



U. S. Department of Housing and Urban Development

Columbia Field Office
Strom Thurmond Federal Building
1835 Assembly Street
Columbia, South Carolina 29201-2480
www.hud.gov

June 22, 2018

Joe D. Mergo III, County Administrator
Lexington County
212 South Lake Drive, Suite 401
Lexington, South Carolina 29072



Mr. Mergo:

RE: Community Development Block Grant-Disaster Recovery (CDBG-DR) Program
Grant Number: B-16-UH-45-0001
Fiscal Year 2018 Monitoring
Dates: February 26 – March 2, 2018

This Office conducted an onsite monitoring of the Community Development Block Grant-Disaster Recovery (CDBG-DR) program to assess your organization's performance and compliance with applicable Federal program regulations and requirements. Program performance was assessed through a review of operations, file documentation and interviews. The purpose of this letter is to transmit HUD's monitoring report, which provides the details of our review. The HUD monitoring team consisted of Steven D. Edwards, Community Planning and Development Specialist, Ryan Flanery, Assistant Director-Disaster Recovery and Special Issues Division (DRSI), Erinn Martin, Community Planning and Development Specialist, Regina Montgomery, Region IV Relocation Specialist, Maureen Thurman, Region V Relocation Specialist, Thomas Tiffin, Community Planning and Development Specialist, Celeste Washington, Community Planning and Development Specialist, and Denise White, Financial Analyst.

The enclosed report contains seven (7) Findings with required Corrective Actions and five (5) Concerns with recommended Corrective Actions. Please address each of these in writing to this office within 30 days of this report.

I would like to thank you and your staff for your professionalism and cooperation during the review. If you have any questions or would like to discuss the enclosed monitoring report's contents or conclusions, please contact Steven D. Edwards, at 803-765-5292 or Steven.D.Edwards@hud.gov.

Sincerely,

Bradley S. Evatt, Director
Community Planning and Development

Enclosure

**U.S. Department of Housing & Urban Development
Columbia, South Carolina Field Office**



**Monitoring Report
Community Development Block Grant-
Disaster Recovery (CDBG-DR)**

***Grantee: Lexington County
B-16-UH-45-0001: \$16,332,000***

Monitoring Dates: February 26 – March 2, 2018

Overview

Monitoring is the principal means by which HUD ensures that programs and technical areas are carried out efficiently, effectively, and that the programs comply with applicable laws and regulations. It assists grantees in improving their performance, developing or increasing capacity and augmenting their management and technical skills. Also, it provides a method of staying abreast of the efficacy of CPD-administered programs and technical area within the communities HUD programs serve. Monitoring is not limited to a one-time review but is meant to be an ongoing process that assesses the quality of a grantee's performance over a period of time involving continuous communication and evaluation. In determining which grantees will be monitored, the Department uses a risk-based approach to rate grantees, programs and functions, including assessing the Department's exposure to fraud, waste and mismanagement. This process not only assists the Department in determining which grantees to monitor, but also identifies which programs and functions will be reviewed. Areas reviewed may result in the identifications of Findings, Concerns and exemplary practices.

Specifics relating to this review are as follows:

Date of Report: *June 22, 2018*

Date(s) Monitoring Conducted: *February 26 – March 2, 2018*

Type of Monitoring: *Onsite*

HUD Reviewer(s): *Steven D. Edwards, CPD Specialist
Ryan Flanery, Assistant Director-DRSI
Erinn Martin, CPD Specialist
Regina Montgomery, Region IV Relocation Specialist
Maureen Thurman, Region V Relocation Specialist
Thomas Tiffin, CPD Specialist
Celeste Washington, CPD Specialist
Denise White, Financial Analyst*

Grantee Staff: *Charles Garren, Community Development Director
Cindi Hennigan, Community Development Admin. Mgr.
Cassie O'Neill, CDBG-DR Administrator
Jennifer Harmon, Finance Grants Manager
Bob Brewer, Procurement Manager
Bradley Cain, Procurement Officer
Erich Chatham, Civitas, LLC (Consultant)
Jimmy Ardis, Civitas, LLC (Consultant)
Pat Phillips, Civitas, LLC (Consultant)
Tammie Hawkins-Hoy, Together-Consulting (Internal Auditor)*

Entrance Conference:

Date: *February 26, 2018*
Representatives: *Jimmy Ardis, Civitas, LLC (Consultant)*
Bradley Cain, Procurement Officer
Erich Chatham, Civitas, LLC (Consultant)
Steven D. Edwards, CPD Specialist
Bradley S. Evatt, CPD Director, Columbia Field Office
Ryan Flanery, Assistant Director-DRSI (via telephone)
Charles Garren, Community Development Director
Jennifer Harmon, Finance Grants Manager
Cindi Hennigan, Community Development Admin. Mgr.
Erinn Martin, CPD Specialist
Regina Montgomery, Region IV Relocation Specialist
Cassie O'Neill, CDBG-DR Administrator
Pat Phillips, Civitas, LLC (Consultant)
Maureen Thurman, Region V Relocation Specialist
Thomas Tiffin, CPD Specialist
Celeste Washington, CPD Specialist
Denise White, Financial Analyst

Exit Conference:

Date: *March 2, 2018*
Representatives: *Jimmy Ardis, Civitas, LLC (Consultant)*
Bob Brewer, Procurement Manager
Bradley Cain, Procurement Officer
Steven D. Edwards, CPD Specialist
Bradley S. Evatt, CPD Director, Columbia Field Office
Ryan Flanery, Assistant Director-DRSI (via telephone)
Charles Garren, Community Development Director
Jennifer Harmon, Finance Grants Manager
Cindi Hennigan, Community Development Admin. Mgr.
Erinn Martin, CPD Specialist
Regina Montgomery, Region IV Relocation Specialist
Cassie O'Neill, CDBG-DR Administrator
Maureen Thurman, Region V Relocation Specialist
Thomas Tiffin, CPD Specialist
Celeste Washington, CPD Specialist
Denise White, Financial Analyst

SUMMARY OF RESULTS AND CONCLUSIONS

This report details the results of the monitoring review and contains seven (7) Findings and five (5) Concerns. A Finding is identified as a deficiency in program performance based on a statutory, regulatory or program requirement for which sanctions or other corrective actions are authorized. A Concern is a deficiency in program performance that is not based on a statutory, regulatory or other program requirement but is brought to the grantee's attention. HUD issues a

Concern when in HUD's judgement the practice could, if not corrected, result in noncompliance with a statutory, regulatory or program requirement. Recommended actions are identified for Concerns. Although you are not required to respond to a Concern, a response to any actions you are taking would be appreciated.

Steven D. Edwards, Community Planning and Development Specialist, is available to discuss the results of this monitoring report or provide technical assistance, if requested, and can be reached at (803) 765-5292 or Steven.D.Edwards@hud.gov. If you disagree with any of HUD's determinations or conclusions in this monitoring report, please address these issues in writing to this office within 30 days of this report. Your written communication should explain your reasons why you disagree along with supporting evidence and documentation. All communication should be sent to Bradley S. Evatt, Director, Community Planning and Development, Department of Housing and Urban Development, Columbia Field Office, 1835 Assembly Street, 13th Floor, Columbia, South Carolina 29201.

SCOPE OF REVIEW

The following areas were reviewed to determine whether activities were carried out in compliance with applicable laws, regulations and established policies:

- Overall Program Management
 - Grant Management
 - Staff Capacity
 - Progress of Expenditures
- Overall Financial Management
- Lex Co CDBG-DR Housing Buyouts
 - Policies and Procedures
 - Eligibility and National Objective Documentation
 - Participant File Review
- Lex Co CDBG-DR Minor Housing Rehab
 - Policies and Procedures
 - Eligibility and National Objective Documentation
 - Contractor Oversight
 - Participant File Review
- Overall Relocation Management
- TA as needed/requested

Also reviewed were the following procurement files:

- Disaster Recovery Administrative/Planning Services Purchase Orders
- Tier I Environmental Review Services Purchase Order
- Lexington County's Request for Proposal No. 2017-RFP-12

Exhibits were used to guide the review from the *Community Planning and Development Monitoring Handbook 6509.2*; they are available at:

AREA REVIEWED AND RESULTS

The purpose of this monitoring visit was to review Lexington County's supplemental disaster recovery CDBG activities funded under P.L. 114-113. A monitoring strategy was prepared for the County in accordance with the HUD Monitoring Desk Guide: Policies and Procedures for Program Oversight. The scope included reviews of fundability documentation, program management, financial management, program progress, policy controls for fraud, waste and mismanagement, and overall administration of the Lexington County disaster recovery program. The goals of this visit were to ensure efficacy and efficiency of management of disaster recovery funds by the County, compliance with local policies and procedures and to ensure adequate documentation of eligibility and national objectives through file review.

The areas reviewed and results are as follows:

1. OVERALL PROGRAM MANAGEMENT

HUD evaluated Lexington County's CDBG-DR Management System utilizing Exhibit 6-1, Guide for Review of Overall Management of CDBG Disaster Recovery Grants and Exhibit 3-17, Guide for Review of Overall Management Systems. Areas of review included Overall Management, Financial Thresholds, and Capacity and Performance.

HUD also reviewed Lexington County's procurement files regarding Disaster Recovery Administrative/Planning Services, Tier I Environmental Review Services, and the County's Request for Proposal No. 2017-RFP-12.

The Lexington County Community Development Department is the entity responsible for the overall administration of Lexington County's Community Development Block Grant-Disaster Recovery Programs. The County hired a CDBG-DR Administrator to serve as the leader of the day-to-day activities of the administrative team. Additionally, the County contracted with Civitas to: prepare the County's CDBG-DR Action Plan and Implementation Plan; perform Tier I Environmental Reviews for the County's Buyout and Rehabilitation Programs; perform CDBG-DR Long-Term Management of the County's Disaster Recovery Program; and to provide technical assistance to the County and other contractors to assist in the quality assurance function. The County has also contracted with Tetra Tech to prepare and issue housing buyout offer letters for the Buyout Program and perform demolition activities upon completion of the buyout transactions. Tetra Tech also performs Tier II environmental reviews for rehabilitation properties located within a historic district. All files transitioned to Tetra Tech are maintained in the offices of the Lexington County Community Development Office.

Overall Management

- *Action Plan and Amendments:* The Action Plan Amendment Process is described in the Lexington County CDBG-DR Policies and Procedures beginning on page six (6). The County has defined minor amendments as changes to the plan to correct typographical errors or improved and updated information provided to the plan. Substantial Amendments include adding new program options or eligible activities, removal of an existing program or activity, a change in the target areas served by the program or a significant change in the allocation of funds to existing programs. A significant change is defined as an increase or decrease of ten percent or more of the current allocation. HUD awarded a second allocation of funding to Lexington County in the amount of \$5,038,000.00 and an amended Action Plan reflecting the use of the additional funding was in process at the time of this review.
- *Policies and Procedures:* The County has developed and maintains written procedures specific to CDBG-DR describing its management of the CDBG-DR program. The program activities and processes are described and updated, as needed, following guidance as issued in the Federal Register or internal program changes. HUD provided the following technical assistance recommendations to the Lexington County CDBG-DR staff:
 - Post Policies and Procedures to the County’s Website and any amendments as they are made and approved.
 - Include a summary description of governmental structure and the County’s approval process in the Policies and Procedures.
 - Include a ledger of amendments in the policies and procedures with date of the amendments and purpose description.
- *Website Maintenance:* Lexington County is not maintaining its public website in accordance with the statutory requirements. The site is located at <http://www.lex-co.sc.gov/departments/DeptAH/communitydevelopment/Pages/CDBG-DR.aspx> and contains the updated Action Plan, Amendment one (1) - in process at the time of this review, citizen participation requirements and Quarterly Performance Reports (QPR) although the most recent (approved on February 6, 2018) was not posted at the time of this review. Based on staff interviews, the QPR was in the process of being posted but there is a lag time involved as the County IT Department posts information to the website. Website information is described in the County’s Policies and Procedures beginning on Page eight (8). A “best practice” recommended to Lexington County staff was to include its Policy and Procedures on its public website. However, the County’s CDBG-DR executed contracts were not posted on its public website which resulted in Finding number one (1).
- *Timeliness:* The County has established a four (4) year timeline for expending all grant funds which is included in its published Action Plan. The County’s Policies and Procedures (Pages 20-22) outline the Program In-Take Process and steps from application to final decision aiding to ensure programs and activities meet established

end dates. Although it is early in the grant period, expenditures and accomplishments to date indicate the County should meet the established six (6) year end date. The County has timely submitted three (3) Quarterly Performance Reports submitted to date.

- *Monitoring:* The compliance monitoring and HUD reporting requirements are described in the County's Policies and Procedures beginning on page 56. A review of Lexington County's DRGR Action plan revealed that all projects and activities are tied to end dates and the County is in process of monitoring all program activities utilizing checklists developed and contained in the County's DR Policy and Procedures manual. The County directly oversees the delivery of all CDBG-DR activities and monitoring is conducted on a multi-level review basis covering project delivery and expenditure of CDBG-DR funding.

Financial Thresholds

- *Seventy percent LMI overall benefit requirement:* P.L. 114-113 carries an overall 70 percent Low-moderate income (LMI) benefit requirement. Funding may meet this requirement by either serving low-to-moderate income households directly through one of the two housing programs or by providing an area benefit in a HUD defined low-to-moderate income area. Per Notice 81 FR 39687, of the \$16,332,000 DR grant allocated to the County, \$14,966,501 must be used to support activities that benefit LMI persons (total allocation less admin/planning times seventy percent). Lexington County staff indicated in the entrance conference that this requirement is likely unattainable based on the neighborhood income levels in the flood affected areas and indicated they will seek a waiver of this requirement.
- *Five percent administration cap requirement:* The most recent HUD-approved Quarterly Progress Report for period ending December 31, 2017 indicates Lexington County expended \$78,019.96 for Administrative costs. Due to a DRGR system error, this QPR does not correctly indicate the cap which is \$816,600. The County's Program Administration activity budget is estimated at \$660,000 and will be monitored by Lexington County's Finance and DRGR staff.
- *Twenty percent cap on overall planning and administration:* The most recent HUD-approved Quarterly Progress Report for period ending December 31, 2017 indicates Lexington County's administrative/planning cap is \$4,274,000 (however this is reflective of the County's total allocation of \$21,370,000 which includes an additional \$5,038,000 under P.L. 115-31 that was being processed through an amendment at the time of this review and the correct current amount should be \$3,266,400) of which \$349,569.96 has been expended. The County's Program Administration and Planning activity budgets are estimated at \$660,000 and \$705,000, respectively (total \$1,365,000) and will be monitored by Lexington County's Finance and DRGR staff.

- *Fifteen percent cap on public services:* Lexington County did not include public service activities within their Action Plan; therefore, no funding has been obligated or expended for public services.
- *HUD-identified Most Impacted and Distressed (MID) Counties requirement:* Notice 81 FR 39687 requires the entire \$16,332,000 DR grant allocated to Lexington County be expended for recovery in the HUD-identified “most impacted” areas which is Lexington County. Lexington County’s Action Plan indicates they are only serving the citizens within Lexington County; therefore, they are compliant with the Notice’s MID requirements.
- *Expenditure deadline:* Notice 81 FR 39687 requires Lexington County to expend its allocation of funding within six (6) years of signing the grant agreement. The County has obligated 99 percent of its CDBG-DR funding and is in the process of beginning its buyout and housing activities.

Overall Program Progress:

Total Budget:	\$16,332,000.00
Total Obligated:	\$16,206,000.00 (99 percent)
Funds Drawn:	\$ 349,569.96 (2 percent)
Funds Expended:	\$ 459,856.96 (3 percent)

Capacity and Performance

- *Organizational chart and staffing:* The County has a knowledgeable staff as evidenced by staff interviews and has not lost 25 percent or more of its staff in the last fiscal year. The County has assigned and delegated responsibilities for implementing and managing the CDBG-DR program in accordance with an organizational chart that outlines program managers and lines of authority. County staff were advised to include both names and titles on its organizational chart.
- *Open Findings:* There have been no prior monitoring visits by HUD or audits by the Office of Inspector General.
- *Complaints:* There were no citizen complaints on file at the time of this review. The citizen complaint process was discussed and reviewed with the County’s disaster recovery staff. The County has established citizen complaint procedures within its program policies and procedures.

Procurement

HUD performed a limited review of procurement files as part of the Overall Management review using Exhibit 6-8 Guide for Review of Procurement. HUD reviewed the following CDBG-DR procurement activities conducted by Lexington County:

The County issued Purchase Order P1702668 on July 1, 2016 for \$24,000. This procurement was for the preparation of the County's CDBG-DR Action Plan and Implementation Plan. File documentation indicated that the Purchase Order document included the awardee's proposal and was utilized as the contract for this work. The applicable contract provision requirements set forth in 2 CFR 200.326 (Appendix II, B) were not incorporated. The contractor completed the work for P1702668 and was compensated per the agreement.

The County issued Purchase Order P1704467 on February 1, 2017 for \$18,000 extending the original awardee's engagement for DR Administrative and Planning services for the Transition Period of February through April 2017. File documentation indicated that the Purchase Order document included the awardee's proposal and was utilized as the contract for this work. The applicable contract provision requirements set forth in 2 CFR 200.326 (Appendix II, B) were not incorporated. In addition, the County failed to obtain price or rate quotations for the work as required by 2 CFR 200.320(b). The contractor completed the work for P1704467 and was compensated per the agreement.

The County issued Purchase Order P1704496 to the original awardee on June 15, 2017 for \$14,500 to conduct Tier I Environmental Reviews for the Buyout and Rehab Programs. File documentation indicated that price or rate quotations were not obtained because Lexington County classified this transaction as a sole source procurement. This non-competitive procurement does not comply with the Methods of Procurement requirements under 2 CFR 200.320(f). The Purchase Order document including the awardee's proposal was utilized as the contract for this work thus the applicable contract provision requirements set forth in 2 CFR 200.326 (Appendix II, B) were not incorporated. In addition, the County failed to obtain price or rate quotations for the work as required by 2 CFR 200.320(b). The contractor completed the work for P1704496 and was compensated per the agreement.

Lexington County issued a Request for Proposal (RFP) 2017-RFP-12 on June 9, 2017 for CDBG-DR Long-Term Management and received only two (2) responsive proposals. The County awarded a contract P1801984 on August 10, 2017 for \$17,500 per month for one (1) year with an optional renewal period of up to four (4) years. File documentation and discussions with Lexington County staff indicated the specifications and evaluation criteria portion of the RFP were prepared by the County's Community Development Division. The file also contained a document submitted by the awardee dated May 1, 2017 entitled "Community Development Block Grant – Disaster Recovery Implementation Phase Consulting Services Proposal", which County staff indicated was not a proposal to the RFP, but the pre-RFP cost analysis supplied by the awardee. Prior to this contract award, the awardee served as an integral part of Lexington County's CDBG-DR program by developing the County's Implementation and Action Plans, performing administrative actions within the Disaster Recovery Grant Reporting (DRGR) system, developing the County's DR Policies and Procedures and performing Tier I Environmental reviews. The lack of detail in the Scope of Work within the RFP created a restrictive advantage to the awardee due to its involvement since inception of the County's DR program. This procurement does not comply with the Competition requirements under 2 CFR 200.319(a) and (b) and the contract cost and price provisions under 2 CFR 200.323(a) and (b). In addition, the May 1, 2017 document is insufficient to qualify as a cost or price analysis required by 2 CFR 200.323(a)

and the County failed to negotiate profit as a separate element of the price of the contract as required by 2 CFR 200.320(b).

There were three (3) Findings noted in the CDBG-DR Overall Management review.

Finding 1: Lexington County Failed to Maintain its Public Website in Accordance with Federal Requirements.

Condition: Lexington County did not post its CDBG-DR executed contracts to its public website.

Criteria: Federal Register Notice 81 FR 39687, published June 17, 2016.

Cause: Lexington County's staff was not familiar with the requirement that executed CDBG-DR contracts must be posted to its public website.

Effect: Lexington County is not in compliance with the requirements of Notice 81 FR 39687 to maintain its public website. Consequently, the public is not privy to the County's executed contracts and the contractors responsible for carrying out the County's disaster recovery activities.

Required Corrective Action: Lexington County must update its disaster recovery public website to include all executed CDBG-DR contracts and the Contract Reporting Template provided to County staff on March 1, 2018 within 30 days of this report. It is also recommended that the County update its website with Quarterly Performance Reports within 15 days of HUD approval.

Finding 2: Lexington County Did Not Comply with Federal Procurement Standards

Condition: For the procurements resulting in Purchase Order numbers P1702668, P1704467 and P1704496, Lexington County failed to include the required contract provisions for termination for cause and convenience in the awarded Purchase Order to Civitas, LLC. For Purchase Orders P1704467 and P1704496, Lexington County failed to obtain an adequate number of written price or rate quotations. In addition, for Purchase Order P1704496, Lexington County improperly executed a sole source procurement when Lexington County awarded a Purchase Order to Civitas, LLC.

Criteria: Lexington County must comply with Federal procurement standards at 2 CFR 200.326 (Appendix II, B).

2 CFR 200.326: The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200 (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.

For each of the small purchases, Lexington County must comply with Federal procurement standards at 2 CFR 200.320(b).

2 CFR 200.320(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

For procurements by non-competitive proposals, Lexington County must comply with Federal procurement standards at 2 CFR 200.320(f).

2 CFR 200.320(f): Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;*
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;*
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or*
- (4) After solicitation of a number of sources, competition is determined inadequate.*

Cause: Lexington County issued Purchase Orders that did not include the appropriate Federal procurement contract provisions for CDBG-DR grant awards and failed to obtain an adequate number of price or rate quotations for Purchase Orders P1704467 and P1704496. None of the four allowable circumstances provided in 2 CFR 200.320(f) existed for Lexington County's procurement of Purchase Order P1704496, and without meeting one of these 4 criteria, none of the justifications provided in the County's March 21, 2017 memorandum are sufficient to justify a noncompetitive proposal.

Effect: Lexington County failed to comply with Federal procurement requirements for contract provisions, price or rate quotations, and failed to comply with Federal procurement requirements for noncompetitive proposals due to the County's failure to support sole source justification and cost reasonableness.

Required Corrective Action: Lexington County must revise its CDBG-DR procurement policies and procedures to incorporate the Federal Procurement requirements set forth in 2 CFR 200.317 through 200.326 to ensure the County has the capacity and tools to perform CDBG-DR procurements. Also, the County must prepare a form of contract to serve as a

“model” for each level of procurement (micro, small, or in excess of small purchase) which provides the applicable Federal procurement contract provisions in Appendix II to 2 CFR part 200. Further, the County must identify all existing CDBG-DR contracts and perform a compliance review of each contract utilizing Exhibit 6-8, Guide for Review of Procurement, to ensure all CDBG-DR contracts contain the applicable Federal Procurement contract provisions and notify HUD of any contracts in non-compliance. These documents (the revised procurement policy and procedures, the model contracts, a listing of all CDBG-DR contracts, and a completed Exhibit 6-8 for each contract listed) shall be provided to HUD for review within 30 days of this report. Further noncompliance with Federal Procurement requirements may result in action by HUD to condition Lexington County’s CDBG-DR grant. Lexington County must reimburse its line of credit, from non-Federal sources, in the amount of CDBG-DR funds expended for CDBG-DR procurements identified as P1702668, P1704467 and P1704496.

Finding 3: Lexington County Did Not Comply with Full and Open Competition Federal Procurement Requirements in its Request for Proposal 2017-RFP-12

Condition: Lexington County’s procurement process for awarding a CDBG-DR Program Long-Term Management contract was not conducted in a manner providing full and open competition. Further, the County failed to perform a cost or price analysis in advance of the Request for Proposal 2017-RFP-12 and negotiate profit as a separate element of the contract price and failed to include the required contract provisions in Appendix II to 2 CFR part 200.

Criteria: Lexington County must comply with Federal procurement standards 2 CFR 200.319(a) and (b), 2 CFR 200.323(a) and (b), and 2 CFR 200.326 (Appendix II, B).

2 CFR 200.319(a): All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- (1) Placing unreasonable requirements on firms in order for them to qualify to do business;*
- (2) Requiring unnecessary experience and excessive bonding;*
- (3) Noncompetitive pricing practices between firms or between affiliated companies;*
- (4) Noncompetitive contracts to consultants that are on retainer contracts;*
- (5) Organizational conflicts of interest;*
- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and*
- (7) Any arbitrary action in the procurement process.*

2 CFR 200.319(b): The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

2 CFR 200.323(a): The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

2 CFR 200.323(b): The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

2 CFR 200.326: The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Appendix II to Part 200 (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.

Cause: Lexington County restricted competition by awarding the contract to a contractor that had an unfair competitive advantage because the contractor developed the scope of work. The selection of Civitas violated 2 CFR 200.319(a), which provides that *“In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements.”*

Civitas, the contractor that Lexington selected, submitted a document on May 1, 2017, titled “Community Development Block Grant – Disaster Recovery Implementation Phase Consulting Services Proposal.” The proposal is formatted to perform as a contract and includes signature lines.

Instead of entering a contract by signing a proposal, Lexington County published an RFP (No. 2017-RFP-12) on June 9, 2017, for a limited time (two weeks, including two

weekends), that included a scope of services that incorporated nearly word for word the basic services Civitas offered in its May 1, 2017 proposal. The scope of services mirrored the Civitas proposal in scope, delivery method, and often the number of days staff would be on site.

The following two examples are indicative of how closely the June 9, 2017 RFP tracked the May 1, 2017 Civitas proposal:

From Civitas proposal: Civitas will be responsible for conducting HUD Environmental Reviews, and complying with all related regulations, for all of the County's CDBG-DR projects and activities. All ERs will be carried out and documented in full compliance with 24 CFR Part 58 ... Pat Phillips will complete an initial site review and take pictures of the site - this will be part of the Quality Control review as well. Peter Neiger and Curtis Chatham will then complete the required site specific environmental review checklists within 2 business days from the completion of Quality Control measures.

From Lexington County's RFP: Offeror will be responsible for conducting HUD Environmental Reviews, and complying with all related regulations, for all of the County's CDBG-DR projects and activities. All ERs will be carried out and documented in full compliance with 24 CFR Part 58. Offeror will complete an initial site review and take pictures of the site - this will be part of the Quality Control review as well - then complete the required site specific environmental review checklists within 2 business days from the completion of Quality Control measures.

From Civitas proposal: Civitas staff will assist County staff with a thorough review of all application files and activity files. This shall include an initial review once Hearts & Hands has completed the applicant in-take process. Civitas will also review all activity files for accuracy and completeness once Tetra Tech & SBP have completed their work on a given activity/property. In the event Hearts & Hands is not active in the application and in-take process for the duration of this program, Civitas staff will assist the County in completing the necessary tasks associated with additional client in-take.

From Lexington RFP: Offeror will assist County staff with a thorough review of all application files and activity files. This shall include an initial review of all completed applications received during the initial in-take process. Offeror will also review all activity files for accuracy and completeness once sub-recipients have completed their work on a given activity/property. Offeror will also manage any additional application and/or in-take process necessary for the duration of this program and will assist the County in completing the necessary tasks associated with additional client in-take. Offeror will have access to client files using both electronic systems and hard files in the County's offices.

Additionally, Lexington County's lack of detail within the Request for Proposal 2017-RFP-12 created an unfair competitive advantage to the awardee in violation of the requirement at 2 CFR 200.319(a) requiring full and open competition. The RFP did not contain information about the grantee's program, the rules that apply to the use of the funds, or the County's

planned administration of the program. Civitas had the competitive advantage of knowing the programs, how many subrecipients would need monitoring, how work would be completed, and the rules that applied to the use of the funds.

Because of the lack of information in the RFP, Civitas had an unfair competitive advantage due to the awardee's extensive knowledge of the grantee's programs through previous contractual work with the County developing the Disaster Recovery Implementation and Action Plans, performing administrative actions within the Disaster Recovery Grant Reporting (DRGR) system, developing the Disaster Recovery Policies and Procedures, and performing the Tier I Environmental reviews.

Lexington County failed to perform a pre-bid cost or price analysis and the May 2017 document titled "Community Development Block Grant – Disaster Recovery Implementation Phase Consulting Services Proposal" provided to HUD by the County as the analysis is insufficient to qualify as a cost or price analysis.

Also, the Civitas contract did not contain all applicable provisions required by 2 CFR 200.326.

Finally, HUD also notes that the RFP contained a geographic limitation that appears to unfairly restrict competition. It provides that "A designated member of the offerors senior management shall be available to respond to requests to meet with county staff, county administration and/or county council within 24 hours of a request to meet. This meeting will be either in person or by telephone at the discretion of the County. For this purpose, offerors with an on-going management presence within a 150-mile radius of the County of Lexington's administrative office will receive scoring which reflects that presence during the proposal evaluations." The scoring rubric in section 2.8.02 awards 15% of all possible scoring points for the rating factor "Proposer's location as it relates to a timely response to the needs of this CDBG DR Program and the citizens the program serves." Without a more extensive justification of the geographic preference, such as why a contractor could not travel to appear within 24 hours' notice or establish a local presence after being awarded the contract, it is not clear that this geographic preference is not restrictive of competition in violation of 2 CFR 200.319(b).

Effect: This procurement failed to comply with Federal procurement requirements since it did not provide for full and open competition and failed to meet contract cost and price requirements to support cost necessity and reasonableness. The contract awardee held a restrictive advantage over other prospective bidders due to its previous disaster recovery contracts with the County (performing tasks such as developing the Action and Implementation Plans and providing the cost analysis for the Request for Proposal).

Required Corrective Action: Lexington County must reimburse its line of credit, from non-Federal sources, in the amount of CDBG-DR funds previously expended for contract P1801984. Further, the referenced contract should be terminated immediately, and another Request for Proposal issued for the work. The Request for Proposal shall provide a more detailed scope of work for prospective bidders and shall not include any provisions that are

restrictive of competition. The procurement process shall comply with all requirements of 2 CFR 200.317 thru 200.326, as applicable, as well as the County’s CDBG-DR procurement policy and procedures. Civitas, LLC shall be excluded from competing for an award under a revised Request for Proposal for the same work, even if it is modified to include more detail.

2. OVERALL FINANCIAL MANAGEMENT

The purpose of the Financial Management review is to ensure adequate controls are established and implemented by Lexington County Community Development to oversee its CDBG-DR funds. The financial management review covered internal controls, financial management, internal auditing, OMB compliancy requirements, and disbursements in the amount of \$692,586.

Financial Management

HUD conducted a limited review of CDBG-DR funds for internal controls for compliance with applicable federal regulations. HUD also examined timeliness of payments processed. All payments reviewed were for administrative, planning, reconstruction of residential properties, and buyout activities and were processed within an adequate amount of time.

Financial Review of CDBG Disaster Recovery Payment Requests

Activity Types	Voucher Amounts Reviewed
Acquisition - buyout of residential properties	\$243,558.70
Administration	175,652.70
Planning	271,550.00
Rehabilitation/reconstruction of residential structures	1,825.00
Grand Total:	\$692,586.40

Internal Controls

HUD reviewed written procedures, organizational charts, annual financial audits, chart of accounts, insurance and fidelity bonding coverage, and supporting documentation. HUD also reviewed charges for administrative and programmatic costs charged to the grants. The cost codes applied for programmatic and administrative charges were consistent.

Technical Assistance

HUD provided Technical Assistance to the Lexington County Grants Manager on supporting documentation for expenditures and the Internal Auditor on overseeing internal controls. The detailed supporting documentation was available as requested for review but was not included in the file with the financial transactions. Salary and wages should be supported with personnel names, titles, hourly wages, dates, and amounts. Purchases should include invoices to equal the amount of the draw. Since there were only a minimal number of draws, this was easily corrected and implemented for future draws.

HUD recommended to the Internal Auditor the importance of updating policies and procedures to ensure Lexington County is compliant with 24 CFR 570 and OMB 2 CFR 200 regulations. The Auditor will update the procedures to ensure Lexington County maintains the files with supporting documentation for five years from the closing of the grant as stated in 2 CFR 200.333.

Audit Requirements

HUD reviewed the fiscal year ending June 30, 2017 certified annual financial report. The report was submitted on time with an unmodified opinion. There were no weaknesses or deficiencies identified.

HUD's review of the disaster recovery programs determined that Lexington County is compliant with applicable cost accounting principles, audit management, administrative and financial management as set forth in 24 CFR Part 570 and OMB regulations, other than those Findings noted within this report.

3. LEX CO CDBG-DR HOUSING BUYOUTS

Program Overview and Scope of Review

Lexington County has allocated \$12,000,000 (56.2 percent of total allocation) to its Housing Buy-out Program. The purpose of the program is to enable the County to purchase homes in the flood prone areas to eliminate future flooding and to lessen the flood impacts on the citizens of the County. Once purchased, the County will demolish the housing structures, clear the lots, and either convert the property to green space or use the property for future flood-mitigation infrastructure capacity. The County anticipates completing approximately 65 residential buyouts within the most flood vulnerable neighborhoods.

Homeowner participation in the buyout program is voluntary, and the applicant's property must be located within one of the four neighborhoods that the County has identified as a *Disaster Risk Reduction Area*. Once homeowners apply to the program, the County and its contractors work with each eligible homeowner to collect all pertinent supporting documentation, conduct a duplication of benefits analysis, and determine the eligible purchase amount. In addition to the purchase price for the home, participants may be eligible to receive additional incentives for participation (\$15,000) and purchase assistance (\$10,000 or \$20,000).

HUD's review focused on ensuring program implementation conforms with HUD-approved Action Plans and Action Plan Amendments, adopted policies and procedures, and federal national objective and recordkeeping requirements. The following program documents and/or processes were reviewed:

- CDBG-DR Action Plan and Substantial Amendment #1 (updated November 2017);
- CDBG-DR REBOUND: Comprehensive Policies & Procedures;
- Program eligibility and national objective documentation;
- Intake file checklists;

- Buyout program application status spreadsheet;
- Duplication of benefits (DOB) analysis process;
- Housing incentives tables and related documentation; and
- Six participant file reviews

Technical Assistance

HUD provided onsite Technical Assistance on the following:

- Documenting CDBG-eligible activities in the Action Plan;
- Documenting national objective within applicant files;
- Ensuring program implementation and documentation is consistent across the action plan, policies and procedures, program checklist(s) and application;
- Cost reasonableness of housing incentives; and
- Duplication of benefits calculations

HUD recommends that Lexington County review these areas and as necessary provide additional information, updates and clarifications. Specific technical assistance on these topics will be emailed to Lexington County. HUD recommends that the County use the technical assistance provided for the buyout program, as applicable, to update and strengthen its Minor Housing Rehabilitation program policies and procedures and file documentation prior to the next HUD monitoring review.

Analysis and Conclusion

HUD found that the program files contained the latest program policies and procedures and associated checklist(s). Furthermore, County and contactor staff were able to clearly explain the program application process, applicant eligibility/ineligibility determinations, and how the duplication of benefits analysis and program housing incentives impact final CDBG-DR grant award determinations. The reviewed applicant files included relevant documentation supporting national objective determinations, DOB calculations, final CDBG-DR grant award amounts (if applicable), and program recordkeeping requirements.

There was one (1) Concern noted in the CDBG-DR Lex Co CDBG-DR Housing Buyouts review.

Concern 1: Lexington County's Lack of Documentation to Prove Necessary and Cost Reasonableness of Housing Incentives Provided in the Housing Buy-Out Program.

Condition: In accordance with its approved action plan, Lexington County offers housing incentive options as part of its buy-out program. These incentives are designed to encourage households to relocate in a suitable housing development within Lexington County. According to the County's program policies and substantial Action Plan amendment one (1), all program eligible applicants qualify for a \$15,000 participation incentive and may also qualify for additional incentives based on income or location of the newly purchased home. A summary of

the housing incentives is as follows:

Housing Incentive Eligibility	Owner Occupied (at time of the storm)	Owner Occupied (post-storm)	Owner of renter-occupied (at time of the storm or post-storm)
Participation Incentive	\$15,000	\$15,000	\$15,000
Purchase Assistance/ Incentive	\$10,000 for home purchased in Lexington County <u>or</u> \$20,000 for low- to moderate-income households (Primary residence only)	\$10,000 for home purchased in Lexington County <u>or</u> \$20,000 for low- to moderate-income households (Primary residence only)	\$10,000 cap for home purchased meeting criteria prescribed in program policies and procedures

While housing incentives are allowable under this disaster appropriation, according to the June 17, 2016 *Federal Register* Notice (81 FR 39703), the County has not provided a justification or supporting documentation to demonstrate that the prescribed amounts of housing incentives/assistance are necessary and reasonable to the buy-out program.

Cause: The County may have been unaware of all requirements at 81 FR 39703, which state, “grantees must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable, and the incentives must be in accordance with the grantee’s approved Action Plan and published program design(s).”

Effect: Due to lack of supporting documentation, HUD was unable to determine the cost reasonableness of the County's housing incentives.

Recommended Corrective Action: Prior to awarding CDBG-DR funds to program beneficiaries, the County should ensure its program files contain adequate data and supporting documentation to support the need for additional housing assistance within its buyout program. This supporting documentation must clearly justify why the housing incentives are necessary, reasonable, and essential to the program. This information should be available to HUD upon request or during future reviews. Failure to attain and maintain documentation may result in a future Finding.

4. LEX CO CDBG-DR MINOR HOUSING REHAB

HUD was unable to review this program due to time limitations.

5. OVERALL RELOCATION MANAGEMENT

HUD conducted a review of Lexington County’s compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) as well as waivers granted for the URA and Section 104(d) of the Housing and Community Development

Act (104(d)), as amended. CDBG-DR URA and 104(d) waivers and alternative requirements applicable for this review are in Federal Register Vol. 81, No. 117, June 17, 2016, implementing PL 113-114, approved December 18, 2015.

Detailed requirements of the URA and 104(d) are set forth in 49 CFR Part 24 and 24 CFR Part 42 and 24 CFR 570.606. HUD's policies on acquisition and relocation are further explained in HUD Handbook 1378 (Tenant Assistance, Relocation, and Real Property Acquisition).

This review incorporated a limited file review, as summarized below. It is early in the County's implementation of its flood recovery grant program and completed files for acquisitions and relocations were limited or incomplete at the time of this review.

The Overall Relocation Management review focus:

- Correct implementation of CDBG-DR waivers for 104(d)
- Voluntary acquisition rules (owners) with tenant displacement (current and tenants present at the time of the flood).
- Rehabilitation with tenant temporary or permanent displacement.
- Relocation pursuant to the URA.
- Function oversight, policies, procedures and administration.

Administrative Review

Primary County Staff Interviewed:

Cassie O'Neill, CDBG DR Administrator
Charles Garren, Community Development Director
Cindi Hennigan, Administrative Manager

Policies and Procedures Reviewed:

1. Lexington County's Residential Anti-displacement and Relocation Assistance Policy pursuant to 24 CFR 42.325(a) and 24 CFR 570.606(c)
2. Installment Payment Policy (42 U.S.C. Sec. 3537c)
3. Definition of "Not Suitable for Rehab" (24 CFR 42.305 and 24 CFR Part 91.225(b)(8))
4. Written Appeal Process to conform with 24 CFR 24.10 and 24 CFR 570.606(f)
5. Demonstrable Hardship (waiver alternate requirement)
6. Moving Expense Criteria and Allowances (waiver not being implemented)
7. Internal controls, capacities and oversight of consultants
8. Application of Section 414 of the Stafford Act (42 U.S.C. 5181) and 49 CFR 24.403(d)
9. Recordkeeping Requirements at 49 CFR 24.9

The County's CDBG-DR policies and procedures include both the Homeowner Buy-Out Program and the Homeowner Rehabilitation Program (both under REBOUND), which were also reviewed.

The County has established comprehensive, written policies and procedures. HUD reviewed these to ensure compliance with:

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
- Section 104(d) of the Housing and Community Development Act of 1974, as amended (104(d)) with housing policy waivers and alternative requirements as allowed by the CDBG-DR program.

Some of the County's policies and procedures must be corrected to comply with number's one (1), two (2), four (4), eight (8) and nine (9) (under "Policies and Procedures Reviewed"). HUD offered suggestions to enhance number seven (7) as well. These items are discussed in the following sections of review.

Individual File Review

Homeowner/Voluntary Property Buy Out Program Files (planned at 56 percent of available grant dollars):

3632 Harrogate
648 Lockner Road
300 Lockner Court
401 Western Lane Suite 8B
508 Broken Hill Road

Homeowner Rehabilitation Program Files (planned at 15 percent of grant):

425 Smiths Market Road
622 Crystal Springs Drive
2313 West Congaree Drive

Waiver Implementation Review

HUD waived certain URA and 104(d) requirements and called for specified alternative requirements for grantees under the June 17, 2016 Federal Register Notice. As discussed below, rental assistance to a displaced person under the URA (and 104(d)) requires a grantee to take action to comply with mandatory alternative requirement, as needed.

Demonstrable Hardship

The requirement at Sections 204(a) and 206 of the URA, 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require a grantee to use thirty percent (30 percent) of a displaced low-income person's household income in computing a rental assistance payment if the person had been paying more than thirty percent of household income in rent plus utilities without "demonstrable hardship" before the disaster.

The County defined “Demonstrable Hardship” in its program policies and procedures. HUD determined that this definition and use of “demonstrable hardship” is acceptable as currently implemented.

Not Suitable for Rehabilitation - 24 CFR 42.305 and 24 CFR Part 91.225(b)(8)

One-for-one replacement requirements are waived in connection with funds allocated under the Notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. Grantees must define “not suitable for rehabilitation” in its Action Plan or policies/procedures governing these programs and activities.

The County has the required definition of “not suitable for rehabilitation” in its Action Plan as referenced in its policies and procedures. The County meets the waiver requirement.

104(d) Relocation Assistance

Section 104(d) relocation assistance requirements at 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified for activities related to disaster recovery. The waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under the program.

The County is aware of the waiver and is applying URA level assistance in its current policies/procedures.

Technical Assistance

Upon review of pertinent policies and procedures, and through discussions with County staff, HUD provided technical assistance as discussed below.

Overall Policies and Procedural Revisions

A HUD Relocation Specialist can review revisions and make suggested edits to assist in complying with required provisions. HUD noted the need for technical corrections, clarifications, additions and deleting parts that are not applicable within the County’s policies and procedures.

RARAP (CDBG and HOME requirement)

HUD offered to assist in the development of the County’s Residential Anti-displacement and Relocation Assistance Policy (RARAP) pursuant to 24 CFR 42.325(a) and 24 CFR 570.606(c).

Section 414 Tenants - Moves to Substandard Housing

HUD recommends incorporating language in the County’s policies and procedures that specifies the benefits and process if a former tenant permanently relocated into substandard housing after ION but prior to the County’s identification, tracing, and contact of tenants. This would apply to Stafford tenants as well as others that vacate for an assisted project before being fully advised of

relocation and replacement housing specifics. Tracing efforts must be discussed in writing as procedural.

Lump Sum Payments for Relocation (URA requirement)

HUD clarified that lump sum replacement housing payments can only be issued if the displaced person is purchasing a home. For persons that will continue to rent, the replacement housing payment shall be made in installments. The County shall decide its policy on this, but at least two (2) payments are required for rental to rental situations (see 42 U.S.C. Sec. 3537c).

Moving Payments (alternate waiver requirements not implemented)

The County has not implemented this waiver. If implemented, the County must establish and offer the person a “moving expense and dislocation allowance” under a schedule of allowances that is reasonable for the jurisdiction. However, HUD advised that, for temporary moves to accommodate rehabilitation, the County shall not use Federal Highway’s fixed moving schedule, as it would over-compensate a tenant/homeowner that was required to move. If the relocation is temporary, the County shall only pay for actual and reasonable expenses for moving, storage, utility disconnects/reconnects and increase in actual housing costs. The County understands it cannot provide a stipend or other reimbursement if the costs are not actually incurred by the tenant/homeowner.

Co-mingling Regular CDBG or HOME with CDBG-DR funds

Page 29 of the County’s written “Program Comprehensive Policies and Procedures” discusses “Participation Incentives” and “Program DPA for LMI households”. HUD cautioned the County that if regular CDBG and/or HOME funds are invested in these projects, the County would likely re-trigger important waivers of URA and/or 104(d) afforded solely to the CDBG-DR program. The County informed HUD that no incentives as an optional relocation subsidy have been used by homeowners to date.

Optional Relocation Assistance and Incentives (CDBG requirement)

The County indicated it has not provided any incentives thus far that would trigger re-application of full URA and 104(d) provisions and benefits. If the County is considering using regular CDBG or HOME funding for additional incentives to homebuyers or homeowners in the future, please be aware of this point. Additionally, if relocation assistance is provided under any optional policy (not required by the URA), the County must adopt a written “optional policy” pursuant to 24 CFR 570.606(d).

There were four (4) Findings and four (4) Concerns noted in the CDBG-DR Overall Relocation Management review.

Finding 4: Lexington County Failed to Undertake Efforts to Locate and Qualify Former Tenants Displaced by the Disaster to Determine Eligibility for Assistance Under the URA.

Condition: As a part of accepting CDBG-DR grant assistance, the County certified to comply with Section 414 of the Stafford Act. This means grantees must undertake efforts to locate and qualify former tenants displaced by the disaster to determine eligibility for assistance under the URA. The County has said its estimate for acquiring or rehabilitating tenant-occupied properties is very low. However, this does not currently account for previous tenants occupying units at the flood event that may be eligible for assistance.

Criteria: Section 414 of the Stafford Act and 49 CFR 24.403(d)

49 CFR 24.403(d)(1) – Occupancy requirements for displacement or replacement dwelling. No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including: “A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal Agency funding the project, or the displacing Agency”

Section 414 of the Stafford Act (42 U.S.C. 5181) - Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C. 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

Cause: The County was unaware of this requirement. Training and relevant capacity building within this function may help avoid future Findings such as this.

Effect: Since the County was not aware of this requirement, tracing efforts to contact and determine eligibility of previous occupants has not been performed at this time. There is no indication of data gathered as a part of the application process to determine previous tenants pre-flood. To date, owners/sellers are not being asked for information that may allow the County to comply with efforts needed under Section 414.

Required Corrective Action: The County shall revise its policies and procedures to include the requirements of Section 414, inclusive of a discussion of tracing efforts to be used, process for determining benefits, and timing of any payments due. If tenants were displaced because of the storm and did not return to the unit, the County shall consider those tenants “Stafford Tenants.” The County could effectively have more than one relocation claim on a single house, past and present. Please submit this revision to the County’s policies and procedures within 30 days of the date of this letter.

HUD recommends the County develop a comprehensive application checklist, a checklist for both applicant and grant manager reviews to ensure that all required documentation is

included by the applicant going forward to allow more efficient, effective tracking efforts and provide a better timeline of occupancy.

Finding 5: Lexington County's Written Appeal Process Provides Incorrect Information to its Participants.

Condition: The County has an appeal process, but currently does not address the County's process if a person disagrees with the County's determination concerning whether the person qualifies as a "displaced person" or appeals the amount of the relocation assistance for which the person is eligible. The County's written policy states that in any case, the decision of the Disaster Recovery Technical Review/Appeals Committee will be final. Contrary to this policy, if a low-income person is dissatisfied with the County's determination on the appeal, they may submit a written request for review of the County's determination to the HUD Field Office.

Criteria: 24 CFR 24.10 and 24 CFR 570.606(f)

Cause: The County was not aware that its appeal process was not compliant. The County would benefit from some basic training on the various administrative, technical and project regulations and policy under the URA/104(d).

Effect: The County is not providing correct information to its participants and citizens on what can be appealed, and who can review decisions made by the County under CDBG-DR grants for URA and 104(d) appeals.

Required Corrective Action: The County shall develop and/or amend its written appeal process to reflect compliance with applicable laws and regulations as discussed above. Please submit this revision to the County's policies and procedures within 30 days of the date of this letter.

Finding 6: Lexington County's Policies and Procedures Regarding Lump Sum Payments for Relocation is Incorrect.

Condition: A lump sum replacement housing payment can only be issued if the displaced person is purchasing a home. For tenants that will continue to rent, the replacement housing payment shall be made in installments. This is applicable to tenants under the County's program.

Criteria: 42 U.S.C. Sec. 3537c

Cause: The County was not aware that relocation assistance payments for tenants must be disbursed in installments.

Effect: If a consistent installment policy and method of providing replacement housing payments under the URA is not used, there is potential for error due to lack of a policy. There should not be differences from project to project or case-to-case on the method used to

release payments. Hardship cases and situations can be included in “Installment Payment” policy if beneficial.

Required Corrective Action: The County shall develop/adopt a written installment policy to ensure consistently applied payments for those displaced in a timely manner. The County shall determine its policy and submit as a part of overall revisions to policy documents within 30 days of the date of this report.

Finding 7: Lexington County’s Residential Anti-displacement and Relocation Assistance Policy (RARAP) does not meet the Requirements of Section 104(d) of the Housing and Community Development Act of 1974, as Amended.

Condition: The County has a Residential Anti-displacement and Relocation Assistance Plan in its Action Plan, but the content of the plan did not meet the standards or requirements of Section 104(d) of Housing and Community Development Act of 1974, as amended.

Criteria: 24 CFR 42.325 (a) and (b). As part of its Action Plan, the County must certify that it has in effect and is following a Residential Anti-Displacement and Relocation Assistance Plan.

Cause: County staff was unaware of the specific requirements and elements of the required Plan.

Effect: The County is at risk of violating its Action Plan certification and the requirements of the URA/Section 104(d).

Required Corrective Action: Lexington County shall prepare its RARAP in conformance with applicable regulations and submit for review within 30 days of the date of this report. HUD provided the County staff with HUD Handbook 1378 (Appendix 34), to help with the development of the Plan. HUD also has other resources and templates to assist in overall development of written policy for this function that can be shared for review.

Concern 2: Lexington County’s Methodology for Determining Market Value for the Acquisition/Buy-Out Program.

Condition: The County is properly informing potential sellers of the voluntary nature of the program. When reviewing methodology used to determine values for offers to purchase, HUD determined that there were flaws in the current methodology being used. HUD also discussed some process points that must be revised to reflect fairness and consistency within the program. In summary, sellers choosing to obtain appraisals appeared to receive higher acquisition proceeds than those that did not and consistency in allowed methodology is questioned.

Cause: The initial valuations were based on a formula calculated by the County Assessor’s Office, using property tax assessments as a base. The County believed this methodology would be fair and representative of estimated pre-flood market value.

Effect: Based on a review of the universe of acquisitions already under contract (some of which have closed), those homeowners that chose to obtain their own appraisal (instead of accepting the County's valuation) were generally paid a higher acquisition price based on the appraisal. Homeowners choosing to accept the County's methodology for estimating market value generally received a lower price for acquisition. The disparity between the tax assessed values and the actual appraised values raises concern.

Additionally, while homeowners have the option to appeal the tax-assessed value and get an appraisal, the homeowner would be required to pay for it, and only if valuation were higher would there be reimbursement of the appraisal fee at closing. This could be a challenge for lower/moderate income homeowners or others with hardship and they may forgo the opportunity to hire an appraiser.

Recommended Corrective Action: While a voluntary buyout does not require an appraisal, the County has decided to utilize valuations based on a formula calculated by the County Assessor's Office to support their determination of the market value of these properties. HUD suggests that the County reassess their valuation methodology to ensure it provides a reasonable and sound basis of the market value. HUD previously discussed and is in concurrence with the County that:

1. For homeowners that did not get an appraisal prior to closing, the County may contact them, pay for a qualified appraisal and, if there is a difference between the original compensation (sale price) and the appraised amount, compensate the homeowner for the higher appraised value of their homes, if applicable.
2. For homeowners under contract but not closed, the County may offer an appraisal to have this second estimate of valuation. All Buy-Out eligible participants should be afforded the opportunity to have an estimated market value via appraisal as suggested and agreed upon at the Exit Conference.
3. For those that present a hardship, the County may pay the cost of the appraisal upfront on behalf of the owner. For those that do not present hardship, the cost shall be reimbursable at closing.

HUD recommends that the County provide an updated excel sheet/chart for the current "under contract" homes and those sold to date to reflect (by address) original proposed offer, appraised valuation offer, comments on why any owners did not opt for appraisal after being given the opportunity, and differences in purchase prices paid to date for those already closed acquisitions. For those Buyouts in process, the initial or revised/amended offer can reflect this updated valuation process. The County should revise its written process on having to appeal the initial offer to have an appraisal considered.

Please submit a response to this Concern within 30 days of the date of this letter. A failure to address this Concern could result in a future Finding.

Concern 3: Lexington County's Written Policies and Procedures - Rebound Program.

Condition: The County's relocation (tenant) policies and procedures are still in draft form, yet four (4) tenants have been displaced. Additionally, the "draft" document mixes involuntary and voluntary acquisition language, applies additional requirements not needed under CDBG-DR, and does not include pertinent information about Section 414 tenancy installment payment policy.

Cause: HUD believes that without knowing what is correct, what should or should not be included in written policies/procedures, the County was not able to review its policy/procedural documents appropriately and for accuracy. The County shall oversee third party partners sufficiently to know if the project, or product is compliant.

Effect: The primary effect is potential noncompliance in the County's implementing policies and procedures that may not be technically correct and/or do not include all pertinent provisions (per URA, CDBG-DR).

Recommended Corrective Action: The County should review, revise and perform edits needed to its relocation (tenant) policies and procedures to assist in complying with required provisions.

Concern 4: Lexington County's Oversight of Consultants.

Condition: The County's CDBG-DR REBOUND program policies and procedures did not comprehensively address program oversight of URA consultants. For example, a consultant, Tetra Tech, is responsible for maintaining files and documentation for tenants who were displaced by the Buy-Out Program. In reviewing Tetra Tech's application review process, it does appear to have a formal application review process to ensure that all URA acquisition and relocation requirements are met and properly documented.

At the time of the monitoring review, the written relocation procedures for Homeowner Rehabilitation and the CDBG-DR Buy-Out Program were still in draft form, and the application for relocation assistance described on page 38 of the policies and procedures wasn't included in the packet. HUD reviewers are not sure if Tetra Tech has implemented these draft procedures with the first four (4) tenants displaced by the REBOUND Program. When asked to review the tenant files to determine compliance, Tetra Tech was unable to send the files to the County in a timely manner, upon request.

Cause: While it is understood that the reason a community hires a consultant is to fill a need, or for internal lack of capacity, HUD recommends increasing internal quality controls by training for this function to understand oversight responsibilities. It is difficult to oversee a program and consultants performing the work without fully understanding the documentation provided by the consultant, or in some cases not provided.

Effect: There are expectations that the County can adequately oversee the work being performed by consultants. Without a clear written outline, or road map, of how monitoring and oversight will work, the County may not be able to show effective, clear procedures.

Recommended Corrective Action: The County should develop clear guidelines/protocols for overseeing the work performed by consultants for acquisition of tenant occupied properties, rehabilitation of tenant occupied sites, and relocation activities.

Concern 5: Lexington County's Internal Controls, Training and Recordkeeping.

Condition: Managing both acquisition and relocation requires collaboration between Lexington County, the Buy-Out consultant (TetraTech), and the primary consultant performing duties for the program as a whole (Civitas). HUD's review determined that for acquisition and relocation compliance under the URA, the County would benefit from a better understanding of the URA for property acquisition, replacement housing formulas, timing and URA triggers.

The County has incomplete file documentation of URA actions for assisted properties, however, it is early in program implementation for the Buy-Out and Rehab programs, and HUD believes the County has the capacity to comply with recordkeeping requirements with some assistance.

Cause: To institute good oversight of consultants and for activity performed in-house with County staff, appropriate staff must fully understand the URA and how it is implemented. HUD determined that current staff under the CDBG DR program, as well as staff under the County's regular CDBG/HOME programs, have not received URA or 104(d) training in recent memory.

Effect: Without sufficient training on this function, enhanced internal controls including corrected policies and procedures and recordkeeping protocols, there is a possibility that non-compliant applications, tenants, owners, even consulting firms may go unchecked.

Recommended Corrective Action: The County shall take further action to maintain adequate records of its displacement activities in sufficient detail to demonstrate compliance with the regulations applicable to voluntary acquisition and displacement of residential tenants.

To oversee a program that is largely about acquisition, displacement and relocation, HUD believes strongly that training and capacity building is a need.

NOTE: Recordkeeping Follow-up Documentation Request: Once the initial 4 tenant displacement files that HUD was unable to review are complete, please send to HUD for review and comment, no later than 30 days from the date of this letter. If these tenant files are not made available for review by HUD as a part of this monitoring, this Concern may be elevated to a Finding for inaccurate recordkeeping and access to records.

6. SITE VISIT

On Wednesday, February 28, 2018, HUD staff conducted site visits to four subdivisions within the County that received the most flooding damage and Saluda Shoals Park. Chaledon was the first subdivision visited which has the highest percentage of Low-to-Moderate Income (LMI) families at 66 percent. Kinley Creek flows along the rear of several of the damaged homes. Whitehall was the next subdivision toured which is only 10 percent LMI. Kinley Creek and the creek branch named K1 intersect within this subdivision. The next stop was Saluda Shoals Park, a recreation area within the County that flooded during October 2015. The Saluda River flows through this area and Lexington County staff demonstrated how high the flood waters arose over the banks of the river. The third subdivision toured was Cold Stream, which is 25 percent LMI. The last subdivision toured was Pine Glen which is 46 percent LMI and per County staff the entire subdivision is now located within the remapped flood plain. Noted during this tour were the seven homes that have completed the buyout process through Lexington County's DR Buyout activity.

The Department remains committed to assisting the recovery of Lexington County from the impacts of the disaster in October 2015. If you or any members of your staff have any questions, please contact Steven D. Edwards, Community Planning and Development Specialist at (803) 765-5292 or Steven.D.Edwards@hud.gov.



Bradley S. Evatt
Director, Community Planning & Development
Columbia HUD Field Office



Date