



COLORADO

Division of Homeland Security & Emergency Management

Department of Public Safety

HAZARD MITIGATION GRANT PROGRAM (HMGP)

REAL PROPERTY ACQUISITION PROJECT HANDBOOK

Project Implementation

**Colorado Department of Public Safety
Division of Homeland Security and Emergency Management**

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ACRONYMS

ACM	Asbestos Containing Materials
BCA	Benefit-Cost Analysis
BCR	Benefit-Cost Ratio
BFE	Base Flood Elevation
CDBG-DR	Community Development Block Grant- Disaster Recovery
CDPS	Colorado Department of Public Safety
CFDA	Catalog of Federal Domestic Assistance
CFR	Code of Federal Regulations
CHA	Comparable Housing Assistance
CRS	Community Rating System
CWA	Clean Water Act
DHS	Department of Homeland Security (US)
DHSEM	Division of Homeland Security and Emergency Management (CO)
DOB	Duplication of Benefits
DOP	Duplication of Programs
EHP	Environmental Planning and Historic Preservation
EM Grants	Co.EmGrants.com DHSEM Grants Administration System
EO	Executive Order
ESA	Endangered Species Act
FAR	Federal Acquisition Regulations
FCO	Federal Coordinating Officer
FEMA	Federal Emergency Management Agency
FF	FEMA Form

FFE	Finished Floor Elevation
FFR	Federal Financial Report
FIMA	Federal Insurance and Mitigation Administration
FIRM	Flood Insurance Rate Map
GAR	Governor’s Authorized Representative
GIS	Geographic Information System
GSTF	Greatest Savings to the Fund
HMA	Hazard Mitigation Assistance
HMGP	Hazard Mitigation Grant Program
HUD	Housing and Urban Development
IA	Individual Assistance
ICC	Increased Cost of Compliance
IHP	Individuals and Households Program
IRS	Internal Revenue Service
NEMIS	National Emergency Management Information System
NEPA	National Environmental Policy Act
NESHAP	National Emissions Standards for Hazardous Air Pollutants Act
NFIA	National Flood Insurance Act
NFIF	National Flood Insurance Fund
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
OMB	Office of Management and Budget
PA	Public Assistance
PDM	Pre-Disaster Mitigation
PNP	Private Non-Profit

POC	Point of Contact
POP	Period of Performance
RFI	Request for Information
Risk MAP	Risk Mapping, Assessment, and Planning
SBA	Small Business Administration
SF	Standard Form
SFHA	Special Flood Hazard Area
SFM	Strategic Funds Management
SHMO	State Hazard Mitigation Officer
SOW	Scope of Work
Stafford Act	Robert T. Stafford Disaster Relief and Emergency Assistance Act
URA	Uniform Relocation Assistance
USACE	US Army Corps of Engineers
USPAP	Uniform Standards of Professional Appraisal Practice

DEFINITIONS

Adverse Impact: In general terms related to Environmental Planning and Historic Preservation (EHP) laws, a negative impact (e.g., loss, destruction, modification) to an environmental or historic resource that can have a direct, indirect, or cumulative effect on that resource. Impacts may be short term or long term in duration.

Applicant: The entity, such as a State, territory, or Federally-recognized tribe, applying to the Federal Emergency Management Agency (FEMA) for a Federal award that will be accountable for the use of the funds. Once funds are awarded, the Applicant becomes the Recipient or pass-through entity or both.

Award: A grant of financial assistance for a specified purpose by the Federal government to an eligible Recipient.

Base flood: A flood having a 1 percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE): The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO, V1–V30, and VE that indicates the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year.

Benefit-Cost Analysis (BCA): A quantitative procedure that assesses the cost-effectiveness of a hazard mitigation measure by taking a long-term view of avoided future damage as compared to the cost of a project.

Benefit-Cost Ratio (BCR): A numerical expression of the cost-effectiveness of a project calculated as the net present value of total project benefits divided by the net present value of total project costs.

Building: A structure with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site; a manufactured home or a mobile home without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws. "Building" does not mean a gas or liquid storage tank or a recreational vehicle, park trailer, or other similar vehicle.

Community Rating System (CRS): A program developed by FEMA to provide incentives for those communities in the National Flood Insurance Program (NFIP) that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Cost-effectiveness: Determined by a systematic quantitative method for comparing the costs of alternative means of achieving the same stream of benefits for a given objective. The benefits in the context of hazard mitigation are avoided future damage and losses. Cost-effectiveness is determined by performing a BCA.

Direct costs: Costs that can be identified specifically with a particular final cost objective, such as a Federal award or cost that can be linked to a specific project.

Dwelling: A building designed for use as a residence for no more than four families or a single-family unit in a building under a condominium form of ownership.

Federal award: The Federal financial assistance that a non-Federal entity receives directly from FEMA or indirectly from a pass-through entity or the instrument such as the FEMA-State Agreement, cooperative agreement, or other agreement setting forth the terms and conditions of the financial assistance.

Federal award date: The date when the Federal award is signed by the authorized official of the Federal awarding agency.

Flood Insurance Rate Map (FIRM): Official map of a community on which FEMA has delineated both the special hazard areas and the risk premium zones applicable to the community.

Floodplain: Any land area that FEMA has determined has at least a 1 percent chance in any given year of being inundated by floodwaters from any source.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Communities regulate development in these floodways to ensure that there are no increases in upstream flood elevations.

Governor's Authorized Representative (GAR): The individual, designated by the Governor, who serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program (HMGP); the person empowered by the Governor to execute, on behalf of the State, all necessary documents for disaster assistance.

HMGP lock-in ceiling: The level of HMGP funding available to a Recipient for a particular Presidential major disaster declaration.

Increased Cost of Compliance (ICC): Coverage for expenses a property owner must incur, above and beyond the cost to repair the physical damage the structure actually sustained from a flooding event, to comply with mitigation requirements of State or local floodplain management ordinances or laws; acceptable mitigation measures are structure elevation, dry flood proofing, structure relocation, structure demolition, or any combination thereof.

Management costs: Any indirect costs, administrative expenses, and any other expenses not directly chargeable to a specific project that are reasonably incurred by a Recipient or subrecipient in administering and managing an award or sub-award award. For HMGP, management cost funding is provided outside of Federal assistance limits defined at 44 CFR Section 206.432(b).

Manufactured (mobile) home: A structure, transportable in one or more sections, built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities.

National Flood Insurance Program (NFIP): Federal program that provides the availability of flood insurance in exchange for the adoption of a minimum local floodplain management ordinance that regulates new and Substantially Improved development in identified flood hazard areas.

Non-residential structure: Includes, but is not limited to small business concerns, places of worship, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than 6 months' duration, and nursing homes.

Office of Environmental Planning and Historic Preservation: A FEMA office that integrates the protection and enhancement of environmental, historic, and cultural resources into the FEMA mission and FEMA programs and activities; ensures that FEMA activities and programs related to disaster response and recovery, hazard mitigation, and emergency preparedness comply with Federal EHP laws and Executive Orders; and provides EHP technical assistance to FEMA staff, local, State, and Federal partners, and Recipients and subrecipients.

Pass-through entity: A non-Federal entity that provides a sub-award to a subrecipient to carry out part of a Federal program.

Presidentially declared major disaster: Any natural catastrophe (including any hurricane, tornado,

storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought) or, regardless of cause, any fire, flood, or explosion, in any part of the United States that, in the determination of the President, causes damage of sufficient severity and magnitude to warrant disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Private nonprofit (PNP): Any nongovernmental agency or entity that currently has (i) an effective ruling letter from the Internal Revenue Service granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1954, or (ii) satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

Recipient: A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term Recipient does not include subrecipients.

Replacement cost value: The cost to replace property with materials of like kind and quality, without any deduction for depreciation.

Special Flood Hazard Area (SFHA): The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. An area having special flood, mudflow, or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or a FIRM as Zone A, AO, A1–A30, AE, A99, AH, AR, AR/A, AR/AE, AR/AH, AR/AO, AR/A1–A30, V1–V30, VE, or V.

State Hazard Mitigation Officer (SHMO): The representative of a State government who is the primary point of contact with FEMA, other Federal agencies, and local units of government in the planning and implementation of pre- and post-disaster mitigation activities.

Sub-applicant: The entity, such as a community/local government, Federally-recognized tribe, or PNP, that submits a sub-application to the Applicant for FEMA assistance. Once funding is awarded, the sub-applicant becomes the “subrecipient.”

Sub-award: An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A sub-award may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient: A non-Federal entity that receives a sub-award from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a Recipient of other Federal awards directly from a Federal awarding agency.

Substantial Damage: Damage of any origin sustained by a building whereby the cost of restoring the building to its before-damaged condition would equal or exceed 50 percent of the market value of the building before the damage occurred.

Substantial Improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “Substantial Damage,” regardless of the actual repair work performed.

INTRODUCTION

Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 100-707) created the Hazard Mitigation Grant Program (HMGP) in 1988. The goal of the HMGP is to contribute to the implementation of a long-term, comprehensive mitigation strategy by funding activities designed to achieve the goals of local governments and the State of Colorado. The Division of Homeland Security and Emergency Management (Division), located in the Colorado Department of Public Safety (CDPS), is the applicant, grantee, recipient, and state agency responsible for administering HMGP on behalf of the state, local governments, Indian Tribal governments, and private non-profit organizations. The Division is responsible for ensuring subrecipients meet program and administrative requirements in accordance with 44 CFR §13.

HAZARD MITIGATION ASSISTANCE GUIDANCE AND HAZARD MITIGATION ASSISTANCE GUIDANCE ADDENDUM (February 27, 2015)

FEMA regularly updates their guidance documents. For HMGP under DR-4229, a sub-applicant's primary sources of information on the program and specifically acquisition are the [FEMA Hazard Mitigation Assistance Guidance](#) and the [FEMA Hazard Mitigation Assistance Guidance Addendum](#), both dated February 27, 2015. These documents outline eligibility criteria and grant utilization methodologies for HMGP and other Hazard Mitigation Assistance (HMA) grants.

DHSEM created this acquisition sub-application development handbook to supplement applicable laws, regulations, and FEMA guidance documents. Nothing in the handbook is intended to supersede FEMA guidance or actual laws.

Please note, while this handbook is intended to be comprehensive, there are scenarios that may arise specific to an individual property/property owner that cannot be anticipated. In such cases reaching out to your assigned Division Mitigation Specialist to work through these irregular issues is required.

PART 2. PROJECT IMPLEMENTATION

Pre-Award Costs and Notification of Award

In some cases a sub-applicant may choose to proceed with a project prior to FEMA award; in these cases some work is eligible to be noted as pre-award in the application. Below are examples of costs which may be incurred as pre-award costs. Once the application is complete and submitted to DHSEM (the “Grantee,” “Recipient,” or the “State”), the sub-applicant may choose to proceed with the implementation of certain aspects of their project that were identified as pre-award costs in their application. These activities are limited to: application development, request for proposal and qualifications development and posting; title search; Duplication of Benefits (DOB) analysis (i.e. DOB affidavit development per property); and property appraisals.

Please note, if a sub-applicant decides to pursue pre-award costs the activities must be listed in the section below (and designated as such on their application). If a sub-applicant needs additional consideration of other budgetary line items as pre-award costs those must be evaluated on a case by case basis. *Please be aware that if the application is not approved by FEMA, pre-award costs incurred by the sub-applicant will be considered sunk costs and are not eligible for reimbursement.*

If the sub-applicant prefers to wait until formal FEMA award to begin, the sub-applicant must wait for FEMA to complete its programmatic and Environmental and Historic Preservation (EHP) review of the project and award funding to DHSEM.

After receiving an official award from FEMA, DHSEM will draft a project contract (“Grant Agreement”) and send the contract to the subrecipient (formerly the “sub-applicant”) for review and signature. The subrecipient returns a contract signed by an authorized agent to DHSEM to be signed by the DHSEM Director and the Colorado Department of Public Safety (CDPS) Controller, fully executing the contract. Upon execution, the subrecipient is notified they may begin work on the project and identified pre-award costs may now be submitted for reimbursement. An executed copy of the State Grant Agreement will be sent to the subrecipient for their records.

STEP 1. PROCUREMENT & RFP/RFQ DEVELOPMENT

A. Procurement

The subrecipient must have written procedures that cover all procurement actions which need to comply, at a minimum, with Federal requirements as stated in [2 CFR part 200](#). Please be advised, if the subrecipient has more restrictive procurement requirements, those procedures must be followed. When procuring goods and/or services, the subrecipient’s agent must use a fair and competitive process conducted pursuant to the applicable regulations and procedures outlined below:

1. In arranging for professional services, buyers are required to follow the procurement standards established by the Colorado Department of Personnel and Administration, State Purchasing Office.
2. All purchases are required to be made as prescribed in the appropriate local, state laws and the Federal *Uniform Administrative Requirements for Grants and Agreements* (2 CFR, Chapter II, Part 225—formerly OMB Circular A-87).
3. “Cost-plus-percentage-of-cost” or “percentage of construction cost” contracting is strictly prohibited and contract methodologies using the same are not allowed.
4. Never award a contract to a debarred contractor. In order to avoid awarding a contract to

debarred contractors, the subrecipient must conduct reasonable research into the background of bidders and subcontractors before entering into a purchase agreement or contract. Please see sam.gov to review contractor exclusion records. Documentation of this record search should be provided with reimbursement requests to DHSEM.

5. The subrecipient must follow the most strict procurement regulations between Federal, State, or Local regulations.

Example: If a subrecipient's local regulations stipulate a threshold of \$10,000 for a Request for Proposal (RFP), although the Federal regulations state \$150,000, the subrecipient must follow the stricter local codes. In this case, the subrecipient must solicit formal bids.

B. Davis-Bacon Act

The Davis-Bacon Act is a law that requires Federal construction contractors to pay their workers the "prevailing wage" based on the local union wage scale defined by the United States Department of Labor. The provisions of the Davis Bacon Act do not apply to State or local contracts using Federal assistance funds under the Stafford Act. However, if Housing and Urban Development (HUD)-Community Development Block Grant (CDBG) funds comprise any portion of the project's funding, the Davis-Bacon Act provisions will apply. Please be advised, Davis Bacon does not apply unless project activities include new construction.

STEP 2. IMPLEMENTATION

A. Title Work

It is highly recommended subrecipients perform and review title searches prior to procuring appraisals to ensure there are no easements or encumbrances on the property which would be incompatible with FEMA's open space deed restriction requirement. By completing this step early in the process, the subrecipient can devote time and resources to properties which are eligible to be acquired by the program and sort out those which are ineligible at the earliest stage possible.

Some examples of obstacles which will need to be resolved upon completion of the title search or at time of sale include, but are not limited to:

- Multiple owners of the property (particularly in instances when the person the community has been working with to acquire the property is not the property owner).
- Owner is deceased
- Home is owned by a trust or an estate
- Small Business Administration (SBA) home loan
- Outstanding liens
- Incompatible easements and encumbrances

The subrecipient should procure a title company to perform the title search on all properties submitted in the application. The subrecipient should review the results of the title search analysis prior to uploading to EMGrants to determine if there are any issues which may be resolved prior to State review, this ensures issues are resolved in the most expedient and efficient manner possible.

When procuring a title company, include oil, gas, and mineral rights in the search for each property to ensure these rights are not severed and owned or leased by a different entity. If clear title cannot be obtained, the easements and encumbrances on a property must be compatible with FEMA open space requirements. If this condition cannot be met then the property cannot be purchased.

Once the subrecipient believes all issues related to title search have been addressed and is confident it

will be able to obtain clear title upon closing, the subrecipient should upload title documents to EMGrants for State review and begin the appraisal process for that property.

B. Property Valuation Methodology and Purchase Offer

If applicable, DHSEM will work with the subrecipient and FEMA to determine a pre-disaster appraisal date to be used by the appraiser to determine the value of the homes to be acquired. This date should be prior to the date of the disaster impacts unless extenuating circumstances exist. Once identified, the pre-disaster appraisal date will be conveyed to the subrecipient via a Pre-Disaster Appraisal Date Determination letter from DHSEM.

Once it is determined by the title company, subrecipient, and DHSEM that a property does not have incompatible encumbrances or liens (per the programmatic open space requirement) the subrecipient should coordinate with the property owner to complete a property appraisal. This appraisal will be completed at the subrecipient's expense and in accordance with the Pre-Disaster Appraisal Date Determination letter. Please note, appraisals conducted by the subrecipient are an eligible project cost, subrecipient may be reimbursed at a later date.

This coordination by the subrecipient to the property owner should request permission from the property owner for the appraiser to enter the property to conduct the appraisal, notify the property owner of the date when the appraiser will be appraising the property as well as provide a timeline for when the property owner can expect to see the appraisal results. Additionally, the subrecipient should clarify for the property owner whether pre or post event fair market value will be used.

The only approved method for valuation of the property is a certified real property appraisal, conducted by a Colorado licensed appraiser in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). At a minimum, the following must be observed by the appraiser during the process:

- The appraiser must comply with all relevant State of Colorado laws and requirements and have the appropriate certification, qualifications, and competencies based on the type of property being appraised;
- The appraisal must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

If applicable, the subrecipient must coordinate with the State to determine the Pre-Disaster Appraisal date to be used in the appraisal (i.e. pre or post -event market value) and these assumptions must be applied consistently throughout the project area for all similar properties to be acquired. The DHSEM Pre-Disaster Appraisal Date Determination letter will have identified this date.

The subrecipient is required to offer post-disaster values if the current property owner purchased or took possession of the disaster-damaged property after the disaster event or if the property owner is not a national of the United States or qualified alien.

Upon completion of the appraisal, the appraisal should be shared with the property owner via an Appraisal Acknowledgement Form indicating the property owner has been informed of the property's appraised amount. The Appraisal Acknowledgement Form is created by the subrecipient, sample language may be provided by DHSEM upon request by the subrecipient. Please be aware, the offer amount is still subject to a duplication of benefits review. Additionally, the acknowledgement form should provide property owners with contact information to notify the subrecipient's project coordinator whether the property owner will be accepting the subrecipient's appraised value or will be requesting reconsideration via an appraisal obtained at the property owner's expense to then be submitted to the subrecipient. If the property owner chooses to seek reconsideration of the appraisal

amount, the notification form should provide a timeline whereby the property owner should have their appraisal completed and submitted to the subrecipient's identified agent as identified on the appraisal acknowledgement form (e.g. within 30 business days).

C. Property Owner Property Value Appeal Process

Upon notification of the subrecipient's appraisal results, the property owner may decide to obtain their own property appraisal. Upon completion of this appraisal, the property owner should submit their completed appraisal to the subrecipient.

All completed appraisals must be submitted by the subrecipient to DHSEM. This includes the subrecipient commissioned appraisal and, if applicable, the property owner's appraisal.

If the property owner and subrecipient appraisals meet all requirements listed above, (Section B – Property Valuation Methodology and Purchase Offer), and is within ten percent of the subrecipient-commissioned appraisal, the offer will be revised using the property owner-provided appraised value as the basis of compensation.

If the property owner-provided appraisal is greater than 10 percent above the subrecipient-commissioned appraisal both appraisals will then undergo a desktop review. The desktop review will be completed by a certified property appraiser, to be contracted by DHSEM. This desktop review will ensure all appraisals are making uniform assumptions of the property, all appraisals meet programmatic requirements per Section B – Property Valuation Methodology and Purchase Offer, and each appraisal used fair and equitable comparable structures.

Upon completion of the desktop review, if both appraisals are determined to be reliable and credible, the basis of compensation will be the average value of the two submitted appraisals. This average value shall constitute the subrecipient's final monetary offer to purchase the property, subject to adjustments required by the duplication of benefits review.

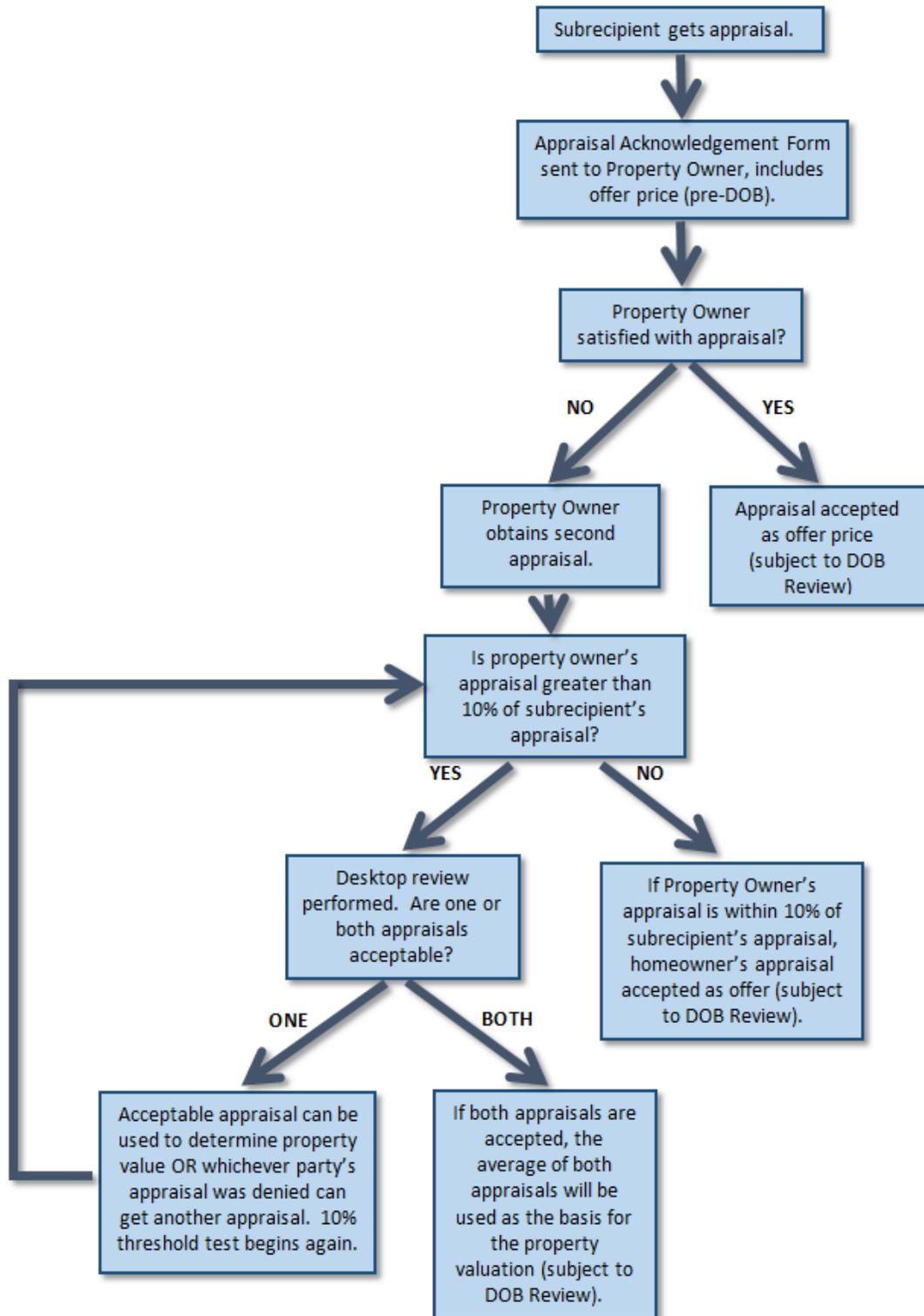
Should it be found during the desktop review that one (or both) of the appraisals does not comply with the programmatic requirements found in Section B: Property Valuation Methodology and Purchase Offer and/or is determined to be neither reliable nor credible, the subrecipient and/or property owner have two options:

- The acceptable appraisal may be used to determine the property value; or
- Whichever party's (subrecipient or property owner) appraisal was deemed unacceptable may choose to obtain and submit another appraisal to be reviewed via the desktop review process (subject to the 10% property valuation analysis).

If it is determined that a second appraisal will be submitted by the subrecipient or the property owner, these appraisals must be received by DHSEM within 30 business days of the letter from DHSEM informing the subrecipient that the appraisal did not meet programmatic or appraisal standards¹. **Figure 1- Process Steps for Property Valuation** (below) illustrates the potential steps in the property valuation process.

¹ A letter from DHSEM informing the subrecipient of the desktop review results will convey this information.

Figure 1 Process Steps for Property Valuation



D. Duplication of Benefits (DOB) Analysis and Review

DOB is assistance from more than one source which is used for the same purpose or activity (refer to Appendix F: HMGP Duplication of Benefits Review for additional DHSEM guidance documents). DOB review will be conducted for properties in the project scope of work for which the purchase price is based on the pre-event market value. The focus and intent of the DOB review is to identify **insurance proceeds**, other **Federal program grants**, and **other funding sources** the property owner may have received to repair or replace a structure. It is illegal for a property owner to receive benefits twice for the same property damage. Therefore, the State must reduce the purchase price by the total value of any disaster-related structure repair assistance and/or National Flood Insurance Policy (NFIP) real property repair and replacement payments received by the property owner. This lawful requirement is known as DOB deductions.

When a damaged property is being acquired and the purchase price is based on the pre-event market value, the property owner must demonstrate that any insurance or other assistance received for repairs to the damaged structure was used for that purpose. Otherwise, the amount of repair assistance will be deducted from the purchase offer.

A subrecipient will have completed a DOB affidavit per property during the application process. At the time of project implementation, the subrecipient will conduct a more thorough review and analysis of Duplication of Benefits received by the property owner. Upon completion of this analysis by the subrecipient, all documentation will be provided to the State via EMGrants. The State will then review and verify all applicable DOB per property and any supporting documentation provided. This process may happen in conjunction with title search review.

It is a best practice to inform property owners of this process as soon as possible so they are aware that they may not receive the full appraised amount of their property value. This also allows property owners to collect relevant documentation (e.g. receipts, invoices, credit card statements, insurance documentation, etc.) as they will be required to submit this information for review as part of this process.

The DOB requirement only applies to real property repair assistance and does not apply to any personal property or medical, funeral, commodities, or counseling assistance that may have been provided to the property owner.

Credits can be used to offset the DOB deduction as long as the funds were used for their intended purpose. For example, if the property owner received a FEMA Individual Assistance (IA) grant to repair the structure, the property owner can offset the IA grant with actual expenses if used to repair the home. Receipts and proof of payment must be provided for the credit to apply.

It is important to note that a property owner may not receive credits in an amount which exceeds the pre-event value of their home. Property owners may only receive credits up to and including the appraised pre-event value.

When a property owner has received insurance or other repair or mitigation assistance for the same purposes as the HMGP grant, receipts should be retained to demonstrate the use of funds. For acquisition projects offering pre-event value, receipts are necessary to document how funds were spent. Proof of Payment and receipts are the only accepted method of demonstrating expenditures. Examples of potential duplication of benefits are listed below:

PROCEEDS (reduction to offer price)

- FEMA Individuals and Households Program (IHP) (Relocation or Repairs only)

- Small Business Administration (SBA) Disaster Loan (Repair or Mitigation Only)
- Private Insurance proceeds (structural repairs only)
- Charitable Gifts (structural repairs only)
- Increased Cost of Compliance (ICC)

Increased Cost of Compliance (ICC)

In some instances a property owner may have carried the Increased Cost of Compliance (ICC) endorsement on their National Flood Insurance Program (NFIP) insurance coverage. In these instances it is possible for the property owner to sign over these benefits to the subrecipient to use as local match. For more information on this specific scenario please consult the following resource guides:

- [FEMA Hazard Mitigation Assistance Tool for Identifying Duplication of Benefits \(Oct. 2012\)](#) and the [FEMA Increased Cost of Compliance Coverage Guidance for State and Local Officials \(Sept. 2003\)](#).

CREDITS (offset proceeds)

- NFIP insurance premium payments can be applied as credits against DOB proceeds. Five years of premium payments can be applied with premium documentation and proof of payment. The last full year the property owner paid and received the full benefit of their premium will be considered “year 5”; we will then count back 4 years from this premium to determine the number and amount of total premiums the property owner can use to offset the flood proceeds received.
- Itemized receipts - paid contractor invoices or hardware store receipts can be used to offset the proceeds. Materials purchased and work done without receipt or invoice may not be counted as the expense cannot be factually proven. Property owner labor cannot be claimed as a credit.
- Additionally, the value of any work performed by the following may not be claimed as an offset to DOB deductions:
 - i. The property owner and/or their family;
 - ii. Any person performing work without compensation;
 - iii. Uncompensated voluntary agency or organized group (e.g. Mennonite Disaster Services, Habitat for Humanity, Church of the Brethren, etc.)

E. FEMA Individuals and Households Program (IHP): Temporary Living Proceeds and Credits

In some cases it may make more sense for a property owner to seek temporary living arrangements instead of repairing their home if they intend to participate in the acquisition program. With this in mind, DHSEM will allow these costs to be credited against the IHP repair proceeds. Allowable credit documentation include: proof of rental payment (with subsequent copy of lease as documentation) and hotel folios with zero balance.

If the property owner received proceeds for IHP repair and IHP temporary housing assistance and wants to claim temporary living credits, the proceeds for repair and temporary living must be included in the duplication calculation. If the property owner only received IHP temporary housing assistance, no duplication exists. Please see examples below:

Please note temporary living costs may only be credited in cases where a property owner received assistance through FEMA's Individuals and Households Program for repairs to their home. If the property owner just received IHP temporary living proceeds, they do not show the proceed or the credit as this is not structure related.

1. Property owner received \$10,000 FEMA IHP repair only. Temporary living costs can be used as a credit to offset the repair proceeds with proper documentation.
2. Property owner received \$10,000 FEMA IHP repair and \$10,000 FEMA IHP temporary housing proceeds. Both types of proceeds must be claimed if property owner intends to offset with temporary living credits. If owner is not applying temporary living credits, there is no need to show temporary living proceeds.
3. Property owner received \$10,000 FEMA IHP temporary housing proceeds only; there is no need to show as a proceed.

F. Method for calculating DOB

- a. Using the DOB Property owner Affidavit, determine the total amount of benefits paid to the property owner (see DOB Property owner Affidavit, Exhibit I).
- b. If the subrecipient is using a post-disaster valuation method to determine the property’s fair market value, **DOB deductions do not apply.**
- c. Only grants to repair real property or NFIP insurance payments to indemnify structural loss are considered under the DOB review. Grants for personal property (contents) repair or replacement, medical services or devices, funeral costs, transportation, occupational supplies and equipment are not subject to DOB deductions.
- d. Once all DOB deductions and offsets have been calculated, the amount of unused benefits is deducted from the purchase offer (*see example below*).

EXAMPLE 1: DOB Valuation	
FEMA (IA) provides \$1,000.00 to replace front steps	\$1000.00
Property owner has \$900.00 in receipts for repair of front steps	\$900.00
DOB deduction:	\$100.00

G. Completion of the Duplication of Benefits

Upon completion of the DOB analysis by the subrecipient, all documentation obtained from the property owner should be uploaded to EMGrants for review by DHSEM. Once DHSEM has reviewed the uploaded documentation, DHSEM will either notify the subrecipient that the analysis has been approved or request clarification and additional documentation. If approved, the subrecipient representative and the property owner must sign the form and EMGrants will generate the Property Final Offer Package. At this time, the subrecipient should schedule to meet with the property owner to discuss the final offer. The subrecipient should always review the Final Offer Package for accuracy before presenting information to the property owner.

H. Final Offer Package and Meeting with Property Owners

The Final Offer Package will include the following items of which the applicable items will require the property owner’s signature (all documents in Appendices are templates; please refer to Appendix I for the items below):

- Owner Letter

- Voluntary Participation Agreement Part II
- Appraisal Acknowledgment Form
- Photo Affidavit
- Seller’s Occupancy Certification
- Statement of Determination of Compensation
- Certificate of Inspection and Possession
- Notice to Prospective Tenant: Move In Notice (if applicable)

At the time the property owner accepts the final purchase offer, a formal FEMA Voluntary Participation Agreement (FEMA Form 81-112, OCT 08) must be executed. Part 3 of this form identifies the date upon which the final purchase price was determined and the amount of the purchase offer. Please be aware, the subrecipient will obtain two separate Voluntary Participation forms. The first is signed by the property owner at the time of project application (refer to **Section 1. Step 3. H. Property Owner Application Packet**). The second Voluntary Participation Agreement (VPA pt. 2) will include the property purchase offer and is presented to the homeowner prior to formally closing on the property as part of the final offer package.

Upon receiving the property owner’s signature on the documents listed above, the next step will be to upload these documents into EMGrants (to submit to DHSEM) and set a date to close on the property with the owner and the closing company.

I. Closing

At closing, the property owner will execute a Warranty Deed in favor of the acquiring subrecipient. The Warranty Deed should be in a format accepted by the State of Colorado and specifically approved by DHSEM. The DHSEM and FEMA-approved Deed Restriction must be attached to the Deed and must be recorded as part of the Deed document.

The preferred method of documenting the property’s financial status is for the closing company to prepare a Settlement Statement using a HUD-1 or equivalent buyer settlement statement form (see Appendix J). The property owner will be required to pay any and all liens against the property (e.g. mortgage, mechanic’s lien, line of credit secured by real property, tax liens, etc.) at the time of closing. Ordinarily, the closing company will request an advance of the settlement proceeds. In turn, it will prepare settlement checks in advance for each debt that must be paid from the settlement, and the balance paid by check to the seller.

Comparable Housing Assistance (CHA) are additions to the purchase offer if the purchase offer for a property is less than the amount the property owner must pay to purchase a comparable replacement residence in a non-hazard-prone area in the same community (refer to “Additions to the Purchase Offer” in FEMA *Hazard Mitigation Assistance Guidance Addendum*, 2015, p.26). The Recipient and subrecipient may choose to make available to the property owner a supplemental payment of up to \$31,000 that would be applied to the difference (FEMA, 2015, p.26). Certain conditions must be met for a seller to be eligible for CHA, thus, if a subrecipient believes a seller eligible, the subrecipient should alert the State to determine the eligible amount of CHA may be offered (if any). Please refer to the points listed below for the circumstances that must apply in order for a property owner to receive supplemental payment:

- Funds cannot be secured from other more appropriate sources, such as housing agencies or voluntary groups.
- Decent, safe, and sanitary housing of comparable size and capacity is not available in non-hazard-prone sites within the community at the anticipated acquisition price of the property being vacated.

- The project would otherwise have a disproportionately high adverse effect on low-income or minority populations because project participants in these populations would not be able to secure comparable decent, safe, and sanitary housing” (FEMA HMA Addendum, 2015, p.26-27).

In the event the seller is entitled to CHA compensation, the relocation specialist should request a separate advance from the subrecipient, payable to the property owner directly (or through an approved distribution method established for the property before closing) and presented at the closing meeting. The CHA award should not be provided until the property has undergone closing and the Warranty Deed is signed.

All tenants eligible to receive Uniform Relocation Assistance (URA) should be provided their assistance package as soon after the property closing as possible. URA will be determined on a case by case basis and is subject to a DOB review.

The subrecipient must record the Warranty Deed with the appropriate County Clerk within fourteen days after settlement along with the open-space deed restrictions.

STEP 3. PROPERTY DEMOLITION & SITE STABILIZATION

A. Demolition of Structures Prior to HMGP Project Approval

There may be circumstances when a structure proposed for acquisition under the Hazard Mitigation Grant Program (HMGP) will need to be demolished on an emergency or urgent basis. When such a situation arises, the subrecipient must take reasonable steps to gather the data necessary for review of the structure’s eligibility under the HMGP.

Please note, approval of demolition prior to project award is granted in very limited circumstances and must be evaluated on a case by case basis. The burden of proof to establish the necessity to conduct the demolition prior to award is placed upon the subrecipient. Please coordinate closely with DHSEM if the subrecipient determines this to be necessary. The following points delineate the types of data and documentation required in such cases:

- If safety permits, obtain exterior and interior photographic evidence of the structure, to include any unique or unusual fixtures or features;
- Records indicating the structure’s date of construction and the year and specifics for any significant remodeling or renovations;
- A narrative describing the use of the structure (e.g. full-time dwelling, commercial, recreational, etc.); the square footage of structure; and apportionment of square footage if more than one type of use exists. County property records from the Assessor with this information will suffice;
- A narrative describing the emergency or urgent circumstances that warrant the structure’s demolition;
- A narrative discussing what, if any, alternatives exist to demolishing the structure;
- A narrative outlining the community’s legal ability to enter the property to perform demolition prior to purchasing;
- Documentation of what temporary measures are currently in place or proposed to preserve environmental integrity pre-demolition, or in the alternative, what environmental protection measures were used during and after the structure’s demolition; and
- Which Construction and Demolition (C&D) Waste landfill will be used to receive the structural debris?

The subrecipient should provide the data outlined above as quickly as possible to the State in order for an Environmental and Historic Preservation (EHP) Emergency Consultation to occur. *If at all possible,*

the structure should not be demolished until an EHP review has been conducted, the subrecipient's narrative reviewed, and FEMA has cleared the property for demolition.

B. Demolition of Structures Post HMGP Project Approval

Asbestos Survey & Lead Testing

Abatement of asbestos and/or lead-based paint is eligible under the acquisition program.

The demolition of structures may not take place until the structure is examined for the presence of asbestos containing materials (ACMs) and the abatement of the same should any materials be discovered to contain greater than one percent asbestos as determined by laboratory analysis.

Please be aware, prior to conducting asbestos and or lead testing for property demolition, the subrecipient must procure the testing company separate from the demolition contractor, since these are separate services and there is potential for conflict of interest.

In order to comply with the National Emissions Standards for Hazardous Air Pollutants Act (NESHAP) each homogenous surface of the demised structure must be tested for the presence of ACMs. This usually means one sample for all interior walls (including ceiling) so long as each wall is similar in age and composition to each other. Additional samples are commonly required for the following: kitchen and bathroom floor and wall tiles; carpets, padding and linoleum; exterior siding and roofs; furnaces; pipe insulation; fireplace inserts and flues; and certain building materials such as window caulking. Structural items such as wooden doors, cabinets, windows and frames (excluding caulking), metal fixtures and valves, and brick, block or poured cement foundations, walkways, and drives generally do not require testing. The average medium sized structure will usually require between 10 and 12 samples to meet the testing requirement of NESHAP. The cost for inspecting the structure and obtaining the required samples is an eligible project expense. Please note, due to the invasiveness of this process it is generally recommended asbestos testing not be completed until the property is fully acquired and in legal possession of the acquiring entity.

Post Demolition Site Stabilization

An acquired property must be demolished within 90 days of closing. If the subrecipient determines that it is in the best interest to leave any improvements on the property those requests must be formally submitted to the State and subsequently be sent to the FEMA Regional Administrator for a final determination.

The sub-grantee is authorized to restore the surface of the acquired property once demolition has been completed. The purpose of land restoration is to ensure that the vacated lot does not pose a hazard to the public that might be in proximity to the acquisition site and to prevent land wasting or erosion. The HMGP will pay the costs of leveling the lot to ensure proper drainage; seeding and mulching of the surface; and planting of indigenous vegetative species (as needed to control erosion).

Approved project funds may not be used to undertake building of any new structure even if the proposed structure would be compliant with FEMA's open space requirements and was approved as part of the subrecipient's post-acquisition land-use plan.

Erecting open pole picnic shelters, building restroom facilities, and installing playground equipment are generally permitted if approved by the FEMA Regional Administrator (either at the time of original project approval or through a later request made by the subrecipient).

STEP 4. PROJECT CLOSEOUT

At this point, the subrecipient has submitted to DHSEM all executed closing documents, the property demolition has been completed in full, and all soft and hard costs associated with the property have been accounted for by the subrecipient and DHSEM.

A. Programmatic closeout – steps for closeout

The final step of project implementation is for the State and the Subrecipient to closeout the sub-award. The State and the subrecipient will begin this process once all of the properties have been closed, demolition of each property in the project completed, and all associated costs accounted for. The subrecipient must submit a formal letter to the State requesting project closeout (template provided in Appendix J). In order for both the subrecipient and the State to close the sub-award, the sub-award file should document the following, per FEMA HMA Guidance (2015) and 44 CFR 206.438 (d):

- The reported costs were incurred in the performance of eligible work
- Verification that any program income has been deducted from total project costs as specified in 2 CFR Section 200.307
- Final site inspection report that includes photographs of each property site after project implementation
- A copy of the recorded deed and attached deed restrictions for each property
- Final project costs, including Federal share, non-Federal share, administrative allowance (if applicable), and cost underrun and overruns
- Latitude and longitude coordinates of each property in the final mitigation project
- A signed Statement of Voluntary Participation from the owner of each property identified in the sub-award scope of work.
- For each property identified in the **FEMA Repetitive Loss database**, a completed FEMA Form AW-501 documenting the completion of mitigation on the repetitive loss property is required
- Certification and documentation to support that the project was completed in compliance with environmental conditions, required permits, and applicable building codes
- Certification that the project meets NFIP insurance requirements (if applicable)

Please review the **Closeout Toolkit: Checklist for Hazard Mitigation Assistance Programs Sub-awards** (Appendix K) for a comprehensive checklist of required documentation. The subrecipient must complete this checklist and submit it with their formal letter requesting project closeout.

B. Future Federal Benefits

Per FEMA HMA Guidance Addendum (2015): “After settlement of the property acquisition transaction, no disaster assistance for any purpose from any Federal entity may be sought or provided with respect to the property, and FEMA will not distribute flood insurance benefits for that property for claims related to damage occurring after the date of settlement in accordance with the requirements in 44 CFR Part 80” (p.11).

C. Monitoring post closeout (3 years monitoring)

The State and the subrecipient will work together to meet the three year FEMA monitoring requirement for the acquired properties which utilized FEMA Hazard Mitigation funding (for more information see 44 CFR Section 80.19 (d)).

The three year monitoring timeline will be based on the first acquired property in the subrecipient’s buyout program for the relevant disaster. From the date of the first property acquired (based on the

closing date, per settlement statement), the three year monitoring requirement is triggered.

Within 30 days of the three year monitoring requirement, the State will reach out to the community to schedule the monitoring visit. The State, along with the subrecipient, will visit each parcel that was purchased with HMGP funding. A site inspection of each parcel will be completed to ensure the parcel is being maintained in accordance with the FEMA allowable open space requirements. Once the site visits are complete, the subrecipient will submit a monitoring report to the State within 25 days of the site inspection for review. The State will review the report and submit to the FEMA Regional Administrator. If the State requests subrecipient revisions, the subrecipient should revise the report and submit back to the State within five days.

The monitoring report should include:

- Property Address
- Property Coordinates
- Date of Acquisition
- Language of:

The Property shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses generally include parks for outdoor recreational activities, wetlands management, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), unimproved and unpaved parking lots, buffer zones, and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space.

- Report signed and dated by the authorized subrecipient agent