

POST AUDIT DIVISION

LEGISLATIVE AUDIT REPORT

RISE WEST VIRGINIA

FLOOD RECOVERY PROGRAM

- The West Virginia Development Office Entered Into Six Illegal Contracts with Horne LLP for Approximately \$18 Million.
- The West Virginia Development Office Entered Into Seven Construction Contracts Totaling Over \$71 Million for Home Rehabilitation, Reconstruction, and Replacement Services Under the Rise West Virginia Housing Restoration Program Which Violate State and Federal Laws.



GENERALLY ACCEPTED GOVERNMENT
AUDITING STANDARDS STATEMENT

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (**GAGAS**). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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JUNE 24, 2018
LEGISLATIVE AUDIT REPORT

RISE WEST VIRGINIA FLOOD RECOVERY PROGRAM

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Executive Summary

The Legislative Auditor conducted this audit of the RISE West Virginia Flood Recovery Program pursuant to West Virginia Code §4-2-5. The objectives of this review are to determine the extent to which the contracts executed by the West Virginia Development Office comply with the applicable State and federal laws governing procurement and the use of Community Development Block Grant – Disaster Recovery funds. The finds of this audit are highlighted below.

Frequently Used Acronyms in This Report

HUD: United States Department of Housing and Urban Development

WV-HRP: Rise West Virginia Housing Restoration Program

WV-RAP: Rise West Virginia Rental Assistance Program

MHU: manufactured housing unit

LMI: low-to-moderate income

Report Highlights

Issue 1: The West Virginia Development Office Entered Into Six Illegal Contracts with Horne LLP for Approximately \$18 Million.

- The Development Office originally contracted with Horne for a total of \$900,000 to provide project management services for the State’s Disaster Recovery funded-programs.
- Between May 2017 and February 2018, the Development Office entered into six additional “Task Order Agreements” with Horne with a total cost of approximately \$18 million.
- None of these additional “Task Order Agreements” were process through or approved by the State’s Purchasing Division. Therefore, Legislative Services has opined that they are void as a matter of W. Va. Code §5A-3-17.

Issue 2: The West Virginia Development Office Entered Into Seven Construction Contracts Totaling Over \$71 Million for Home Rehabilitation, Reconstruction, and Replacement Services Under the Rise West Virginia Housing Restoration Program Which Violate State and Federal Laws.

- The West Virginia Development Office appears to have violated federal law with respect to committing or expending Disaster Recovery funds. Each of the seven construction contracts entered into by the Development Office for the Rise West Virginia Housing Restoration Program was executed and effective prior to the date upon which the Development Office received Authority to Use Grant Funds from HUD.
- The West Virginia Development Office has issued over \$700,000 in payments under these invalid contracts. Moreover, approximately \$400,000 in payments were issued prior to the date upon which the Development Office received authorization to use the federal grant money.
- The West Virginia Development Office did not comply with the Purchasing Division statutes and rules when entering into these seven construction contracts. Therefore, Legislative Services has opined that they are void as a matter of W. Va. Code §5A-3-17.

Recommendations

- 1.1 The Legislative Auditor recommends that the West Virginia Development Office seek repayment, or credit against the new contract, if permissible, for money paid pursuant to the invalid Task Order Agreements.
- 1.2 The Legislative Auditor recommends that the West Virginia Development Office not issue payments for any work done under the invalid Task Order Agreements Three through Eight.
- 2.1 The Legislative Auditor recommends that the West Virginia Development Office cease all future payments under the current construction contracts for the Rise West Virginia Housing Reconstruction Program.
- 2.2 The Legislative Auditor recommends that the West Virginia Development Office terminate the existing construction contracts and enter into new contracts that comply with the applicable State and federal law.
- 2.3 The Legislative Auditor recommends that the West Virginia Development Office work with the U.S. Department of Housing and Urban Development to resolve any issues regarding the Disaster Recovery funds that were committed and expended prior to February 20, 2018.

Background

Between September 2016 and May 2017, West Virginia Was Awarded Approximately \$150 Million in Community Development Block Grants – Disaster Recovery Funds to Respond to the June 2016 Flood

In June of 2016, West Virginia experienced historic levels of rainfall, which led to extreme flooding. In total, more than a dozen counties experienced extreme flooding, and a State of Emergency was declared in 44 of West Virginia's 55 counties. The State requested disaster recovery funding from Congress to aid in the ongoing recovery efforts. Congress approved an Appropriations Act on September 29, 2016, which made \$500 million available to state and local governments around the country. On October 28, 2016, the U.S. Department of Housing and Urban Development (HUD) announced that it had awarded \$17 million of those funds in the form of Community Development Block Grant - Disaster Recovery (Disaster Recovery funds) to the State as a result of the June 2016 flooding.

Internal memos obtained by the Legislative Auditor show that the West Virginia Department of Commerce (Commerce) immediately began planning to hire a consulting firm to assist the State in managing the Disaster Recovery funds and ensure compliance with federal law. On November 2, 2016, then-Commerce Secretary Keith Burdette requested emergency purchasing authority, pursuant to W. Va. Code §5A-3-15, from the Purchasing Division. In his request, Secretary Burdette wrote:

. . . Due to the extremely short deadline, a consultant needs to be commissioned immediately to assist the West Virginia Development Office in developing a strategy on how best to effectively utilize these funds in the designated areas, as well as to set up processes to track and expend the funds efficiently in accordance with the federal regulations and requirements.

The emergency purchasing request was approved on the same day, clearing the way for Commerce to begin seeking consulting services.

On November 4, 2016, the West Virginia Development Office (Development Office) sent out its Request for Proposal soliciting project management services related to the State's receipt of the Disaster Recovery funds. Bids were solicited from four vendors, and two complete bids were returned by the November 16, 2016 response deadline. Bid by the vendors Horne LLP and Tetra Tech, Inc. were evaluated, and Horne was awarded the contract.

Federal Register Vol. 81, No. 224 was released on November 21, 2016 and included the details regarding HUD's award of \$17 million to the State of West Virginia in connection with the June 2016 flood. The Federal Register requires that \$13,600,000.00 (or 80 percent) of these funds are to be spent in Kanawha or Greenbrier counties, which are identified by HUD as the "most impacted areas." In addition, the Federal Register establishes all of the requirements that must be met to receive the Disaster Recovery funds, including the submission of an action plan, which

documents the State's unmet needs related to the disaster, outlines the programs the State plans to fund with the Disaster Recover funds, and allocates specific amounts to each program.

Commerce, acting through the Development Office, entered into a contract with Horne on December 12, 2016. The initial contract contained two "Task Orders" which laid out specific services to be delivered by Horne and the associated compensation for the completion of each Task Order.

Task Order One required Horne to prepare and submit a comprehensive action plan, as required by the Federal Register, in order for the State to receive Disaster Recovery funds. Upon gaining HUD approval for the submitted action plan, Horne would be paid \$225,000 by the Development Office.

Under Task Order Two, Horne would provide program guidance, design, and development for the State's Disaster Recovery programs, as well as its normal Community Development Block Grant programs. These services included activities such as compliance monitoring, policy development, training, and support services. Horne is to be compensated a total of \$675,000 for services rendered under Task Order Two.

Congress voted to make available additional Disaster Recovery funds in December of 2016. On January 18, 2017, Federal Register Vol. 82, No. 11 was released, which indicated that West Virginia had been granted an additional \$87,280,000 in Disaster Recovery funds to aid in the flood recovery effort. As with the previous allocation of Disaster Recovery funds, the State was required to spend \$69,824,000 (or 80 percent) in Kanawha and Greenbrier counties. In addition, the State was granted a 90-day extension for the submission of its action plan to HUD.

On April 21, 2017, the State made a timely submission of its action plan to HUD for approval. On June 1, 2017, HUD officially approved the State's action plan, which provided for the expenditure of \$104,280,000 in Disaster Recovery funds. According to the State's original action plan, \$97,398,950 or 93 percent of the funds allocated were to be spent on addressing the State's unmet housing needs.

Finally, in May of 2017, Congress appropriated additional Disaster Recovery funds to prior recipients. This third disbursement of federal funds, detailed in Federal Register Vol. 82, No. 150, made available an additional \$45,595,000 to West Virginia in connection with the June 2016 flood. The State was also required to submit an amendment to its existing action plan, updating its needs assessment and providing a detailed plan for the expenditure of these additional Disaster Recovery funds.

In total, the State received an allocation of \$149,875,000 in Disaster Recovery funds. These funds must be spent in 12 disaster-declared counties: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster.

Overall, these grant funds are subject to various requirements established in the Federal Registers or elsewhere in federal law:

- 80 percent of the total grant amount, or \$119,900,000, must benefit the HUD-identified “most impacted areas” (Kanawha, Greenbrier, Clay, and Nicholas counties¹).
- 70 percent of the total funds, or \$104,912,500, must benefit low-to-moderate income (LMI) persons.
- All of the activities funded by the Disaster Recovery funds must meet one of three national objectives:
 - Benefit LMI persons;
 - Aid in the prevention or elimination of slums or blights; or
 - Meet another urgent community development need.
- All of the funded programs and activities must stem from an unmet recovery need that has **not** already been addressed by other federal, state, local, or private funding sources.

West Virginia’s Assessment of Unmet Needs for Its Action Plan Identified the Housing Sector as Having the Greatest Amount of Unmet Need.

The Legislative Auditor reviewed the State’s original action plan submission to HUD, as well as the substantial amendment submitted as required by the third appropriation of Disaster Recovery funds. The action plans serve three broad, critical functions:

1. The State is required to document a comprehensive assessment of its unmet need in housing, infrastructure, and economic revitalization as it relates to the flood.
2. The State is required to detail the program(s) that will be funded by the Disaster Recovery money, including the program objectives, the eligibility requirements, projected accomplishments, program priorities, and start and end date.
3. The State must appropriate the full amount of its Disaster Recovery award to each program detailed in its plan. Once HUD approves the State’s action plan, the State is limited in making significant modification to these appropriations without HUD approval.

The State conducted its assessment of unmet need by compiling a number of different data sources from state and federal entities. The unmet needs assessment for housing analyzed application data from the Federal Emergency Management Agency (FEMA), HUD, the Small Business Administration (SBA), and the National Flood Insurance Program (NFIP). Based on this analysis, the State’s original action plan estimated that there was over \$380 million in verified property loss as a result of the June 2016 flood, and only about \$80 million of that need had been met through federal, state, or private funding sources. In its substantial amendment to the action plan, the State reduced its unmet housing needs assessment. The updated needs assessment still identified over \$286 million in unmet housing needs related to the June 2016 flood. Table 1 compares the State’s assessment of unmet housing in its original action plan and the substantial amendment.

¹The State submitted, and HUD approved, a waiver to add Clay and Nicholas counties under its designation of “most impacted areas.”

Table 1
Total West Virginia Unmet Housing Need
Comparison Between Action Plan and Substantial Amendment

	Action Plan	Substantial Amendment	Difference
Total Real Property Loss	\$380,614,560	\$380,464,116	(\$150,444)
FEMA Repair Payments	(\$28,656,603)	(\$30,153,136)	(\$1,496,533)
NFIP Claim Payments	(\$27,188,147)	(\$28,542,972)	(\$1,354,825)
SBA Disaster Home Loans	(\$27,373,186)	(\$31,855,700)	(\$4,482,514)
SBA Disaster Business Loans*	(\$1,902,900)	(\$3,593,500)	(\$1,690,600)
Total Unmet Housing Need	\$295,493,724	\$286,318,808	(\$9,174,916)

*Business Loans were for rental properties

Source: State's Unmet Housing Need Assessments from its action plan and substantial amendment.

A similar methodology to assess and calculate the unmet needs related to infrastructure and economic revitalization. While the unmet needs in the housing and infrastructure sectors remained relatively unchanged in the substantial amendment, the State greatly increased the unmet needs assessment for economic revitalization. Table 2 provides a comparison of the unmet needs, by sector, for the action plan and the substantial amendment.

Table 2
Total West Virginia Unmet Needs by Sector
Comparison Between Action Plan and Substantial Amendment

	Action Plan	Substantial Amendment	Difference
Housing	\$295,493,724	\$286,318,808	(\$9,174,916)
Infrastructure*	\$41,334,373	\$46,764,679	\$5,430,306
Economic Revitalization	\$132,785,839	\$269,921,030	\$137,135,191
Total	\$469,613,936	\$603,004,517	\$133,390,581

*Dollar figures represent the State share. FEMA funds infrastructure projects 3-1.

Source: State's Unmet Housing Need Assessments from its action plan and substantial amendment.

West Virginia's Action Plan Submission to HUD Appropriated the Vast Majority of Its Disaster Recovery Funds to Meet the State's Unmet Housing Needs

HUD requirements further specified that the State's action plan must contain details pertaining to each program or activity that would be funded using the Disaster Recovery award. While the Federal Register notices required each grantee receiving funds to primarily address unmet housing needs, grantees could allocate funds to infrastructure or economic revitalization if they could demonstrate that their unmet housing needs would otherwise be addressed. However, West Virginia's action plan placed a clear emphasis for funding programs to address the unmet housing need. In its original action plan submission, the State appropriated 93 percent of all Disaster Recovery funds to programs designed to address housing. Even though the State's

substantial amendment to its action plan doubled the amount of unmet economic need, funding for programs aimed at addressing the housing needs still accounted for 80 percent of all grant funds awarded. Table 3 shows a breakdown.

Table 3			
Appropriated Program Budget for West Virginia’s Disaster Recovery Funded Programs			
Sector	Program Name	Disaster Recovery Allocation	Percent of Total
<i>Housing</i>	Housing Restoration Program	\$71,899,250	48%
	WV Rental Assistance Program	\$16,000,000	11%
	HMGP Match ²	\$12,440,000	8%
	Bridge Home Project	\$2,080,000	1%
	Restore Riverview Project	\$5,712,000	4%
	Slum & Blight Removal Project	\$5,875,000	4%
	Multifamily Rental Housing Program	\$5,875,000	4%
	Total Housing	\$119,881,250	80%
<i>Economic</i>	Economic Development Program	\$12,500,000	8%
	Total Economic	\$12,500,000	8%
<i>Planning & Administration</i>	Planning	\$10,000,000	7%
	Administration	\$7,493,750	5%
	Total Planning & Administration	\$17,493,750	12%
	Total Budget	\$149,875,000	100%

Source: State of West Virginia’s Disaster Recovery Action Plan Amendment.

In total, the State has developed seven programs to assist flood victims with unmet housing needs, including two core programs designed to provide direct assistance to individuals whose homes sustained significant damage during the June 2016 flood. The largest of these two core programs is the Rise West Virginia Housing Restoration Program (WV-HRP), to which the State has allocated nearly \$72 million, or approximately half of all Disaster Recovery funds distributed to the State. The Rise West Virginia Rental Assistance Program (WV-RAP) received \$16 million, or 11 percent of the State’s total Disaster Recovery funds. Appendix C provides a brief overview of the other flood relief programs funded with Disaster Recovery money.

Eligible applicants to the State’s WV-HRP can receive housing assistance in the form of repair, rehabilitation, reconstruction, or mobile home replacement. Additionally, applicants under the WV-HRP could receive assistance with property elevation expenses to mitigate the risk of damage in future flooding events and temporary rental assistance if reconstruction or rehabilitation work requires the applicant to vacate their homes. According to the State’s action plan, the WV-HRP is estimated to provide direct relief to up to 1,200 low-to-moderate income homeowners. Each individual type of assistance is subject to a per-applicant limit, per the action plan and the Rise West Virginia Policies and Procedures Manual.

²The Hazard Mitigation Grant Program is detailed in Appendix C.

Eligible applicants to the WV-RAP program includes any single-family properties containing one to four residential rental units that were damaged as a result of the flood. Applicants to the WV-RAP program are eligible for the same types of assistance as is provided under the WV-HRP, and subject to the same grant limits for each type of assistance. A breakdown of the grant limits for each type of assistance can be found in Appendix D. The State estimated in its action plan that it would be able to assist 300 rental property units under WV-RAP. **In aggregate, WV-HRP and WV-RAP are estimated to repair, reconstruct, or replace as many as 1,500 residential properties using the Disaster Recovery funds awarded to the State.**

Issue 1: The West Virginia Development Office Entered Into Six Illegal Contracts with Horne LLP for Approximately \$18 Million.

Issue Summary

The Legislative Auditor reviewed the contract entered into by the West Virginia Development Office with the vendor Horne LLP. Based upon the opinion of the attorneys in Legislative Services, the Legislative Auditor identifies the following issues with the contract:

1. The Development Office entered into six additional “Task Order Agreements” with Horne, totaling over \$17 million, which were not processed through the West Virginia Purchasing Division.
2. Legislative Services’ attorneys opine that the additional “Task Order Agreements” were subject to the purchasing requirements under State law. Since they did not follow the provisions of West Virginia purchasing law, they are void as a matter of law.

The Legislative Auditor cease all payments for services rendered and invoiced for the voided “Task Order Agreements.”

The West Virginia Development Office Executed Six Additional Task Order Agreements with Horne, In Effect, Adding an Additional \$17 Million to a \$900,000 Original Contract

In March of 2018, representatives from the Governor’s Office approached the Legislative Manager/Legislative Auditor with concerns regarding the Development Office’s contractual relationship with Horne LLP. As previously mentioned, Development Office entered into a contract with Horne on December 12, 2016. This contract contained two “Task Order Agreements” wherein Horne agreed to develop the State’s action plan for submission to HUD, and to provide general project management services with respect to the State’s Disaster Recovery programs. The total value of this contract was for \$900,000.

Between May 2017 and February 2018—after the State’s total Disaster Recovery award had increased to approximately \$149 million—the Development Office and Horne executed six additional “Task Order Agreements.” **The result of these additional Task Order Agreements increased the total value of the Development Office’s contractual relationship with Horne from \$900,000 to approximately \$18 million, an increase of nearly 1,900 percent.** Table 4 provides a breakdown of these agreements.

Table 4 Task Order Agreements Three Through Eight		
Task Order Number	Execution Date	Dollar Amount
Three	May 23, 2017	\$27,250
Four	July 17, 2017	\$17,466,358
Five	August 24, 2017	\$100,000
Six	January 2, 2018*	\$17,500 - \$51,000
Seven	December 1, 2017	\$75,000
Eight	February 2, 2018	\$97,500
Total		\$17,817,108
*Date of Amended Task Order Agreement		
<i>Source: Executed Task Order Agreements provided to the Legislative Auditor</i>		

Therefore, the Governor’s Office expressed concern to the Legislative Auditor regarding the validity of these additional Task Order Agreements.

The Legislative Auditor requested a legal opinion from Legislative Services regarding the validity of these additional Task Order Agreements. In evaluating the contract and the Task Order Agreements, Legislative Services indicates that the original contract between the Development Office and Horne contains a term that would allow additional Task Orders to be developed and incorporated. However, Legislative Services points out that,

The agreement did not expressly state the process for additional task orders to be developed and incorporated.

Legislative Services also indicates that the phrase “Task Order Agreement” is a federal term which there is no parallel in West Virginia law. According to Legislative Services:

*Under federal law, task order contracts may be issued after an original contract to avoid some of the federal procurements requirements. However, generally under federal law, task order contracts may only avoid those requirements **if they are substantially similar to the original contract**, and task order contracts that are not substantially similar to the original contract must go through the full bidding requirements. [Emphasis added].*

Therefore, Legislative Services opined that even under the federal standard for task order contracts, Task Orders Three through Eight would be required to undergo the full bidding requirements because each substantially differs from the original contractual agreement between the Development Office and Horne.

Legislative Services further determined that Task Orders Three through Eight constitute new contracts between the two parties because each Task Order contains separate and distinct terms and compensation.

Under West Virginia law, all contracts entered into on behalf of the State must comply with the Purchasing Division's statutes and rules, as well as be reviewed by the Attorney General. According to W. Va. Code §5A-3-17:

[I]f a spending unit purchases or contracts for commodities or services contrary to the provisions of this article or the rules and regulations made thereunder, such purchase or contract shall be void and of no effect.

Because none of the additional Task Order Agreements complied with the Purchasing Division's requirements that contracts over the amount of \$25,000 be subject to competitive bidding and undergo review by both the Purchasing Division and the Attorney General's Office, **Legislative Services believes Task Orders 3 through 8 are void as a matter of law, as set forth in W. Va. Code §5A-3-17.**

On February 28, 2018, Horne and the Development Office requested authorization from the Purchasing Division to enter a Change Order to their existing contract on February 28, 2018. Both parties indicated that the addition of Task Order Agreements Three through Eight "*will not exceed \$18,000,000.*"

In a response dated April 4, 2018, Purchasing Director Mike Sheets indicated to the Development Office that its change order request would be rejected by the Purchasing Division. Director Sheets provided three main reasons for the denial of the change order request:

1. The Change Order request contained proposed completion dates that had already lapsed, indicating that the Development Office was requesting a change order for work that had already been completed. Approval of a change order for work already completed violates CSR §148-1-6.8(f).
2. In the opinion of the Purchasing Division, the pricing and scope of work related to Task Order Agreements 3 through 8 was not sufficiently defined to allow the contemplated work to continue under the Development Office's existing contract with Horne.
3. In the opinion of the Purchasing Division, the State would be best served by competitively bidding for the additional implementation services contemplated by Task Order Agreements 3 through 8.

A full copy of this response can be found in Appendix E of this report.

Horne Invoiced the Development Office for Approximately \$1.3 Million Associated with the Invalid Task Order Agreements. Further, the Development Office Disbursed Payments Totaling Approximately \$100,000 for Those Task Orders.

In addition to the legal analysis of the Development Office’s contractual relationship with Horne, the Legislative Auditor analyzed invoice and payment data for services rendered under the original agreement and the subsequent Task Order Agreements Three through Eight.

From May 2017 through February 2018, Horne had invoiced the Development Office for a total of \$2,067,478 for services performed under Task Order Agreements 1 through 4 and Task Order Agreement 8. Table 5 provide a breakdown of all invoice and payment information obtained by the Legislative Auditor for the period of May 2017 through February 2018.

Table 5 Invoice and Payment Analysis May 2017-February 2018			
Task Order Agreement	Total Invoiced	Total Paid	Difference
Task Order 1	\$225,000	\$225,000	-
Task Order 2	\$436,442	\$382,442	\$54,000
Task Order 3	\$96,250	\$96,250	-
Task Order 4	\$1,252,585.88	-	\$1,252,585.88
Task Order 8	\$57,200	-	\$57,200
Total	\$2,067,477.88	\$703,692	\$1,363,785.88

Source: Invoices provided by the Development Office. Payment information accessed from wvOASIS and the State Auditor’s Office.

To date, Horne has received \$703,692 in payments. Currently, Horne has invoiced for, but not been paid, approximately \$1.4 million under the voided Task Order Agreements.

Conclusion

The Legislative Auditor concludes that the Development Office has paid over \$96,000 for services rendered by Horne under an illegal contract. In addition, Horne has invoiced the Development Office for over \$1.4 million in payments for services rendered under the invalid Task Order Agreements 3 through 8.

The Governor’s Office indicated at a press conference on June 15, 2018 that a new contract with Horne was in the process of being finalized. Therefore, the Legislative Auditor would expect the new contract to have been procured through the Purchasing Division’s competitive bidding process, but as of today, has not seen this new contract. In addition, the new contract should not

contain payments for any of the services that have already been rendered under the invalid Task Order Agreements Three through Eight³.

Recommendations

- 1.1 The Legislative Auditor recommends that the West Virginia Development Office seek repayment, or credit against the new contract, if permissible, for money paid pursuant to the invalid Task Order Agreements.
- 1.2 The Legislative Auditor recommends that the West Virginia Development Office not issue payments for any work done under the invalid Task Order Agreements Three through Eight.

³Task Order Agreement 4 included Environmental reviews (both Tier I and Tier II, as will be covered in Issue 2). It is a known fact that services such as these have already been rendered, and it would be inappropriate to include them in a new contract, after the fact.

Issue 2: The West Virginia Development Office Entered Into Seven Construction Contracts Totaling Over \$71 Million for Home Rehabilitation, Reconstruction, and Replacement Services Under the Rise West Virginia Housing Restoration Program Which Violate State and Federal Laws.

Issue Summary

During the course of the audit work regarding the Development Office’s contract with Horne, legislative leadership raised questions regarding construction contracts entered into by the Development Office related to Rise West Virginia’s Housing Restoration Program (WV-HRP). The Legislative Auditor has determined that the Development Office entered into seven separate contracts for construction services with four different vendors: Thompson Construction Group; Danhill Construction Company; River Valley Remodeling, LLC; and Appalachia Service Project. Table 6 provides a breakdown of these contracts.

Table 6 Construction Contracts for the Rise West Virginia Home Reconstruction Program		
Vendor Name	Type of Service	Total Dollar Amount
Thompson Construction Group	Rehabilitation Reconstruction Manufacture Housing Unit (MHU)	\$49,000,000.00
Danhill Construction Company*	Reconstruction Manufactured Housing Unit (MHU)	\$15,000,000.00
Appalachia Service Project	Reconstruction	\$3,180,000.00
River Valley Remodeling, LLC*	Rehabilitation	\$4,250,000.00
Total		\$71,430,000.00
*Denotes a West Virginia-based vendor. Source: Contract documentation pulled from wvOASIS		

Collectively, these contracts account for a total of \$71,430,000 or approximately 99 percent of the total amount of Disaster Recovery funds allocated to the WV-HRP.

Based upon the Legislative Auditor’s analysis of these contracts and the applicable state and federal laws that govern procurement and expenditure of Disaster Recovery funds, the Legislative Auditor has identified the following issues:

1. The West Virginia Development Office violated federal law with respect to committing or expending Disaster Recovery funds. Each of the seven contracts committing Disaster

Recovery funding was executed and effective prior to the date upon which the Development Office received HUD Form 7015.16, Authority to Use Grant Funds.

2. The West Virginia Development Office has issued over \$700,000 in payments under these invalid contracts. Moreover, approximately \$400,000 in payments were issued prior to the date upon which the Development Office received authorization to use the federal grant money.
3. The West Virginia Development Office did not comply with the Purchasing Division statutes and rules when entering into these seven construction contracts. While there is evidence to suggest the Requests for Proposals were publicized through the wvOASIS system, each contract was required to be processed through the Purchasing Division.

As a result, the Legislative Auditor recommends that the Development Office cease all payments under these invalid contracts. Further, the Legislative Auditor recommends that the Development Office immediately terminate all contracts which commit the expenditure of Disaster Recovery funds that were executed prior to receiving HUD's Authority to Use Grant Funds form. The Development Office should execute new contracts that comply with both State and federal laws.

The State is Responsible for Conducting an Environmental Review and Obtaining Approval from HUD Prior to Using Disaster Recovery Funds

Upon receiving HUD's approval of its action plan, which occurred in June 2017, the State was required under federal law to conduct a comprehensive environmental review related to the activities described in the action plan. The State's environmental review must certify compliance with the National Environmental Policy Act of 1969 and with various environmental statutes listed in 24 CFR §58.5. Upon completion of the environmental review, the State must send a Request for Release of Grant Funds for HUD-approval, and, if approved, receives an Authority to Use Grant Funds form from HUD.

Per HUD guidance, the State elected to use a two-tiered review system. Under a tiered system, the State was required to conduct a Tier I Broad Environmental Review at the county-level, prior to requesting and receiving its Authority to Use Grant Funds from HUD. The Tier I review required the State to assess and certify that the housing reconstruction and rehabilitation programs funded by Disaster Recovery funds were not likely to significantly impact the environment. In addition, the State is required to develop the standards that it will use for its Tier II Site Specific reviews as part of the Tier I review process.

The Tier II, or Site-Specific Review, is conducted once the individual project site is known and addresses any remaining environmental compliance issues that could not be covered under the Tier I Broad Environmental Review. According to the Rise West Virginia Policies and Procedures:

In short, a tiered review focuses on a targeted geographical area [i.e., a county] to address and analyze environmental impacts related to the proposed activities that might occur on a typical project site within that area.

The specific addresses/locations of the individual properties are not known at this time. However, once individual project sites are located any remaining environmental compliance issues that could not be resolved until project locations became known are now completed [in a Tier II review].

Moreover, the Rise West Virginia Policies and Procedures make it clear that **the environmental review process must be completed prior to any work beginning under the WV-HRP**. This requirement is not, however, limited to the use of federal funds. The policies state:

*In addition, no work may start on a proposed project before the environmental review process is completed, **even if that work is being done using non-HUD funds**. In other words, environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. **A violation of this requirement may jeopardize federal funding to this project and disallow all costs that were incurred before the completion of the Environmental Review.** [Emphasis added].*

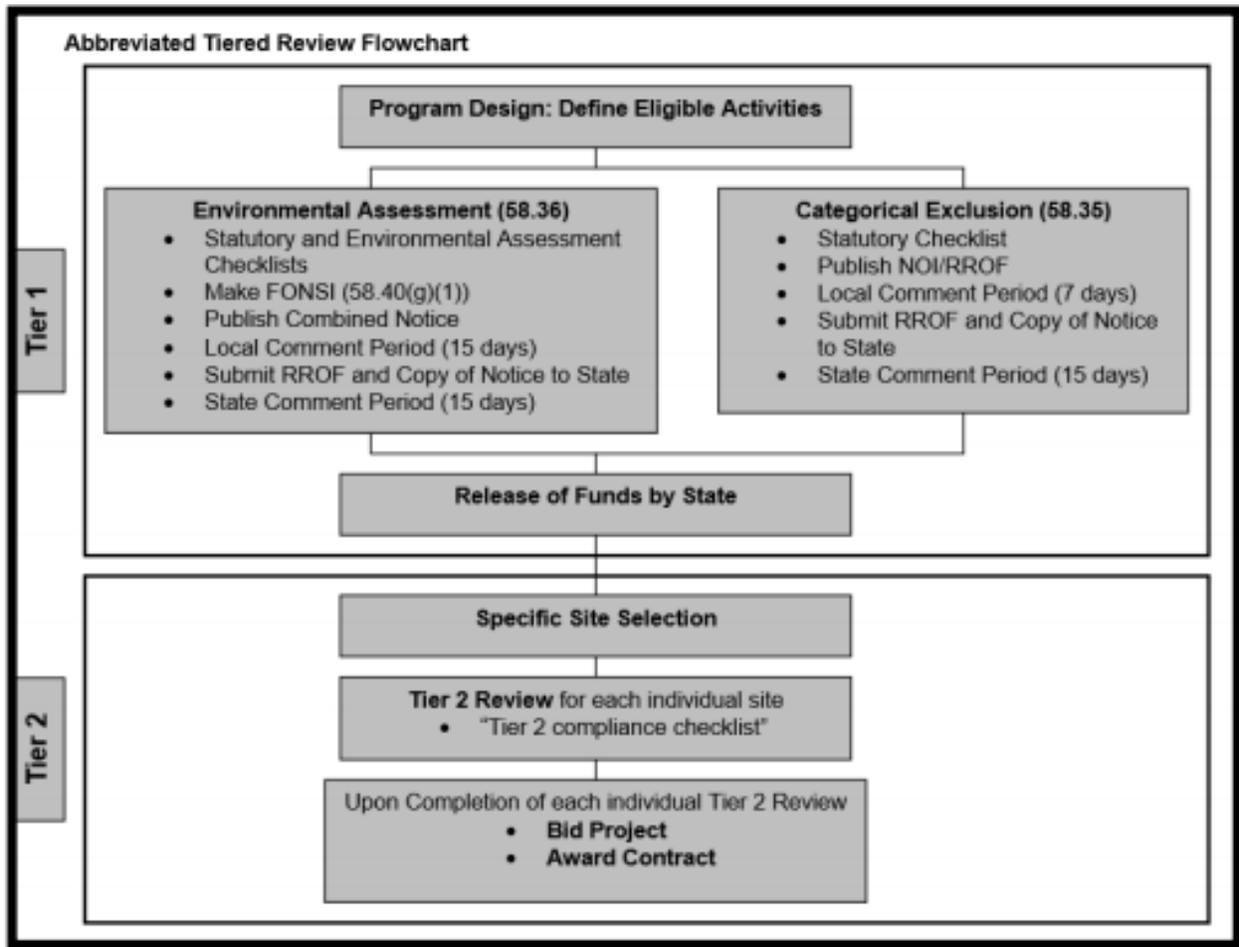
Further, the Policies cite 24 CFR 58.22 which states:

*Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, **may commit HUD assistance under a program listed in §58.1(b) on an activity or project until HUD or the state has approved the recipient's [Request for Release of Funds] and the related certification from the responsible entity** [Emphasis added].*

The Rise West Virginia Policies and Procedures explain the application of this provision by indicating, “. . . *Therefore, the environmental review process must be completed before committing or expending DR funds on a project (such as signing a construction contact, etc.)* [Emphasis added]”

Finally, the Policies provide a flowchart to demonstrate the process by which the State should complete its two-tiered environmental review process. Figure 7 shows this process flow chart.

Figure 7



Source: *Rise WV Policies and Procedures*. March 5, 2018.

As can be seen in the flowchart above, the Rise West Virginia Policies and Procedures Manual does not envision any contracts being bid out or awarded at least until the Tier I review is complete and the authorization to use funds is granted by HUD.

The West Virginia Development Office Entered Into Seven Construction Contracts for the Housing Reconstruction Program Prior to Receiving Authorization from HUD to Commit or Expend the Disaster Recovery Funds.

While the State’s action plan was approved by HUD in June of 2017, the State did not send its Request for Release of Funds to HUD until January 29, 2018. Based on this submission date, the Legislative Auditor concludes that the State did not complete its Tier I Broad Environmental Review until January 2018 when it sent the request to HUD for approval. The State received its Authority to Use Grant Funds from HUD on February 20, 2018. Per federal law and the program’s

own policies and procedures, the Development Office was only authorized to spend or commit to spend the Disaster Recovery funds awarded by HUD after this date.

The Legislative Auditor reviewed each of the seven construction contracts entered into by the Development Office for home reconstruction or rehabilitation services. All seven of the contracts reviewed have an effective date of July 1, 2017. In addition, each of the contracts was fully executed by both parties no later than August 10, 2017. In each case, the effective dates and execution dates on all seven contracts predate the State receiving authorization from HUD to spend or commit the Disaster Recovery funds. Therefore, the Legislative Auditor, based upon the opinion of the attorneys in Legislative Services, concludes that these contracts violate the provisions of 24 CFR §58.22 because the State committed to spend these funds before gaining authorization to do so.

As of June 1, 2018, the State Has Spent Nearly \$800,000 On Construction Contracts That Violate Federal Law. Further, Over \$400,000 Was Disbursed to Vendors Under the Contracts Before February 20, 2018.

The Legislative Auditor sought information through the State Auditor’s website regarding payments made to each of the four construction vendors. The Legislative Auditor identified 49 total invoices for \$784,407 paid by the Development Office for construction services for the WV-HRP. However, it appears that only two of the four vendors contracted with have received any payments for services rendered under the contracts. Thompson Construction Group, the recipient of the largest contract for services under the WV-HRP, has received payment for 37 invoices, totaling \$604,407. The only other vendor receiving payment, Danhill Construction Company, has been paid \$180,000 for 12 invoices. Table 8 provides a breakdown of invoices and payments under the contracts.

Table 8 Payments Made to Construction Vendors for the Rise West Virginia Home Reconstruction Program As of June 1, 2018			
Vendor Name	Invoices Submitted	Total Payments Received	Total Contract Amount
Thompson Construction Group	37	\$604,407	\$49,000,000
Danhill Construction Company*	12	\$180,000	\$15,000,000
Appalachia Service Project	0	\$0	\$3,180,000
River Valley Remodeling, LLC*	0	\$0	\$4,250,000
Total	49	\$784,407	\$71,430,000
*Denotes a West Virginia-based vendor. Source: Contract documentation pulled from wvOASIS			

In addition, the Legislative Auditor identified that over half of the invoices paid by the Development Office were paid in January and early February of 2018. **Payments made to the vendors prior to February 20, 2018 would have been paid prior to the State receiving HUD authorization to use the Disaster Recovery funds.** According to the payment vendor data analyzed by the Legislative Auditor, 25 separate invoices were paid by the Development Office between January 1, 2018 and February 12, 2018, totaling \$408,443.25 or approximately 52 percent of the total amount spent for the WV-HRP to date.

Further, the Legislative Auditor reviewed the invoice documentation attached to each transaction in wvOASIS (a copy of which can be found in Appendix F of this report). Each invoice document is titled “CDBG-DR Cash Requisition Form,” indicating that the Disaster Recovery funds received from HUD are the funding source.

The Legislative Auditor Questions Whether Any Homes Have Been Completed Under the Rise West Virginia Housing Restoration Program, as of June 1, 2018.

While reviewing the vendor payment data and attached invoice documentation for payments made to the construction vendors, the Legislative Auditor identified that 48 of the 49 total paid invoices were paid for one of three different dollar amounts. All but one of the invoices submitted to and paid by the Development Office were for \$14,878.25; \$15,000; or \$17,128.25. Further, each paid invoice lists a case identification number. Each of the paid invoices lists a different case ID number, meaning each payment represents assistance that has been provided to a unique individual or household.

The Legislative Auditor concludes that none of these payments represent a full home reconstruction. Per the construction contracts, each vendor is entitled to receive over \$99,000.00 for a reconstructed home. These amounts would be paid as follows:

- The vendor will receive 25 percent of the total cost upon assignment; and
- The vendor will receive the remaining 75 percent owed upon completion and the newly constructed home passing inspection.

Each contract for a manufactured housing unit replacement (MHU) contains a “turnkey” price for which the vendor agrees to replace a MHU. Table 9 shows the pricing proposals for MHU replacements and home reconstructions submitted by Thompson Construction Group and Danhill Construction Company, the two vendors identified to have received payment under the contracts.

Table 9 MHU Replacement Pricing		
Vendor	Service	Fixed-Fee
Danhill Construction Company	Turnkey MHU	\$60,000.00
	ADA Modification	\$5,000.00
	Structural Elevation (per 8 in)	\$3,500.00
Thompson Construction Group	Turnkey MHU	\$59,513.00
	ADA Modification	\$9,000.00
	Foundation Work	\$15,500.00
	Structural Elevation (per 8 in)	\$4,900.00

Source: Contracts between the Development office and Thompson Construction and Danhill Construction.

The payment structure for an MHU replacement mirrors the structure outline above for home reconstruction projects. Table 10 uses the pricing structures contained in each contract to provide a breakdown of the payments that Thompson and Danhill could receive upon assignment of a MHU replacement project.

Table 10 MHU Replacement Payment Upon Assignment Thompson Construction Group and Danhill Construction Company		
Danhill Construction Group		
Service	Fixed-Fee	25 % Upon Assignment
Turnkey MHU Price	\$60,000.00	\$15,000.00
MHU ADA Modification	\$5,000.00	\$1,250.00
Elevation (per 8in)	\$3,500.00	\$875.00
Total	\$68,500.00	\$17,125.00
Thompson Construction Group		
Turnkey MHU Price	\$59,513.00	\$14,878.25
MHU ADA Modification	\$9,000.00	\$2,250.00
Elevation (per 8in)	\$4,900	\$1,225.00
Total	\$73,413.00	\$18,353.25
Total Turnkey + ADA	\$68,513.00	\$17,128.25

Source: Legislative Auditor's calculations from the vendor-contracts.

Each of the dollar-values associated with the paid invoices to Thompson Construction Group and Danhill Construction Company are represented (highlighted above). Therefore, the Legislative Auditor concludes that each of the 49 invoices paid by the Development Office represents the initial assignment to a vendor of a MHU replacement project. However, based solely on the invoice data, it does not appear that a single home reconstruction or rehabilitation

has been undertaken by the WV-HRP, and none of the 49 MHU replacement projects have been completed. **As such, the Legislative Auditor questions whether any individual homeowner has received full assistance from the Rise West Virginia flood recovery program as of June 1, 2018.**

None of the Seven Construction Contracts Entered Into by the West Virginia Development Office Were Processed by the State’s Purchasing Division.

Based upon the documentation provided with respect to the seven construction contracts, the Legislative Auditor questioned whether any of the contracts were processed by the State Purchasing Division. A request was made to Purchasing Director Mike Sheets to provide any documentation possessed by the Purchasing Division related to the contracts.

In a June 14, 2018 response, Director Sheets indicated to the Legislative Auditor:

In response to your June 7, 2018 request (attached), we have searched and found that we do not have documentation for the listed solicitations . . . The absence of ‘C’ level solicitations returned in [our] search assures us that we did not process these solicitations and do not have documentation for them.

According to State law and the West Virginia Department of Administration’s Purchasing Handbook, “Agencies under the executive branch of state government are required to process purchases estimated to exceed \$25,000 through the Purchasing Division, unless statutorily exempt.” Currently, there are no exemptions to the State’s purchasing law which exempts the Development Office from the requirement to use the Purchasing Division for purchases that are expected to exceed \$25,000. **Similar to the Horne contract covered in Issue 1 of this report, the Legislative Auditor questions whether any of the seven construction contracts are valid under W. Va. Code §5A-3-17.**

Upon receiving its initial \$17 million appropriation, the State was required by the provisions of 81 Fed. Reg. 83245, 83256 (November 21, 2016) to provide to HUD evidence that it had sufficient financial controls in place, including procurement, to administer the grant.

A grantee has in place a proficient procurement process if it has either: (a) Adopted 2 CFR 200.318 through 200.0326 (subject to 2 C.F.R. 200.110, as applicable); or (b) the effect of the grantee’s procurement process/standards are equivalent to the effect of procurements of 200.318 through 200.0326, meaning that the process/standards while not identical, operate in a manner that provides for full and open competition.

81 Fed. Reg. at 83256. (emphasis added).

The Office of Management and Budget’s regulations also provide that the “non-federal entity **must use its own documented procurement procedures** which reflect applicable state, local, and tribal laws and regulations, provided that the procurements conform to applicable federal

law and standards identified in this part.” 2 C.F.R. 200.318(a). In short, if the State does not use the federal standards, it must use its own standards, provided they are equivalent.

HUD’s regulations also specifically describe how procurement should be administered by the state receiving CDBG funds. According to 24 C.F.R. §570.489(g):

(g) Procurement. When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by § 570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

The Legislative Auditor’s office received documentation indicating that the Development Office relied on W.Va. Code §5A-3-11 to determine it was not bound to follow the State Purchasing Division’s competitive bidding requirements. W.Va. Code §5A-3-11(i)(3) provides:

If a grant awarded to the state requires the state to transfer some or all of the grant to an individual, entity or vendor as a subgrant to accomplish a public purpose, and no contract for commodities or services directly benefitting a spending unit will result, the subgrant is not subject to the competitive bidding requirements set forth in this chapter.

It is the position of the Legislative Services Division that, the Development Office’s decision to exempt the construction contracts from the Purchasing Division’s competitive bidding requirements is directly at odds with federal authority’s mandate that “the state shall follow its procurement policies and procedures” and ensure “full and open competition” occurs with respect to those federal funds. Further, it is the position of Legislative Services that the specific federal authority should control where West Virginia’s statute eliminates the competitive bidding requirements for the distribution of certain federal grant funds. By not using the Purchasing Division’s competitive bidding requirements, the Development Office’s process to awarding the grant funds is not in compliance with federal regulations.

The State was also required to maintain a website detailing how the grant funds are used and administered, including “ongoing procurement policies.” On the publicly available website, the State provides a link to the Purchasing Division’s Policies and Procedures manual, which might indicate to the public that they would be used by the Development Office when awarding the federal grant funds.

Recommendations

- 2.1 The Legislative Auditor recommends that the West Virginia Development Office cease all future payments under the current construction contracts for the Rise West Virginia Housing Reconstruction Program.
- 2.2 The Legislative Auditor recommends that the West Virginia Development Office terminate the existing construction contracts and enter into new contracts that comply with the applicable State and federal law.
- 2.3 The Legislative Auditor recommends that the West Virginia Development Office work with the U.S. Department of Housing and Urban Development to resolve any issues regarding the Disaster Recovery funds that were committed and expended prior to February 20, 2018.

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

1900 Kanawha Blvd. East, Room E-132
Charleston, WV 25305-0610
(304) 347-4800
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Aaron Allred
Legislative Manager

June 19, 2018

Major General James Hoyer, Adjutant General
West Virginia National Guard
1703 Coonskin Drive
Charleston, WV 25311

Dear Major General Hoyer:

This is to transmit a draft copy of the Post Audit Division's audit of the Rise West Virginia Flood Recovery Program. This report is tentatively scheduled to be presented during the **June 24, 2018** interim meeting of the Post Audits Subcommittee. The meeting is scheduled to begin at **4:00 p.m. in the Senate Finance Committee Room (M-451)**. It is expected that a representative from your agency be present at the meeting to respond to the report and answer any questions committee members may have during or after the meeting.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify me at 304-347-4880 or Aaron Allred, Legislative Manager/Legislative Auditor by close of business **Thursday, June 21, 2018**. In addition, we need your written response by **Saturday, June 23, 2018** in order for it to be included with the final report. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "A. R. Fridley".

Adam R. Fridley,
Manager

Enclosure

c: Brian Abraham, General Counsel, Office of the Governor
Bray Cary, Senior Adviser, Office of the Governor

Objective, Scope, and Methodology

The Post Audit Division within the Office of the Legislative Auditor conducted this review as authorized by Chapter 4, Article 2, Section 5 of the *West Virginia Code*, as amended.

Objectives

The objectives of this review were to determine the extent to which the contracts entered into by the West Virginia Development Office complied with the State's procurement laws and the federal laws governing Community Development Block Grant funds.

Scope

The scope of this review consists of the all documentation regarding the RISE West Virginia Flood Recovery program, including any documentation related to the procurement of contracts, invoice and payment documentation, program policies and procedures, and contracts.

Methodology

Post Audit staff gathered and analyzed several sources of information and assessed the sufficiency and appropriateness of the information used as evidence. Testimonial evidence was gathered through interviews with various agencies that oversee, collect, or maintain information. The purpose for testimonial evidence was to gain a better understanding or clarification of certain issues, to confirm the existence or non-existence of a condition, or to understand the respective agency's position on an issue. Such testimonial evidence was confirmed by either written statements or the receipt of corroborating or physical evidence.

Audit staff analyzed various source documents that were either provided to us by the Governor's Office, or publicly available on the State's public flood recovery website (wvfloodrecovery.com). In addition, information was obtained using the State Auditor's website and directly from the Purchasing Division.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX C:

RISE West Virginia Housing Restoration Program (WV-HRP)

Program Objective and Description: To provide housing assistance for victims of the 2016 floods, which includes the repair, rehabilitation, reconstruction, and property elevation of impacted housing units. West Virginia will manage and complete the construction process for the rehabilitation or reconstruction of damaged homes on behalf of eligible applicants. The State will contract with a pool of contractors and assign them to repair or reconstruct damaged properties.

Administering Entity: West Virginia Department of Commerce

Geographic Area Eligible to be Served: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster counties.

Eligibility Criteria:

- a) The applicant household meets HUD's Low- to Moderate-Income (LMI) requirements.
- b) Owners of single-family homes, including mobile homes. Manufactured Housing Units are eligible for rehabilitation if less than 5 years old and repair costs do not exceed \$5,000.
- c) Structure was impacted by the June 2016 floods.
- d) Structure was the primary residence of the applicant at the time of the disaster.
- e) Homes that have suffered substantial damage will also qualify for assistance to mitigate against future losses and to comply with local building and zoning codes to address future flood risk.
- f) The homeowner must agree to own the home and use the home as their primary residence for a period of three years after rehabilitation or replacement.
- g) If located in a floodplain, the applicant must acquire flood insurance and comply with obligations to notify future owners of flood insurance requirements.

Ineligible Activities: Forced mortgage payoffs; SBA home/business loan payoffs; funding for second homes; assistance for those who previously received federal flood disaster assistance and did not maintain flood insurance; and compensation payments.

CDBG-DR Allocation: \$71,899,250

Project Accomplishments: The State estimates it will be able to assist up to 1,200 low and moderate-income homeowners. Projections show that the majority of the affected population will need home repairs rather than replacement.

Start Date: The State anticipates launching the program in the third quarter of 2017.

End Date: Upon the expenditure of all funds allocated for this program or within six years after the execution of the grant agreement with HUD.

West Virginia Rental Assistance Program (WV-RAP)

Program Objective and Description: Focus on rehabilitation, repair and reconstruction needs within the rental market and ensure resilience by incorporating mitigation measures to reduce impacts of future disasters. The program will provide financial assistance to small rental property owners who serve a low to moderate income market. The program expands affordable rental options while also spurring economic growth.

Administering Entity: West Virginia Department of Commerce

Geographic Area Eligible to be Served: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster counties.

Eligible Applicants: Eligible properties include single family properties containing one to four residential units. Rental units must have experienced major to severe damage and have remaining unmet needs. After completion of the assistance provided, the owner of the property shall be required to offer the unit(s) at affordable rates to renters earning less than or equal to 80% AMI for a period of three years. Units must be affordable to renters earning less than 80% AMI for three years.

Eligibility Criteria:

- a) Owners of rental property to include single family homes and mobile homes. Owners may include individuals, community development non-profits, Public Housing Authorities, Community Housing Development Organizations and/or private entities. Manufactured Housing Units are eligible for rehabilitation if less than 5 years old and repair costs do not exceed \$5,000.
- b) Structure was impacted by the June 2016 floods.
- c) Second homes are not eligible for assistance. Seasonal, short-term and vacation rental properties are also not eligible.
- d) Homes that have suffered substantial damage will also qualify for assistance to mitigate against future losses and to comply with local building and zoning codes to address future flood risk.
- e) The owner of the property must agree to rent the unit according to the affordability requirements set forth below for a period of 3 years after rehabilitation or replacement as secured through a recorded use restriction or other mechanism (e.g. forgivable promissory note or lien) to ensure that rental housing remains affordable for the stated period of time.
- f) If located in a floodplain, the applicant must acquire flood insurance and comply with obligations to notify future owners of flood insurance requirements.

Affordability Requirements:

Definition of Affordable Rents: Housing is considered “affordable” if the rent (including utilities) is no more than 30 percent (30%) of a household’s pre-tax income.

Number of Units: To be eligible for the program, at a minimum, the owner/applicant must agree to meet the following occupancy requirements established by HUD:

- All assisted single unit structures must be occupied by LMI households,
- An assisted two-unit structure (duplex) must have at least one unit occupied by a LMI household, and

- An assisted structure containing more than two units must have at least 51 percent (51%) of the units occupied by LMI households.

Duration of Affordability: The provision of affordable rents to qualified tenants will be required and monitored by the State for three (3) years.

Ineligible Activities: Forced mortgage payoffs; SBA home/business loan payoffs; funding for second homes; assistance for those who previously received federal flood disaster assistance and did not maintain flood insurance; and compensation payments.

CDBG-DR Allocation: \$16,000,000

Project Accomplishments: The State estimates it will be able to assist 300 units of rental property.

Start Date: The State anticipates launching the program in the third quarter of 2017.

End Date: Upon the expenditure of all funds allocated for this program or within six years after the execution of the grant agreement with HUD.

RISE West Virginia Multifamily Rental Housing Program

Program Objective and Description: Offer assistance to repair majorly to severely damaged multifamily rental housing in the most impacted communities, and to develop new multi-family housing affordable to low income renters in the most impacted communities. Assistance will be provided through multiple housing activities including, but not limited to, the repair, rehabilitation, reconstruction, and new construction of housing units.

Administering Entity: West Virginia Department of Commerce

Geographic Area Eligible to be Served: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster counties.

Eligible Applicants: Developers building affordable multi-family projects (10 units or greater), or substantially rehabilitating multi-family projects (10 units or greater) that withstood major to severe damage in the declared counties.

Eligibility Criteria: Developers will respond to an RFP released by the West Virginia Development Office. Properties must have at least 10 units to be considered for funding. There is no maximum project size. Mixed-use projects are not eligible. Eligible property types range from single structures to large complexes. For rehabilitation of an existing multifamily property, the property must have been owned by the applicant entity at the time of the flood and sustained damage from the flood. For new construction projects, the applicant entity must currently own the property and it must be situated outside the floodplain.

Affordability Requirements:

All assisted properties must have at least 51% of the units occupied by LMI households. The provision of affordable rents to qualified tenants will be required and monitored by the State for five (5) years.

Grant Limit: Up to \$50,000 per unit

CDBG-DR Allocation: \$5,875,000

Project Accomplishments: The State estimates it will be able to restore and/or construct up to 150 units.

Start Date: The State anticipates launching the program in the second quarter of 2018.

End Date: Upon the expenditure of all funds allocated for this program or within six years after the execution of the grant agreement with HUD.

RISE West Virginia Slum and Blight Removal Program

Program Objective and Description: The purpose is to address slum and blight on a spot basis, and assist in the removal of vacant, deteriorated or abandoned buildings through code enforcement activities. The program will address voluntary and involuntary participation for any dwelling, building, structure, or property that is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes and constitutes an endangerment to the public health or safety because of unsanitary or unsafe conditions.

Administering Entity: West Virginia Department of Commerce

Geographic Area Eligible to be Served: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster counties.

Eligibility Criteria: All voluntary applicants must have had ownership interest in the property on June 26, 2016 and must currently own the property. The property must have been damaged by the flood, located in one of the 12 disaster declared counties, and currently be vacant. Eligible properties include both residential and commercial. For involuntary participation, a local jurisdiction may refer open code enforcement cases to the program for consideration of demolition activities.

CDBG-DR Allocation: \$5,875,000

Project Accomplishments: The State estimates it will be able to demolish up to 200 dilapidated properties.

Start Date: The State anticipates launching the program in the second quarter of 2018.

End Date: Upon the expenditure of all funds allocated for this program or within six years after the execution of the grant agreement with HUD.

Bridge Home Program

Program Objective and Description: The State will coordinate with WVVOAD to rebuild privately-owned access bridges damaged or destroyed by the flood. Bridges must serve at least two residential properties to be eligible for the program

Administering Entity: West Virginia Department of Commerce in partnership with West Virginia VOAD.

Geographic Area Eligible to be Served: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, and Webster counties.

Eligibility Criteria:

- Applicants must prove that the private bridge access was directly damaged or destroyed by the flood and provides primary access to the target homes.
- Applicants should demonstrate that lack of access is a health and safety issue and provides emergency vehicle access.
- The private bridge should serve at least two residential properties, one of which must be a primary residence.
- At least 51 percent of the properties that the bridge provides access to must be low-and-moderate income households unless an urgent need can be substantiated.

CDBG-DR Allocation: \$2,080,000

Project Accomplishments: The State estimates that up to 100 bridges can be repaired or replaced.

Grant Limit: \$30,000 per bridge

Start Date: The State anticipates launching the program in the third quarter of 2017.

End Date: The State anticipates the completion of the program by December 2020.

West Virginia Hazard Mitigation Grant / CDBG-DR Match Program

Program Objective and Description: FEMA's Hazard Mitigation Grant Program (HMGP) will be a critical part of long-term resilience improvements for infrastructure in West Virginia's impacted area. West Virginia will combine the HMGP funds with the CDBG-DR funds for discretionary resilience projects. CDBG-DR funding will be applied to the local cost share of projects funded under the HMGP. These projects will be determined in advance to be those that reduce risk to future disasters to life, private property and/or public infrastructure. Projects must pass a cost-benefit analysis and be determined as cost-effective. FEMA provides 75 percent federal funding (75% of the project total) and West Virginia will provide the remaining non-FEMA cost-share of 25 percent (25% of the project total). CDBG-DR funds would go to pay for some or the entire local 25% cost share. The State will utilize its CDBG-DR allocation within the eligible areas to elevate residential structures, with a particular emphasis on LMI households.

Administering Entity: West Virginia Department of Commerce in partnership with the West Virginia Division of Homeland Security and Emergency Management.

Eligible Applicants: Homeowners, Counties, Municipalities, Public Housing Authorities, other county and local program applicants eligible to receive federal HMGP funds, including eligible private non-profit organizations.

Eligible Activities:

- Housing Activities
- Property acquisition and demolition (stick-built homes and mobile homes)
- Property elevation
- Minor localized flood reduction projects (i.e. detention ponds, increased channel capacity)
- Infrastructure improvements or replacement

Eligibility Criteria: Eligibility criteria will include all program eligibility criteria for both the FEMA Hazard Mitigation Program and the CDBG-DR program.

Grant Limit: The grant limit will be the amount equal to the entire local 25% cost share of the HMGP project.

CDBG-DR Allocation: \$12,440,000 (West Virginia's initial CDBG-DR allocation is \$12,440,000; however, the State reserves the right to revise this allocation via future amendments at a later date should it be warranted.)

Start Date: The State anticipates launching the program in the third quarter of 2017.

End Date: Upon the expenditure of all funds allocated for this program or within six years after the execution of the grant agreement with HUD.

Restore Riverview Project

Program Objective and Description: In 2009, various stakeholders formed a plan to restore the old Clendenin School and repurpose it into a mixed-use facility. The Riverview facility, opened in 2011, provides both affordable housing for seniors and a medical clinic for the community.

Like the majority of Clendenin, the 2016 floods caused devastating damage to Riverview. Local officials within Clendenin initially estimated that \$4 million would be required to repair flood damage to this building and to reopen the 18 rental units vacated after the flood. Given the building's location, the extensive damage suffered to the first floor, the height of the flood waters of 2016 and the possibility of future flooding, the State has considered whether it is advisable to rebuild housing units on the first floor of this property. After further discussion with local officials, the State intends to restore the ten units on the third floor and relocate the first-floor units.

In addition to the need for affordable housing in Clendenin, there is also a community need for training and office space. Thus, the Restore Riverview Project will rehabilitate the first floor of the building to function as training and office space. Such use will require a tenant or owner to ensure that 51% of the jobs associated with the use of the first floor are held by low- and moderate-income persons. Furthermore, additional property located in Clendenin will be acquired with the CDBG-DR funds to replace the eight first floor housing units. Various sites are currently being proposed by local officials and the program is working to choose a site that is located near the historic school and a cost-effective option for the program.

Acquisition for Redevelopment: In addition to the rehabilitation of the Riverview housing units described above, through this Project, the State will also target specific blocks or areas within Clendenin ideal to provide additional rental stock within the community. The purpose of this phase of the Restore Riverview Project will be to redevelop any acquired property to increase the available rental stock in the Clendenin area such as affordable rental housing.

Administering Entity: West Virginia Department of Commerce in partnership with the West Virginia Housing Development Fund.

Geographic Area: Clendenin, Kanawha County

CDBG-DR Allocation: \$5,712,000

Start Date: The State anticipates launching the program in the third quarter of 2017.

End Date: The State anticipates the completion of this project by July 2020.

RISE West Virginia Economic Development Program

Program Objective and Description: Funds will be awarded in the form of grants to be used for economic development purposes.

The RISE West Virginia Economic Development Program supports the long-term housing recovery in the following ways:

Project applications may also be submitted to fund broadband infrastructure and service delivery such as infrastructure development, internet access, wiring, hardware and software purchases, development and construction of computer rooms and digital literacy classes.

The program will provide funding for eligible infrastructure improvements, building improvements to support businesses launching, locating or expanding in the declared counties, as well as eligible activities to facilitate broadband connectivity. Job retention or creation is a critical component of this program, and a company benefiting from the assistance provided to a local government on its behalf must commit to make a certain capital investment and retain or create a certain number of jobs. In addition, the program requires that at least 51 percent of the jobs created must be made available to persons of low and moderate income.

Administering Entity: WV Department of Commerce in partnership with the Regional Planning Development Councils.

Geographic Area: Clay, Fayette, Greenbrier, Jackson, Kanawha, Lincoln, Monroe, Nicholas, Pocahontas, Roane, Summers, Webster.

Eligible Applicants: Units of local governments, for-profit businesses and private non-profit organizations located in the disaster declared county.

Eligibility Criteria:

- 1) The proposed activities must meet one of the HUD National Objectives.
- 2) The proposed activity must address a disaster related impact either directly or indirectly.
- 3) The program requires that at least 51 percent of the jobs created must be made available to persons of low and moderate income as determined by the HUD income limits.
- 4) The applicant must enter a Memorandum of Agreement (MOA) executed with the applicant and benefitting business (as applicable) to foster economic development and to make the investment as described in the application.

CDBG-DR Allocation: \$12,500,000

Start Date: Will begin accepting project proposals in the second quarter of 2018.

End Date: Upon the expenditure of all funds allocated for this program or within six years after the execution of the grant agreement with HUD.

APPENDIX D:

Grant Limits for Individual Types of Assistance WV-HRP and WV-RAP	
Type of Assistance	Grant Limit, Per Applicant
Single-Family Homeowner Rehabilitation	\$75,000
Single-Family Homeowner Reconstruction	\$100,000
Mobile Home Replacement	\$60,000
Structural Elevation	\$75,000
Temporary Rental Assistance- Reconstruction	\$2500
Temporary Rental Assistance - Rehabilitation	\$1,000

Source: State of West Virginia Action Plan and Rise West Virginia Policies and Procedures.



JOHN A. MYERS
CABINET SECRETARY

STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25305-0130

W. MICHAEL SHEETS
DIRECTOR

April 4, 2018

Sheila Hannah
Procurement Officer
West Virginia Development Office
1900 Kanawha Boulevard East
Building 3, Suite 800
Charleston, WV 25305

Re: Horne LLP – Contract Change Order

Dear Ms. Hannah,

As you know, you recently provided the Purchasing Division with a packet of papers that you represented as a change order request to the emergency contract between the Development Office and Horne LLP for services related to the flood recovery. It is worth noting that the contract change order was not presented in wvOASIS so there is no official action to be taken by the Purchasing Division at this point. If, however, this change order was submitted officially to the Purchasing Division in wvOASIS, it would be rejected.

The facts as I understand them are as follows:

On November 2, 2016, the WV Development Office requested emergency approval under the authority granted the Purchasing Division by W. Va. Code § 5A-3-15, and W. Va. CSR § 148-1-7.6, to obtain a contract for a consultant to assist with federal funding for flood recovery. The emergency request was approved by former Director David Tincher in an email dated November 2, 2016.

Emergency approval allowed the WV Development Office to begin working with a vendor immediately after selection and before the formal written contract was finalized and approved on June 5, 2017. The WV Development Office conducted its own request for proposal (RFP) process utilizing the emergency approval. At the time Horne submitted its proposal, the WV Development Office and Horne expressly anticipated only \$17,000,000 in recovery funds. At present, the State anticipates, or has received, closer to \$150,000,000 in recovery funds.

The WV Development Office ultimately awarded a contract to Horne LLP on June 5, 2017, in the amount of \$900,000. That \$900,000 was tied to Phases 1 and 2 of the contract by the RFP and was specifically included in the initial contract documents as Task Order 1 and Task Order 2. If the request for proposal followed the Purchasing Division's process, any cost evaluation that occurred would have been based only on the \$900,000 included in the RFP. The contract had an effective date of December 12, 2016.

The contract contained express language requiring that any additional work after Phases 1 and 2 be submitted to the Purchasing Division for review and processing as a change order. The contract language states as follows:

“Should any additional Task Orders as referenced in the Disaster Recovery and Project Management Agreement; (Item 3.b) become necessary it will be initiated by the Agency, agreed to by the Vendor and the Agency will submit the Change Order request to the West Virginia Purchasing Division for review and processing prior to commencing additional work.”

On February 28, 2018, you presented the Purchasing Division with documentation that you represented was intended to be a change order request. The change order documentation contained Task Orders 3 through 8 (Task Order 7 was not included) with detailed cost information not included in the original proposal and completion dates that had already elapsed. The Purchasing Division is not clear on whether the work in Task Orders 3 through 8 has been completed, but the dates suggest that completion has occurred. Task Orders 3 through 8 were not reviewed by the Purchasing Division or the Attorney General's office prior to the elapsed completion dates.

The WV Development Office has noted that the change would increase the contract value (amounts owed to Horne) in wvOASIS from \$900,000 to more than \$17,000,000. As justification for the substantial increase, the WV Development Office asserted that all work associated with the change order was included in the initial contract, in a very generic sense, under Phase 3. The Development Office contends that the inclusion of a chart on page 72 of the vendor's proposal listing tiered percentages is the pricing for phase 3.

1. Work Already Completed Cannot Be Added After the Fact by Change Order

Any work associated with Task Orders 3 through 8 that has already been completed cannot be approved now by the Purchasing Division. The contract itself mandated that the additional task orders be processed as change orders through the Purchasing Division. The Code of State Rules prohibits the approval of work via change order if that work has already been completed. It states:

Spending units must not permit vendors to perform work that the spending unit anticipates will be added to a contract through a change order until such time as the

change order has been formally approved by the Purchasing Division and the Attorney General's office, encumbered by the Purchasing Division, and mailed to the vendor. W. Va. Code R. § 148-1-6.8.f.

This rule was a direct result of the conclusions in a report issued by the Legislative Auditor's Performance Evaluation and Research Division ("PERD") dated January 2015 and identified as PE 14-11-565. That report plainly states that under current law, approval of monetary change orders after-the-fact is illegal. More specifically, the audit states that:

"the [Purchasing] Division should uphold and enforce West Virginia Code in processing and approving change orders. In order to do so, the Division should stop accepting and approving change-orders after the fact that have monetary repercussions for the State."

2. The Pricing and Scope of the Work for Phase Three was Not Sufficiently Defined to Allow the Contemplated Work to Continue Under the Existing Contract.

The Development Office has attempted to justify this change order by explaining that Task Orders 3 through 8 were included in the original contract pricing and scope contained in Phase 3. The Purchasing Division does not agree and finds that Phase 3 alone was not detailed enough to allow for continued contractual activity. Consider the funding chart on page 72 of Horne's proposal that WVDO relied upon as the pricing for Phase 3. The Proposal describes that chart as an example and indicates immediately below the chart that pricing could be significantly lower based upon the programs to be implemented.

Similarly, Horne's proposal addressing Phase 3 states that "The WVDO's complete vision for recovery is yet to be defined. The type and scope of recovery projects, as well as ultimate amount of funding, directly affect the cost to implement them." Most telling however, is that Horne makes the pricing for Phase 3 contingent on program selection. Horne states on page 72 of its proposal that "[o]nce WVDO has established a framework for their recovery programs, HORNE will provide comprehensive pricing [sic] to deliver full implementation for those programs."

Given this high degree of uncertainty in pricing and scope of work associated with Phase 3, the Purchasing Division does not believe that Phase 3 was sufficiently detailed to create a contractual obligation. Accordingly, any uncompleted work associated with Task Orders 3 through 8 will not be approved.

3. The State Would be Best Served by Competitive Bidding to Obtain the Best Pricing/Value for Implementation Services That Are Now More Sufficiently Defined.

The original emergency request that received approval was to "assist the West Virginia Development Office in developing a strategy on how to best effectively utilize these funds in the designated areas, as well as to set up processes to track and expend the funds" This approval

would seem to support the activities that were undertaken in Phases 1 and 2 of the contract. Those two phases were also more concretely defined and priced out in the solicitation. Phase 3 on the other hand, exceeds that emergency approval by going beyond strategy development and setting up processes and moving into full project oversight and implementation. As noted above, Phase 3 was very vague in the solicitation and proposal documents.

The lack of detail in the contract surrounding the activities associated with Phase 3 is also the most likely reason that Phase 3 pricing was not included in the request for proposal's pricing page. That pricing page forms the basis for evaluating costs in the request for proposal process. Without entries on the pricing page associated with Phase 3, the WV Development Office could not have evaluated those costs as part of its award decision.

Similarly, the original submission from Horne was based upon the assumption that \$17,000,000 of recovery funds would be involved. Now that the number has increased close to 9 times, a rebidding of the now more detailed Phase 3 activities could yield significant economies of scale and savings for the State.

For the reasons stated herein, the Purchasing Division will not approve the change order containing Task Orders 3 through 8 if it is submitted. The Purchasing Division will, however, work diligently with the WV Development Office to quickly obtain any needed services through proper procurement methods.

Sincerely,



W. Michael Sheets, CPPO, Director
West Virginia Purchasing Division



IN 18-39003

APPENDIX F:

CDBG-DR Cash Requisition Form

Request Type: Down Payment

Invoice Number: WV-00004		Invoice Date: 12/21/2017
Vendor ID #: VS*13216		
Contract #: APO DEV18*2		
Name: Thompson Construction Group, Inc.		Phone: (304) 553-0224
Address: 100 N Main St., Sumter, SC 29150-4948		
State Administration	Administrative	\$0
Planning	Planning	\$0
MID Rehab LMI	Housing	\$0
MID Rehab UN	Housing	\$0
MID Rehab Delivery LMI	Housing	\$0
NMID Rehab LMI	Housing	\$17,128.25
NMID Rehab UN	Housing	\$0
NMID Rehab Delivery LMI	Housing	\$0
MID Bridge Replacement LMI	Housing	\$0
MID Bridge Replacement Delivery LMI	Housing	\$0
NMID Bridge Replacement LMI	Housing	\$0
NMID Bridge Replacement Delivery LMI	Housing	\$0
MID HMGP LMI	Housing	\$0
MID HMGP Delivery LMI	Housing	\$0
NMID HMGP LMI	Housing	\$0
NMID HMGP Delivery LMI	Housing	\$0
MID Riverview Rental Housing LMI	Rental Housing	\$0
MID Riverview Rental Housing Delivery LMI	Rental Housing	\$0
MID Rental Assistance Program LMI	Rental Housing	\$0
MID Rental Assistance Program Delivery LMI	Rental Housing	\$0
NMID Rental Assistance Program LMI	Rental Housing	\$0
NMID Rental Assistance Program Delivery LMI	Rental Housing	\$0
Total		\$17,128.25
RiseWV Team Lead	Juan Alaniz	12/27/2017 12:12 PM
RiseWV QC	Shelley Mounkes	12/28/2017 10:40 AM
Program Specialist	Andrew Mihallik	12/29/2017 11:38 AM
Deputy Director	Russell Tarry	1/5/2018 10:37 AM

WV-FL16-995-TMP



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