



# Local Match Program Technical Assistance Training

# Contact Us

- For all questions, please e-mail us at:
- [LOCALMATCH@stormrecovery.ny.gov](mailto:LOCALMATCH@stormrecovery.ny.gov)
- For FAQ's and all other information, visit:
- <http://stormrecovery.ny.gov/infrastructure>.

# Program Goals

- To have the State of New York cover your local match reimbursement for your storm related FEMA Public Assistance projects and to make the process as seamless as possible, and
- To minimize to the extent possible the number of requests made by GOSR of PA applicants, to provide documentation required by the United States Department of Housing and Urban Development, HUD.

# Program Goals

- GOSR Staff & our consultants **are here to help** applicants through the process
  - This includes monitoring and compliance items we are going to explain today
  - Providing Technical Assistance on procurement for projects that have not begun or in the process, and
  - Providing Technical Assistance and methods for applicants to submit HUD documentation

# Process

- Applicants should continue to utilize and follow all Division of Homeland Security and Emergency Services, DHSES, and FEMA PA processes
  - IT IS CRITICAL THAT APPLICANTS CONTINUE TO WORK WITH DHSES
  - This includes submitting requests for reimbursement through DHSES & completing all DHSES & FEMA required reporting requirements

# Funding

- The funding for this program came from HUD.
- New York State received these funds to assist communities recover from the Storm.
- To ensure that all storm impacted sectors were addressed, GOSR created within the Local Government and Infrastructure Program, the Match Program, so that as you recover you will not need to be saddled and concerned with finding funds to address your match obligations.
- It is one of 4 main program areas at GOSR. Other large programs focus on Housing, Small business, and the NY Rising Community Reconstruction program

# What Are the Rules

- Like FEMA, HUD funding comes with many rules. GOSR is committed to working with each one of you to make this program operate as efficiently as possible.
- For some PA areas like Debris removal – Category A - many HUD rules we will discuss today do not apply. For the rebuilding categories (C-G) the rules will vary somewhat based on how far along projects are in being completed and what State and Federal laws as a public body you must follow.
- We want to stress, we will help you navigate the crosswalk between FEMA and HUD rules within each PA category. We will work with you to understand and explain specific PW's requirements.

# What are the Rules

- That said the program does have specific rules that the State must follow. A goal for today is to begin to inform you about some of these rules, we do not need for you to memorize them. We will help you comply with them. To that end after this presentation and meetings adjourn this week, we will be sending you electronically, materials discussed today.
- Some elements like procurement we will work with you on a one on one basis so that you remain compliant with the program. To do this GOSR may need to conduct site visits and hold additional Technical Assistance workshops with you either directly or in meetings like this.
- All of this will be done after we analyze your PW's and determine what additional information is needed

# The Process

GOSR staff, like DHSES, has been given access by FEMA to EMMIE so that we can minimize the burden of asking you for HUD documents that may be in your EMMIE files. We therefore start by;

- Initially analyzing information on project worksheets and other materials that you have uploaded and is contained in the EMMIE database.
- We then see if we have all the necessary documentation needed to process your match payment.

# The Process

- If we have all the information we need, will inform DHSES that our PW's are ready to have the match payment made on your behalf. However if after that review it is determined that more information is needed for HUD, GOSR staff will contact YOU, the applicant, to request specific documentation.
  - That request will come from GOSR via an e-mail letter and it will request what specific information is missing
  - We will ask if you have the information and how we can obtain it electronically from you.

# The Process

- GOSR will request information be scanned or photocopied and emailed to us.
- If there are questions about how to do this, if you need additional assistance GOSR staff, will help you if necessary.
- After obtaining this information GOSR Staff will make a payment recommendation to DHSES and
- DHSES will submit reimbursement to you at 100% share with 90% of the funds coming from FEMA and 10% coming from STATE RESOURCES for Sandy and 75% of the funds coming from FEMA and 25% coming from STATE RESOURCES for all other storms!

# Typical Items Requested

- Procurement Policy
- Payroll Policy (Employee Contracts)
- Payroll or Timesheets during work (Force Labor)
- Bids and Contracts
- Certified Payroll (Outside labor)
- Invoices
- Canceled Checks

# Big Question – How Much Will I Get?

- Because GOSR has access to the EMMIE database, the State has budgeted enough funds from this program to cover your match obligations.
- As long you remain compliant with FEMA and DHSES programs and provide GOSR with documentation requested, The State will cover your Storm PA match obligations for PW's that were found to be eligible by FEMA and are in the EMMIE database.
- If additional projects become eligible or the scope of work increases from what is currently showing, as long as the project remains FEMA eligible, your match costs will be paid for.

# Reimbursement – When & How?

- REIMBURSEMENT will come through DHSES in the same method as you get your current reimbursement.
- However as opposed to getting 90% of the request for Sandy and 75% for all other storms, you will now receive 100%, assuming you complete and provide GOSR with requested items
- How much and when you get payments will be tied to the PW and what stage each PW is in (complete, in progress, or yet to begin)
- For those of you here, GOSR will inform DHSES this week that you attended and GOSR staff will begin to analyze your PW's so that we can as quickly as possible start making payments to you for work that is completed and done
- However, as a reimbursement based program - work must be completed and/or you must have submitted a request for payment for work (progress payment)

# Small Projects

- GOSR will analyze your small PW's to determine eligibility and ensure the required HUD documentation is obtained. Assuming you have also requested payment from DHSES, when the GOSR review is complete, the State will make a “lump sum” payment to cover your match costs for small PW's that have been paid
- For Small projects where you have not yet submitted to DHSES a request for payment, you will, upon that request, be paid the 100% share.

# Large Projects

- due to the size and complexity of these projects, GOSR will initially review EMMIE and look for projects where work has already been completed.
  - A good example is Debris Removal. We expect that most Debris removal work is complete now. GOSR will analyze these files and upon completion, make a recommendation that the state make a lump sum “Catch-up” payment to account for 10% match cost for Sandy and 25% for all other storms.
  - For projects that are yet start and or are in progress, we will cover these in the balance of the presentation. We want to stress though that for work that is in progress and has yet to begin we will work with each applicant to address specific project needs to remain compliant.



Goal of the training is to provide an introduction of the HUD required components that are not contained your FEMA PA program so that the State of New York can make your local match payments on your behalf ` and reimburse you for work completed



# Monitoring & Compliance Overview

# Today's Topics

Today, we will discuss four areas of CDBG-DR compliance as follows:

- Davis-Bacon
- Section 3
- Minority- and Women-Owned Business Enterprises (M\MBE)
- Fair Housing



# Applicability Examples

# Applicability – Scenario 1

Because of the Storm, I performed debris removal work that was completed in January of 2014. What applies to this Scenario?

- Davis-Bacon does not apply.
- Section 3 does not apply.
- M\WBE does not apply.
- Fair Housing does not apply.
- Debris removal is an eligible activity.

In Scenario 1, you should seek reimbursement from DHSES through the normal channels.

# Applicability – Scenario 2

My fire truck was destroyed by floodwater and I need to purchase a new one. What applies to this Scenario?

- Davis-Bacon does not apply.
- Section 3 does not apply.
- M\WBE does apply.
- Fair Housing does not apply.
- Equipment replacement is an eligible activity.
- In Scenario 2, you should seek reimbursement from DHSES through the normal channels.

# Applicability – Scenario 3

I am going to repair an elementary school damaged by the Storm. What applies to this Scenario?

- Davis-Bacon does apply.
- Section 3 does apply.
- M\WBE does apply.
- Fair Housing does apply.

Because the work has not been performed, you will need to comply with all of the regulations presented today. GOSR will assist you in complying with these regulations

# Applicability – Scenario 4

I've completed 50% of the work to clean out and replace sewers impacted by the Storm. What applies to this Scenario?

For all future work moving forward:

- Davis-Bacon does apply.
- Section 3 does apply.
- M\WBE does apply.
- Fair Housing does apply.

Because the work has not been completed, you will need to comply with all of the regulations presented today. GOSR will assist you in complying with these regulations and determining how far long each project is so that these apply these regulations for remaining phases

# GOSR Technical Assistance

- As part of the State's process, GOSR will work with each applicant to identify what stage your Public Assistance project is in.
- Based upon this information, we will work with each applicant to develop an appropriate plan for you to remain in compliance with the topics we will discuss today.

# Davis-Bacon Act

# What is the Davis-Bacon Act?

The Davis-Bacon Act (DBA) applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

- Davis-Bacon is applicable to all laborers and mechanics employed by contractors and subcontractors.
- Contractors must submit a wage determination for all covered workers and categorizes prior to commencing work
- A Davis-Bacon **wage decision** is simply a listing of different work classifications and the minimum wage rates that must be paid to anyone performing work in those classifications.

# What is a “Prevailing Wage”

- The Davis-Bacon “prevailing wage” is the combination of the basic hourly rate and any fringe benefits listed in a Davis-Bacon wage determination.
- The contractor’s obligation to pay at least the “prevailing wage” can be met by paying entirely cash wages or through a combination of cash wages and employer-provided bona fide fringe benefits.
- Prevailing wages, including fringe benefits, must be paid to each covered employee for all hours worked on the applicable job site.

# New York Prevailing Wage

- In some cases in which New York State Prevailing Wages and Davis-Bacon Prevailing Wages both apply. In such instances, the higher of the two will prevail.
- For assistance in determining which Davis-Bacon wage rates apply to a particular project, contact the GOSR CDBG-DR Division Labor Specialist, or contact the New York State Department of Labor at [www.labor.ny.gov](http://www.labor.ny.gov).

# Contractor Requirements

- Contractors and subcontractors are required to pay covered workers weekly and submit weekly certified payroll records to the contracting agency.
- Contractors must maintain all payroll records for at least three (3) years.
- If a Contractor is found to be noncompliant, penalties and sanctions may be imposed.

# Section 3 Overview

# Section 3

## What is Section 3?

Section 3 of the Housing and Urban Development Act of 1968 . . . ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, *to the greatest extent feasible*, be directed to low- and very low-income persons.

**Section 3 Residents Include:** Public housing authority (PHA) residents. Low and very-low income persons in the area.

**Section 3 Businesses Include:** Businesses owned by Section 3 Residents or that employ the same.

# GOSR Section 3 Contract Goals

- At least **30%** of all **NEW** employees hired have to be Section 3 residents; **AND**
- At least **10%** of the total dollar amount of all Section 3 covered contracts for housing rehabilitation, construction, and other public construction should be granted to eligible Section 3 businesses ; **OR**
- At least **3%** of the total dollar amount of non-construction (e.g., professional services) contracts should be granted to eligible Section 3 businesses.

# Section 3 Outreach Strategies

- Request current list of Section 3 eligible applicants and certified Section 3 businesses from housing authorities and other HUD CDBG-funded agencies.
- Advertise job and subcontracting opportunities in local, community papers and job boards in impacted areas and LMI communities.
- Utilize the recently created **GOSR Local Workforce Opportunities Program** to recruit and attract Section 3 eligible applicants for posted positions.
- Contact local community organizations (e.g. faith-based organizations, community centers, organizations that serve adult special needs population, etc.) and provide them with job postings for Section 3 eligible applicants.

# Section 3 Outreach Strategies

(cont.)

- Partner with the NY Division of Employment and Workforce Solutions (<http://labor.ny.gov/dews-index.shtm>) to promote special advertisement of Section 3 job postings and opportunities.
- Clearly indicate on all job applications and websites for job postings that the position is “A Section 3 eligible job opportunity.”
- Word-of-Mouth – ask others to refer qualified applicants to your firm.

# Minority and Women-Owned Businesses (M\WBE)

# Minority and Women-Owned Business Enterprises

- Article 15-A of the New York Executive Law (M\WBE Regulations) sets annual goals for direct and indirect contracting opportunities with certified minority-and women-owned business enterprises.
- Contractors must make a “good faith effort” to enter into a state contract (or subcontract) with a certified, small business that is 51% owned by a minority or woman with a contract value in excess of (1) \$25,000 for labor, services, equipment, materials, or any combination of the foregoing; or, (2) \$100,000 for real property renovations and construction.

# GOSR M\WBE Utilization Goals

As a GOSR applicant, there is a requirement to contract with qualified M\WBEs for a minimum of 30% of the contract value

- Goal of 15% to minority-owned businesses; and
- Goal of 15% to women-owned businesses.

# GOSR's Office of Monitoring and Compliance

Each successful applicant must submit a M\WBE Utilization Plan to Subrecipient during bid process and prior to the award of a State contract.

Each Subrecipient and Contractor must submit a **Quarterly Compliance Report** to **MWBE\_EEOCreports@stormrecovery.ny.gov**. These are due by the 15th after the end of the quarter.

The four reporting quarters are:

- April 1st - June 30th (1st quarter due July 15th);
- July 1st - September 31st (2nd quarter due October 15th);
- October 1st - December 31st (3rd quarter due January 15th); and
- January 1st - March 31st (4th quarter due April 15th).

# M\WBE Utilization Strategies

- Search Empire State Development Corporation's (ESD) M\WBE website located at:  
[https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=6478;](https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=6478)
- Provide direct communication channels (e.g. posting procurement opportunities on website) to local W\MBE professional organizations to assist in outreach;
- Unbundle contracts to make smaller procurement opportunities that M\WBEs will qualify for (e.g., lower bonding requirements; lower insurance requirements; #of years of prior experience, etc);

# M\WBE Utilization Strategies

## (cont.)

- Host “Meet the Prime” vendor outreach forums to connect M\WBEs to prime contract holders;
- Provide additional points in procurement scoring (weighted 5% -10%) for M\WBE inclusion;
- Submit procurement opportunities to ESD and other State agencies; and,
- Encourage M\WBE firms to submit bids and respond as prime vendors.

# Fair Housing Compliance

# What Does Fair Housing Mean?

The Federal Fair Housing Act\* extends a person's right to live in the housing of her\his choice free from discrimination as long as s\he has the means to do so regardless of:

- Race;
- Color;
- National origin;
- Religion;
- Disability; and,
- Familial status (defined as the presence of children under age 18)

\*42 U.S.C. 3601-19

# New York Fair Housing Law

The New York State Human Rights Law\* covers all the same characteristics as the Federal Fair Housing Act, but offers additional protections based upon:

- Creed
- Age
- Sexual Orientation
- Marital Status
- Military Status

\*New York State Executive Law Article 15 §§290-301

# Fair Housing Impediments

The following are examples of impediments to Fair Housing:

- Refusing to rent, sell, finance, insure, or negotiate for housing;
- Zoning laws around transportation hubs could prohibit development of affordable housing;
- Relocation of a protected class to areas that lacks equal opportunities for access to green space and parks; and,
- Refusing to make or provide information for a loan, or imposing different terms or conditions for a loan.

# Additional Civil Rights Obligations

- Title VI of the Civil Rights Act of 1964
- Limited English Proficiency
- Equal Employment Opportunities
- The Americans with Disabilities Act
- The Pregnancy Discrimination Act
- The Equal Pay Act of 1963 (EPA)
- The Age Discrimination in Employment Act of 1967
- The Genetic Information Nondiscrimination Act of 2008

# Contract Requirements: Exhibit E

# “Exhibit E”- Supplementary Conditions for Contracts

- Pursuant to a contractual relationship yet to be determined among GOSR and its Federal and State partners, “Exhibit E” shall be incorporated into all contracts, subcontracts and lower-tiered subcontracts.
- “Exhibit E” must be a part of the bid packages for all contracts that are covered by CDBG-DR funds.
- With respect to the Davis-Bacon Act, all appropriate wage determinations shall be included in all bid packages, as applicable.

# Other GOSR Required Forms

- HUD-2516 Contract and Subcontract Activity (annually)
- HUD-60002 Section 3 Summary Report (quarterly)
- PROC 1 – EEO Staffing Plan (bid)
- PROC 2 – M/WBE Utilization Plan (bid)
- PROC 3 – Request for Waiver (bid if waiver sought)
- PROC 4 – M/WBE and EEO Policy Statement (bid)
- PROC 5 – Workforce Employment Utilization Report (quarterly)
- PROC 6 – M/WBE Quarterly Report (quarterly)
- PROC 8 – EEOC Statement (bid)
- HUD-4710 Semi-Annual Labor Standards Enforcement Report (semi-annually)
- WH-347 Federal Weekly Payroll Form (weekly)
- ADM-123 Cumulative Pay Statement (quarterly)
- ADM-146 Affirmation of Income Payments to MBE/WBE (quarterly)
- ADM-136 Monthly Employment Utilization Form (monthly)

# Governor's Office of Storm Recovery

Exhibit E – Supplementary Conditions for Contracts



- Exhibit E contains terms that are required by HUD to be included in contracts and subcontracts by CDBG-DR grantees and their subrecipients
- Subrecipients must incorporate all of Exhibit E, including the instructions, by reference into their contracts, and provide Exhibit E to their contractors
- Subrecipients also must require their contractors to do the same for their subcontractors at all tiers

# Governor's Office of Storm Recovery



Population of Information in Exhibit E

- Subrecipients need to populate Exhibit E with certain information before providing Exhibit E as part of bid packages for all contracts
  - Introductory Statement
  - Insurance Requirements

Governor's Office of Storm Recovery  
Supplementary Conditions for Contracts

## INTRODUCTORY STATEMENT

"Project" or "Program": [Insert]

Project Location: [Insert]

"Subrecipient": [Insert Name and Address]

"Contractor": [Insert Name and Address]

Contract Number: [Insert]

"Insurance Requirements": See Attachment A to Introductory Statement

Housing Trust Fund Corporation ("HTFC" or "Grantee"), acting through the Governor's Office of Storm Recovery ("GOSR") has entered into a Subrecipient Agreement with the Subrecipient for a grant of Community Development Block Grant Disaster Recovery ("CDBG-DR") funds for purposes of the design and construction of the Project (the "Subrecipient Agreement"). This grant represents a portion of CDBG-DR funds received or to be received under the Federal CDBG-DR program

# Governor's Office of Storm

## Recovery

### Introductory Statement



- The Subrecipient needs to add the following information to the Introductory Statement:
  - Project or Program Name
  - Project Location
  - Subrecipient Name and Address
    - Full legal name of the subrecipient
    - Also insert subrecipient name at signature block, but do not sign
  - Contract Number
- Prospective contractors providing bids should populate:
  - Contractor Name and Address
    - Also insert contractor name at signature block, but do not sign

# Governor's Office of Storm

## Recovery

### Insurance Requirements



- Subrecipients must impose the insurance requirements on contractors and subcontractors that it would in the usual course of business, commensurate with the activity at issue
- Such insurance requirements should be set forth in the contract
- Exhibit E's Attachment A, "Insurance Requirements," however, imposes additional requirements:
  - Contractors and subcontractors must provide the same insurance rights that they provide to the subrecipient to the Housing Trust Fund Corporation (HTFC)
  - Contractors and subcontractors must:
    - Indemnify, defend, and hold harmless HTFC
    - Name HTFC as an additional insured on all policies
    - Provide HTFC with copies of all policies and evidence of insurance

# Governor's Office of Storm

## Recovery

### Order of Precedence



- Note that Part 1 of Exhibit E sets out which terms take precedence in the event of a conflict that makes compliance by a contractor or subcontractor impossible:
  - Instructions for the subrecipient regarding Exhibit E; then
  - The HUD General Provisions (Part 3)
  - The HTFC M/WBE Requirements (Part 4); then
  - The HTFC Standard Clauses (Part 5); then
  - The Required Contract Terms (Part 2); then
  - The terms of the contract between the subrecipient and the contractor, or contractor and subcontractor
- Note: If any provision of these Supplementary Conditions relates to a matter embraced by another provision(s) of these Supplementary Conditions, but is not in conflict therewith, all such provisions shall apply
- Questions regarding priority should be raised with GOSR

# Governor's Office of Storm Recovery



## Flowdown to Contractors' Subcontractors

- Subrecipients must require their contractors to flow down Exhibit E to their subcontractors at all tiers
- As stated above, subrecipients must include the Exhibit E instructions, as they show how the interpretation of terms changes at each tier:
  - Essentially, references to a federal or state entity refer to:
    - The subrecipient (at the contract level)
    - The contractor (at the first subcontract level)
    - Exceptions apply for governmental functions. Seek guidance from GOSR as needed.
  - With respect to references to “Subrecipient” and “contractor”:
    - “Subrecipient” refers to the contractor (at the contract level)
    - “Contractor” refers to the subcontractor (at the contract level)
  - And on down the line if there is further subcontracting

# GOSR Is Here To Help You!

GOSR is available to assist you every step of the way to comply with the laws that we have discussed today.

# Next Steps

- GOSR will be e-mailing in PDF format materials covered today to assist you in moving forward within the next week or you can access via the website provided earlier and on the following screen.
- GOSR will be communicating with DSHSES and Department of Budget to prepare match payments as part of the program.
- GOSR staff will communicate with each of you directly to validate that the PW's information contained in EMMIE .

# Contact Us

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- For FAQ's and all other information, visit:
- <http://stormrecovery.ny.gov/infrastructure>.