  
**CONTRACT AND SUBRECIPIENT AGREEMENT MANUAL**  
VERSION CONTROL

<b>VERSION NUMBER</b>	<b>DATE REVISED</b>	<b>DESCRIPTION OF REVISIONS</b>
1	June 17, 2021	Original version.
2	July 22, 2021	Added Section 3 clauses and other minor changes. Edits are highlighted in grey.

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# 1 Overview

## 1.1 Legal Basis

This Manual is adopted pursuant to the authority granted to the Puerto Rico Department of Housing (**PRDOH**) in Act No. 97 of June 10<sup>th</sup>, 1972, as amended, known as the “Organic Act of the Department of Housing” (**Act 97-1972**), 3 L.P.R.A. § 441 *et seq.*, and in accordance with (i) 2 C.F.R. Part 200, in force at the date hereof and may be amended hereafter; (ii) Public Law 115-56, known as the “Continuing Appropriations Act, 2018 and the Supplemental Appropriations for Disaster Relief Requirements Act, 2017” (**Pub. L. 115-56**) and Public Law 115-123, known as the “Bipartisan Budget Act of 2018” (**Pub. L. 115-123**); (iii) Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, and all subsequent waivers and amendments issued by the U.S. Department of Housing and Urban Development (**HUD**) thereto (collectively, the **Notice**); (iv) Act No. 237 of August 31<sup>th</sup>, 2004, as amended, known as “Act to Establish Uniform Parameters in the Process of Contracting Professional or Consulting Services for Governmental Agencies and Entities of the Commonwealth of Puerto Rico” (**Act 237-2004**), 3 L.P.R.A. § 8611 *et seq.*; (v) Act No. 18 of October 30<sup>th</sup>, 1975, as amended, known as the “Contract Registration Act” (**Act 18-1975**), 2 L.P.R.A. § 97 *et seq.* and the (vi) Circular Letter No. 1300-16-16 of January 22, 2016, issued by the Puerto Rico Treasury Department.

## 1.2 Purpose

The PRDOH Community Development Block Grant-Disaster Recovery (**CDBG-DR**) Program has a regular, on-going need to enter into agreements with third party organizations like vendors, partners, municipalities, governmental agencies, and non-governmental agencies, among others, for the acquisition of different services such as construction, professional services, and acquisition of materials, supplies, and equipment.

The purpose of this Manual is to provide guidance, establish best contracting standards and practices, and serve as a resource to the CDBG-DR Program staff, contractors, and subrecipients. This Manual shall serve as a tool to warrant that an equitable, transparent, and streamline process is followed to maximize the value received for expended funds and minimize risk of exposure.

## 1.3 Applicability

The contractual policies, clauses, and insurance requirements contained herein are applicable to every agreement made under PRDOH CDBG-DR programs and activities, whether is funded in whole or in part with CDBG-DR funds.

This Manual shall apply to the contract execution process between PRDOH and other entities for the acquisition of goods, products, services or activities funded, in whole or in part, with the CDBG-DR funds appropriated by Pub. L. 115-56, Pub. L. 115-123, and the Additional Supplemental Appropriations for Disaster Relief Act, 2019, (**Pub. L. 116-20**) approved on June 6, 2019, as amended. The provisions established in this Part shall apply to all contracts and to Subrecipient Agreements (**SRA**) with private entities. Additional clauses or other provisions required for SRA with non-governmental organizations,

governmental entities, such as government agencies and municipalities, are specified further on this Manual.

#### 1.4 Definitions /Acronyms

- **Agreement Package:** Set of documents that contain all the necessary information to draft a contract, such as contractor information, submitted proposal, notice of award, scope of work/services, compensation schedule or cost form, or any other necessary document to complete the contracting process.
- **Contract:** A written agreement between PRDOH and a contractor for the delivery of goods or services to PRDOH and which creates a mutually binding legal relationship.
- **Contract Administrator:** PRDOH CDBG-DR designated employee to administer the contract between PRDOH and a contractor.
- **CDBG-DR:** Community Development Block Grant – Disaster Recovery.
- **Contractor:** A vendor or supplier, as applicable, who is awarded and executes a Contract (as defined hereinabove).
- **Contracting Officer:** The PRDOH Secretary or their designee.
- **Cooperative Purchasing/Intergovernmental Agreements:** Agreements between the PRDOH and other governmental agencies, or entities to purchase or use common supplies, equipment, or services.
- **Disaster Recovery Deputy Secretary:** The Director of the CDBG-DR Program of the Puerto Rico Department of Housing.
- **FOMB:** The Financial Oversight and Management Board, established in accordance with the “Puerto Rico Oversight, Management, and Economic Stability Act,” 48 U.S.C. §2101 *et seq.*, also known as “PROMESA”.
- **FOMB Policy Checklist:** Refers to a checklist document that has the purpose of assessing the contents of the contractor’s file delivered to the Legal Division for compliance with the list of the mandatory items/documentation that the PRDOH must submit to the FOMB, as part of contract review process done by the FOMB.
- **HUD:** The United States Department of Housing and Urban Development.
- **PRDOH:** Refers to the Puerto Rico Department of Housing.
- **Programmatic Area:** Refers to any Area/Department/Division of the PRDOH for CDBG-DR, responsible for creating Standard Operating Procedures, among other documentation, for compliance with CDBG-DR Programs objectives and conditions, and involved in its implementation.

- **Programmatic POC:** Refers to PRDOH CDBG-DR Point of Contact, a designated CDBG-DR employee with the responsibility of serving as a coordinator and focal point of communication concerning a specific CDBG-DR Program or Programs.
- **Office of the Comptroller of Puerto Rico (Oficina del Contralor de Puerto Rico, as known in Spanish):** Office where contracts and Subrecipient Agreements are registered, as established in Act No. 18, approved on October 30th, 1975, as amended, known as the "Contract Registration Act".
- **Office of Management and Budget (Oficina de Gerencia y Presupuesto, as known in Spanish):** Office where contracts and Subrecipient Agreements are notified, as established in the Circular Letter of the Office of Management and Budget No. 93-11 of October 25, 2011.
- **Secretary:** Secretary of the Puerto Rico Department of Housing.
- **Subrecipient:** An entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal program on behalf of that entity; but does not include an individual that is a beneficiary of such program.
- **Subrecipient Agreement (SRA):** The SRA is the basis for the contractual obligation between PRDOH and the subrecipient to fund and implement the awarded activity or program as required by 24 C.F.R. § 570.503. The agreement denotes responsibilities attributable to each party, and outlines in exact measure the scope of services provided under the agreement, methods of accountability, and a schedule for payment.

**SOP:** Refers to Standard Operating Procedure.

- **Transition period:** Refers to the period of **ninety (90) consecutive calendar days** upon termination of a contract or SRA where contractor or subrecipient agrees to comply with PRDOH with the transition of services assigned to contractor or subrecipient by the PRDOH.
- **Termination of contract and/or Subrecipient Agreement:** Refers to the end of the contractual relationship between PRDOH and a contractor or subrecipient for: Cause or Default, for Convenience, Unilateral Abandonment, Unilateral Termination, or Immediate Termination.
- **User Area:** CDBG-DR area in need of a good or service and who will eventually administer the contract.



## 2 Contracts

### 2.1 Contract Administration

#### 2.1.1 Contracting Officer

All contracting processes shall be the responsibility of the Secretary or their designee in accordance to Act 97-1972, and they shall ensure that PRDOH or any contracting entity meets the contracts and Subrecipient Agreements requirements.

#### 2.1.2 Contract Administration Office Personnel Roles and Responsibilities

- a. **Legal Director** – The Legal Director is responsible for the final review and approval of the proposed contract, proposed SRA, and proposed amendment drafts, and signs FOMB Package, when applicable. Is responsible for analyzing facts and legal options when contracts or Subrecipient Agreements should be terminated or suspended. Generates and submits memos to the PRDOH Secretary and Disaster Recovery Deputy Secretary with all facts, legal options and recommendations. As well, provides guidance on contracts execution, administration, concepts and regulations to the Secretary and/or Disaster Recovery Deputy Secretary.
- b. **Program Component Director (Contract Administration)** – The Program Component Director (Contract Administration) is responsible for analyzing, interpreting, and applying state and federal laws that apply to government contracts, reviewing contracts and Subrecipient Agreements, ensuring compliance with state and federal requirements and regulations, maintaining communication to ensure timely execution, and analyzing contract documents. Provides guidance on contract execution, administration, concepts, and regulations.
- c. **Contract Specialist** – The Contract Specialist is responsible for reviewing contracts, SRA, regulations, legislation, and other documents related with the CDBG-DR contracting procedure and issues legal opinions. The Contract Specialist also analyzes, interprets, and applies state and federal laws that apply to government contracts, gathers all documents required for contract execution, coordinates with Vendor to execute the contract, submits the contract for registration at the Office of the Comptroller of Puerto Rico, sends copy of the executed contract to the Vendor and to CDBG-DR Operations Area.
- d. **Contract Compliance Specialist** – The Contract Compliance Specialist is responsible for performing contract compliance analysis, ensures compliance with applicable federal and state laws and regulations, and performs the required analysis of contract documents, including insurance requirements, related to Disaster Recovery Grant programs.
- e. **Insurance Specialist** – The Insurance Specialist is responsible for evaluating limits, validity and coverage of the insurance policies that correspond to the CDBG-DR Program, processes the damages claims to insurance companies, determines the

applicability of insurance policies for every service contracted, notifies contracting parties with the compliance or expiration of any insurance policy, revises the invoices or policies submitted by the insurance companies and verifies that they are correct and that they match with the quotations presented, establishes and maintains registers, controls, actualized archives of the validity of insurance policies and other documents related to the duties performed.

## 2.2 Contract Types

The PRDOH will use the type of contract that will serve its best interests and follows all applicable Federal laws, regulations, and local laws. The preferred types of contracts are Firm Fixed-Price Contracts and Requirement Contracts. Time and Materials Contracts<sup>1</sup> are only used after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk, in accordance with 2 C.F.R. §200.318(j)(1) and (2).

Among all types of contracts, the most used are the following:

### 2.2.1 Fixed-Price Contract (Firm Fixed-Price and Fixed-Price)

This type of contract is used when the contractor is paid a firm fixed-price for all required work, regardless of the contractor's actual cost of performance. It is appropriate for use when fair and reasonable prices can be established at time of award. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by a written amendment executed by both parties or other revision of the contract price under stated circumstances such as any benchmark requirements and penalties for late or nonperformance.

### 2.2.2 Cost-Reimbursement Contracts

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Contracting Officer.

The contract shall include a clause establishing a ceiling price and clearly state that if the maximum price is exceeded, it will be at the contractor's own risk without refund by the PRDOH.

The contracts may include options for additional quantities to the original price or extension of the compliance period, subject to the following conditions:

- a. The option is specifically contained in the procurement method;

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<sup>1</sup> A time-and-materials contract provides for acquiring supplies or services on the basis of: (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and (2) Actual cost for materials, except as provided for in 48 C.F.R. § 31.205-26(e) and (f). A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. 48 C.F.R. § 16.601.

- b. The option is an unilateral right of the PRDOH;
- c. The contract provides a limit on the additional quantities for the period of duration or complete duration of the contract;
- d. The options are evaluated as part of the initial evaluation (initial competition);
- e. The contract provides the period within which the options may be executed;
- f. The options may be exercised only at the price specified in or reasonably determinable in the contract and;
- g. The option may be exercised only in cases where it is determined to be more beneficial to the PRDOH.

### 2.2.3 Intergovernmental Agreements/Memorandum of Understanding

PRDOH and other government entities may enter into a written agreement to purchase or use common supplies, equipment, or services. It can be between two or more federal or local government entities, and can be a unilateral, bilateral, or multilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action, and describes the role and responsibilities of the parties regarding compliance of a specific matter. A Memorandum of Understanding (**MOU**) can be executed with a non-governmental entity to establish agreed responsibilities.

### 2.2.4 Prohibitions

“Cost-Plus Percentage of Cost” or “Percentage of Construction” cost contracts are not allowed at any time for any reason when using CDBG-DR funds.

## 2.3 Contract Term

The term of a contract shall not exceed the lifetime of the initial Grant Agreement, including options for renewal or extension, unless the term of the initial Grant Agreement is extended by HUD, in which case the contract shall not exceed said extended period. All contracts are subject to the availability of funds.<sup>2</sup>

Contracts with terms and extensions that exceed a total of **five (5) years**, are viewed as threatening to the principle of “full and open competition” of federal regulations. PRDOH will seek the approval of HUD for contracts in excess of a **five (5) year** term if it determines there is no other alternative.

## 2.4 Contract Clauses

The PRDOH CDBG-DR Program shall include in all contracts the required clauses stated in Federal Laws and Regulations. The contracts will also include all the clauses that State law, regulations, and other government agencies require. Every PRDOH CDBG-DR

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<sup>2</sup> According to Act 237-2004, as amended, Puerto Rico government entities may not grant contracts that cover more than one (1) fiscal year so as not to encumber future budgets. However, this disposition does not apply to contracts awarded under the CDBG-DR Program, since the Program has its own funds allocated under the Grant Agreement, so it is not contingent on the closing of the fiscal year and the approval of a next budget in order to carry out contracts. Section 3 L.P.R.A. § 8613 (f) does not apply to this Program, as it only applies to Government contracts that are subject to the budget of the fiscal year.

Program contract will comply with all the formalities required for the validity of contracts made with CDBG-DR funds. The clauses established in this part apply to all contracts and to SRA with non-governmental organizations. Clauses required for Subrecipient Agreements with governmental entities, such as government agencies and municipalities, are specified further on this Manual. PRDOH personnel shall include all the mandatory clauses contained within this Contracts and Subrecipient Agreements Manual and its Appendixes.

#### 2.4.1 Mandatory Clauses Established by Federal Law and Regulations

All contracts and agreements from the PRDOH CDBG-DR Program shall contain, among others, a clause identifying the type of contract, and all required provisions set forth at 2 C.F.R. § 200.327, the applicable provisions described in Appendix II to Part 200, the mandatory clauses contained on the latest released HUD forms, as applicable to the contract type. Each contract shall also include all other clauses required by federal and state laws, the 83 FR 5844, Executive Orders, rules and regulations, in accordance with 24 C.F.R. §570.489(g), including, without limitation:

- a. All contracts, except for general management consulting services, shall include performance requirements and liquidated damages.
- b. Termination for cause and convenience in all contracts in excess of \$10,000.00 including manner by which the agency will be affected and the basis for settlement.
- c. Except as otherwise provided under 41 C.F.R. Part 60, compliance with Equal Opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order 11246, as amended, signed and issued by the President of the United States, entitled "Equal Employment Opportunity", and supplemented in U.S. Department of Labor regulations.
- d. Compliance with Davis-Bacon Act, as amended (40 U.S.C. §§ 3141- 3148). When required by Federal program legislation, all prime Construction Contracts in excess of \$2,000.00 awarded by PRDOH must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148, as supplemented by Department of Labor regulations; 29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts covering Federally Financed and Assisted Construction"). A clause for compliance of the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations, must also be included.
- e. Compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §3701-3708). Where applicable, all contracts awarded by PRDOH in excess of \$150,000.00, that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by U.S. Department of Labor regulations (29 C.F.R. Part 5).

- f. Advertisement of requirements and regulations pertaining to patent rights with respect to any discovery or invention, which arises or is developed during or under such contract. (37 C.F.R. § 401.2 (a) and 37 C.F.R. Part 401).
- g. Contracts of amounts in excess of \$150,000 must contain a provision that requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (**EPA**).
- h. Compliance with orders and requirements relating to Debarment and Suspension (OMB guidelines at 2 C.F.R. Part 180 that implement Executive Orders 12549 at 3 C.F.R. Part 1986 Comp., p. 189, and 12689 at 3 C.F.R. Part 1989 Comp., p. 235; 2 C.F.R. Part 180 establishes that a Contract award may not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (**SAM**).
- i. Compliance with Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award of \$100,000.00 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
- j. The contractor shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
- k. Retention of contractor's records by PRDOH, HUD or Comptroller General of the United States, or any of their duly authorized representatives, until **five (5) years** after final payment under the contract. If any claims or litigation are involved, the records shall be retained until all issues are satisfactorily resolved. Grant of access and right to the authorities named above to examine any documents, papers or records related to the contract.
- l. Advertisement of HUD requirements and regulations pertaining to right in data and patent rights (ownership and proprietary interest) of PRDOH in relation to all information, materials, and documents discovered or produced by contractor pursuant to the terms of the contract.
- m. Compliance of the contractor with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The

- requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000.00 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.00; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- n. Value Engineering: Systemic and organized approach to analyze functions of systems, equipment, facilities, services, and materials to ensure they achieve their essential functions at the lowest cost consistent to life cycle in execution, reliability, quality and safety, in accordance with 2 C.F.R. § 200.318(g).
  - o. Limitation on Payments to Influence Certain Federal Transactions.
  - p. Minority and Women-Owned Business Enterprise (**M/WBE**) requirements.
  - q. Drug-Free Workplace Act, as amended, 41 U.S.C.A. § 8102 *et seq.*
  - r. Section 3, Low and Very Low- Income Persons or Firms Participation Clause, which is described in further detail on this Manual.
  - s. Clause regarding subcontracts, which shall contain the following provisions:

All subcontracts shall contain the applicable provisions described in the HUD General Provisions, as well as applicable provisions set forth in 2 C.F.R. § 200.101. The PRDOH shall review subcontracts as part of the compliance, monitoring, and oversight process performed by PRDOH or upon request.

- 1. Specific Requirements:** All subcontracts shall contain provisions specifying:
  - i. That the work performed by the subcontractor be in accordance with the applicable terms of the Agreement between the PRDOH and contractor;
  - ii. That nothing contained in such subcontract agreement shall impair the rights of the PRDOH;
  - iii. That nothing contained in such subcontract, or under the Agreement will create any contractual relation between the subcontractor and the PRDOH;
  - iv. That the subcontractor specifically agrees to be bound by the confidentiality provision regarding Personal Identifiable Information set forth in the Agreement;
  - v. That contractor will be responsible for ensuring all subcontract work is performed consistent with federal and state regulations and/or policies to be eligible for reimbursement of the approved work; and

vi. All Federal flow down provisions are included in the subcontract agreement per Federal guidelines.

- 2. Monitoring:** Contractor shall diligently monitor all subcontracted services. If contractor discovers any areas of noncompliance, contractor shall provide the PRDOH summarized written reports supported with documented evidence of corrective action.
- 3. Content:** Contractor shall cause all the applicable provisions of the Agreement to be included in, and made a part of, any subcontract executed in the performance of the Agreement.
- 4. Notification:** Contractor shall notify and provide a copy of any and all subcontracts related to the Agreement and CDBG-DR funds to the Contract Administration Area of the PRDOH CDBG-DR Legal Division within **three (3) days** of its execution.

#### 2.4.2 Contract Requirements and Mandatory Clauses as established by Puerto Rico State Law.

##### 2.4.2.1 Act 237-2004, as amended

Act 237-2004, as amended, established the uniform parameters in the process of contracting professional or consulting services for governmental agencies and entities of the Government of Puerto Rico. Those uniform parameters and requirements that shall be part of all the PRDOH CDBG-DR contracts are the following:

- a. Every contract executed between the PRDOH CDBG-DR Program and a contractor shall meet the following requirements:
  1. The execution of a professional or consulting services contract between a contractor and the PRDOH CDBG-DR Program shall be prospective. The PRDOH CDBG-DR Program shall pay solely for the services rendered.
  2. The legal provision that authorizes the PRDOH CDBG-DR Program to execute contracts shall be included in the text of the contract.
  3. The contract shall include the full name of the contractor as registered in the Vital Statistics Registry or in the Department of Vital Statistics of their place of origin. When contracting a legal entity, its full name as it appears in the Register of Corporations or Partnerships of the Department of State or of the Department of the Treasury, as the case may be, must be included and the person appearing as its representative must be identified.
  4. The contract shall include a detailed description of the personal information of the contractor. As part of the description of the contractor, the contract shall indicate the civil status, legal age, domicile and profession of the contractor. If the contractor is a

corporate entity, a certified copy of its articles of incorporation issued by the Department of State must be included.

5. The contract shall indicate the Social Security number of the party to be contracted. When contracting a legal entity, the employer identification number (EIN) shall be included. For Foreign contracting parties that do not have a Social Security number, its valid passport or visa number shall be used.
6. The contract shall establish the dates of its execution and of its effectiveness.<sup>3</sup>
7. The contract shall precisely indicate which services or responsibilities are required by the PRDOH CDBG-DR Program. The contracted services shall be described in detail in the contract text or its appendixes.
8. All contracts shall establish the maximum amount to be paid for services, task, or responsibilities to achieve an adequate fiscal control.
9. The contract shall establish the method of payment, that is, whether the invoice shall be based upon hourly fees, or by tasks or finished phases, or by means of a lump sum after the services to be rendered have been completed, among others.
10. The invoice shall be specific, itemized and accompanied by a report detailing the services rendered and the hours worked in the rendering of said services. The submitted invoice shall include a certification indicating that the services were rendered and have not yet been paid for. It shall also indicate that no public servant of the contracting entity is a party to or has any interest in the profits or benefits product of the contract object of said invoice, and that if having been a party to or having had an interest in the profits or benefits product of the contract, the invoice shall specify whether a dispensation has been issued in that regard.

As part of the invoice, the contractor must include the following certification to comply with Act No. 2 of January 4, 2018, as amended, 3 L.P.R.A. § 1881 *et seq.*, known as the "Anticorruption Code for the New Puerto Rico" (Act 2-2018):

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<sup>3</sup> According to Act 237-2004, as amended, Puerto Rico government entities may not grant contracts that cover more than one (1) fiscal year so as not to encumber future budgets. However, this disposition does not apply to contracts awarded under the CDBG-DR Program, since the Program has its own funds allocated under the Grant Agreement, so it is not contingent on the closing of the fiscal year and the approval of a next budget in order to carry out contracts. Section 3 L.P.R.A. § 8613 (f) does not apply to this Program, as it only applies to government contracts that are subject to the budget of the fiscal year.



*Under penalty of absolute nullity, I hereby certify that no public servant of the government entity is a party to or has an interest of any kind in the profits or benefits to be obtained under the contract which is the basis of this invoice, and should he be a party to, or have an interest in, the profits or benefits to be obtained under the contract, a waiver has been previously issued. The only consideration to provide the contracted goods or services under the contract is the payment agreed upon with the authorized representative of the government entity. The amount that appears in the invoice is fair and correct. The work has been performed, the goods have been delivered, and the services have been rendered, and no payment has been received therefor.*

b. Mandatory clauses

When awarding a contract, the PRDOH CDBG-DR Program shall ensure compliance with the special laws and regulations applicable to the type of service to be contracted. In accordance with the foregoing, the following mandatory clauses shall be included in the contract:

1. The contractor shall certify that it has filed income tax returns for the **five (5) taxable years** preceding the year in which the contract is intended to be executed and that it has no outstanding tax debt with the Government of Puerto Rico of any sort; or that he has availed himself of a payment plan whose terms and conditions are being complied with.
2. For contracts whose payment for services exceeds **sixteen thousand dollars (\$16,000) per year**, it shall be necessary to include the following certifications in the contract:
  - i. Two certifications issued by the Department of the Treasury, one on the absence of tax debt or on the existence of a payment plan and another one certifying that income tax returns have been filed for the last **five (5) years**.
  - ii. A certification issued by the Municipal Revenues Collection Center (**CRIM**, for its Spanish acronym) on the absence of any tax debt or on the existence of a payment plan.
  - iii. A certification issued by the Department of Labor and Human Resources on the payment of unemployment or temporary disability insurance, or Social Security, as applicable.
  - iv. A negative debt certification issued by the Child Support Administration (**ASUME**, for its Spanish acronym). This requirement shall only apply if the contractor is an individual.

- v. For contracts executed with insurers or healthcare service providers, there shall be submitted a certification on the absence of any debt or on the existence of a payment plan with the Puerto Rico Medical Services Administration (**ASEM**, for its Spanish acronym) attesting to the fact that the plan is being complied with and is not past due. The date of issue of said certification shall not exceed **sixty (60) calendar days** prior to the proposed effective date of the contract to be awarded by the Puerto Rico Health Insurance Administration (**ASES**, for its Spanish acronym). For purposes of this paragraph, debt shall be understood as any contractual obligation that entails the payment of a certain and specific amount of money that has become due and payable by the insurer or healthcare service provider. The foregoing notwithstanding, an obligation shall not be deemed to be an overdue debt if there is an ongoing process of invoice and payment reconciliation between the insurer or the healthcare service organization and ASEM. The contract shall include a clause stating that said documents have been attached to the contract or that the party has been granted a reasonable time to obtain them.
3. The contract shall identify the legal provision authorizing the execution of the contract.
4. No public officer or employee authorized to contract on behalf of the PRDOH CDBG-DR Program for which they work may execute a contract between the PRDOH CDBG-DR Program and an entity or business in which they or any member of their family unit has or has had direct or indirect economic interest during the **two (2) years** prior to their holding office. **Note:** Act 237-2004, as amended, establishes this term to be four (4) years. However, the CDBG-DR Program adopted the term of two (2) years, as established on Act. No. 1-2012, as amended, known as "Puerto Rico Government Ethics Act" (Act 1-2012), 3 L.P.R.A. § 1854 et seq.
5. The PRDOH CDBG-DR Program may not execute a contract in which any of its officers or employees or any member of their family units has or has had direct or indirect economic interest during the **two (2) years** prior to their holding office, unless the Governor gives authorization thereto with the previous recommendation of the Secretary of the Treasury and the Secretary of Justice. **Note:** Act 237-2004, as amended, establishes this term to be four (4) years. However, the CDBG-DR Program adopted the term of two (2) years, as established on Act 1-2012, as amended.
6. No public officer or employee may be a party to or have any interest in any profits or benefits produced by a contract with any other executive agency or government dependency unless the Governor gives express

authorization thereto with previous recommendation from the Secretary of the Treasury and the Secretary of Justice. The contracting described in this subsection may only be established without having to request and obtain authorization from the Governor as follows:

- i. In contracts valued at **three thousand dollars (\$3,000)** or less which occur only once in any fiscal year.
- ii. In lease, exchange of property, purchase and sale, loans, and mortgage insurance contracts or those of any other nature which pertain to a housing unit and/or a lot provided or to be financed and whose financing is insured or guaranteed by a government agency.
- iii. In service, loan, guarantee and incentive programs sponsored by government agencies.

In the cases specified in clauses (b) and (c) of this subsection, the contracting agency shall authorize the transactions provided that the following requirements concur:

- a. When dealing with contracts, loans, insurance, guarantees, or transactions available to any qualified citizen.
  - b. When the standards for eligibility are of general application.
  - c. When the public officer or employee complies with all the standards of eligibility and they are not, directly or indirectly given preferential treatment different from that given to the general public.
7. No public officer or employee who has the power to approve or authorize contracts shall evaluate, consider, approve or authorize any contract between an executive agency and an entity or business in which they or any member of their family unit has or has had direct or indirect economic interest during the **last two (2) years** prior to their holding office. **Note:** Act 237-2004, as amended, establishes this term to be four (4) years. However, the CDBG-DR Program adopted the term of two (2) years, as established on Act 1-2012, as amended.
  8. No public officer or employee may execute or authorize a contract with any private person knowing that such a person is in turn the representative of particular interests in cases or issues involving conflict of interest or public policy between the contracting government agency and the particular interests represented by said private person. For these purposes, the PRDOH CDBG-DR Program shall require that any private person with whom it executes a contract include a contractual clause in which said private person certifies that they are not involved in any conflict of interest or of public policy, pursuant to the facts described in this subsection.

9. The PRDOH CDBG-DR Program shall not execute contracts with or for the benefit of persons who have been public officers or employees of said executive agency until after **two (2) years** have elapsed from the time said person has ceased working as such. The Governor may issue a waiver regarding the applicability of this provision provided that said waiver is for the benefit of the public service. This prohibition shall not apply to contracts for services rendered *ad honorem*.
10. A clause shall be included to provide for the corresponding withholdings established in Act No. 1 of January 31<sup>th</sup>, 2011, as amended, known as the "Puerto Rico Internal Revenue Code," 13 L.P.R.A. § 30011 *et seq.*
11. The budget obligation number from which the contractor fees shall be paid and shall be indicated therein.
12. A clause to provide that the contracted person is not duty bound to pay child support, or if so, that said person is up to date or has a payment plan to such effects.
13. A clause indicating that the PRDOH CDBG-DR Program may rescind the contract by giving a notice **thirty (30) calendar days** prior to its being the contract rescinded, or within a lesser term, depending the type of services to be contracted.
14. A clause indicating that the PRDOH CDBG-DR Program may terminate the contract immediately in cases of negligence, dereliction of duties, or noncompliance by the contractor.
15. The contract shall contain a clause stating that, if required, the necessary waiver has been obtained from any government entity and that said waiver shall become part of the contracting record.
16. The contractor shall certify in the professional services contract that they have not been convicted for offenses against public integrity, as defined in the Puerto Rico Penal Code (33 L.P.R.A. § 5001 *et seq.*), or misappropriation of public funds, and that they have not been found guilty of any such type of offense in the courts of the Government of Puerto Rico, Federal Courts or any courts of any jurisdiction of the United States of America. If the contractor is found guilty on the aforementioned offenses, the professional or consulting services of the contract shall be rescinded.
17. In contracts with individuals, a clause shall be included indicating that the contractor receives no payments or compensation for regular services rendered under a designation from any other public entity, except those authorized by law.

18. In professional contracts, a clause shall be included, under which the contractor accepts being knowledgeable of the rules of ethics of their profession and assumes responsibility for their own actions.

#### 2.4.2.2 Contract and SRA registration in the Office of the Comptroller of Puerto Rico

Act No. 18 of October 30, 1975, as amended, known as the "Contract Registration Act" (Act 18-1975), 2 L.P.R.A. § 97 *et seq.*, establishes strict requirements for the registry of every contract or Subrecipient Agreement made by any Puerto Rico government entity. Those contract registration requirements are included on Regulation No. 7743, of September 15, 2009, known as "Registration of Contracts, Deeds and Related Documents, and sending copies to the Office of the Comptroller of the Government of Puerto Rico", issued by the Office of the Comptroller of Puerto Rico (**Regulation No. 7743-2009**). The registration requirements that PRDOH Contract Administration Office shall abide, are the following:

- a. The PRDOH CDBG-DR Program shall keep a registry of all contracts and Subrecipient Agreements executed, including amendments thereto, and shall remit a copy thereof to the Office of the Comptroller within **fifteen (15) calendar days** following the date of the execution or amendment of the contract or Subrecipient Agreement. This period shall be extended to **thirty (30) calendar days** when the contract or Subrecipient Agreement is executed outside of Puerto Rico. It shall be understood that a contract, Subrecipient Agreement or amendment to a contract or Subrecipient Agreement is executed outside of Puerto Rico when **all the appearing parties are outside of Puerto Rico, or the last of these to sign the document execute it** outside of Puerto Rico. The period of **fifteen (15) or thirty (30) calendar days**, as applicable, shall be extended for **fifteen (15) additional calendar days**, provided just cause is shown and it is so determined by the Office of the Comptroller. In the case whereby the Comptroller notifies any objection to the contract or Subrecipient Agreement filed, the PRDOH CDBG-DR Program shall have a term of **thirty (30) calendar days** to correct the matter. When deeds for the acquisition or disposal of real property are executed, a copy of every writ and document connected to the negotiation shall also be sent to the Comptroller.
- b. Every contract subject to registration pursuant to this section shall contain a clear and conspicuous notice that shall read as follows:

**"No provision or consideration of services object of this contract may be demanded until the same has been filed for registration with the Office of the Comptroller, pursuant to the provisions of Act No. 18 of October 30, 1975, 2 L.P.R.A. §§ 97 and 98, as amended".**

### 2.4.3 Puerto Rico Department of Treasury Circular Letter No. 1300-16-16.

All contracts must comply with the following requirements of the Puerto Rico Department of Treasury, Circular Letter No. 1300-1616<sup>4</sup>, which establishes the required documents needed before contract execution. These requirements apply to private entities, which are to execute a contract or Subrecipient Agreement with the PRDOH.

- a. The contract shall contain a provision in which the contractor certifies that it has filed all the necessary and required income tax returns to the Government of Puerto Rico for the last **five (5) years**, that it has no current tax debt and that, in the alternative, it is complying with a payment plan.
- b. The contract must also contain a clause that states that contractor is in compliance with the Act No. 74 of June 21, 1956, as amended, known as the "Puerto Rico Employment Security Act", 29 L.P.R.A. § 701 *et seq.*; Act No. 139 of June 26, 1968, as amended, known as the "Temporary Disability Benefit Act", 11 L.P.R.A. § 201 *et seq.*; Act No. 428 of May 15, 1950, as amended, known as the "Social Security for Chauffeurs and Other Employees Act", 29 L.P.R.A. § 681 *et seq.*, and certifies that it has paid all contributions or, in the alternative, is complying with a payment plan.

### 2.4.4 Compliance with Anticorruption Code

In order to comply with Act 2-2018, as amended, a pledge to abide by the Code of Ethics for contractors, suppliers, and applicants for economic incentives of the Executive Agencies of the Government of Puerto Rico<sup>5</sup>, shall be an indispensable requirement for every person contracting with the Government.

Therefore, such fact shall be stated in every contract between the PRDOH CDBG-DR Program and contractors or suppliers of services, and in every application for economic incentives granted by the Government, per Section 3.3 of Act 2-2018.

In addition, any natural or legal person who wishes to participate in the award of bids or in the award of any contract with PRDOH, to provide services or for the sale or delivery of goods, shall file a sworn statement before a notary stating whether the natural or legal person or any chair, vice chair, director, executive director, or member of a board of officers or board of directors, or persons discharging similar duties for the legal person have been convicted of, or plead guilty to, any of the offenses listed in Section 6.8 of Act No. 8-2017, as amended, known as the "Government of Puerto Rico Human Resources Administration and Transformation Act", 3 L.P.R.A. § 1472h, or any offenses listed in Act 2-2018, as amended.

Any natural or legal person who has been convicted of: violating Articles 4.2, 4.3, or 5.7 of Act No. 1-2012, known as the "Government Ethics Office Organic Act", 3 L.P.R.A. § 1854 *et seq.*; committing any of the offenses against public service or public funds

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<sup>4</sup> In addition to the requirements mentioned in Act 237-2004, as amended, the Circular Letter No. 1300-16-16 includes the presentation of various certifications (CRIM, ASUME, Good Standing, etc.) before contract execution.

<sup>5</sup> Art. 3.3 of Act 2-2018. (3 L.P.R.A. § 1883b).

deemed felonies under Articles 250 through 266 of Act No. 146-2012, as amended, known as the “Penal Code of Puerto Rico”, any of the offenses classified under the Code of Ethics of Act 2-2018, as amended, or any other felony involving misappropriation of public funds or property, including, but not limited to, the offenses listed in Section 6.8 of Act 8-2017, shall be ineligible to contract or bid with the PRDOH for the period established in Section 6.8 of Act No. 8-2017. If no such period is established, the person shall be ineligible for **ten (10) years** from the date they finishes serving the sentence.<sup>6</sup>

Every contract shall include a termination clause in the event that a person who entered into a contract with the PRDOH is convicted in the federal or state jurisdiction of any of the offenses that render him ineligible to enter into contracts under the preceding paragraph. The contract must contain a certification that establishes that the person has not been convicted in the federal or state jurisdiction of any of the aforementioned offenses. The duty to inform shall be of a continuous nature at all stages of the contracting process and the execution of the contract.

## 2.5 Contract Attachments

All contracts to be executed by the PRDOH CDBG-DR Program shall contain the following attachments:

- a. **Scope of Work/Service:** is a formal agreement document that specifies all the criteria of a contract between a service provider (vendor) and the PRDOH. It clearly documents the project requirements, milestones, deliverables, final products, documents and reports that are expected to be provided by the vendor. It helps in the smooth functioning of a project/work contract wherein both parties can avoid ambiguities and situations leading to dispute.
- b. **Notice of Award:** means the official notice issued by the PRDOH notifying the vendor or vendors that his or they bid has been accepted.
- c. **Proposal:** document that is designed to persuade an organization to buy a product or service.
- d. **Compensation Schedule:** at any given time, the then effective schedule(s) of maximum rates applicable to a particular product under which provider and contracted providers will be compensated for the provision of covered services to covered persons.
- e. **Performance Requirements:** document that describes the functional performance criteria required for a particular equipment, material, or products or services.
- f. **Insurance Requirements (DV-OSPA-78-5):** this form includes all the insurance and bonding requirements for the contract.

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<sup>6</sup> Art 3.4 of Act 2-2018, as amended. (3 L.P.R.A. § 1883c)

- g. **HUD General Provisions:** given that the PRDOH CDBG-DR Program Contracts involve funds for which HUD is the oversight agency, the terms and conditions included in this document must apply and they must be included as an attachment to every agreement.

## 2.6 Insurance Requirements

Since the PRDOH is not immune from liability for its actions, all PRDOH's CDBG-DR contracts and Subrecipient Agreements should indicate what insurance coverage is required.

In the practice of good risk management, the CDBG-DR Program should attempt to transfer the risk of accidental loss accruing through its contractual relationships. The CDBG-DR Contract Administration area, through the Insurance Specialist, will require the contractor or subrecipient to assume the PRDOH's liability arising out of the contractor's or subrecipient's negligent delivery of products, services, or activities. This transfer generally is appropriate, as the contractor is most often the party in the best position to control loss.

When the procurement area decides to publish any acquisition process, it must require to the CDBG-DR Contract Administration area, through the Insurance Specialist to review the scope of work, the Independent Cost Estimate and the risk of the service that is sought to contract. The Insurance Specialist will prepare the form known as DV-OSPA-78-5. This form includes all the insurance and bonding requirements for the contract. The most common insurance and bond requirements are:

- a. Commercial General Liability
- b. Comprehensive Automobile
- c. Professional General Liability and/or Errors and Omissions Policy (E&O)
- d. Umbrella
- e. Crime Insurance
- f. Cyber Liability
- g. Builder's Risk (Construction Contracts)
- h. Bid Bond (Construction Contracts)
- i. Payment Bond, Wage Payment Bond, and Labor Materials Payment Bond (Construction Contracts)
- j. Guarantee Bond for Materials and Repairs (Construction Contracts)

Once the company or companies to be contracted and/or subrecipients have been chosen, the Insurance Specialist must ensure that each of the required insurance policies is submitted before executing the contract. If an amendment to a contract or Subrecipient Agreement is necessary, all policies must be in force.

The insurance policies to be obtained must contain the following endorsements including as additional insured the PRDOH, the Government of Puerto Rico and HUD:

- a. Breach of warranty



- b. Waiver and/or Release of Subrogation
- c. Additional Insured Clause
- d. Hold Harmless Agreement
- e. **Thirty (30) days** cancellation clause

In addition, all contracts and Subrecipient Agreements must include the following requirement clause:

**HOLD HARMLESS:** *The CONTRACTOR and its affiliates, its successors and assignees will indemnify the PRDOH from any damages and/or losses arising out of any breach of this Agreement by the CONTRACTOR or against personal injuries or property damage resulting from any act of negligence or omission by the CONTRACTOR and its affiliates in connection with this Agreement.*

The Insurance Specialist is responsible for maintaining communication with contractors and subrecipients, so that insurance policies are up to date. If any vendor, subrecipients or municipalities have any expired policy, the Insurance Specialist must request it as soon as possible to be in compliance.

## 2.7 Contractor Qualifications and Duties

### 2.7.1 Determination of Contractor Eligibility and Responsibility

PRDOH and its subgrantees must ensure that all contractors receiving CDBG-DR funds meet all eligibility requirements. The Procurement Area from PRDOH and/or any subrecipient shall verify and document contractor eligibility. Contracts shall be awarded to and executed only with responsible contractors, in accordance with 2 C.F.R. §200.318(h).

### 2.7.2 Subcontractor Clearance

The PRDOH does not clear subcontractors. The PRDOH and its subgrantees are required to make prime contractors aware that it is their responsibility to verify subcontractor eligibility. The prime contractor must also use the System for Award Management (**SAM**) website to determine if a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, PRDOH urges prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated, and the matter reported to PRDOH.

The Contractor Qualifications and Duties are included in the Procurement Manual for the CDBG-DR Program.

The Procurement Manual for the CDBG-DR Program and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

## 2.8 Contract Execution

After a contract is awarded, the Contract Execution Process begins. The Program Component Director (Contract Administration) and/or area personnel receives an Agreement Package from the Procurement Area.

When contracts amount to **ten million dollars (\$10,000,000.00)** or more, the Program Component Director (Contract Administration) and/or area personnel shall prepare and gather the documents and/or certifications required by the Financial Oversight & Management Board (**FOMB**) Policy, and submit it to the FOMB.

After the FOMB Approval Letter is received, the Contract File is assigned to a Contract Specialist or a Contract Compliance Specialist for review and request of documents and insurance to vendors. The draft of the agreement is prepared and sent to the Legal Director for final review approval for the parties' signatures.

After the contract is executed, it is the duty of the Contract Administration to register it at the Office of the Comptroller, along with all its documents and/or appendixes, within **fifteen (15) calendar days** of its execution, and notify the Office of Management and Budget as well.

Copy of every executed contract can be found within **five (5) business days** of its execution, and a brief description in English and Spanish, on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/contracts-cdbg/> and <https://www.cdbg-dr.pr.gov/contratos-cdbg/>.

## 2.9 Registration of the Contract with the Office of the Comptroller

As per Act 18-1975, as amended, once the contract is signed by both parties, the Program Component Director (Contract Administration) or area personnel shall comply with the Office of the Comptroller of Puerto Rico's regulations, and will maintain a Contract Register with all the appropriate information. All contracts shall be registered digitally at the Office of the Comptroller, except for those circumstances established by Regulation No. 7743-2009, issued by the Office of the Comptroller of Puerto Rico, along with all its documents and/or appendixes, within **fifteen (15) calendar days** of its execution.

The Program Component Director (Contract Administration) or area personnel shall print the certification provided by the electronic portal of Office of the Comptroller and send it for the Secretary's signature. Once the certification is duly signed, it must be filed in the contract file.

## 2.10 Contract Amendments

### 2.10.1 General

Any amendments to contracts shall be binding only if written and signed by both parties, and/or its authorized representatives. Amendments shall make specific reference to the original agreement, and comply with programmatic policies, procedures, and

guidelines. Such amendments shall not invalidate the original agreement, nor relieve or release the Parties from their obligations under the same.

However, PRDOH reserves the right to notify in writing to contractors any applicable policies, procedures, regulations, requirements, guidelines, or change in law, whether existing or to be established, as well as changes and/or amendments thereof, and the notified policies, procedures, regulations, requirements, guidelines and laws shall be deemed incorporated by reference to the Agreement without the need of executing a separate written and signed amendment.

PRDOH or the contractor may request an amendment based on their identification of a changing condition. The CDBG-DR User Area in need of the amendment shall notify Legal Director of its need. After the approval of the Amendment by the Secretary, the Amendment may be executed following the process established in the Standard Operating Procedure (**SOP**) relating to Contract Execution Process.

After the contract amendment is executed, it is the duty of the Contract Administration to register it at the Office of the Comptroller, along with all its documents and/or appendixes, within **fifteen (15) calendar days** of its execution.

Copy of the executed contract amendment can be found within **five (5) business days** of its execution, and a brief description in English and Spanish, on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/contracts-cdbg/> and <https://www.cdbg-dr.pr.gov/contratos-cdbg/>.

#### 2.10.2 Changes to the Scope of Work/Services

During the process of negotiating an amendment of any contract, including change orders, which changes the scope of work/services previously authorized and affects the price or estimated cost, a cost analysis must be used to attain a reasonable cost. This applies even if the basic contract was awarded competitively through sealed bidding. The only exception to this rule is a contract amendment based on pricing terms already established in the contract document. Bear in mind that changes in scope do not always result in increased costs. Elimination or reduction of contract work may result in a decrease in the contract price. Regardless of the direction of the price change, these amendments require cost analysis using the cost principles to determine that the price change is fair and reasonable.

The CDBG-DR User Area in need of an amendment is in charge of performing the aforementioned cost analysis when negotiating a modification to a contract. As part of the documentation that notifies the need and justifies the amendment to the Legal Director, the User Area must provide a certification that states that the required cost analysis was performed.

### 2.10.3 Types of Contract Amendments

There are two ways to change a contract. One is a bilateral amendment where all parties to the contract agree that a modification is necessary because the scope of work, the term of the contract, or some other provision must be altered. The second is the right to unilaterally modify the contract — the terms and conditions in the contract determine how the agency may exercise a right to modify the contract without the contractor's consent. An amendment will be either administrative or substantive in nature.

#### 2.10.3.1 Administrative Changes

Administrative changes occur within the scope of the contract and do not affect or alter the rights of the parties. These changes are typically executed via a unilateral amendment.

Examples of administrative changes include:

- a. changes in billing instructions or address;
- b. corrections of typographical errors not affecting the substance of the contract;
- c. changes as permitted by the specific contract language; and
- d. changes in agency personnel assigned to the contract.

#### 2.10.3.2 Substantive Changes

Substantive Changes are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (agreement by both parties). Examples of substantive changes include:

- a. change of deliverables (e.g., the specifications); or
- b. change of any terms and conditions.

### 2.10.4 Contract Amendment Analysis

Whether or not a contract may be amended depends upon certain principles. PRDOH guidelines require a competitive process in most situations. The specific method of competition depends upon the type of goods or services needed. If a competitive process was used, the resulting contract must be consistent with what was solicited during the competition. Inconsistencies between the solicitation and contract can violate the competitive process requirements.

If an amendment is needed to a contract, the change has to be within the scope, or parameters of the solicitation. A significant difference in the scope of work would be a material or substantial change and would not be allowed because it was not originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for all of the vendors.

When determining what constitutes scope changes to advertised specifications, the crucial question is whether the changes are material or substantial. Material or substantial changes are not measured by the number of changes made to the original specifications, they are measured by determining if the extent of the changes so substantially alters the original specifications that not re-advertising the revised specifications would deny a potential vendor an opportunity to respond to the revised

specifications. If a revision is substantial, a new procurement process is needed to ensure compliance with the bidding statutes. The Procurement Area will review and validate the need to amend the contract or to publish a new procurement process, depending on the user area need and not affecting full and open competition.

## 2.11 Contract Management

### 2.11.1 General

Contract Management consists of the actions taken by the PRDOH after the award of a contract to ensure it is successfully performed in accordance with the terms and conditions agreed by the parties in the agreement, as per 2 C.F.R. 200.318(b). It allows for implementation and oversight of legally enforceable performance commitments and risk positions.

The User Area is responsible for ensuring deliverables are being met by key stakeholders and the value of the contract isn't deteriorating throughout its early phases of growth. User Area must be attentive to the following criteria when managing a contract:

- a. Ensure that the products and/or services are delivered as and when they are ordered.
- b. Maintain communications with the vendor.
- c. Ensure that the day-to-day contractual activities follow the spirit and sections of the contract.
- d. Seek improvements within the contractual relationship to find efficiencies.
- e. Ongoing Assessment to ensure that the contracts are adhered to.
- f. Enforce specifications, timelines, labor standards and other contract requirements.

If the User Area has any questions about how it should handle a situation with a contractor, or questions regarding the details of the contract, it should contact the Legal Division.

### 2.11.2 Contract Default

Default occurs when the contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in the contract including any extension, or fails to complete the work within this time.

In case the User Area detects a default, shall refer the issue to the PRDOH CDBG-DR Legal Division.

If the contractor fails to cure the defects, after having received the notice to cure the defects that resulted in default, the Programmatic or User Area may not accept the goods, construction works, and/or services. The contractor will receive a Notice of Termination.

The PRDOH CDBG-DR Program, however, may not terminate a contractor's right to proceed under the default clause if the delay in completing the work arises from

unforeseeable causes beyond the control and without the fault or negligence of the contractor. The contractor must notify the PRDOH CDBG-DR User Area of the causes of the delay, and the PRDOH CDBG-DR Program will then determine if an extension of time is warranted.

### 2.11.3 Corrective Actions

If a contractor failed on any of the tasks included on the agreement with PRDOH, the Programmatic POC and/or or User Area shall take the following to require correcting actions from the contractor:

- a. The Programmatic POC and/or the Programmatic or User Area will send a communication to the contractor establishing the fails and noncompliance task of the agreement.
- b. If the contractor does not implement any corrective action, the Programmatic POC and/or the Programmatic or User Area will send email to **Program Component Director (Contract Administration)** for evaluation of any Contract Penalties.

### 2.11.4 Contract Penalties

After the recommendation for the application of contract penalties, the **Program Component Director (Contract Administration)** or their designee will analyze all contract activities to recommend the application of contract penalties as established in the agreement executed between the PRDOH and the contractor or subrecipient.

In the event that it is determined that the contractor has engaged in any proscribed conduct or otherwise is in default as to any applicable term, condition, or requirement of the agreement, at any time following the effective date of the agreement, PRDOH may impose sanctions against the contractor for any default in accordance with the agreement. Refer to all required provisions set forth at 2 C.F.R. § 200.326 and 24 C.F.R. § 570.489(g).

If the contractor fails to comply with federal statutes, regulations, or the terms and conditions of the agreement, PRDOH may take one or more of the following actions:

- a. Temporarily withhold cash payments pending correction of the deficiency by the contractor.
- b. Disallow all or part of the cost of the activity or action not in compliance.
- c. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180.
- d. Withhold further Federal awards for the project or program.
- e. Take other remedies that may be legally available.

### 2.11.5 Liquidated Damages

As stated on Article VI, Section 26(b) of 83 FR 5844, issued by HUD, all PRDOH CDBG-DR Program contracts, except for general management consulting services, will include performance requirements and liquidated damages. If contractor failed on their

timeframes of performance under the Program, the contractor shall pay to PRDOH liquidated damages. Liquidated damages will be calculated as stated on the executed agreement.

The contractor shall pay to PRDOH a sum to be determinate for liquidated damages for each calendar day that any task deliverable required is late until deemed in compliance subject to a maximum of money established in the agreement between PRDOH and the contractor. All PRDOH CDBG-DR Program contracts, except for general management consulting services, will include performance requirements and liquidated damages.

#### 2.11.6 Suspension and Debarment

An agreement between PRDOH and a contractor is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 2424. As such, the contractor is required to verify that its principals or its affiliates are not excluded or disqualified.<sup>7</sup>

Every contract shall include a clause in which the contractor certifies that agrees to comply with the requirements of 2 C.F.R. Part 180, Subpart C, and 2 C.F.R. Part 2424, while the agreement is valid. The contractor shall further agree to comply with these regulations and include a provision requiring such compliance in its lower tier covered transactions.

This certification is a material representation of fact relied upon by PRDOH. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, Subpart C, and 2 C.F.R. Part 2424, in addition to remedies available to PRDOH, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

## 2.12 Contract Claims

### 2.12.1 General

Contract claims may occur after the contract has been executed and may be pursued by the PRDOH or the contractor, although most often the contractor is the claimant. Disputes may arise regarding breach of contract, mistake, misrepresentation, other cause for contract modifications, or other disputes as described in the contract documents, such as unforeseen conditions.

### 2.12.2 Filing Claims

The PRDOH should make every effort to resolve claims informally and expeditiously to avoid time losses or expensive delays. However, if the dispute cannot be resolved by mutual agreement, the following steps must be taken:

- a. The contractor must submit the claim to the CDBG-DR Legal Division in writing through the following means:
  - **Via email at:** [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov)
  - **In writing at:** CDBG-DR Legal Division

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<sup>7</sup> The terms principal, affiliates, excluded and disqualified shall be interpreted as defined in 2 C.F.R. Part 180, Subpart I.



P.O. Box 21365  
San Juan, PR 00928-1365

- b. The claim can be sent by email, but an original copy will be required to be filed in the contract file.
- c. The claim must identify the nature and scope of the claim, including extra costs or time sought by the contractor.
- d. The claim must also include all documentation that it deems pertinent to justify it.

### 2.12.3 Rendering Decisions on Claims

The CDBG-DR Legal Division shall review the facts pertinent to the claim and secure any necessary assistance from technical or other advisors and shall issue a final written decision promptly. The written decision should include:

- a. A description of the claim;
- b. A reference to the pertinent contract clause(s);
- c. A statement of the factual areas of agreement or disagreement;
- d. A statement of the CDBG-DR Legal Division decision with support rationale.

The CDBG-DR Legal Division shall immediately furnish a copy of the decision to the contractor by certified mail, with return receipt requested.

### 2.12.4 Records Claims

The PRDOH CDBG-DR shall maintain a complete written and dated record of any actions that may result in a dispute or claim for damages. At a minimum, the PRDOH CDBG-DR should maintain records of a complete and detailed job; and all disputes and claims files, including a cross-reference to other pertinent files (such as a separate file for a particular subcontractor), any correspondence related to a dispute, written minutes of meetings between the PRDOH and contractors, or job meetings where decisions or agreements were made regarding disputes.

## 2.13 Contract Termination

Terminating a contract means unilaterally ending it before its stated end. Contracts can be terminated for the convenience of the grantee or for cause (also called default). Contracts are usually terminated for convenience when the PRDOH no longer has a need for the service or products as they are specified in the contract, or when it is not possible to substantiate that the contractor's performance is poor enough to terminate for cause. Contracts may be terminated for cause when the contractor fails to perform the contract as written. If a contract of any type (fixed-price or cost-reimbursement) is being terminated for convenience, or a cost-reimbursement contract for cause, cost analysis, and the appropriate cost principles, must be used to negotiate the final amount of the termination settlement.



### 2.13.1 Reasons for termination

If the Contract Administrator believes a contract should be terminated, they will consult with the Legal Director and ask for approval to the Secretary.

A contract may be terminated for the following reasons:

- a. Contractor fails to fulfill any of its obligations;
- b. Termination is necessary or convenient to the PRDOH;
- c. Contractor unilaterally and without prior notice chooses to abandon in any shape, form, or fashion, cease and desist in the specific performance of its general duties and responsibilities;
- d. PRDOH's sole discretion, with or without cause, at any time;
- e. Contractor is subjected to a criminal or civil action, suit, proceeding, inquiry in a court of applicable jurisdiction, or any governmental agency, or the contractor is subject to an order, judgment, or opinion, issued by any federal or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the contractor of the contract or the contractor has been noncompliant, breach, inaccuracy of any representation, warranties, covenants, or the certifications provided, whether the noncompliance, breach, or inaccuracy takes place before or after the execution of the contract;
- f. Contractor is subject to a judgment that may obligate the PRDOH to terminate the contract pursuant to Act 2-2018, as amended;
- g. CDBG-DR funds are suspended, withdrawn, canceled or unavailable

After reviewing the facts and legal options, the Legal Director will recommend the termination or not of a contract. If they determine the contract should be terminated, a memo will be submitted to the PRDOH Secretary and the Disaster Recovery Deputy Secretary with all facts and legal options.

### 2.13.2 Notice of Termination

If the Secretary and Disaster Recovery Deputy Secretary conclude the contract should be terminated, the Legal Director will generate and send a Notice of Termination to contractor with a copy to the Contract Administrator.

If the termination is for cause or default, the PRDOH shall send the Notice to Contractor with a **ten (10) calendar day's** opportunity to cure the defect that resulted in the default. If the defect is not cured within **ten (10) calendar days**, then the PRDOH will generate a notice of termination.

The Notice of Termination shall include, at least the following:

- a. Contract clause used as basis for termination:
  1. Cause or Default
  2. For Convenience
  3. Unilateral Abandonment

4. Unilateral Termination
  5. Noncompliance with HUDs regulations, 24 C.F.R. Part 135
- b. Whether the termination is of the whole contract or part of the contract;
  - c. Effective date of termination;
  - d. Reason for termination;
  - e. Notice that contractor shall immediately discontinue all services being terminated and deliver to the PRDOH all information, notes, drafts, documents, analysis, reports, compilations, studies, and other materials accumulated or generated in performing the services contemplated in the Contract, whether completed or in process;
  - f. Notice that contractor is not being relieved of liability to the PRDOH for damage sustained to PRDOH CDBG-DR Program by virtue of any breach of the contract by the contractor;
  - g. Notice that the PRDOH may withhold any payments to the contractor, for the purpose of off-set or partial payment, of any amounts owed to the PRDOH by the contractor, if applicable;
  - h. Notice of Period of Transition.

#### 2.13.3 Transition Services Agreement

Upon termination of contract, a Transition Services Agreement will be drafted and shall include, at least, the following:

- a. During the Transition Period, the contractor will be paid at a reasonable, agreed upon hourly rate, for any work performed for the PRDOH during this period.
- b. Upon termination of the contract and for **ninety (90) consecutive calendar days** thereafter, contractor shall make himself available to assist the PRDOH with the transition of services assigned to contractor by the PRDOH.
- c. Contractor shall provide to the PRDOH the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the services to the PRDOH or a third party designated by the PRDOH.

After the Transition Services Agreement is executed by both parties, it is the duty of the Contract Administration to register it at the Office of the Comptroller, along with all its documents and/or appendixes, within **fifteen (15) calendar days** of its execution, and notify the Contract Administrator and CDBG-DR Finance Division of the termination of the contract.

Copy of the Transition Services Agreement shall be published within **five (5) business days** of its execution on the PRDOH website <https://www.cdbg-dr.pr.gov/en/written-agreement/> and <https://www.cdbg-dr.pr.gov/acuerdos/>.

#### 2.14 Contract Closeout

After the end of the term of a contract and fulfillment of the contractual obligations entered into between PRDOH and a contractor, the contractor is obligated to comply

with the documentation and recordkeeping requirements established on the contract. Per said requirements, contractor is to maintain the records and documentation pertinent to the contract accessible to the PRDOH for the greater of **five (5) years** from closeout of the grant, or the period required by other local applicable laws and regulations, as well as access to those records for the purposes of making audits, examinations, excerpts, and transcriptions.

### 2.15 Subcontractor Claims

In those instances where a subcontractor files a direct communication to PRDOH claiming any amounts due for work carried out as part of the contract, and if the claim is one of work agreed for a lump sum, the Legal Division will request all the information and documentation that supports the claim for the corresponding legal evaluation. Depending on the recommendations from the Legal Division, the Program Area will act as recommended.

In case of claims other than work agreed upon for a lump sum, the claim shall be treated as a Program Complaint and referred to the Appeals Manager to follow the complaints procedure.

## 3 Subrecipient Agreements

### 3.1 Subrecipient Types and Responsibilities

#### 3.1.1 Subrecipients

A Subrecipient may be a public or private nonprofit agency, authority, or organization, which receives CDBG-DR funds from PRDOH to undertake eligible activities. 24 C.F.R. § 570.500(c). It is further defined at 2 C.F.R. § 200.1 as an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal program. Unless otherwise noted, the term "Subrecipient" will be used throughout this Guide to denote entities who the PRDOH determined were subrecipients and who are receiving CDBG-DR funds pursuant to an executed written SRA. 2 C.F.R. § 200.331.

There are **three (3)** main types of subrecipients:

- a. Governmental entities, such as government agencies and municipalities;
- b. Private Non-profits organizations; and
- c. Private For-profits only as authorized under 24 C.F.R. § 570.201(o).

#### 3.1.2 Responsibilities

Responsibilities of subrecipients generally include:

- a. Meet PRDOH's selection criteria;
- b. Carry out specified program and/or program activity on behalf of PRDOH;
- c. Comply with all Federal and state statutes, regulations, and Program requirements;
- d. PRDOH's policies and procedures;

- e. Comply with all terms and conditions of the Subrecipient Agreement; and
- f. Meet established performance goals.

Ultimately, however, the PRDOH is responsible for subrecipient compliance and performance. 24 C.F.R. § 570.501.

### 3.2 Subrecipient Agreement

The SRA is the basis for the contractual obligation between PRDOH and the subrecipient to fund and implement the awarded activity or program as required by 24 C.F.R. § 570.503. The agreement denotes responsibilities attributable to each party, and outlines in exact measure the scope of services provided under the agreement, methods of accountability, and a schedule for payment. Execution of the agreement binds the subrecipient for a specified period of time (term), and may be revised only upon written authorization from PRDOH. Subrecipient Agreements include the following:

- a. Legal means to convey all applicable requirements, roles, and responsibilities (see CDBG regulations 24 C.F.R. § 570.503);
- b. Statement of work/scope of services;
- c. Budget;
- d. Period of performance;
- e. Records to be maintained, reports to be submitted;
- f. Uniform administrative/ financial & cross-cutting requirements; and
- g. Provisions on program income, suspension/termination, reversion of assets and enforcement.

PRDOH utilizes a standardized Subrecipient Agreement template, which may be amended from time to time.

### 3.3 Subrecipient Agreement Term and Extensions

#### 3.3.1 Terms

Subrecipient Agreements shall be in effect and enforceable between the parties from the date of execution. SRAs shall contain a clause establishing the performance period and the end date of the Agreement, as well as a statement that the Agreement is subject to the Grant Agreement between the Government of Puerto Rico or the PRDOH and HUD, and the availability of the allocated CDBG-DR funds.

PRDOH may, at its sole discretion, extend the Agreement's term for additional terms, upon mutual written agreement of the parties. The term of the Agreement shall not exceed the lifetime of the initial Grant Agreement between PRDOH and HUD, unless the term of the initial Grant Agreement is extended by HUD, in which case the term of the Agreement cannot exceed the extension.

#### 3.3.2 Notice to Proceed

The Subrecipient shall not, and shall not be obligated to, commence performance of the Scope of Work/Service until PRDOH issues the Notice to Proceed (**NTP**) authorizing it

pursuant to the terms and conditions of the SRA. Upon receipt from PRDOH of the NTP, the Subrecipient shall promptly commence with the performance of the work.

Any performance of the Scope of Work/Service prior to the issuance of the NTP shall be considered by the PRDOH as an unapproved activity not subject to reimbursement.

### **3.4 Mandatory Clauses Applicable to Subrecipient Agreements**

The subrecipient must agree to comply with all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws applicable to the administration of CDBG-DR funds. Failure to comply may result in forfeiture of the CDBG-DR funding provided to the subrecipient under a SRA.

The following provisions applicable to SRAs are additional to the state and federal requirements formerly established on this Manual.

#### **3.4.1 Clauses Established by Federal Law and Regulations**

All Subrecipient Agreements from the PRDOH CDBG-DR Program shall contain, among others, general award information, subrecipient management responsibilities, general administration clauses, national objectives, performance goals and timelines, nonperformance standard, staffing with identified responsibilities to the identified activities, and prohibition of pre-award costs. Each SRA shall also include all other clauses required by federal and state laws, 83 FR 5844, 83 FR 40314, Executive Orders, rules, and regulations, in accordance with 24 C.F.R. §570.489(g), including, without limitation:

- a. A clause stating that subrecipient may only carry out the roles and responsibilities described in the SRA and the activities related to the performance of the Scope of Work/Service. The subrecipient is prohibited from charging to the PRDOH the costs of CDBG and/or CDBG-DR ineligible activities, including those described at 24 C.F.R. § 570.207, unless waived or made eligible by an applicable Federal Register Notice, from using funds provided or personnel employed in the administration of activities under the agreement for political activities, inherently religious activities, or lobbying. The subrecipient may be financially liable for performing activities outside the parameters of the Scope of Work/Service described.
- b. A general compliance clause stating the following:
  1. That subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.*, and the regulations at 24 C.F.R. § 570, as modified by the Federal Register Notices that govern the use of CDBG-DR funds available under the Agreement. This clause must clearly establish that, notwithstanding the abovementioned, (1) the subrecipient does not assume any of the PRDOH's responsibilities for environmental review, decision-making, and action, described in 24 C.F.R. Part 58 and (2) the subrecipient does not

assume any of the PRDOH's responsibilities for initiating the review process under the provisions of 24 C.F.R. Part 52.

2. The subrecipient shall also comply with all other applicable Federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this Agreement, regardless of whether CDBG-DR funds are made available to the subrecipient on an advance or reimbursement basis. This includes, without limitation, applicable Federal Register Notices; 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; Community Development Act of 1974, as amended; 24 C.F.R. Part 570 Community Development Block Grants; applicable waivers; Fair Housing Act; 24 C.F.R. § 35; 24 C.F.R. Part 58; 24 C.F.R. Part 75; National Historic Preservation Act, 54 U.S.C. 300101 *et seq.*, and any other applicable state laws or regulations, including the requirements related to nondiscrimination, labor standards and the environment; and Action Plan amendments and HUD's guidance on the funds.
3. The subrecipient shall comply, without limitation, with the requirements set forth in the HUD General Provisions, which must be attached and made part of the SRA.
4. Where waivers or alternative requirements are provided for in 83 FR 5844 or any future Federal Register Notice published by HUD (**HUD Notices**), such requirements, including any regulations referenced therein, shall apply.
5. The subrecipient also agrees to comply with all other applicable federal, state, and local laws, regulations, HUD Notices, policies, and guidelines, whether existing or to be established, that applied to activities occurring after the date the policy or guideline was established, governing the Grant Funds provided under the SRA.
6. In the event a conflict arises between the provisions of the Agreement and any of the foregoing, the Federal, State, and local laws, regulations, HUD Notices, policies, and guidelines shall control, and the Agreement shall be interpreted in a manner so as to allow for the terms contained there to remain valid and consistent with such federal, state, and local laws, regulations, HUD Notices, policies and guidelines.
7. The subrecipient shall also comply with applicable PRDOH's policies and guidelines as established in Program Guidelines and their amendments, if any.

All CDBG-DR Program policies and guidelines are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

- c. A clause stating that the subrecipient shall not carry out any of the activities in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5155 *et seq.*, and described in Appropriations Acts. The subrecipient must comply with HUD's requirements for duplication of benefits, detailed in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836. The subrecipient shall carry out the activities under the Agreement in compliance with the PRDOH's procedures to prevent duplication of benefits.
- d. Drug-Free Workplace clause.
- e. Insurance & Bonding Clause. The Insurance Requirements Clause previously indicated in this Manual will be applicable to Subrecipient Agreements.
- f. Hold Harmless clause where subrecipient agrees to hold harmless, defend (with counsel acceptable to the PRDOH) and indemnify the PRDOH and each and all of its successors, affiliates, or assigns, and any of their employees, officers, directors, attorneys, consultants, agents, managers, and affiliates, from and against any and all damages, costs, attorneys' fees, claims, expenses, injuries, property damage, causes of action, violations of law, violations of the Agreement, and losses of any form or nature arising from or related to the conduct of the subrecipient in the performance of the efforts called for in the Agreement. This indemnity shall expressly include, but is not limited to, the obligation of the subrecipient to indemnify and reimburse the PRDOH for any and all attorneys' fees and other litigation or dispute resolution costs incurred or to be incurred in the PRDOH's enforcement of the Agreement or any portion of it against the subrecipient or otherwise arising in connection with the subrecipient's breach, violation, or other non-compliance with the Agreement. This clause shall survive indefinitely the termination of the Agreement for any reason.
- g. PRDOH Recognition Clause where the subrecipient shall ensure recognition of the role of HUD and the PRDOH in providing funding, services, and efforts through the Agreement. Unless otherwise directed by the PRDOH, all activities, facilities, and items utilized pursuant to the Agreement shall be prominently labeled as to role of HUD and of the PRDOH. In addition, the Subrecipient shall include a reference to the support provided in all publications made possible with funds made available under the Agreement. The PRDOH reserves the right to direct specific reasonable recognition requirements on a case-by-case basis, including but not limited to, the size and content, waiver, removal, or addition of such recognition.
- h. Logos Clause stating that the Parties will not use the name of the other party, seals, logos, emblems, or any distinctive trademark/ trade name, without the prior written express authorization of the other party.

- i. The subrecipient shall comply with the applicable provisions in 2 C.F.R. Part 200, as amended, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. These provisions include:
  1. The subrecipient shall expend and account for all CDBG-DR funds received in accordance with 2 C.F.R. Part 200, Subpart D §200.302 - §200.303 adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
  2. The subrecipient shall administer its program in compliance with Cost Principles as outlined in 2 C.F.R. Part 200, Subpart E, as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.
  
- j. The subrecipient shall maintain all records required by applicable law to be maintained, including but not limited to the Federal regulations specified in (1) 2 C.F.R. Part 200; (2) 24 C.F.R. § 570.506; and (3) the applicable HUD Notices that are pertinent to the activities to be funded under the Agreement, as well as any additional records required by the PRDOH. Such records shall include but not be limited to:
  1. Records providing a full description of each activity undertaken;
  2. Records demonstrating that each activity undertaken meets one of the National Objectives of CDBG-DR programs, as modified by the HUD notices;
  3. Records required to determine the eligibility of activities;
  4. Records required to document the acquisition, improvement, use, or disposition of real property acquired or improved with CDBG-DR funds;
  5. Records documenting compliance with the fair housing and equal opportunity components of the CDBG-DR program;
  6. Financial records as required by (1) 24 C.F.R. § 570.502; and (2) 2 C.F.R. Part 200;
  7. Other records necessary to document compliance with 24 C.F.R. Part 570, Subpart K.
  
- k. The subrecipient shall furnish and cause each of its own subcontractors to furnish all information and reports required and shall permit access to its books, records and accounts by the PRDOH, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the applicable rules, regulations and provisions.



- l. The subrecipient shall retain all official records on programs and individual activities, which shall be retained for the greater **of five (5) years**, starting from the closeout of the grant between PRDOH and HUD, or the end of the affordability period for each housing activity, whichever is longer. If any other laws and regulations as described in 24 C.F.R. § 570.490 apply to a project, the record retention period may be extended. All records involved in litigation, claims, audits, negotiations, or other actions, which have started before the expiration date of their retention, will be kept until completion of the action and resolution of all issues or the end of the regular **five (5) year** period, whichever is longer.<sup>8</sup> Records shall be made available to PRDOH upon request.
- m. In the event that the subrecipient comes to possess client data and other sensitive information as a result of the Agreement, then the subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to PRDOH monitors or their designees for review upon request.
- n. The subrecipient must comply with 2 C.F.R. §200.303 and shall take reasonable measures to safeguard protected personally identifiable information, as defined in 2 C.F.R. § 200.1, and other information HUD or the PRDOH designates as sensitive or the subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality. Additionally, the subrecipient must comply with the PRDOH CDBG-DR Personal Identifiable Information Policy.

Personal Identifiable Information, Confidentiality, and Nondisclosure Policy (PII Policy) and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

The subrecipient shall comply with all State or local requirements concerning the privacy of personal records, consistent with 24 C.F.R. §§ 570.508 (local governments) and 570.490(c) (States).

- o. Closeout Clause, which details closeout period requirements and activities.
- p. Clause stating that all subrecipient records with respect to any matters covered by the Agreement shall be made available to the PRDOH, HUD, and the Comptroller General of the United States, or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the

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<sup>8</sup> See 2 C.F.R. § 200.334 and 24 C.F.R. § 570.490(d).

subrecipient within **thirty (30) days** after receipt by the subrecipient. Failure of the subrecipient to comply with these audit requirements shall constitute a violation of the Agreement and may result in the withholding of future payments and/or termination.

- q. The subrecipient must be audited as required by 2 C.F.R. Part 200, Subpart F when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.
- r. The subrecipient shall permit the PRDOH and auditors to have access to the subrecipient's records and financial statements as necessary for the PRDOH to meet the requirements of 2 C.F.R. Part 200.
- s. The PRDOH may issue management decisions and may consider taking enforcement actions including but not limited to corrective actions in 24 C.F.R. § 570.910 if noncompliance is detected during monitoring and audits. The PRDOH may require the subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
- t. Procurement and Contractor Oversight Clause stating that the subrecipient shall not enter into any contract for goods or services with any entity without the written consent of the PRDOH prior to the execution of such contract. Unless specified otherwise within the Agreement, the subrecipient shall procure all materials, property, equipment, or services in accordance with the requirements of the PRDOH's procurement policies and procedures, and 2 C.F.R. §§ 200.318-327, as applicable, including but not limited to the need to appropriately assess the lease versus purchase alternatives.

The Procurement Manual for the CDBG-DR Program and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

- u. The subrecipient shall include all applicable PRDOH's Conditions (as revised from time to time by the PRDOH in accordance with applicable law, rule, or regulation) in any contract entered into under the Agreement. Subrecipient shall also require all contractors to flow down the PRDOH's Conditions, as well as termination for convenience of the PRDOH, to all subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors. These Conditions include required terms for project contracts, HUD General Provisions, Participation by Minority Group Members and Women Requirements and Procedures for Contracts with Housing Trust Fund

Corporation, Standard Clauses for Contracts with the PRDOH, and required diversity forms.

- v. The subrecipient must comply with CDBG-DR regulations regarding debarred or suspended entities at 24 C.F.R. § 570.609 or 24 C.F.R. § 570.489(l) as appropriate. CDBG-DR funds may not be provided to excluded or disqualified persons.
- w. The subrecipient shall maintain oversight of all activities under the Agreement and shall ensure that for any procured contract or Agreement, its contractors perform according to the terms and conditions of the procured contracts or Agreements, and the terms and conditions of the Subrecipient Agreement.
- x. Nondiscrimination clause that must include that:
  - a. The subrecipient shall comply with 24 C.F.R. Part 6, which implements the provisions of section 109 of Title I of the Housing and Community Development Act of 1974 (**Title I**) (42 U.S.C. § 5309), which provides that no person in the United States shall, on the ground of race, color, national origin, religion, 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 Federal financial assistance.
  - b. The subrecipient shall adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-6107) (**Age Discrimination Act**) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) (**Section 504**). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the subrecipient shall comply with regulations of 24 C.F.R. Part 8, which implement Section 504 for HUD programs, and the regulations of 24 C.F.R. Part 146, which implement the Age Discrimination Act for HUD programs.
  - c. The Subrecipient shall ensure that all CDBG-DR activities conducted by itself or its contractors are consistent with the applicable federal and local legal provisions, regulations, and policies that prohibit discrimination on the basis of race, creed, color, national origin, religion, sex, disability, familial status, actual or perceived sexual orientation or gender identity, marital status, or age, as established in the CDBG-DR Fair Housing and Equal Opportunity (FHEO) Policy for CDBG-DR Programs.
- y. Architectural Barriers Act of 1968 (42 U.S.C. 4151-4156) and the Americans with Disabilities Act (42 U.S.C. § 12131 *et seq.*) Requirements.

- z. Clause where subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 C.F.R. § 570.607, as revised by Executive Order 13279.
- aa. Clause stating compliance with Title VI of the Civil Rights Act of 1964 (24 C.F.R. Part 1).
- bb. Clause establishing that subrecipient shall take the affirmative steps listed in 2 C.F.R. § 200.321(b)(1) through (5) regarding the Women- and Minority-Owned Businesses. Subrecipient must also establish compliance with the CDBG-DR Minority and Women-Owned Business Enterprise Policy (**M/WBE Policy**).

The M/WBE Policy and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

- cc. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement indicating that subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.
- dd. Labor Standards Clause, where subrecipient shall comply with the in labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended, and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under the Agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis Bacon Act, as amended (40 U.S.C. 3141 *et seq.*), and 29 C.F.R. Parts 1, 3, 5, 6, and 7, provided that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than eight (8) units.
- ee. The subrecipient must comply with the kickbacks from public works employees prohibition (18 U.S.C. § 874) and its implementing regulations of the U.S. Department of Labor at 29 C.F.R. Part 3 and Part 5. The subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the PRDOH for review upon request.
- ff. Clause stating that the subrecipient is prohibited from using funds provided under the Agreement or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; or nepotism activities.

- gg. Clause stating that the work to be performed under the 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.
- hh. Clause where parties agree to comply with HUD's regulations in 24 C.F.R. Part 75, which implement Section 3, and certify that they are under no contractual or other impediment that would prevent them from complying with the Part 75 regulations.
- ii. Clause establishing that subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the subrecipient's commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- jj. Clause where Subrecipient agrees to include Section 3 clauses in every subcontract subject to compliance with regulations in 24 C.F.R. Part 75 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 C.F.R. Part 75. The Subrecipient will not subcontract with any subcontractor where the Subrecipient has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. Part 75.
- kk. Clause where subrecipient acknowledges that subrecipients, contractors, and subcontractors are required to meet the employment, training, and contraction requirements of 24 CFR § 75.19, regardless of whether Section 3 language is included in the Subrecipient Agreement or contracts.
- ll. Clause certifying that any vacant employment positions, including training positions, that are filled (1) after the Subrecipient is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. Part 75 require employment opportunities to be directed, were not filled to circumvent the Subrecipient's obligations under 24 C.F.R. Part 75.
- mm. Clause stating that noncompliance with HUD's regulations in 24 C.F.R. Part 75 may result in sanctions, termination of the Agreement for default, and debarment or suspension from future HUD assisted contracts.

nn. Clause where Subrecipient agrees to submit, and shall require its subcontractors to submit to them, quarterly reports to the PRDOH detailing the total number of labor hours worked on the Section 3 Project, the total number of labor hours worked by Section 3 Workers, and the total number of hours worked by Targeted Section 3 Workers, and any affirmative efforts made during the quarter to direct hiring efforts to low- and very low-income persons, particularly persons who are Section 3 Workers and Targeted Section 3 Workers.

oo. Clause regarding contracts entered into in the performance of the subrecipient agreement with PRDOH, as follows:

#### Contracts

1. **Approvals:** The subrecipient shall not enter into any contracts with any agency or individual in the performance of this Agreement without the written consent of the PRDOH prior to the execution of such Agreement.
2. **Monitoring:** The subrecipient will monitor all contracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.
3. **Content:** The subrecipient shall cause all of the provisions of the contract in its entirety to be included in and made a part of any contract executed in the performance of the Agreement.
4. **Selection Process:** The subrecipient shall undertake to insure that all contracts awarded for the performance of the Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements found at 2 C.F.R. §§ 200.318-200.327. Executed copies of all contracts shall be forwarded to the PRDOH along with documentation concerning the selection process.

The Procurement Manual for the CDBG-DR Program and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

5. **Notification:** The subrecipient shall notify and provide a copy of all contracts related to the Agreement and CDBG-DR funds to the Contract Administration Area of the PRDOH CDBG-DR Legal Division within **three (3) days** of its execution. Additionally, the subrecipient shall provide a copy of all subcontracts executed by its Contractors to the Contract Administration Area of the PRDOH CDBG-DR Legal Division within **three (3) days** of its execution.

- pp. Clause stating subrecipient shall comply the Hatch Act, 5 U.S.C. §§1501–1508, and shall ensure that no funds provided, nor personnel employed under the Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the United States Code.
- qq. Conflict of Interest Clause where subrecipient agrees to abide by the provisions of 2 C.F.R. Part 200, as applicable, and 24 C.F.R. § 570.611.
- rr. Clause stating that citizen complaints or grievances received shall be referred immediately to the PRDOH CDBG-DR Program so that PRDOH may respond appropriately.
- ss. Clause stating Technical Assistance and Trainings assistance requirement.
- tt. CDBG-DR Policies and Procedures Clause, as follows:

*In addition to what is established in this Agreement, the Subrecipient shall comply with all CDBG-DR program specific and general policies and procedures, including, but not limited to, the Subrecipient Management Policy, OS&H Guideline, MWBE Policy, Procurement Manual and Contractual Requirements, URA & ADP Guidelines, Cross Cutting Guidelines, AFWAM Policy, Section 3 Policy, Personally Identifiable Information, Confidentiality, and Nondisclosure Policy and Conflict of Interest and Standards of Conduct Policy, as found in the CDBG-DR Website ([www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov)), which are herein included and made integral part of this Agreement, as they may be updated from time to time, and reporting requirements as established by the PRDOH.*

### 3.5 Subrecipient Agreement Exhibits

All Subrecipient Agreements to be executed by the PRDOH CDBG-DR Program shall contain the following attachments:

- a. **Scope of Work/Service:** is a formal agreement document that specifies all the criteria of an agreement between the subrecipient and the PRDOH. It clearly details the project requirements, milestones, deliverables, products, documents, and reports that are expected to be provided by the vendor. It helps in the smooth functioning of a project/work contract wherein both parties can avoid ambiguities and situations leading to dispute.
- b. **Timeline and Performance Goals:** objectives set for specific duties or tasks in the contract.
- c. **Key Personnel:** employees who have the authority to directly or indirectly plan and control business operations.
- d. **Budget:** financial plan for a defined period.

- e. **Funds Certification:** PRDOH document that certify that funds are available for a basic order or an order modification.
- f. **HUD General Provisions:** given that the PRDOH CDBG-DR Program SRA involves funds for which the U.S. Department of Housing and Urban Development (HUD) is the oversight agency, the terms and conditions included in this document may apply.
- g. **Special Conditions:** are the rules, provisions, requirements, specifications, and standards for a specific project that is an integral part of an agreement or contract.

### 3.6 Subrecipient Qualifications and Duties (Start Up and Post Award)

#### 3.6.1 Selection Criteria

PRDOH may use any reasonable criteria to select a subrecipient, including but not limited to:

- Issuing a Request for Qualifications;
- Issuing a Notice of Funding Availability (**NOFA**);
- Issuing an application process;
- Selecting a qualified non-profit serving a specific geography;
- Selecting a Unit of General Local Government;
- Selecting a Governmental Agency or Organization;
- Direct Selection; or
- Other, as applicable

#### 3.6.2 Capacity Assessment

PRDOH is responsible for determining the adequacy of performance under Subrecipient Agreements (24 C.F.R. § 570.501). The adequacy of performance must be gauged before any work begins. It is required under 2 C.F.R. § 200.331(b) for grantees to assess their subrecipients' capacity. A well thought-out assessment prior to the selection of a subrecipient helps reduce the risk of future problems and increases the chance of success. PRDOH will accomplish this by assessing the capacity of the subrecipients. A capacity assessment provides the information needed by considering key functions such as:

- Grant management history (track record)
- Grantee monitoring reports
- Internal and external audits (i.e. Office of Inspector General (**OIG**))
- Ability to comply with Federal rules and regulations (capacity)
- Staffing (New or experienced staff and turnover rate)
- Program and activity experience/ Knowledge of CDBG/CDBG-DR
- Management of similar programs/activities



### 3.6.3 Pre-Agreement Procedures

Prior to agreement execution, subrecipients, as applicable, must have the needed staffing support, confirmed matching resources, sufficiently developed plans, a program site (if required), and budget to start the proposed program after the funding approval, in accordance with the requirements of the proposed Subrecipient Agreement. Program Areas will provide the support, as needed, for the preparation of agreement related documents and execution thereof.

### 3.6.4 Post Award Responsibilities

Upon execution of the agreement between PRDOH and the subrecipient, the subrecipient shall:

- a. Comply with provisions of the SRA and its Exhibits, including but not limited to:
  1. General requirements included thereunder.
  2. Reporting requirements, performance and delivery of services requirements.
  3. Any special conditions, as applicable, which may include development of necessary policies and procedures and/or adoption of PRDOH CDBG-DR Policies, as well as capacity building and training requirements, among others.
- b. Participate in initial meetings with the Program areas for program implementation, and ensure understanding of Program Guidelines, procurement, and finance requirements.
- c. Establish and implement a sound structure for internal controls in compliance with 2 C.F.R. Part 200 requirements and as indicated herein.

## 3.7 Subrecipient Agreement Execution

After PRDOH establishes the need for a subrecipient agreement using the criteria in 2 C.F.R. §200.331, the Subrecipient Agreement Execution Process begins.

PRDOH sends a Letter of Intent (**LOI**) to the Subrecipient with the SRA Documents, which must be completed using the Subrecipient Agreement Templates Instructions. The designated PRDOH POC will discuss and review the LOI and documents to complete them accordingly. After the completed SRA documents are received, reviewed and approved by the POC and Finance Department, the PRDOH POC shall prepare a Memo, which is then submitted with the Document Package to the Disaster Recovery Deputy Secretary or the Secretary. Once the Disaster Recovery Deputy Secretary or the Secretary approves, the memo and document package are sent to the Legal Division.

After the Legal Division determines the Document Package is correct and complete, it is sent to the PRDOH POC for their confirmation. After it is confirmed, the SRA is ready for execution. The execution of the SRA can be done personally or by electronic means.

After the agreement is executed, it is the duty of the Contract Administration Area to register it at the Office of the Comptroller, along with all its documents and/or

appendixes, within **fifteen (15) calendar days** of its execution, and notify the Office of Management and Budget as well.

Copy of the SRA shall be published within **five (5) business days** of its execution with a brief summary in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/written-agreement/> and <https://www.cdbg-dr.pr.gov/acuerdos/>.

### 3.8 Subrecipient Agreement Amendment

#### 3.8.1 Amendment

Subrecipient Agreements may be amended, provided that such amendments make specific reference to the original agreement, comply with programmatic policies, procedures, and guidelines. Amendments shall be executed in writing and signed by a duly authorized representative of each party, and approved by PRDOH. Such amendments shall not invalidate the original agreement, nor relieve or release the parties from their obligations under said agreement. Unless specified, such amendments are not intended to effect nor will they constitute an extinctive novation of the obligations of the parties under the agreement and amendment.

The PRDOH may, in its discretion, amend SRAs to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of the original agreement, such modifications shall be incorporated only by written amendment signed by both the PRDOH and the subrecipient.

However, PRDOH reserves the right to notify in writing to subrecipient any applicable policies, procedures, regulations, requirements, guidelines, or change in law, whether existing or to be established, as well as changes and/or amendments thereof, and the notified policies, procedures, regulations, requirements, guidelines and laws shall be deemed incorporated by reference to the agreement without the need of executing a separate written and signed amendment.

### 3.9 Subrecipient Agreement Termination

#### 3.9.1 Reasons for Termination

The PRDOH may terminate an agreement, in whole or in part, upon **thirty (30) calendar days'** notice, whenever it determines that the subrecipient has failed to comply with any term, condition, requirement, or provision of the Agreement.

Termination may occur in some circumstances, including but not limited to:

- a. Termination is convenient for the PRDOH;
- b. Agreement by the PRDOH and subrecipient;
- c. PRDOH's sole discretion, with or without cause, at any time;
- d. Subrecipient is subjected to a criminal or civil action, suit, proceeding, inquiry or court of applicable jurisdiction, or any governmental agency, or the subrecipient is subject to an order, judgment, or opinion, issued by any federal

- or local authority, a court of applicable jurisdiction, or any governmental agency, in connection with the execution, delivery, and performance by the subrecipient of the SRA or the subrecipient of the SRA has been noncompliant, breach, inaccuracy of any representation, warranties, covenants, or the certifications provided in the SRA, whether the noncompliance, breach or inaccuracy takes place before or after the execution of the SRA;
- e. Subrecipient is subject to a judgment that may obligate the PRDOH to terminate the contract pursuant to Act 2-2018, as amended;
  - f. Subrecipient fails to comply with audit requirements
  - g. Noncompliance with HUD's regulations in 24 C.F.R. Part 75;
  - h. Subrecipient fails to attend required technical assistance and/or trainings; or
  - i. CDBG-DR funds are suspended, withdrawn, canceled, terminated, or unavailable.

After reviewing the facts and legal options, the Legal Director will recommend to the Secretary or the Disaster Recovery Deputy Secretary the termination or not of a Subrecipient Agreement. The SRA Termination SOP provisions shall be follow.

If PRDOH conclude the Subrecipient Agreement should be terminated, the Legal Director will generate and send a Notice of Termination to subrecipient.

The Notice of Termination shall include, at least, the following:

- a. SRA clause used as basis for termination:
  - 1. Cause
  - 2. For Convenience
  - 3. Agreement by the Parties
  - 4. Unilateral Termination
  - 5. Immediate Termination
  - 6. Unavailability of Funds
  - 7. Judgment pursuant to Act 2-2018
  - 8. Failure to comply with audit requirements
  - 9. Noncompliance with HUDs regulations, 24 C.F.R. Part 75
  - 10. Subrecipient fails to attend required technical assistance and/or trainings
- b. Whether the termination is of the whole SRA or a portion of it
- c. Effective date of termination
- d. Reason for termination
- e. Notice that subrecipient shall immediately discontinue all services being terminated and deliver to the PRDOH all information, notes, drafts, documents, analysis, reports, compilations, studies, and other materials accumulated or generated in performing the services contemplated in the SRA, whether completed or in process
- f. Notice that subrecipient is not being relieved of liability to the PRDOH for damage sustained to PRDOH CDBG-DR Program by virtue of any breach of the SRA by the subrecipient

- g. Notice that the PRDOH may withhold any payments to the Subrecipient, for the purpose of off-set or partial payment, as the case may be, of any amounts owed to the PRDOH by the subrecipient, if applicable
- h. Notice of Period of Transition, if applicable

### 3.9.2 Transition Services Agreement

Upon termination of a Subrecipient Agreement, a Transition Services Agreement will be drafted and shall include, at least, the following:

- a. During the Transition Period, the subrecipient will be paid at a reasonable, agreed upon hourly rate, for any work performed for the PRDOH during this Period.
- b. Upon termination of the SRA and for **ninety (90) consecutive calendar days** thereafter, subrecipient shall make himself available to assist the PRDOH with the transition of services assigned to subrecipient by the PRDOH.
- c. Subrecipient shall provide to the PRDOH the assistance reasonably requested to facilitate the orderly transfer of responsibility for performance of the services to the PRDOH or a third party designated by the PRDOH.

After the Transition Services Agreement is executed by both parties, it is the duty of the Contract Administration to register it at the Office of the Comptroller, along with all its documents and/or appendixes, **within fifteen (15) calendar days** of its execution, and notify the POC and the CDBG-DR Finance Division of the termination of the contract.

Copy of the Transition Services Agreement shall be published within **five (5) business days** of its execution with a brief summary in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/written-agreement/> and <https://www.cdbg-dr.pr.gov/acuerdos/>.

### 3.9.3 Suspension

The PRDOH may suspend the agreement in whole or in part at any time for the PRDOH's convenience. The PRDOH shall give the subrecipient **five (5) business days'** written notice of such suspension. Upon receipt of said notice the subrecipient shall immediately discontinue all services affected.

## 4 General Provisions for Contracts and SRAs

### 4.1 Section 3 Low and Very Low-Income Persons or Firms Participation

#### 4.1.1 General

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1710 (u) (**Section 3**) is to ensure that the employment and other economic opportunities generated by HUD assistance or HUD assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low-income persons and businesses, particularly persons who are recipients of HUD assistance for housing. PRDOH, its subrecipient and its contractors and subcontractors will comply with HUD's regulations set forth in 24 C.F.R. Part 75, which implement Section 3. All

subgrants agreements and contracts funded by the CDBG-DR Program shall include the Section 3 clause and a certification from the parties to the agreement that the entity is under no contractual or other impediment that will prevent them from complying with 24 C.F.R. Part 75.

#### 4.1.2 Affirmative Action

PRDOH will make efforts and outreach to individuals (low or very low-income persons) or firms located in or owned substantially by residents, women or persons who are residents of the public housing authorities or Section 3 residents from the area where the CDBG-DR project is located, as part of its efforts to comply with Section 3. The PRDOH will offer employment and training opportunities not only to its employees, but also to residents, women, minority or persons with low or very low-income in the public housing projects or the area where the public housing project is located, who would like to participate in this process and are qualified for the positions. The Resident Councils in the public housing projects and its agents will help identify these persons or firms. PRDOH will require subrecipients and contractors to post information of job opportunities at their central offices for all persons interested, including residents, women, minority or persons with low or very low-income in the public housing projects or the area where the public housing project is located. PRDOH will include the Section 3 clause in every contract or subcontract subject to compliance with regulations in 24 C.F.R. Part 75. Noncompliance with HUD's regulations 24 C.F.R. Part 75 will result in the termination of the contract or subcontract.

The PRDOH, its subrecipients and the Program contractors will also offer employment and training opportunities to residents, women or persons with low or very low- income in the public housing projects or the area where the public housing project is located. The subrecipient or contractor, according to the agreement or contract signed with PRDOH, agree to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization workers or representative of its commitments under Section 3 clause, and shall post copies of this notice in conspicuous places at the sites where both employees and applicants for training and employments 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; the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin. Noncompliance with HUDs regulations, 24 C.F.R. Part 75, will result in the termination of the contract or subcontract.

All contractors shall pay not less than the wages prevailing in the locality, as determined by and adopted by the Secretary of HUD, to all architects, technical engineers, draftsmen, and technicians, as established in Section 12 of the Housing Act. In the Procurement Area, PRDOH will develop procedures to assess and evaluate proposals

received by Section 3 **Business Concerns**, Women Business Enterprise (**WBE**) and Minority Business Enterprise (**MBE**) programs. These procedures will be, but are not limited to, the following:

- a. In determining the responsibility of potential contractors, consider their record of Section 3 compliance based on past actions and current plans related to the pending contract.
- b. Contacting business assistance agencies, minority contractors (**M/WBE**) associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying Section 3 businesses, which may solicit bids or proposals for contracts for work in connection with Section 3 covered assistance.
- c. Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the administrative offices of the projects.
- d. Contacting resident councils and other resident organizations and requesting their assistance in identifying business concerns.
- e. Providing written notice to all known Section 3 businesses or businesses concerns about contracting opportunities, with enough time to participate in the Invitation for Bids or Request for Proposal.
- f. Informing Section 3 businesses or businesses concerns in pre-bid meetings about future opportunities of contracting.
- g. Carrying out workshops on contracting procedures and specific Contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.
- h. Advise Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.
- i. Where appropriate, breaking out Contract work items into economically feasible units to facilitate participation by Section 3 business concerns.
- j. Contacting agencies administering HUD Youth Programs and notifying these agencies of the contracting opportunities.
- k. Developing a list of eligible Section 3 business concerns.
- l. Establishing or sponsoring programs designed to assist residents of public housing in the creation and development of Section 3 Business Concerns.
- m. Supporting businesses, which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (**SBA**), and other local agencies.
- n. Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*, to provide no or low-interest loans for providing working capital and other financial needs.
- o. Actively supporting joint ventures with Section 3 business concerns and other businesses that assist them.

The Section 3 Policy and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

## 4.2 Conflicts Of Interest and Ethics in Public Contracting

### 4.2.1 General

Since the awarding of a contract involves the disbursement of taxpayers' funds, PRDOH officials, agents, subrecipients, subgrantees, and employees, as well as the contractors involved in each contracting process owe a fiduciary duty to the PRDOH. Therefore, no PRDOH official, agent, subrecipients, subgrantees, or employee shall participate directly or indirectly in the selection, award, administration, or monitoring of any contract if a conflict of interest, real or apparent, results.

All PRDOH officials, agents, employees, subrecipients, subgrantees, and contractors shall maintain an exemplary degree of honesty, integrity, and impartiality when procuring, directly or indirectly, goods, work and/or services, and in the execution and/or performance of contracts for the agency.

It is mandatory that every official, employee, agent, subrecipients, subgrantees, and contractors adhere strictly to the ethical standards in public contracting as set forth in 2 C.F.R. §200.318(c)(1), the [HUD Procurement Handbook 7460.8 Rev-2](#) as a Guide Book, Act 1-2012, Act 2 -2018, this Manual, and all applicable federal and state laws and regulations in force now or as they may be amended in the future.

### 4.2.2 Prohibitions

All provisions contained in Act 1-2012 shall be deemed applicable to this Manual. Whenever the Law mentions the phrase "public servant", in terms of PRDOH, it refers to "officials, employees, subrecipients, and subgrantees". Whenever the Law mentions "appointing authority" and "Executive Director", in terms of PRDOH, it refers to "Secretary". Most of the prohibitions that apply to officials and employees shall be interpreted to also apply to PRDOH agents, subrecipients, subgrantees, and contractors due to their fiduciary duty to the PRDOH.

All provisions contained in the Act 2-2018 shall be deemed applicable to this Manual. Specifically, those prohibitions included in Title III "Code of Ethics for Contractors, Suppliers and Applicants for Economic Incentives from Puerto Rico's Government," 3 L.P.R.A. § 1883-1883(g).

The Conflict of Interest and Standard of Conduct Policy (**COI Policy**) and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.



### 4.3 Emergency Situations

The PRDOH will be attentive to the enactment of any executive order, circular letter, law or regulation related to public emergency situations in order to make the appropriate adjustments in the contracting process.

### 4.4 Force Majeure Clause

All PRDOH CDBG-DR Program contracts and Subrecipient Agreements shall contain the following clause regarding force majeure events.

#### **FORCE MAJEURE**

*In the event of a fire, flood, earthquake, natural disaster, hurricane, riot, act of governmental authority in its sovereign capacity, strike, labor dispute or unrest, embargo, war, insurrection or civil unrest, any Force Majeure including inclement weather, herein collectively referred to as Force Majeure during the term of this Agreement, neither the PRDOH nor the Contractor or Subrecipient shall be liable to the other party for nonperformance during the conditions created by such event.*

*The Contractor or Subrecipient shall notify, as soon as possible, the PRDOH of the occurrence of the Force Majeure event and describe in reasonable detail, the nature of the Force Majeure event.*

## 5 Communications

All communications from any Area, Department or Division of the PRDOH addressed to contractors or subrecipients of the PRDOH CDBG-DR Program, must be previously notified to the CDBG-DR Legal Division. Additionally, the Legal Division must be copied in all communications sent to CDBG-DR Program contractors regarding specific contract/SRA non-compliance issues.

## 6 Severability Clause

If any provision of this Manual is held to be unconstitutional or void by any court with jurisdiction, such judgment will not affect, impair or invalidate the remaining provisions of this Manual.

## 7 Prevailing Version

This Manual is originally adopted in the English. A Spanish translation will be published. In case of any inconsistency between both versions, the English version will prevail.

## 8 Approval

This Contract and Subrecipient Agreement Manual will take effect immediately after its approval. This document supersedes any previously approved version.



## Appendixes

Appendix 1: Checklist 1: Contract File Checklist

Appendix 2: Checklist 2: Fiscal Oversight and Management Board Policy Checklist

Appendix 3: Checklist 3: Subcontract Checklist

Appendix 4: Contract Execution and Amendment Process Standard Operating Procedures

Appendix 5: Contract Termination Process Standard Operating Procedures

Appendix 6: Subrecipient Agreement Execution Process Standard Operating Procedures

Appendix 7: Subrecipient Agreement Termination Process Standard Operating Procedures

Appendix 8: Contracts Claims Process Standard Operating Procedures

Appendix 9: Subcontracts Claims Process Standard Operating Procedures.

**END OF POLICY.**