Recovery and Resilience after the Helene Disaster

CDBG-DR
Procurement and Contracting, Part II

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Where we're going…

Part I:

Procurement by Subrecipients (That's You!)

Part II:

Crosscutting Federal Requirements

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Part II Roadmap

- Significance of Contract Clauses Required by the Uniform Guidance
- CDBG-Specific Requirements (Section 3, Section 104(d), URA)
- Watch Out for Conflicts of Interest and Other Regulations of Conduct!

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State Law & Uniform Guidance Require Contracts in Writing

- Agreements for municipalities must be in writing (G.S. 160A-16)
- Contracts for construction or repair in the formal range must be in writing (G.S. 143-29)
- Contracts must include clauses identified in the Uniform Guidance (2 C.F.R. 200.327 & Appendix II to 2 C.F.R. 200)

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Contract Clauses Required by the Uniform Guidance, 2 C.F.R. 200

2 C.F.R. 200.327: "The recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II."

Appendix II to Part 200: "In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable."

Let's look at the 12 sections in Appendix II, Subsections (A) through (L)…

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The Easier Stuff in Appendix II

(A) ✓ Contracts above the Simplified Acquisition Threshold must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties

(B) ✓ All contracts in excess of $10,000 must address termination for cause and for convenience by the recipient, including how it will be triggered and the basis for settlement

(C) ✓ Equal Employment Opportunity clause required verbatim for "federally assisted construction" as defined in 41 CFR Part 60-1.3 (but note that President Trump's Executive Order 14173 rescinded Executive Order 11246, "Equal Employment Opportunity")

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The Easier Stuff in Appendix II

(F) ✓ If the federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a), a recipient entering for performance of experimental, developmental, or research work under that funding agreement must comply with the requirements of 37 CFR Part 401, which require disclosure of inventions and governs the rights to title for the invention

(G) ✓ Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires agreement to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act

(K) ✓ Recipients and subrecipients cannot obligate or expend loan or grant funds on covered telecommunications equipment or services; by accepting a loan or grant, a recipient is certifying that it will comply with the prohibition on covered telecommunications equipment and services

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The More Complicated Stuff…

- **(H)** ✓ Debarment and Suspension
- **(J)** ✓ Procurement of Recovered Materials
- **(D)** ✓ Davis-Bacon and Related Acts and Copeland Anti-Kickback Act
- **(E)** ✓ Contract Work Hours and Safety Standards Act
- **(L)** ✓ Domestic Preferences
- **(I)** ✓ Byrd Anti-Lobbying Amendment (covered later in the conflicts of interest section)

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Debarment and Suspension
Subsection (H) of Appendix II

Principle 1, Responsibility: Award contracts only to responsible contractors possessing the ability to perform successfully. Consider integrity, compliance with public policy, record of past performance, and financial and technical resources.

Principle 2, Ineligibility: Do not award contracts to parties that are "debarred, suspended, or otherwise excluded from or ineligible from participation in Federal assistance program or activities."

What can NFEs do to comply?

1. Search SAM.gov Exclusions List (https://sam.gov/content/exclusions) for counterparty name. If possible, also search names of counterparty principals or "sounds like" names. Document searches in your procurement files.
2. Add a "clause or condition" to "covered transaction" contracts, and require subrecipients to do the same. Require contractors to include "clause or condition" in "covered transaction" subcontracts.
3. Obtain certification from contractor about eligibility status.

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Procurement of Recovered Materials
Subsection (J) of Appendix II & 2 C.F.R. 200.323

- State governments, an agency that is a political subdivisions of a State, and its subcontractors must comply with Section 6002 of the Solid Waste Disposal Act
- Applicable where purchase price of the item being procured exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000
- Requires procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition (e.g., park benches and picnic tables containing recovered steel, aluminum, plastic, or concrete)

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Davis-Bacon And Related Acts (DBRA)
Subsection (D) of Appendix II

- The Davis-Bacon Act applies to prime construction contracts of $2,000+ where the federal government or the District of Columbia is a party
- Davis-Bacon Related Acts are the 60+ statutes whereby the prevailing wage provisions of the Davis-Bacon Act apply when federal agencies assist construction projects through grants, loans, loan guarantees, and insurance
- Prime contractors must pay laborers and mechanics “prevailing wages” according to a wage determination by the Department of Labor; these wages are set federally and applied locally
- Prime contractors must provide weekly certified payrolls for all subcontractors and Statements of Compliance (latter requirement can be satisfied by Optional Form WH-347 and relates to Copeland Anti-kickback Act)

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When Requirements of Davis-Bacon and Related Acts Do Not Apply

- Demolition as a standalone activity
- Non-contiguous residential properties
- Projects with fewer than 8 contiguous residential units if funded with CDBG
- Force account labor

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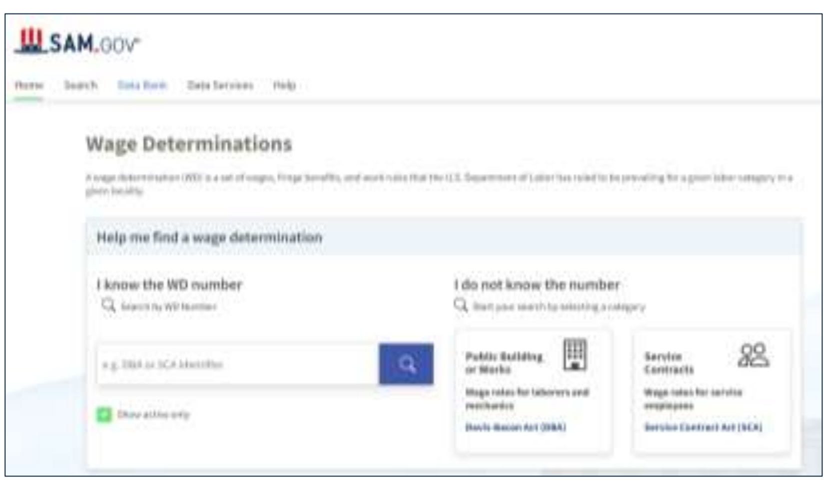
Walking through a Wage Determination

Davis-Bacon wage determinations are published on the System for Award Management (SAM) website at https://sam.gov/content/wage-determinations for contracting agencies to incorporate them into covered contracts.



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Davis-Bacon And Related Acts (DBRA) Subsection (D) of Appendix II

Subrecipient Responsibilities

- Subrecipients need to identify a "**Labor Standards Officer**" (LSO) who provides DBRA support (wage decisions, labor standards advice, monitoring, etc.)
- Subrecipients should establish a **construction contract management system** that enables appropriate involvement by the LSO
- Subrecipients must **include wage determination in solicitation documents** and **federal labor standards contract clause** in the contract
- Subrecipients must check for modifications to wage decisions **10 days before bid opening**
- Subrecipient must conduct **on-site inspections** and employee interviews to monitor compliance and identify any additional job classifications

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Davis-Bacon And Related Acts (DBRA) Subsection (D) of Appendix II

Want more information about DRBA?
The HUD Exchange has a CDBG-DR Labor Standards Training here.

Looking for contract clauses?
Consult Form HUD-4010, Federal Labor Standards Provisions.

Looking for other DBRA forms?
HUD has over 20 DBRA-related forms available online here. For example, you can see what HUD will be monitoring using Form HUD-4741, Monitoring Review Guide Agency On-Site.

Want to see an example DBRA policy?
Haywood County adopted its policy in June 2025. See the Haywood County DBRA Policies and Procedures.

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Copeland Anti-Kickback Act
Subsection (D) of Appendix II

- The "Anti-Kickback" provision of the Copeland Act applies to contractors and subcontractors that perform work on contracts for the construction, prosecution, repair, or completion of public buildings, public works, or works which are financed in whole or in part by loans or grants from the United States
- Prohibits a contractor or subcontractor to induce an employee to give up (“kick back”) any portion of their wages rightfully earned under a government contract
- The Copeland Act and implementing regulations also require contractors and subcontractors performing on covered contracts to pay their employees on a weekly basis to submit weekly payroll reports of the wages paid to their laborers and mechanics during the preceding payroll period.

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Contract Work Hours and Safety Standards Act
Subsection (E) of Appendix II

- CWHSSA applies to certain federally assisted construction contracts over $100,000 subject to Davis-Bacon and Related Acts labor standards where the federal government is not a direct party, ***except*** it does not apply to work where the federal assistance is only a loan guarantee or insurance
- Requires contractors to pay laborers and mechanics employed in the performance of covered contracts not less than one and one-half times their basic rate of pay for all hours worked over 40 in a work week

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Domestic Preferences
Subsection (L) of Appendix II

- **Federal agency requirements:** Buy American Act of 1933 (BAA)
- **"Soft" preference:** Uniform Guidance "Buy America" provision at 2 C.F.R. 200.322
- **"Hard" preference:** Build America, Buy America Act as part of the Infrastructure Investment and Jobs Act of 2021 (BABAA/BABA)

Remember: The Build America, Buy America (BABA) domestic content requirements do not apply to CDBG-DR funding

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CDBG-Specific Requirements

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The Uniform Notice's "Procurement Alternative Requirements"

Under Implementation, at Section III.B.7.a., HUD established "additional alternative requirements" for all procurement actions (but these requirements are related to contracts):

- The procuring entity is required to clearly state the period of performance or date of completion in all contracts
- The procuring entity must incorporate performance requirements and liquidated damages (as applicable) into each procured contract
- The procuring entity may contract for administrative support, but may not delegate or contract to any other party any inherently governmental responsibilities related to oversight of the grant, including policy development, fair housing and civil rights compliance, and financial management

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CDBG Funds Require More

- Uniform Relocation Act
- Section 104(d)
- Section 3
- Fair Housing and Non-Discrimination Requirements

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The Uniform Relocation Act
42 U.S.C. 4601

- The URA is a federal law that governs acquisition of property and provides protection and assistance for a “displaced person” due to a federally assisted construction project
- The URA applies to any project that involves property acquisition, rehabilitation, or demolition if federal funds are used at ***any*** stage of the project
- The URA has two types of requirements: acquisition and relocation requirements
- The URA provides two paths for acquisition of property: involuntary and voluntary

Note: The URA is not specific to CDBG-DR. The Department of Transportation is the federal agency responsible for administering the URA. However, HUD has its own requirements in implementing the URA.

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The Uniform Relocation Act
42 U.S.C. 4601

- Subrecipients should be aware that the URA imposes several notice requirements that apply depending on the nature of the project:
    - General Information Notice (GIN)
    - Notice of Relocation Eligibility (NOE)
    - Ninety-Day Notice (NOND)
- If an occupant of property will be displaced by the federally assisted project, they may be eligible for relocation benefits, such as actual and reasonable moving expenses and reestablishment expenses or a fixed payment in lieu of those expenses

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The Uniform Relocation Act
42 U.S.C. 4601

Want more information about the URA?

The HUD Exchange has a "URA the HUD Way" resource page, which includes short informational videos and written resources like flowcharts and fact sheets.

More information about the basics of the Uniform Relocation Act is available in this SOG blog post.

Looking for a Residential Anti-Displacement and Relocation Assistance Plan (RARAP)?

Consult NCDOC, which is developing a RARAP. Typically, subrecipients can adopt the grantee's RARAP or adopt their own.

Want to know how a subrecipient might be monitored for URA compliance?

Check out this URA File Checklist developed by the State of Montana.

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Section 104(d)
Housing and Community Development Act of 1974

Applies when CDBG funding is used in connection with demolition of lower-income residential structures or conversion of lower-income dwelling units into something other than a lower-income dwelling unit

Three basic requirements:

- RARAP required (24 CFR 42.325)
- 1 for 1 replacement (24 CFR 42.375)
- Special relocation assistance (24 CFR 42.350)

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Section 104(d)
Housing and Community Development Act of 1974

- Displaced lower-income persons under Section 104(d) are generally entitled to choose either:
  - Relocation assistance under Section 104(d)
  - Relocation assistance under the URA
- ***Note: The Universal Notice at Section III.B.15.c. waived Section 104(d) requirements to align relocation assistance with the URA; eligibility under Section 104(d) remains the same***
- Unlike the URA, there is no prohibition against providing Section 104(d) assistance and payments to persons not legally present in the United States
- Homeowners and nonresidential entities are not eligible for Section 104(d) relocation assistance regardless of income

Want more info?

See this Section 104(d) summary from HUD.

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Applicability of Section 3
Housing and Urban Development Act of 1968

- The purpose of Section 3 is to ensure that economic and employment opportunities generated by HUD assistance are directed to low and very low-income people and businesses that provide economic opportunities to these people
- Section 3 applies to projects or activities involving housing (construction, demolition, rehabilitation) or other public construction when the recipient has contracted with subcontractors for services, housing, or public construction activities AND the CDBG assistance in the project exceeds $200,000
- Section 3 does ***not*** apply to projects that do ***not*** involve rehabilitation and new construction, and it does ***not*** apply to materials only contracts
- Implementing regulations are found at 24 C.F.R. 75

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Requirements of Section 3
Housing and Urban Development Act of 1968

- Direct recipients of certain HUD financial assistance and their contractors and subcontractors are required to provide, to the greatest extent feasible, **contracts, employment, training**, and other to low- and very low-income persons in the local jurisdiction, referred to as **"Section 3 Workers"** and to businesses that employ or are majority owned by such persons, referred to as "**Section 3 Business Concerns"**

- NCDOC is responsible for ensuring compliance with Section 3 in administration of the CDBG-DR funding, but obligations flow down to subrecipients...

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Section 3
Subrecipient Requirements

- **Comply with Section 3 benchmarks (24 C.F.R. 75.23)**
  - At least 25 percent of total labor hours worked on a Section 3 project should be by Section 3 Workers; and
  - At least 5 percent of total labor hours worked on a Section 3 project should be by Targeted Section 3 Workers
- **Safe Harbor for Compliance (24 C.F.R. 75.23)**

  Section 3 recipients will be considered to have complied with the Section 3 requirements and met the "safe harbor" if they certify that they have followed the required prioritization of effort under 24 C.F.R. 75.19 ***and*** met or exceeded the applicable Section 3 benchmarks
- **If Safe Harbor Benchmarks Are Not Met (24 C.F.R. 75.25(b))**

  Recipients must show they made **"best efforts"** to comply, such as outreach, job fairs, working with workforce development programs, or using HUD's Section 3 Opportunity Portal

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Section 3
Subrecipient Requirements

- **Ensure Contractor and Subcontractor Compliance**
  - Include Section 3 requirements in contracts
  - Monitor contractors to ensure labor compliance
- **Outreach and Engagement**
  - Notify local Section 3 workers and businesses about opportunities
  - Work with job centers, housing authorities, and community-based organizations to recruit qualified workers and vendors
  - Maintain documentation of efforts, outreach, and results
- **Recordkeeping and Reporting**
  - Track labor hours worked by Section 3 and Targeted Section 3 workers
  - Collect and verify contractor reports
  - Submit required Section 3 reporting to the State

HUD FAQ:
What are the responsibilities of recipient agencies under Section 3?

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Section 3
Additional Resources

Want more information about Section 3 requirements?

You can learn more in "Section 3 in Action" on the HUD Exchange.

HUD also has Final Rule videos intended for internal partners, like procurement staff and attorneys, and external partners, like subrecipients and contractors.

Has your Section 3 question already been asked?

You can check this HUD Section 3 FAQs document, which was updated February 2025.

There is also a more extensive FAQs collection hosted on the HUD Exchange here.

Want to see a sample Section 3 Plan?

HUD has a sample available here. Subrecipients are not required to have Section 3 policies or plans, but HUD advises that they are a best practice.

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Fair Housing & Non-Discrimination Obligations

- The grantee must use its CDBG-DR funds in a manner that complies with its fair housing and nondiscrimination obligations, which include:
  - Section 109 of the HCDA,42 U.S.C. 5309
  - Titles VI and VII of the Civil Rights Act of 1964,42 U.S.C. 2000d *et seq*.
  - Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 (The Fair Housing Act)
  - Section 504 and 508 of the Rehabilitation Act of 1973,29 U.S.C. 794;
  - The Americans with Disabilities Act of 1990,42 U.S.C. 12131 *et seq*.
  - Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104-193

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Conflicts of Interest
2 C.F.R. 200.318(c)

- ✓ Recipient must maintain **written standards** of conduct covering conflicts of interest (COI) and governing actions of employees engaged in making and administering contracts
- ✓ An employee, officer, or agent with **a real or apparent** conflict of interest is prohibited from participating in the making or administering of contract supported by federal funds
- ✓ **Apparent COI** exists where reasonable person would question objectivity of decision-maker in the contracting process
- ✓ **Real COI** exists when any employee, officer, agent, or board members, or any member of their immediate family, business partner, or an organization that employs any of these individuals has a **financial interest, tangible personal benefit from, or other interest in a firm** considered for a contract

SOG UG Conflicts of Interest policy available here.

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CDBG Program Administrative Requirements
24 C.F.R. 570.489(g) and (h)

HUD regulations include two separate provisions on conflicts of interest, depending on the nature of the transaction:

Type 1: Procurement of supplies, equipment, construction, and services by the State, units of local general governments, and subrecipients

Type 2: Any transaction not covered by Type 1, including the acquisition and disposition of real property and the provision of assistance with CDBG funds to individuals, businesses, or other private entities by a unit of local government or its subrecipients

Governs employees engaged in the award or administration of procurement contracts

State can direct subrecipients to follow the Uniform Guidance or establish other methods that comply with subsection (g)

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A Closer Look at Type 2 Transactions
24 C.F.R. 570.489(h)

Covered People: Any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds

Prohibited Conduct: A covered person who exercises or has exercised any functions or responsibilities with respect to CDBG activities, who is in a position to participate in a decision-making process, or gain inside information ***or*** those with whom they have family or business ties ***cannot*** benefit from CDBG-assisted activity either for themselves

Period of Applicability: During the covered person's tenure or for one year thereafter.

Exceptions: The State can grant an exception to a local government if there has been a public disclosuree of the conflict and the attorney for the local government gives an opinion that the interest would not violate State or local law

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Byrd Anti-Lobbying Amendment
31 U.S.C. 1352

- *Prohibition:* The Byrd Amendment **prohibits using federal funds to lobby** Congress or a federal agency to award or renew a federal contract, grant, loan, or cooperative agreement
- *Contract Provisions:* Recipients of federal funds need to include contract provisions and certifications where contractors will be bidding for work of $100,000 or more; this requirement flows down to lower tiers
- *Certification and Disclosure:* Where federal funding is $100,000 or more, the Byrd Amendment also requires **certification** that applicants or bidders have not used appropriated funds to lobby in violation of the Amendment as well as file reports disclosing certain of the applicant's lobbying activities related to a contract, grant, loan, loan guarantee, or cooperative agreement

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The Hatch Act
5 U.S.C. 7323

The Hatch Act **restricts** the political activity of individuals principally employed by state, District of Columbia, or local executive agencies and who work in connection with programs financed **in whole or in part** by federal loans or grants.

The Hatch Act prohibits covered persons from:

- Candidacy for public office in partisan election, if salary is **entirely** federally funded;
- Using official authority or influence to **interfere** with or **affect** the results of an election or nomination; or
- Directly or indirectly **coercing** local officer or employee to contribute anything of value to a party, committee, organization, agency, or person for political purposes

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Other Prohibited Conflicts under Federal Regulations and State Law

Prohibitions on Design Professionals
General Statutes, Chapter 133 (Public Works)

G.S. 133-1. Cannot have a financial interest in materials or equipment.

G.S. 133-2. A manufacturer cannot draw up the specifications.

"The law is designed to mandate and encourage free and open competition on public contracts."

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Other Prohibited Conflicts under Federal Regulations and State Law

Prohibitions on Procurement
The Uniform Guidance, 2 C.F.R. 200.319(b)

✓ Cannot specify a "brand name" product—instead, allow equal product to be offered and describe the performance requirements

✓ ***Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals cannot compete on those procurements***

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Putting It All Together

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Getting Prepared for Federal Procurement

- ❑ Confirm that your unit has an updated procurement policy that includes federal provisions (sample policy available here)
- ❑ Confirm that your unit has an updated conflict of interest policy (sample policy available here)
- ❑ Self-certify to increase your unit's micro-purchase threshold (more here)
- ❑ Authorize electronic advertising for formal purchases and construction or repair (sample resolution available here)
- ❑ Develop contract clauses to comply with federal agency guidance and Appendix II of 2 C.F.R. 200, as applicable

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Considerations for Compliance

- ❑ Consider contracting with consultants to assist with regulatory compliance or construction management (more on construction project advisory services here)
- ❑ Adopt policies to direct employees on procedures for CDBG-DR compliance
- ❑ Work with your attorney to develop a universal contract clause addendum that can accompany existing templates
- ❑ Be on the lookout for forthcoming resources; NC Department of Commerce, other State agencies and offices, and the various partners are working together to provide your agencies with guidance and support

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Thank You!

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