

Watershed Projects Grant Program: Local and Regional – Round 1

Mandatory Webinar

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working together for sustainability and resilience





Overview



Objective:

Implement low-risk, high-impact projects that will mitigate flood risk and incentivize the prioritization of projects through regional collaboration

UP TO \$100 MILLION

Up to \$60 million

Projects selected by score



Up to \$40 million

Projects selected by region (up to \$5 million per region)



Update PRE-APPLICATIONS

- Nearly 400 submitted
- More than \$1.7 billion in funding requested
- Strong demand for flood risk reduction projects
- Received project pre-applications from every provisional watershed region
- A variety of traditional and nontraditional projects
- Updated program <u>policies and</u> <u>procedures</u> and <u>FAQ</u> available



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Watershed Projects Grant Program: Local and Regional - Round 1

The state is reviewing applications from local and regional public entities to access \$100 million in anticipated federal funds for projects that will address immediate flood mitigation needs. The funding opportunity is part of the state's Action Plan to spend \$1.2 billion in Community Development Block Grant Mitigation funds, which the U.S. Department of Housing and Urban Development approved Feb. 21.

NOTICE OF FUNDING AVAILABILITY

View the notice of funding availability, or NOFA, to find out more about this round of projects funding. <u>View frequently asked questions</u> associated with this funding opportunity, and if you have any additional questions, please email <u>watershed@la.gov</u>.

View the NOFA

PROJECT PRE-APPLICATION

Please note that the deadline for submitting pre-applications was 3 p.m. Jan. 17. Applicants must have completed a pre-application before completing a full application for funding.



Timeline

EVENT	DATE	
State issued NOFA and solicited project applications	Nov. 22, 2019	
Deadline to submit project pre-applications	Jan. 17, 2020	
Anticipated grant agreement between HUD and State of Louisiana	April 2020	
Deadline to submit full project applications	Three months after grant agreement (estimated July 2020)	
Awards announced for \$60 million in statewide projects	Following application scoring process (estimated September 2020)	
Regional selection recommendations due to OCD	Estimated October 2020	
Grant agreements between OCD and grantees executed for awarded projects	Winter 2020	





Our goal today:

ENSURING YOUR PLAN OF ACTION IS COMPLIANT AND INFORMED

This presentation will answer questions regarding the following:

- Procuring services or using existing services to complete full applications
- Starting an environmental review for a submitted project
- Pre-award costs associated with completing a full application
- Possible conflicts of interest in completing a full application for your parish, city, engineering firm or regional steering committee
- Reviewing the full application online
- How to submit the full application
- How comments and questions about the full application will be addressed



Pre-award costs

- Pre-award costs become eligible for reimbursement **after** the state enters into a grant agreement with HUD.
 - Note: Anticipated in April
- They are included in the maximum project award amount.
 - Note: \$10 million is the maximum award
- They are categorized as **project delivery costs**, which are capped at 15% of the project budget.
- The extended full application deadline (three months after the state enters into a grant
 agreement with HUD) assists applicants intending to request reimbursement of pre-award costs.
- If a project is not awarded funds, pre-award costs are not reimbursable.





Procurement regulatory citations

Procurement regulations

- 2 CFR 200.317, 24 CFR 570.489(g) for **states**, plus federal register notice requirements
- 2 CFR 200.318-326 for all other **non-federal entities**, plus federal register notice requirements, Louisiana's public bid law, La. R.S. 38:2211-2296

OCD CDBG-DR Grantee Administrative Manual

Section 6, Exhibits 6-1 to 6-16

Procurement standards

General and specific procurement standards are broken down into the following categories:

- 2 CFR 200.318 General Procurement Standards
- 2 CFR 200.319 Competition
- 2 CFR 200.320 Methods of Procurement
- 2 CFR 200.321 Socioeconomic Contracting
- 2 CFR 200.322 Procurement of Recovered Materials
- 2 CFR 200.323 Contact Cost and Price
- 2 CFR 200.324 Review of Procurements
- 2 CFR 200.325 Bonding Requirements
- 2 CFR 200.326 Contract Provisions
- 2 CFR 200.458 Pre-Award Costs

General procurement standards

A **procurement policy** must be written and adopted prior to securing contract services. Grantees must determine whether their procurement policies include all federal requirements contained in 2 CFR 200.318.

- If a grantee already has an applicable policy in place, but the policy does not contain all federal requirements (and the grantee intends to use CDBG-DR funds), the policy must be amended accordingly.
- A sample procurement policy is included as Exhibit 6-1 of the grantee administrative manual.

Competition

HIGHLIGHTS

All procurement transactions must be conducted in a manner providing "full and open competition" - see 2 CFR 200.319.

The use of restrictive selection criteria is considered an impediment to full and open competition, and is thus prohibited. Some of the common situations considered to be restrictive of competition include:

- Placing unreasonable requirements on firms in order for them to qualify to do business
- Requiring unnecessary experience and excessive bonding
- Awarding noncompetitive contracts to consultants that are on retainer contracts
- Organizational conflicts of interest
- Specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance or other relevant requirements of the procurement



Competition

SELECTION PROCEDURES

Selection procedures for procurement transactions must be written and documented prior to securing contract services – see 2 CFR 200.319.

The procedures must ensure that **all** solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured
- Reflect all requirements the offers must fulfill
- Delineate all other factors used in evaluating bids or proposals

Common restrictive criteria

NOTED FROM C&M REVIEWS

- Experience with a specific CDBG program (e.g., -DR, LCDBG,-MIT), rather than considering experience with all CDBG programs
- Previous experience with the grantee requesting services (or local governments associated with that grantee)
- Minority-, women-, handicapped- and veteran-owned businesses, as well as section-3 businesses
- Distance from grantee (OK in requests for qualifications)

A sample RFQ is included in the grantee administrative manual as Exhibit 6-9.

Preparing contracting procedures

MEETING EQUAL OPPORTUNITY REQUIREMENTS

Applicable equal opportunity language must be included in the bid specifications and contract documents. See Exhibit 6-2 for sample Contract Documents Guide.

CDBG-DR recipients must make affirmative efforts to use minority- and women-owned firms when possible [2 CFR 200.321]:

- Place qualified firms on solicitation lists
- Divide total requirements into smaller tasks
- Establish delivery schedules that encourage participation
- Use SBA and Minority Business Development Agency services
- Require prime contractors to take same affirmative steps



Contract administration and records

2 CFR 200.318(i) requires the non-federal entity to maintain records sufficient to detail the history of a procurement. These records must include the following:

- Rationale for the method of procurement
- Selection of contract type
- Contractor selection or rejection
- Basis for the contract price



The role of cost and price analyses

- The method and degree of analysis depend on the facts surrounding the procurement situation, but as a starting point, the non-federal entity must make independent estimates before receiving bids or proposals.
- **Price analysis** is essentially a price comparison. It is the evaluation of a proposed price (i.e., total sum) without analyzing any of the separate cost elements.
- **Cost analysis** is the evaluation of the separate elements (e.g., labor, materials, profit, etc.) that make up a contractor's total cost proposal to determine if they are allowable, directly related to the requirements. (Cost analysis should apply to both new contracts and contract modifications or change orders.)

*Analyses can only be relied on as controls if they are on file and dated prior to bid issue to establish chronology.



Methods of procurement overview

- Micro purchase
- Small purchase
- Sealed bids (formal advertising)
- Competitive proposals
- Noncompetitive proposals



Methods of procurement overview

* The noncompetitive method is not covered in this presentation, as it is forbidden for this application process.

Procurement type	Cost reasonableness	Contract type	Solicitation method	Applications	Dollar thresholds (if applicable)
Micro purchase See 8.0	- Price analysis	- Fixed order - Fixed price	- No solicitation required	- Supplies - Produced items - Single-task services	- Under \$2,000 for construction - Under \$5,000 for all other purchases
Small purchase See 8.0	- Price analysis	- Purchase order - Fixed price	- Quotations - Submitted bids	- Produced items - Single-task services - Supplies	- \$250,000 or less for produced items - \$250,000 or less for non-construction services
Sealed bid (formal advertising) See subsection 10.0	- Price analysis - Cost analysis	- Fixed price	- Submitted bids	- Construction items - Produced or designed items	- All construction contracts, including less than \$250,000 - Produced or designed items over \$250,000
Competitive proposals See subsection 11.0	- Price analysis - Cost analysis	- Cost reimbursement - Fixed price - Time and materials	- Submitted proposals	- Professional services - Multitask services - Designed items	- Professional services and/or multitask services over \$250,000 - Designed items over \$250,000 when sealed bid isn't appropriate
Noncompetitive proposals See subsection 12.0	- Cost analysis	- Cost reimbursement - Fixed price - Time and materials	- Submitted proposals	- Produced items - Single-task services - Professional services - Multitask services - Designed items	- No particular threshold, but may only be used when other methods are not feasible

Micro purchase

- Micro purchases require a simple price analysis prior to receiving bids or proposals. They do not require a cost analysis.
- Only accepted method for which no solicitation is required
- Under \$2,000 for construction and under \$5,000 for all other purchases
- **Example:** A city or parish purchasing office equipment (quotes and use of a purchase order to accompany)

Small purchase

- Relatively simple and informal procurement methods used for securing services, supplies or other property that does not cost more than the Simplified Acquisition Threshold (which is set at \$250,000) in the aggregate
- If small purchase procurement is used, price or rate quotations (or submitted bids) will be obtained from at least three qualified sources. Quotes can be requested via telephone, fax, email, mail or any other reasonable method.
- Example: Breaking down larger contracts into smaller contracts for feasibility

Common noncompliance example

During the review of a parish's procurement files, C&M staff noted there was no evidence of quotes in the file for appraisal services and review of appraisal services performed on the property located at 617 OCD Highway.

Per Section 6, Part 9.0, of the OCD Grantee Administrative Manual and 2 CFR 200.320(b), price quotations from at least three qualified sources must be obtained prior to making a purchase.

Corrective action: The parish must provide documentation showing three quotations were received from qualified sources or an explanation of why proper procedures for the purchase were not followed. *Follow up actions may be required.*

FORMAL ADVERTISING

- Formal advertising is the preferred method for the purchase of goods and services, such as equipment and construction services.
- Grantees should always prepare their own cost estimates and compare it to the low competitive bids received. If they are significantly different, grantees will need to evaluate their initial estimates, compare them to the bids received and identify the appropriate price.

For sealed bidding to be feasible, the following must be present:

- A complete, adequate and realistic specification or purchase description
- Two or more responsible bidders are willing and able to compete for the business
- Procurement lends itself to a firm fixed-price contract and the bidder can be selected principally based on price

When sealed bids are used, the following requirements apply:

- Invitation for bids must be publicly advertised.
- Invitation for bids must adequately define the items/services, enabling the bidder to properly respond.
- Bids must be publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder.
- Any bid may be rejected if there is a sound, documented reason.

LOUISIANA'S PUBLIC BID LAW REQUIREMENTS

- Louisiana's public bid law, La. R.S. 38:2211-2296, and 2 CFR 200.320 provide specific requirements that must be followed when bid packages are created and advertised, as well as the required steps to conduct bid openings.
- Section 6 of the <u>grantee administrative manual</u> provides additional guidance on OCD requirements. Grantees must follow whichever requirement is more stringent.

Competitive proposals

- Essentially two types:
 - Request for proposals (RFP)
 - Request for qualifications (RFQ)
- This method is typically used to contract for professional consulting, architectural or engineering services. To determine whether proposed costs are reasonable, the grantee must perform a **cost analysis** using the appropriate set of principles.
- Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement contract is awarded. This is used when conditions are not appropriate for the use of sealed bids.

Competitive proposals

- The RFQ method may be used for qualification-based procurement of architectural or engineering professional services. Typically, only architectural or engineering professional services may consider factors other than price in the bid selection.
- The RFP method may be used for other types of professional service providers. Price must be a factor when selecting professional service firms other than architectural or engineering.
- The principal difference between the two types of requests is that an RFP includes **price** and an RFQ does not.

Compliance breaches/issue determination

- **Grant fund usage** As is the case with virtually all federal regulations, the spirit or intent of procurement regulations is to ensure the judicious use of federal funds.
- Competition is paramount As is stated multiple times throughout the CFR regarding procurement, the best way to provide for a judicious use of federal funds is to ensure **free** and open competition throughout the process.
- **Compliance issues** Generally, when it comes to procurement, the graveness and prioritization of compliance issues are driven by the extent to which competition is hindered and/or funds are spent imprudently.

Contracting BASIC CONTRACTING TYPES

- Purchase order A purchase order is a document a buyer issues to a seller committing to pay the seller for the future sale of specific products/services at specified prices.
- Fixed price A fixed-price contract provides a
 price that is not subject to any adjustment based
 on the contractor's cost experience in performing
 the contract.



Contracting BASIC CONTRACTING TYPES

- Cost reimbursement A cost-reimbursement contract provides for payment of allowable incurred costs to the extent prescribed in the contract.
- **Time and materials** A time and materials contract provides for payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses and actual cost for materials.

The time and materials contract type should only be used after a determination that no other contract is suitable and the contract includes a **ceiling price** that the contractor exceeds at its own risk [2 CFR 200.318(J)]. The grantee should document the process to support this determination and retain it in the project files.

Prohibited procurement/contract methods

- Piggyback procurement/contracting The practice of using a procurement conducted by another non-federal entity or the use of an agreement entered by another non-federal entity and a contractor.
- "Cost plus a percentage of cost" Profit can be a portion of a contractor's bid, but it should be negotiated with the bidder. The level of profit will vary based on the size, risk and complexity of the project.
- "Retainer contracts" Grantees cannot award a contract to a contractor that is already on a retainer contract/agreement without a separate, competitive proposal.
- Restrictive or exclusionary practices Generally, anything that restricts "free and open competition" is prohibited.

Common noncompliance example

During the review of the city's procurement and contract files, C&M staff noted that the city has received CDBG-DR payment totaling \$1,138.62 for auditing services provided by ABC Consulting from 2015 to 2016 for IFIS-12345 project. C&M staff identified the following issues:

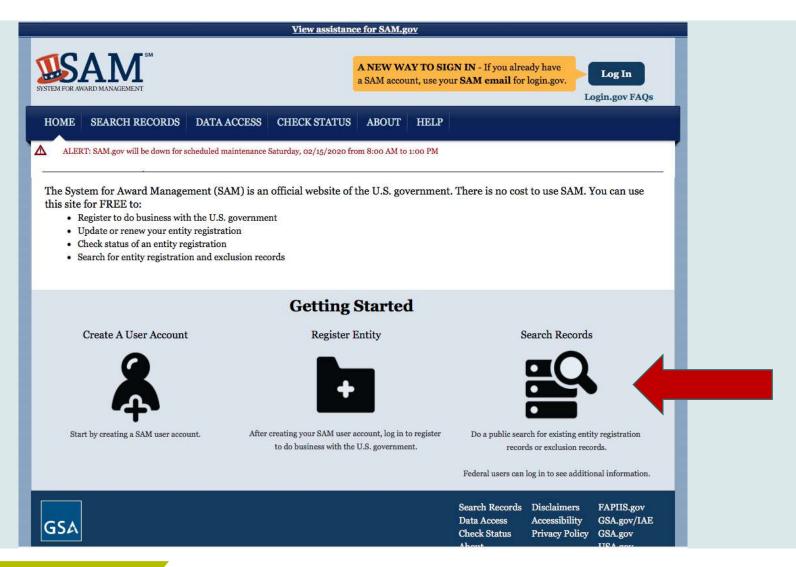
A. Insufficient documentation:

- No evidence was found to show that the city conducted a formal procurement (using one of the recommended methods) before engaging the services of ABC Consulting, as required by 2 CFR 200.320 and Section 6, Part 7.0, of the grantee administrative manual.
- o Because no evidence was found to corroborate procurement, "free and open competition" for services was not ensured, as is required by 2 CFR 200.319.
- **B.** Contract type/nonexistent ceiling: The city did execute a contractual agreement with ABC Consulting. After review, it was determined that a time and material contract was used. However, the contract did not include a ceiling contract amount, as is required by 2 CFR 200.318(j)(2).

Additional requirements

- Debarment (2 CFR 200.213, sam.gov/SAM/)
 - Note: SAM must be entered in capital letters in the URL.
- Required contract provisions (2 CFR 200.326)
 - Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
- Contracting with small and minority businesses, women-owned business enterprises (2 CFR 200.321)
- Section 3 (Section 8 of OCD Grantee Administrative Manual, Section 3 of the HUD Act of 1968)

System for Award Management (SAM)



Common noncompliance example

C&M staff reviewed a parish's contract files and noted no evidence of contractor clearance was found for ABC Consulting.

Per Executive Order 12549, 2 CFR 200.213 and Section 6, Part 14.0, of the OCD Grantee Administrative Manual, the grantee is required to verify that the contractor is eligible to participate in a federally funded project prior to award of the contract.

Corrective action: The parish must immediately run the entity's name through the federal database and verify that the firm was not debarred, suspended or deemed ineligible for participation in federal assistance programs. A copy of a printout from the SAM website must provided to C&M staff.

For all future projects administered using CDBG-DR funds, the parish must perform the required contractor clearance prior to the contract effective date. Failure to do so can result in ineligibility for CDBG reimbursement and ultimately a required return of funds.

Common noncompliance example

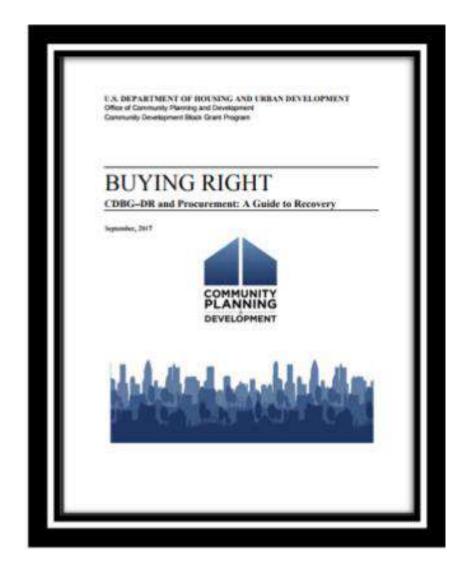
C&M staff reviewed a town's executed contract with OCD Consulting for 11MIP1111 project. It was noted that the contract did not contain the required CDBG Compliance Provisions for Professional Services contracts.

Per Section 6, Part 16.0, of the OCD Grantee Administrative Manual and 2 CFR 200.326, all contracts must include required provisions.

Corrective Action: The town must modify its contract with OCD Consulting to include the required CDBG Compliance Provisions for Professional Services contracts and maintain the executed contract amendment in the project files. Going forward, the town must also ensure that all contracts include the required CDBG compliance provisions.

Helpful resource

Buying Right CDBG-DR and Procurement: A Guide to Recovery



Environmental review

- **CRITICAL**: Failure to complete the environmental review record and get notice to proceed from OCD before taking a choice limiting action can render entire project ineligible.
- Applicants should procure an environmental consultant who is experienced with 24 CFR Part 58.
- Environmental assessment is considered part of project planning and should be completed as early as possible to determine if there are reasons a project should not continue in the process.
- Each project varies in the amount of time it takes to complete the assessment. The larger and more complicated the project, the longer and more complicated the environmental review.
- Generally, an environmental assessment takes about six months to complete, so this process should start as soon as a project application is approved.



APPLICABLE CONFLICT RULES

- The Louisiana Code of Governmental Ethics, La. R.S. 42:1102 et seq ("Ethics Code"), can apply to RSC members and contractors that are "engaged in a governmental function."
- HUD's conflict of interest rule at 24 CFR 570.611 generally apply to persons who exercise or have exercised any functions or responsibilities with respect to CDBG activities.

HOW DO THESE APPLY TO RSC MEMBERS AND CONTRACTORS?

As part of the LWI, the RSC mission is to help establish the regional's priorities for long term operations and to help select projects from applications for funding, which are integral to the LWI and CDBG processes. The conflict rules apply whether or not the person is being compensated.

WHAT IS A CONFLICT OF INTEREST?

- Conflicts of interest may occur when one's private interest and public duties overlap, resulting in a real or perceived lack of impartiality or the public perception that the RSC member is either not acting in the best interest of the state or inappropriately using the relationship for undue enrichment or influence.
- In avoiding these conflicts, the RSC member must be familiar with the following general prohibitions.

PROHIBITED PARTICIPATION

An RSC member shall not participate in any transaction involving OCD in which the RSC member has an economic interest.



PROHIBITED TRANSACTIONS

- The RSC member shall not participate in any transaction involving the RSC in which, to its actual knowledge or through reasonable due diligence could ascertain that any of the following persons have a financial interest:
 - Any legal entity in which the RSC member owns any ownership interest
 - Any legal entity in which an officer, director, partner or trustee of the RSC member owns an ownership interest in excess of 25%
 - Any member of the immediate family of a person who is an officer, director, partner, trustee or employee of the RSC member
 - Any legal entity owned by a member of the immediate family of a person who is an officer, director, partner, trustee or employee of the RSC member
 - Any legal entity with which the RSC member has an existing contract and who by reason thereof is in a
 position to affect directly the economic interests of the RSC member



PROHIBITED TRANSACTIONS

- "Participate" is to take part in or to have or share responsibility for action of a governmental entity or a proceeding personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice investigation or the failure to act or perform a duty.
- "Immediate family member" is the public employee's spouse, children and their spouses, siblings and their spouses, parents and spouse's parents.

PROHIBITED TRANSACTIONS

- The RSC member is prohibited from entering into any contract, subcontract or other transaction that:
 - Is under the "supervision and jurisdiction" of the RSC member's "agency"
 - Relates to CDBG activities for which the RSC member may or has exercised any function or responsibility or was in a position to participate in a decision-making process or gain inside information with regard to such activities
- This restriction also applies to the immediate family members of the RSC member and to legal entities in which the RSC member's family members own an interest in excess of 25%.

Gifts

- RSC members are prohibited from soliciting or accepting gifts from persons who have an economic interest in the RSC member's provision of services to an LWI partner agency.
- RSC members are prohibited from receiving anything of economic value from any person whose economic interests will be affected by the performance or nonperformance of the RSC member's contractual responsibilities.
- RSC members should not accept a gift, including of food or drink, from any person or entity seeking financial assistance of CDBG-MIT funds for a project within the geographic boundaries of the RSC's authority.

Disclosure of conflicts

- Existing actual or potential conflicts: RSC members must disclose all known or potential
 conflicts of interest to OCD as soon as they are aware of them.
 - The RSC member in coordination with OCD and any other affected agencies will develop and implement a Disqualification Plan.
 - The Disqualification Plan will be a written document that identifies the alternative measures available to OCD and the RSC member to prevent participation in prohibited transactions.

Disclosure of conflicts

- Future conflicts: RSC members shall refrain from entering any new relationship or undertaking any new or additional services that present an actual or potential conflict of interest.
 - RSC members shall report to OCD any circumstance under which it can anticipate monies or other compensation for services which in whole or in part are funded directly or indirectly by CDBG-MIT funds administered by OCD.
 - This disclosure requirement is not limited to whether a task order has been issued or is anticipated to be issued.

Disclosure of conflicts

All disclosures required in this process must be directed in writing to OCD as follows:

- Via email to <u>AdminManualQuestions@la.gov</u>
- The subject line of the email shall include "LWI COI POLICY DISCLOSURE" in addition to any further description of the subject.



Full application considerations

- Existing levee and dam project requirements
 - Grantees are prohibited from using CDBG-MIT funds to enlarge a dam or levee beyond the original footprint of the structure that existed prior to the disaster event.
- Approved HMGP projects
- Similar projects submitted by multiple entities
- Consider full application scoring



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Full application process

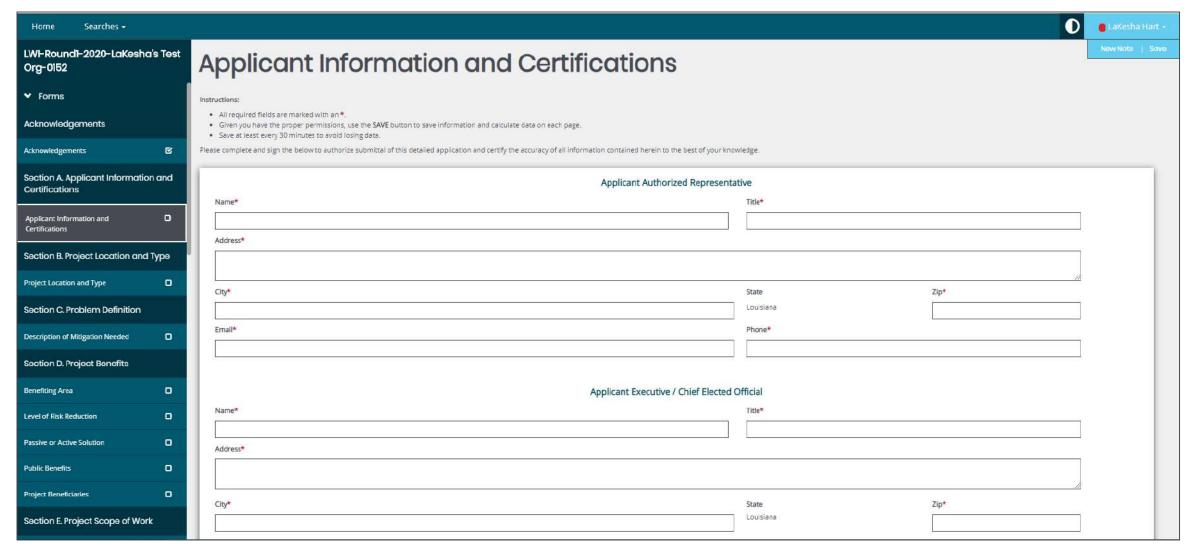
- Applicants will be notified when the full application period opens.
- Instructions will be emailed to the Applicant Point of Contact and the Applicant Representative listed in the pre-application.
- Users will need to register for an account and set up a user profile.
- All application questions will be completed and saved in the system.
- System is user-friendly and a user manual will be available.

Full application process

Welcome to the online Grants Management System! Login Because this is a new online management system, all organizations will need to register with the system. Username Steps to Get Started: . The initial Registration for your organization must be completed by an Authorized Signatory (AS) for the organization Username . Once the AS registers the organization, they will receive an email Notification of Access Approval from the online systems administrator . The AS can then designate access to your organizational account for additional staff members as they deem appropriate Password To visit our official website click the following link: https://www.doa.la.gov/Pages/ocd-dru/Index.aspx Password **Announcements** Submit Forgot Username/Password! New User? Register Here! Powered by IGX™

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Full application process





Direct questions to the following

- Procurement, contracting Ed Sutherland <u>Ed.Sutherland@la.gov</u>
- Environmental review <u>AdminManualQuestions@la.gov</u>
- Conflict of interest <u>AdminManualQuestions@la.gov</u>
- Full application <u>LWI-Round1@la.gov</u>
- LWI or Round 1 program questions <u>Watershed@la.gov</u>
- Regional questions regional coordinator or LWI staff <u>Watershed@la.gov</u>

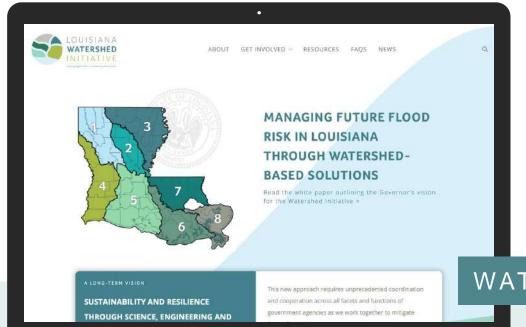
Instructions

Applicants must **certify** that they have viewed the pre-recorded webinar by emailing <u>LWI-Round1@la.gov</u> on or before **March 31** including:

- Applicant name (must be a staff member of the public entity)
- Organization
- Project(s)
- Date viewed

The presentation and pre-recorded webinar are available at <u>watershed.la.gov/round-1-projects</u>.

- @LAWATERSHEDINITIATIVE
- **♥** @LAWATERSHED



THANK YOU

Se pondrán a disposición los materiales en idioma español cuando se los solicite. Envíe las solicitudes a watershed@la.gov.

Khi có yêu cầu, tài liệu sẽ được cung cấp bằng tiếng Việt. Vui lòng gửi yêu cầu đến địa chỉ watershed@la.gov.

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