



# COLORADO

## Division of Homeland Security & Emergency Management

Department of Public Safety

**August 16, 2016**

Subject: DHSEM On-Site Monitoring Visit for Lyons – Initial Results – FOLLOW UP ACTION REQUIRED

Dear Lyons,

On behalf of the Colorado Department of Public Safety, Division of Homeland Security & Emergency Management (DHSEM), we would like to thank you for your cooperation with the monitoring visit on June 1, 2016. The reason for the site visit was not to perform an audit, but rather to conduct a monitoring review of your federally funded grant programs (administered by DHSEM), the related processes/procedures, and the quality of documentation being maintained to support program activities. Our goal of this review was to help you prepare for and respond to future audits and/or reviews.

Our monitoring visit was required by the Federal Office of Management and Budget (OMB) Circular A-133 and/or Title 2 of the Code of Federal Regulations § 200.331(e), as applicable, which states that DHSEM, as a pass-through entity of federal funding, is responsible for performing on-site reviews of your program operations to ensure proper accountability and compliance with program requirements and achievement of performance goals.

During our visit, we examined certain functions of your organization related to the administration of funds under the following grant programs and the compliance requirements applicable to your grant(s) and associated project(s):

- Public Assistance (PA) – CFDA 97.036
- Community Development Block Grant – Disaster Recovery (CDBG-DR) – CFDA 14.269
- Hazard Mitigation Grant Program (HMGP) – CFDA 97.039

The administrative requirements and cost principles from Title 2 of the Code of Federal Regulations apply to all federal grants awarded to DHSEM after December 26, 2014. For all grants awarded prior to this date, various OMB circulars govern the administrative requirements and cost principles as outlined in this letter. Audit requirements for all grant programs are governed by Title 2 of the Code of Federal Regulations for fiscal years beginning after December 26, 2014 regardless of award date.

The objective of these monitoring activities was to make an assessment of performance towards project objectives and an evaluation of compliance towards program requirements.

The observations, risks, and recommendations detailed in *Attachment 2* and *Attachment 3* of this letter are based on the fieldwork conducted by our team. *Attachment 1* provides the categories and general scope reviewed during our on-site monitoring visit. *Attachment 2* highlights areas of improvement that require your follow up. *Attachment 3* highlights leading practice recommendations that do not require follow up but are provided for your benefit. *Attachment 4* provides additional guidance on the observations, risks, and recommendations included in *Attachments 2* and *3*. Please submit a corrective action plan in the “Subrecipient’s Response” section below for each observation noted in *Attachment 2*. The corrective action plan should contain your organization’s plans to implement the recommendations listed. Your response should include scheduled dates of implementation and the names of responsible parties. Additionally, please include a detailed response and plan if you intend to present alternative solutions to address the observations reported. **Please submit your response to CDPS [SRM@state.co.us](mailto:SRM@state.co.us) by September 12, 2016 to ensure compliance with DHSEM requirements.** Based on your response, we will either accept or decline your plan of action.





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*Note: Given the recent OIG audit of the Town of Lyons, we have provided a mapping of our observations to the findings outlined in the OIG audit report. This mapping can be found in Attachment 4, Exhibit A.*

If you should have any questions regarding this letter, please contact the Subrecipient Monitoring Team at [CDPS\\_SRM@state.co.us](mailto:CDPS_SRM@state.co.us) or contact Ezzie Michaels at 720.852.6607.

We thank you again for your cooperation and will continue to provide assistance to ensure that your entity and the State continue to comply with all federal grant requirements.

Sincerely,

Ezzie Michaels  
Grants & Contracts Manager  
[ezzie.michaels@state.co.us](mailto:ezzie.michaels@state.co.us)





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### **Attachment 1: Scope Activities Performed**

The objective of the Subrecipient Monitoring visit was to assess your organizations ability to maintain compliance with the regulations governing the federal grants you have received through DHSEM. The following categories and general scope were reviewed during our on-site monitoring visit as applicable:

Category	Scope
Control Environment	<p>Our assessment of your organizations control environment included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Overall internal control structure (e.g. policies and procedures, reporting lines, etc.)</li> <li>✓ Code of ethics, Conflict of interest certifications</li> <li>✓ Prior experience with management of grant programs and Federal funding</li> <li>✓ Familiarity with DHSEM points of contact</li> <li>✓ Implementation of corrective action resulting from audits and other monitoring activities</li> <li>✓ Segregation of duties for grant management functions</li> </ul>
Allowable Activities / Costs / Expenditures	<p>Our assessment of your organizations expenditures included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Procedures for ensuring expenditures comply with cost principles</li> <li>✓ Process for valuing in-kind contributions and donated resources</li> <li>✓ Allowability and review of travel and per-diem expenses</li> <li>✓ Proper controls in the expenditure cycle (e.g. approval processes for expenditures)</li> </ul>
Accounting	<p>Our assessment of your organizations grant accounting included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Validating use of cost centers for grant projects</li> <li>✓ Maintenance of a chart of accounts for federal, state, and insurance funding</li> <li>✓ Review of reconciliation practices and procedures</li> <li>✓ Process for reconciling budget overruns and variances</li> </ul>
Reporting	<p>Our assessment of your organizations reporting practices included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Policies and procedures governing reporting practices</li> <li>✓ Supporting documentation for reported milestones and expenditures</li> <li>✓ Communication of passed through funding to DHSEM and Federal agencies</li> </ul>
Cash Management And Advances	<p>Our assessment of your organizations cash management practices included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Processes established to manage cash advances in accordance with regulations</li> <li>✓ Policies or procedures for timely payment of vendors</li> <li>✓ Verifying that in-kind contributions are used only for local match amounts</li> </ul>
Equipment & Inventory	<p>Our assessment of your organizations equipment management practices included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Policies and procedures in place to manage equipment purchased with grant funding</li> <li>✓ Maintenance of property records that reflect required data points</li> <li>✓ Controls to protect equipment from theft, loss, or damage</li> <li>✓ Tagging of assets</li> <li>✓ Validation of proper disposition practices and policies</li> <li>✓ Inventory practices</li> <li>✓ Depreciation of assets in line with organizational depreciation schedules</li> <li>✓ Documentation of maintenance procedures</li> </ul>





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<p>Labor &amp; Time Accounting</p>	<p>Our assessment of your organizations labor and time accounting practices included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Documentation of Job descriptions for employees splitting time between grant and non-grant activities</li> <li>✓ Review of salary and fringe benefit allocations to grant projects</li> <li>✓ Support for administrative time and force account labor (timesheets)</li> <li>✓ Compliance with Davis Bacon (as applicable)</li> </ul>
<p>Procurement &amp; Contracts</p>	<p>Our assessment of your organizations procurement practices included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Documentation of policies and procedures for procurement</li> <li>✓ Review of contract types used under Federal grants</li> <li>✓ Review of supporting procurement documentation and bid tabulations</li> <li>✓ Review of contracts with vendors for proper flow down provisions</li> <li>✓ Verification of use of debarment and suspension lists</li> <li>✓ Utilization of minority and women owned businesses</li> <li>✓ Use of geographical preference in bid criteria</li> <li>✓ Use of contract management systems for managing vendors</li> </ul>
<p>Subrecipient Monitoring (Subaward)</p>	<p>Our assessment of your organizations subrecipient monitoring included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Determination of contract vs. subaward</li> <li>✓ Proper documentation of pass through funding</li> <li>✓ Compliance with FFATA, Single audit reporting</li> <li>✓ Review of single audit results</li> <li>✓ Follow up on subrecipient’s corrective action plans</li> <li>✓ Verification of subrecipient’s use of grant flow down provisions</li> </ul>
<p>Project Progress</p>	<p>Our assessment of your organizations project progress monitoring included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Processes for accurately reporting project progress</li> <li>✓ Documentation of why established goals were not met</li> <li>✓ Comparison of actual project progress vs. reported progress</li> </ul>
<p>Record Retention</p>	<p>Our assessment of your organizations record retention practices included a review of the following:</p> <ul style="list-style-type: none"> <li>✓ Documented record retention policies and procedures</li> <li>✓ Backup and secure storage of documentation</li> <li>✓ Organization of supporting files</li> </ul>
<p>Other</p>	<p>In addition to the reviews listed, the following may have been reviewed or discussed:</p> <ul style="list-style-type: none"> <li>✓ Follow up on variances from quarterly reports</li> <li>✓ Feedback for DHSEM related to program administration</li> <li>✓ Technical training on EMGrants Pro platform</li> <li>✓ Need for in person training or guidance for grant programs</li> </ul>





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### Attachment 2: Summary of Guidance Observations

Observations related to required guidance require your organization’s response. Please note this response in the “Subrecipient’s Response & Corrective Action Plan.”

*Note: During our on-site monitoring visit, we provided initial results during our exit meeting based on the documentation reviewed and interviews conducted. Since that time, it is possible that observations below were made during the final review of documentation that were not discussed during the exit meeting.*

Guidance Observation #1	
<b>Area of Review:</b>	Contracts and Procurement – Procurement Requirements
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our review of the Town’s Administrative Purchasing Policy, it was noted that key policies and procedures related to procurement under Federal Grants were not included. The missing policies include avoiding duplicative items, consideration of use of geographical preference in vendor selection, consideration of women and minority owned business, and avoiding cost plus percentage contracting vehicles.
<b>Compliance Requirement:</b>	<p><u>PA 4145, CDBG-DR, and HMGP 2015:</u></p> <p><i>44 CFR 13.36(b)(4) Avoiding Unnecessary and Duplicative Items</i>  <i>Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.</i></p> <p><i>44 CFR 13.36(c)(2) Geographical Preference</i>  <i>Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences</i></p> <p><i>44 CFR 13.36(c)(3) Procurement Procedures</i>  <i>Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:</i></p> <p><i>(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and</i></p> <p><i>(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.</i></p>





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### *44 CFR 13.36(e) Small, Minority, and Women Owned Businesses*

*(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.*

*(2) Affirmative steps shall include:*

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;*
- (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;*
- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;*
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and*
- (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.*

### *44 CFR 13.36(f)(4) Cost Plus Percentage Contracts*

*The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.*

#### Future Grant Programs:

### *2 CFR 200.318(d) Avoiding Unnecessary and Duplicative Items*

*The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.*

### *2 CFR 200.319(c) Procurement Procedures*

*The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:*

- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.*
- (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.*

### *2 CFR 200.321(a) Small, Women, and Minority Owned Businesses*

*(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.*

*(2) Affirmative steps shall include:*

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;*
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;*





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	<ul style="list-style-type: none"> <li>(iii) <i>Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;</i></li> <li>(iv) <i>Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;</i></li> <li>(v) <i>Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and</i></li> <li>(vi) <i>Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.</i></li> </ul> <p><i>2 CFR 200.323(d) Cost Plus Percentage Contracts</i>  <i>The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.</i></p>
<b>Risks:</b>	<p>Failure to document procurement policies outlined for grant activities in the Code of Federal Regulations could result in ineligible procurement actions for grant related activities. Improper procurement can lead to deobligation of costs associated with the procurement action, and/or additional administrative costs in performing a cost analysis to validate vendor selection.</p>
<b>Recommendations:</b>	<p>It is recommended that the procurement policies be updated and referenced in the Grant Management Guidelines. This includes the legacy OMB circulars for grants issues prior to 12/26/2014 and the Uniform Guidance for grants issued after that period. Additionally, the Town should follow these guidelines for any further procurement required during their current federal grant cycle.</p>
<b>Subrecipient's Response &amp; Corrective Action Plan:</b>	





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Guidance Observation #2	
<b>Area of Review:</b>	Procurement and Contracts – Contract Type and Provisions
<b>Applicable Programs:</b>	Public Assistance
<b>Observations:</b>	Per our review of the contract (10/10/13) and contract amendment (10/13/13) for Project 30 with Triple R Excavation, it was noted that the contract type used for the works (time and materials without a “sum not to exceed clause”) is unallowable and the contractor was not registered in SAM.gov. Additionally, the contract did not contain the flow down provision for the equal opportunity clause as outlined in 44 CFR.
<b>Compliance Requirement:</b>	<p><i>FEMA Public Assistance FAQ - Time and materials contracts should be avoided but may be allowed for work that is necessary immediately after the disaster has occurred. If used, you must carefully document contractor expenses. A cost ceiling or "not to exceed" provision also should be included in the contract.</i></p> <p><i>44 CFR 13.36(i) Contract provisions.</i>  <i>A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.</i></p> <p><i>(1) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)</i></p>
<b>Risks:</b>	Failure to include key flow-down provisions in contracts as required in 44 CFR can expose subrecipients to financial and operational risks associated with non-compliance. This can result in deobligation of funds during the closeout process if activities performed under the aforementioned contracts are noncompliant with federal regulations. Additionally, the use of improper contracting vehicles may result in deobligation of associated costs if the costs are determined to be unreasonable.
<b>Recommendations:</b>	It is recommended that the Town include the contract provisions outlined in 44 CFR13.36(i) in all future contracts for federal grant-related work and that an effort is made to adjust the existing contracts in violation, where possible, to ensure that these regulations are followed. Additionally, the Town should avoid the use of time and materials contracts without a sum not to exceed clause.
<b>Subrecipient's Response &amp; Corrective Action Plan:</b>	





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Guidance Observation #3	
<b>Area of Review:</b>	Record Retention – Procurement Documentation
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our review of procurement transactions for Triple R Excavation (PA-30), Loris & Associates (PA-613), Land & Title (HMGP-45, CDBGDR-160022), and Naranjo Civil Constructors (CDBGDR-160022), it was noted that the Town has not maintained documentation evidencing consideration of Women & Minority owned businesses during procurement.
<b>Compliance Requirement:</b>	<p><i>44 CFR 13.36 (e) Contracting with small and minority firms, women’s business enterprise and labor surplus area firms.</i></p> <ul style="list-style-type: none"> <li><i>(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible</i></li> <li><i>(2) Affirmative steps shall include:</i> <ul style="list-style-type: none"> <li><i>(i) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;</i></li> <li><i>(ii) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;</i></li> <li><i>(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises;</i></li> <li><i>(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises;</i></li> <li><i>(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and</i></li> </ul> </li> <li><i>(1) (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.</i></li> </ul>
<b>Risks:</b>	Inclusion of small, minority, and women-owned firms in the procurement process is required under Federal grants. Failure to consider these organizations for grant-funded projects may result in disallowed costs or deobligation of funding for any procurement transactions that may have been made without proper consideration for future grants.
<b>Recommendations:</b>	When soliciting contractors for grant-funded projects, the Town should ensure that affirmative steps are taken to assure small, minority-owned, women-owned, and labor area surplus firms are used when possible by adding language to their procurement policy and detailing how consideration was given in practice to these firms for each procurement opportunity as detailed in the Code of Federal Regulations. Additionally, the Town should document their consideration of these respective entities in the federal grant file to evidence compliance with the regulation.
<b>Subrecipient’s Response &amp; Corrective Action Plan:</b>	





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### Attachment 3: Summary of Leading Practice Observations

Responses to observations related to Leading Practices are optional. These recommendations are derived from leading practices rather than from federal guidance and are provided for your consideration.

Leading Practice Observation #1	
<b>Area of Review:</b>	General Control Environment – Grants Management
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our interview with the Town Finance Director and our review of documented policies and procedures, it was noted that the Town does not maintain policies governing the administrative requirements, cost principles, and audit requirements of their grant programs as required by the Federal guidance.
<b>Guidance:</b>	<p><u>PA 4145, CDBG-DR, and HMGP:</u>  <i>Allowable Costs: 44 CFR 13.22</i>  <i>Cash Management &amp; Advances: 44 CFR 13.20</i>  <i>Equipment &amp; Inventory: 44 CFR 13.32</i>  <i>Subrecipient Monitoring: 44 CFR 13.37</i>  <i>Procurement &amp; Contracts: 44 CFR 13.36</i></p> <p><u>Future Grant Programs:</u>  <i>Safeguarding Personally Identifiable Information: 2 CFR §200.303(e)</i>  <i>Allowable Costs: 2 CFR §200.302(b)(7)</i>  <i>Cash Management &amp; Advances: 2 CFR 200.302(b)(6) and 2 CFR 200.305</i>  <i>Equipment &amp; Inventory: 2 CFR 200.313</i>  <i>Subrecipient Monitoring: 2 CFR 200.330-332</i>  <i>Procurement &amp; Contracts: 2 CFR 200.319 and Appendix II</i></p>
<b>Risks:</b>	Failure to document policies and procedures could lead to inconsistent application of Federal grant management practices, raising the risk of non-compliance with program requirements.
<b>Recommendations:</b>	A consolidated grant management policy should include detailed steps to be taken during each phase of the federal grant management lifecycle from application through closeout, including but not limited to vendor procurement, expenditure allowability determination, and reporting. The County can use the <u>DHSEM Management Guide</u> as a basis for developing their own grant policy and procedures, which can be found on the DHSEM website at <a href="http://dhsem.state.co.us/sites/default/files/attachments/2014%20Grants%20Management%20Guide.pdf">http://dhsem.state.co.us/sites/default/files/attachments/2014%20Grants%20Management%20Guide.pdf</a> .
<b>Subrecipient's Response &amp; Corrective Action Plan (Optional):</b>	





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Leading Practice Observation #2	
<b>Area of Review:</b>	General Control Environment – Organizational Chart
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our review of the Town’s grant management guidelines and administrative policies, it was noted that organizational hierarchies and responsibilities have not been clearly defined, documented, and communicated as prescribed in the GAO Greenbook.
<b>Guidance:</b>	<p><i>2 CFR 200.303(a) Internal Controls</i>  <i>Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).</i></p> <p><i>GAO Greenbook – Control Environment – Principle 3.01 Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity’s objectives.</i></p>
<b>Risks:</b>	A lack of clearly defined and communicated organizational responsibilities could result in duplicative efforts and improper expenditure approval.
<b>Recommendations:</b>	It is recommended that the Town create a flowchart listing the organizational hierarchy of the staff and communicate these responsibilities to all current employees.
<b>Subrecipient’s Response &amp; Corrective Action Plan (Optional):</b>	





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Leading Practice Observation #3	
<b>Area of Review:</b>	Cash Management and Advances – Advance Payments
<b>Applicable Programs:</b>	Public Assistance
<b>Observations:</b>	Per our interview with the Town Finance Director, it was noted that while the Town did receive a sizeable advance payment, the payment was made from the State Disaster Emergency Fund and is not technically Federal Funding. While this advance payment is not governed under Federal regulations, the Town does not have any policies in place in the case that they do receive a Federal advance in the future.
<b>Guidance:</b>	<p><i>2 CFR 200.305 Advance Payments</i></p> <p><i>(b)(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability</i></p> <p><i>(b)(7)(ii) Advance payments of Federal funds must be deposited &amp; maintained in insured accounts when possible</i></p> <p><i>(b)(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply. (see guidance)</i></p> <p><i>(b)(9) Interest earned amounts up to \$500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System</i></p>
<b>Risks:</b>	Failure to document policies for handling advance funding could result in improper use, accounting, and management of Federal funds.
<b>Recommendations:</b>	It is recommended that the Town add the above cited CFR guidance into their Grant Management Guidelines to ensure awareness of all requirements in the event that a federally funded advance is received in the future.
<b>Subrecipient's Response &amp; Corrective Action Plan (Optional):</b>	





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Leading Practice Observation #4	
<b>Area of Review:</b>	Expenditures – Cost Reasonableness
<b>Applicable Programs:</b>	Public Assistance
<b>Observations:</b>	As outlined in the OIG Audit (16-67-D), extenuating circumstances caused costs associated with idle equipment to increase beyond a reasonable amount to be charged to the grant. While the Town has provided a response detailing the resolution for this issue, it was noted that the Town has not established a process for consideration of the circumstances in which future costs are incurred as outlined in 2 CFR.
<b>Guidance:</b>	<p><i>2 CFR 200.404 Reasonable Costs</i></p> <p><i>A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:</i></p> <ul style="list-style-type: none"> <li><i>(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.</i></li> <li><i>(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state and other laws and regulations; and terms and conditions of the Federal award.</i></li> <li><i>(c) Market prices for comparable goods or services for the geographic area.</i></li> <li><i>(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal government.</i></li> <li><i>(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.</i></li> </ul>
<b>Risks:</b>	Without a documented process for determining cost reasonableness, as prescribed by the CFR, the Town runs the risk of incurring costs that may not be covered under the Federal award.
<b>Recommendations:</b>	The Town should establish a process for analyzing cost reasonableness to ensure that all expenditures to be submitted for reimbursement are eligible under the Federal awards.
<b>Subrecipient's Response &amp; Corrective Action Plan (Optional):</b>	





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Leading Practice Observation #5	
<b>Area of Review:</b>	Equipment and Inventory – Equipment Management
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our review of the Town’s grant management guidelines and our interview with the Finance director, it was noted that while no equipment has been purchased with grant funding, the agency has not documented practices for managing federally funded assets.
<b>Guidance:</b>	<p><i>2 CFR 200.313 (d) Management Requirements</i>  <i>Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:</i></p> <p><i>(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.</i></p> <p><i>(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.</i></p> <p><i>(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.</i></p> <p><i>(4) Adequate maintenance procedures must be developed to keep the property in good condition.</i></p> <p><i>(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.</i></p>
<b>Risks:</b>	Without formal policies for equipment management, any equipment purchased with future grant funding may be improperly maintained or disposed of and could result in a deobligation of funding to cover the equipment costs.
<b>Recommendations:</b>	It is recommended that the Town establish guidelines for inventory, property records, control systems, maintenance, and disposition of equipment and add them to their Grant Management Guidelines as a mitigating measure for any future purchases.
<b>Subrecipient’s Response &amp; Corrective Action Plan (Optional):</b>	





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Leading Practice Observation #6	
<b>Area of Review:</b>	Subrecipient Monitoring
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our interview with the Town Finance Director, it was noted that the town has not passed through federal funding to date and they are not familiar with the guidelines established for contractor vs. subrecipient determinations as outlined in guidance.
<b>Guidance:</b>	<p><i>2 CFR 200.330 Subrecipient and Contractor Determinations</i></p> <p><i>The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.</i></p> <p><i>(continued in Attachment 4 Exhibit B below)</i></p>
<b>Risks:</b>	Failure to differentiate between a contracting or subrecipient relationship could result in improper disbursement or pass-through of funds.
<b>Recommendations:</b>	It is recommended that the Town add the above guidance related to the determination of a contractor vs a subrecipient into their Grant Management Guidelines and what to do in the case that there is a pass through of Federal funding.
<b>Subrecipient's Response &amp; Corrective Action Plan (Optional):</b>	





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Leading Practice Observation #7	
<b>Area of Review:</b>	Procurement and Contracts – Contract Provisions
<b>Applicable Programs:</b>	All Programs
<b>Observations:</b>	Per our review of the Town’s grant management guidelines and Administrative Purchasing policy, it was noted that required flow down provisions for contracts under Federal Awards are not currently documented for inclusion in purchasing activities.
<b>Guidance:</b>	<p><i>2 CFR Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards</i></p> <p><i>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</i></p> <ul style="list-style-type: none"> <li><i>(A) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.</i></li> <li><i>(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.</i></li> <li><i>(C) Equal Employment Opportunity.</i></li> <li><i>(D) Davis-Bacon Act,</i></li> <li><i>(E) Contract Work Hours and Safety Standards Act</i></li> <li><i>(F) Rights to Inventions Made Under a Contract or Agreement</i></li> <li><i>(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387),</i></li> <li><i>(H) Debarment and Suspension</i></li> <li><i>(I) Byrd Anti-Lobbying Amendment</i></li> </ul> <p><i>(continued in Attachment 4 Exhibit C below)</i></p>
<b>Risks:</b>	Failure to include all contract provisions as listed by the CFR could lead to improper practices by contractors and may ultimately lead to disallowed costs associated with the contract in question.
<b>Recommendations:</b>	It is recommended that flow down provisions are documented in the Town’s procurement policy to ensure proper inclusion in future contracts.
<b>Subrecipient’s Response &amp; Corrective Action Plan (Optional):</b>	





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### Attachment 4: Guidance for Observations

Exhibit A – Site Visit Results reconciled to OIG Audit (OIG-16-67-D):

OIG Findings	Observation Guidance	Leading Practice Guidance
<b>A. Procurement</b>	<b>Observation 1</b> - Missing Policies <b>Observation 2</b> - Contract Types <b>Observation 2</b> - Suspension & Debarment <b>Observation 2</b> - Equal Opportunity Clause <b>Observation 3</b> - Documentation of MBWBE	<b>Leading Practice 7</b> - Flow down provisions
<b>B. Equipment Costs</b>	N/A	<b>Leading Practice 1</b> - Procedure for allowability <b>Leading Practice 4</b> – Reasonable Costs <b>Leading Practice 5</b> - Equipment MGMT procedures
<b>C. Relocation of Critical Facility</b>	N/A – See OIG Audit	<b>Leading Practice 2</b> – Internal Control (Responsibilities)
<b>D. Environmental Compliance</b>	N/A – See OIG Audit	<b>Leading Practice 2</b> – Internal Control (Responsibilities)

### Exhibit B – Subrecipient Monitoring Requirements

#### Contractor and Subrecipient Determination Guidance (2 CFR 200.330)

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See §200.92 Subaward. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See §200.22 Contract. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;





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- (3) Normally operates in a competitive environment;
  - (4) Provides goods or services that are ancillary to the operation of the Federal program; and
  - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

### Contractor and Subrecipient Determination Example

The following example shows the difference in classification of subrecipient vs. contractor. The substance of the agreement is what defines if it is a subrecipient or a contractor.

#### Scenario 1

Subrecipient A received \$1,000,000 of FEMA Public Assistance funding to reconstruct a school district affected by flooding. Following the scoping of the projects, Subrecipient A procured vendors and then managed the construction through completion. During this time, Subrecipient A managed all activities related to the completion of the project, procured all goods and services needed, submitted expenditures for reimbursement, and procured a single audit. In this scenario Subrecipient A's relationship with the contractors was a contracting relationship.

#### Scenario 2

Subrecipient B also received \$1,000,000 of FEMA Public Assistance funding to reconstruct a school district affected by flooding. Following the scoping of the projects, Subrecipient A procured a single vendor who would manage all project sites through completion. This vendor managed procurement for completion of the schools, maintained their own documentation of project efforts, and reported the status of all projects to subrecipient B. In this scenario Subrecipient B's relationship with the vendor was a subrecipient relationship, where Subrecipient B was a pass through.

### **Exhibit C – Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

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.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and





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- implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- (D) 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 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 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 Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit





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- Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree 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 as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  - (H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
  - (I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
  - (J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 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, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, 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. Such disclosures are forwarded from tier to tier up to the non-Federal award.
  - (K) See § 200.322 Procurement of recovered materials.

