

ATTACHMENT 5-C: VOLUNTARY ACQUISITION PROCESS

1.0 REMINDER OF IMPORTANT REQUIREMENTS

Community Development Block Grant projects are subject to the applicable acquisition and relocation requirements under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) [49 CFR Part 24](#).

A real property or easement acquisition may only be completed after (i.e., the property purchase/closing cannot be finalized until) the Grant Agreement is fully executed and the Environmental Review is certified by DEHCR to be an eligible cost paid (or reimbursed) with CDBG funds. DEHCR recommends **no** acquisition for a CDBG project to be completed until the Grant Agreement is fully executed and the Environmental Review is certified by DEHCR, regardless of funding source.

Construction on the property cannot begin until the acquisition is complete/property closing is finalized.

2.0 CRITERIA FOR VOLUNTARY ACQUISITION

There can be no threat of eminent domain or condemnation when acquisition is undertaken as voluntary. Additional requirements apply under the [URA](#). The requirements of [49 CFR Part 24.101\(b\)\(1\)-\(5\)](#), which are summarized within the “criteria” section below, must be satisfied for a transaction to be considered a voluntary acquisition.

The URA recognizes three general types of purchases which can be voluntary:

1. Purchases where the buyer has the power of eminent domain, but agrees that it will not condemn the property if an agreeable purchase price cannot be reached, and the acquisition meets the URA criteria listed in this chapter;
2. Purchases in which the buyer does not have the power of eminent domain (e.g., non-profits, private developers, etc.); and
3. Purchases of government property (federal, state, local) in which the buyer does not have the power of eminent domain. For example, if a non-profit organization offers to purchase a piece of property from the local government/Grantee and with state CDBG funds.

In addition, for buyers with eminent domain authority [i.e., units of general local governments (UGLGs)], the acquisition only qualifies as voluntary if all the following criteria are also met:

1. No specific site is needed and any of several properties could be acquired for project purposes;
2. The property is not part of an intended, planned, or designated project area where other properties will be acquired within specific time limits;
3. The UGLG informs the owner in writing of the property's market value; and
4. The UGLG informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement.

A common misconception is that a “willing seller” or “amicable agreement” means a transaction is “voluntary.” This is not necessarily true under the URA and the applicable requirements of 49 CFR 24.101(b)(1)-(5) (as summarized above) must be satisfied for a transaction to be considered a voluntary acquisition for purposes of the URA.

For buyers **without** eminent domain authority, the acquisitions are voluntary and the following is required under the URA:

- The buyer must notify the owner in writing of the property’s market value; and
- The buyer must notify the owner prior to making an offer that it will not acquire property if an amicable settlement cannot be reached.
- If any tenants occupy (or have possessions on) the property, the buyer must comply with applicable federal and state relocation regulations and requirements pertaining to tenant-occupants.

Relocation Applicability (Tenants Only)

An owner does not have relocation rights and is not eligible for relocation assistance in a voluntary acquisition, but tenants do have relocation rights and may be eligible for relocation assistance. Tenant-occupants are eligible for relocation assistance in a voluntary acquisition if deemed displaced persons. The Grantee/buyer may offer relocation assistance to an owner as part of negotiations for a voluntary acquisition, but federal funds may not be used for a relocation payment to an owner when the acquisition is voluntary.

3.0 VOLUNTARY ACQUISITION PROCESS

The Grantee/buyer must complete the processes presented below and should consult legal counsel to ensure all applicable state and federal laws are followed (the guidance below is not meant to be and should not be interpreted as legal advisement from DEHCR).

For a general overview, refer to *General URA Acquisition Process* (Attachment 5-P), which is [HUD’s Tenant Assistance, Relocation and Real Property Acquisition Handbook](#)

NOTE: The order in which Steps #2-8 are completed may vary, depending on when the Grantee determines the property will be acquired and when the Grantee becomes aware of tenants or displaced persons (excluding the property owner). Certain notices to the property owners and tenants may be combined.

Refer to the “General Standards for All Notices” section within this chapter and #12-#13 within Attachment 5-C regarding specifications for notices and record keeping requirements.

IMPORTANT NOTICE

Refer to the “General Standards for All Notices” section within this chapter and #12-#13 within Attachment 5-C regarding specifications for notices and record keeping requirements.

1.0 Notice to DEHCR

The DEHCR Project Representative must be notified prior to starting the acquisition/relocation process and the start of construction if acquisition and/or relocation will occur as part of a project. Complete and submit the *Notice of Acquisition/Relocation to DEHCR* (Attachment 5-L).

2.0 Determination of Fair Market Value

The current fair market value (FMV) of the property must be determined and the owner must be informed of the FMV (in the initial notice to the owner referenced below). The FMV of the property may be obtained via formal appraisal by a licensed appraiser, but a formal appraisal is not required for a voluntary acquisition. The Grantee/buyer may obtain a determination of the FMV from a person with knowledge of/expertise in the current local real estate market in lieu of obtaining an appraisal. The “assessed” value of property based on a tax assessment is not necessarily the FMV. The value must be based on current real estate

market information. The source and method of the FMV determination records must be maintained in the project file.

3.0 Informational Notice (Initial Notice to Owner)

As soon as feasible and prior to negotiations, the Grantee/buyer must notify the owner in writing of the Grantee's/buyer's interest in acquiring the real property and the basic protections provided to the owner by law.

When the buyer is an agency/entity with eminent domain authority (i.e., an UGLG), then this notice should include the following:

- A property value amount based on the current fair market value (FMV) determination. The sale price may be negotiated, but the owner must be informed of the current FMV. Provide the source/basis of the FMV determination.
- A clause that states the UGLG possesses eminent domain authority; however, in the event the owner is not interested in selling their property, or if the owner cannot reach an amicable purchase agreement, the UGLG will **NOT** pursue its acquisition under eminent domain.
- A clause stating that the property is not a necessary part of the proposed project.
- A clause stating that the property is not part of an intended, planned, or designated project area where substantially all the property within the area is to be acquired.
- Notification that owner occupants who move as a result of a voluntary acquisition are NOT eligible for relocation assistance, but tenants do have relocation rights and may be eligible for relocation assistance.
- A contact name, title, address, email address (optional) and telephone number for a person who can answer questions.
- Providing the applicable publications listed in #4 (Brochures) below may be provided with this initial informational notice to the property owner or provided separately].

Refer to the *Informational Notice to Owner for Voluntary Acquisition* template (Attachment 5-B) for guidance on the required language for this type of notice.

When the buyer is an agency/entity **without** eminent domain authority, then this notice should include the following:

- A property value amount based on the current FMV determination. The sale price may be negotiated, but the owner must be informed of the current FMV. Provide the source/basis of the FMV determination.
- A clause that states the agency does not have eminent domain authority and in the event that an amicable purchase agreement cannot be reached, the agency will not pursue the acquisition.
- Notification that owner occupants who move as a result of a voluntary acquisition are NOT eligible for relocation assistance, but tenants do have relocation rights and may be eligible for relocation assistance.
- A contact name, title, address, email address and telephone number for a person who can answer questions.
- The applicable publications listed in #4 (Brochures) below may be provided with this initial informational notice to the property owner or provided separately.

Additional Notices To Tenants:

While property owners are not eligible for relocation assistance using federal funds for voluntary acquisition, notice of relocation rights must be given to any tenants, as listed in Attachment 5-D and Attachment 5-F. The buyer must consult with the property owner and URA and HUD regulations to make the determination of whether any persons will qualify as tenants, for which the additional notices apply.

For various acquisition and relocation notices/letters, forms and templates, refer to the Appendices of HUD's [Tenant Assistance, Relocation and Real Property Acquisition Handbook \(1378.0\)](#)

4.0 Brochures to Owners and Notices & Brochures to Tenants

The Grantee/buyer must determine the applicable brochures that must be provided to the owners and tenants (if applicable). The brochures may be sent with the initial informational notice to the property owners and tenants (recommended) or provided separately but must be provided prior to the initiation of negotiations.

The buyer must consult with the property owner to make the determination of whether any persons will qualify as “displaced tenants” who must be provided with relocation rights brochures and notices listed in Attachment 5-D and Attachment 5-F. Both the federal government and the state have developed brochures to be provided to potential sellers and tenants during the acquisition/relocation process. The Grantee/buyer is not required to provide the federal brochures but is required to provide the applicable Wisconsin state brochures. DEHCR recommends that the Grantee/buyer provide both the federal and state brochure publications that are applicable to the acquisition and/or relocation process.

Acquisition

Federal Acquisition Brochures

Although multiple notices must be provided to comply with the URA, the URA does not specify that the federal brochures issued by HUD are required to be provided. However, the HUD brochures/booklets for acquisition and relocation are designed to include the information that is required to be provided in accordance with the URA for a Grantee/buyer and are recommended to be provided to the owner and tenants (if applicable) at the initial notice stage of the acquisition or relocation process. If the buyer is a UGLG/public agency with eminent domain authority, the following HUD acquisition booklet/brochure is **recommended** (in addition to the applicable HUD relocation brochures listed in *Relocation Planning/Process and Advisory Services* (Attachment 5-F)):

- *When a Public Agency Acquires Your Property*. This booklet/brochure informs a property owner of their rights under the URA.

The federal/[HUD acquisition and relocation booklets/brochures](#) are available in English and Spanish.

State Acquisition Brochures

Regardless of the type of funds used (federal, state, local) at any stage of a publicly funded project, a displacing UGLG/public agency **with** eminent domain authority in Wisconsin is **required** to provide the applicable state acquisition brochures listed below (in addition to the applicable relocation brochures listed in the *Relocation Planning/Process and Advisory Services* (Attachment 5-F) in this chapter):

Transportation [Wis. Stat. Ch. 32.05(2)(a)] Projects:

- [The Rights of Landowners Under Eminent Domain Law – Procedures Under §. 32.05, Wisconsin Statutes brochure](#); or

Other than Transportation [Wis. Stat. Ch. 32.06(2a).] Projects:

- [The Rights of Landowners under Eminent Domain Law - Procedures under s. 32.06 Wisconsin Statutes brochure](#); or

A buyer **without** eminent domain authority must provide the applicable relocation notices and brochures to any tenant-occupants who will be displaced as a result of the acquisition/project.

The [state acquisition and relocation brochures](#) may be accessed in the English, Spanish and Hmong languages.

Relocation

If a homeowner, residential tenant, business (including non-profit organizations and farms) or business tenant *will or potentially will* be displaced as a result of the acquisition or associated project, then the Grantee/buyer is **required** to provide the applicable **state** relocation brochure and it is **recommended** that the applicable **federal/HUD** relocation booklet/brochure also be provided at the same. The applicable relocation brochures must be provided to the affected persons prior to the initiation of negotiations for the acquisition.

- Refer to *Relocation Planning/Process and Advisory Services* (Attachment 5-F) in this chapter for guidance on the federal and state relocation brochures and notice requirements.

5.0 Relocation Plan and Processes

For voluntary acquisition, while property owners are not eligible for relocation assistance, tenant-occupants who will or potentially will be displaced as a result of a voluntary acquisition or the associated project may be entitled to relocation assistance and must be so informed. The relocation processes may begin earlier in the acquisition process. The Grantee/buyer is to proceed with the Relocation Plan and relocation planning processes as soon as it is known that any tenants (or their possessions) are on the property to be acquired and the tenants will or potentially will experience displacement as a result of the acquisition or associated project.

The UGLG/buyer must file the Relocation Plan and receive approval in writing from DOA Division of Legal Services **before proceeding with the initiation of negotiations**. The Grantee/buyer must also complete the required relocation processes for tenant-occupants who will or potentially will be displaced.

Refer to Attachment 5-F through Attachment 5-J in this chapter for guidance on the Relocation Plan and relocation processes and requirements.

6.0 Notice of Intent to Acquire (if Tenant Relocation is required)

If tenant relocation is required, a Notice of Intent to Acquire must be issued to trigger relocation eligibility. Refer to Attachment 5-F through 5-J for guidance on actions required for relocation rights/assistance for tenants who will be displaced tenants as a result of the voluntary acquisition. This notice may be combined with the initial informational notice or other notices associated with relocation.

7.0 Negotiations

A written offer to purchase generally serves as the initiation of negotiations. However, the date of a verbal monetary offer to purchase authorized by the acquiring Grantee/buyer must be considered as initiation of negotiations to establish eligibility for a relocation benefit.

Proceed with negotiations with the property owner to determine a mutually agreed upon sales price and any other terms of the sale, if applicable. Maintain any documentation associated with the negotiations process in the CDBG project file.

8.0 Determination of Final Offering Price

Determine the final offering price after negotiations with the property owner are complete and a mutually agreed upon sales price and any other terms of the sale are settled. Maintain any documentation associated with the negotiations process in the CDBG project file.

Any amount above the FMV cannot be paid with CDBG funds without prior approval from DEHCR. Generally, no more than the current FMV should be offered when using CDBG funds. Paying above the current FMV when using CDBG funds requires documenting sufficient justification for how it is in the best interest of the public and a responsible use of public funds. Any value above this threshold generally must be paid by the Grantee/buyer. Regulatory provisions allow for a request for an exception when a higher amount is justified as necessary and in the public interest. For an exception to be considered, the Grantee must submit to DEHCR, prior to payment to the owner, a request for an exception with sufficient justification for the necessity of a higher purchase amount. The request must be approved by DEHCR prior to the Grantee proceeding with offering an amount above the threshold. DEHCR may approve up to 20% above the FMV and anything greater than 20% above the FMV must be approved by HUD when using CDBG funds for the acquisition. Typically, an exception for paying more than 20% above the FMV would **not** be considered for voluntary acquisition. The URA does not restrict the Grantee from using its own funds (i.e., matching funds for the project) to pay above the FMV, but the Grantee may have local government policies or ordinances that restrict it, which must be followed.

9.0 Official Determination/Approval To Acquire

The Grantee must make an official determination to acquire the property and approve the purchase price (if the Grantee/UGLG is the buyer). Record of the Grantee's actions must be in the acquisition file for the CDBG project. If a subrecipient is the buyer rather than the Grantee, an official determination from the Grantee is not required but recommended, due to the Grantee being the responsible entity for the expenditure of grant funds.

10.0 Purchase Agreement and Title Transfer

Upon finalizing negotiations, a written agreement for the purchase of property with the purchase terms and amount must be executed, signed by the seller and buyer. The purchase agreement must be in writing and include details of the property and purchase amount. Provide a copy of the executed purchase agreement to the seller. The signed purchase agreement and records of the financial transaction and title transfer must be maintained in the acquisition file for the CDBG project. *[Note: If the acquisition is to be paid/reimbursed with any CDBG funds, the Grant Agreement must be fully executed, and the Environmental Review must be certified by DEHCR prior to the acquisition purchase being completed/closed. Construction cannot begin on any property until the acquisition is complete (purchase completed and title transferred).]*

11.0 Acquisition Financial Records to DEHCR

Using CDBG Funds for Acquisition Costs

If the Grantee seeks to draw down CDBG funds 'up front' to cover all or a portion of the acquisition transaction cost, then submit the FMV determination record and unexecuted purchase agreement (as the 'invoice') to DEHCR with a CDBG Payment Request. The executed purchase agreement, title transfer record, and record of payment to the owner must be submitted on the next CDBG Payment Request that follows the completion of the acquisition.

If the Grantee seeks to draw down CDBG funds as 'reimbursement' to cover all or a portion of the acquisition transaction cost after the acquisition has occurred, submit the FMV determination record,

executed purchase agreement (as the 'invoice'), record of payment to the owner, and title transfer record to DEHCR with a CDBG payment request.

Acquisition costs are to be recorded on the CDBG Disbursements Journal if CDBG funds are used to cover all or a portion of the acquisition costs, and/or recorded on the Matching Funds Journal if non-CDBG funds (i.e., matching funds) are used to cover all or a portion of the acquisition costs.

IMPORTANT NOTE: Professional services for acquisition processes and activities provided by a third-party (versus the Grantee's/buyer's own employees) must be competitively procured, meeting the procurement requirements in Chapter 3: *Procurement and Contracting* of the [CDBG Implementation Handbook](#), to be eligible to be paid using CDBG funds.

Using Only Match/Non-CDBG Funds for Acquisition Costs

If the Grantee is **not** using CDBG funds for the acquisition and the acquisition occurs *after* the CDBG Award, then the Grantee must still submit the records of the acquisition transaction and record the costs on the Matching Funds Journal. Submit the FMV determination record, executed purchase agreement (as the 'invoice'), record of payment to the owner, and title transfer record to DEHCR with a CDBG payment request.

If the Grantee is **not** using CDBG funds for the acquisition and the acquisition occurs *prior to* the CDBG Award, then the Grantee is to maintain the records of the acquisition transaction in the project file and provide them to DEHCR (and other regulating entities) only upon request. **Do not** record pre-Award acquisition costs on the CDBG Disbursements Journal or the Matching Funds Journal.

12.0 Records of Notices

Refer to the "General Standards for All Notices" section within this chapter regarding specifications for notices and record keeping requirements. Note that in addition to all correspondence and records of communication with owners and tenants (and/or their designated authorized representative), the case file must include the records of the method of delivery of the required acquisition and/or relocation notices [which must be via official certified or registered First Class mail, return receipt requested, or personal delivery, *unless* they voluntarily agree to receive notices electronically] to owners and tenants (and/or their designated authorized representative), as applicable; the date of delivery; and signed confirmation of receipt (e.g., signed official mail returned receipt or signed statements of acknowledgement of receipt from the owners/tenants that specify the type/nature/titles of the documents received and date of receipt; or the electronic tracking information documents and electronic signature that are date- and time-stamped for electronic delivery). If additional optional notices are provided using other methods of delivery, the copies of the notices, methods of notices (e.g., newspaper or other publication, online/website publication, postings at central locations within the community, etc.) and the dates of the notices must also be in the case file. These additional methods of notices are allowed as supplemental optional efforts but **cannot** be *in lieu* of the required personal delivery or certified/registered mail delivery, or electronic delivery if voluntarily agreed upon by the intended recipient.

13.0 Recordkeeping in Project File

All documentation for the acquisition process must be maintained in the CDBG project acquisition file. A separate file for each property acquisition and each relocation case must be maintained. Refer to *Chapter ADM 92.20 Acquisition/Relocation File* (Attachment 5-J) and *Acquisition/Relocation Monitoring Checklist* (Attachment 5-K) for further details on the documentation required to be maintained.