

APPENDIX N

REQUEST FOR WAIVER OF THE 50% EXPENDITURE RULE

BACKGROUND

As enacted, Assembly Bill 723 (AB 723) allows applicants to request a waiver of the 50 % Expenditure Rule (“*Rule*”). The Rule states an applicant shall be ineligible for any additional CDBG funds unless the applicant has expended at least 50 percent of CDBG funds awarded for any standard agreement executed in 2012 or later. AB 723 allows the director to waive the Rule, thus making an applicant eligible to apply for NOFAs, including general NOFAs, and receive CDBG funds.

New to this NOFA, the Department has implemented a waiver process for applicants who meet one of two criteria: the application is for a “*shovel ready*” project, or, the applicant received 2016 Special Drought and/or Disaster NOFA awards.

Request for Waivers and approved requests are applicable for the 2017 CDBG NOFA cycle.

WAIVER REQUEST REQUIREMENTS

To request a waiver, the jurisdiction must substantiate compliance with the following three requirements:

1. *Execution of the Request for Waiver Form.* Complete and submit the Request for Waiver form located in the Application Summary Forms, *Request for Waiver* -Tab 12, [Application Summary Form](#).
2. *Citizen Participation requirement.* To demonstrate compliance with the citizen participation requirements, the local jurisdiction must have properly noticed a public hearing wherein the jurisdiction was authorized to submit an application requesting a Waiver to the Rule. Specific language is found in [Appendix C](#)
3. *Authorization by Local Governing Body (“Resolution”).* The Jurisdiction must submit a *Resolution* that authorizes and acknowledges that the jurisdiction is requesting a waiver and will comply with the terms of the waiver. For more information about the Resolution language, please refer to [Appendix D](#)

APPENDIX N

REQUEST FOR WAIVER OF THE 50% EXPENDITURE RULE

WAIVER REQUEST FORM

All applicants that are not compliant with the Rule but want to submit a 2017 CDBG funding application must complete a Request for Waiver form and indicate that they meet either of the following criteria:

- A. received 2016 Special Drought and/or Disaster NOFA award(s); or,
- B. plan to submit an application for a “*shovel ready*” project.

WHAT IS A SHOVEL READY PROJECT?

Jurisdictions are eligible to receive a waiver for a “shovel ready project” if the applicant complies with *Readiness Criteria (A)* and *Special Conditions (B)* as defined below:

A. Readiness Criteria

The following documentation must be submitted as part of the project activity application:

1. **Site Control. Site Control.** The applicant must have site control of the project property, *i.e.*, an option to purchase, right of way easement, or other legal instrument(s) that convey fee title ownership of the property. If the applicant has an option to purchase, the option agreement must contain a provision which makes the purchase of the option property expressly conditioned upon the applicant’s approval of the environmental condition of the property and allowing the applicant to terminate the option agreement and any purchase thereunder in the event the applicant disapproves of the environmental condition of the property.
2. **Funding Commitment.** The application must include all funding commitments if additional non-CDBG funding will be used to complete the project. Commitment requires a resolution, and other instruments that commit funding, (*i.e.*, agency funding commitment letter, first page of the grant agreement, lender commitment letter, etc.).
3. **Evidence of Procurement for Architectural and/or Engineering Services.** The applicant should include copies of executed professional services agreement for architectural and/or engineering services, as applicable, along with a resolution approving the terms of all such agreements.
4. **Preliminary Project Plans.** Submit a set of preliminary plans signed and stamped by engineer or architect, as applicable. If available, final plans should be submitted.

APPENDIX N

REQUEST FOR WAIVER OF THE 50% EXPENDITURE RULE

5. ***Project Budget, Scope of Work, and Schedule.*** Must be submitted with the plans. If submitting preliminary plans, then tentative budget, scope and schedule must be submitted. If submitting final plans, then a final budget, scope and schedule must be submitted.
6. ***List of local permits.*** Application must include a list of all required local, state and federal permits required to complete the project. Applicant must indicate the type of permit, permitting agency, anticipated filing date, anticipated date of approval, and cost of permit.

EXAMPLE:

Type of Permit	Issuing Agency	Anticipated Application Date	Anticipated Approval Date	Cost of Permit (if applicable)
Building	ABC City	2 weeks from award approval	2 months from submittal	\$5,000
Environmental	XYZ County	3/1/2018	6/1/2018	N/A

B. Special Conditions.

In addition to the above readiness criteria, the jurisdiction must attest to the following as stated in the Request for Waiver form:

1. Within 30 days of the execution date of the Standard Agreement, the grantee must submit an updated project schedule; and
2. Within six (6) months of the execution date of the Standard Agreement, the grantee shall procure project/grant consultants and services, in accordance with CDBG, State and federal procurement standards. The grantee shall submit procurement documentation, the Professional Services Agreement, environmental clearances, and other *general or special conditions* made a part of the Standard Agreement; and
3. Within twelve (12) months of the executed Standard Agreement, the grantee shall submit final plans and copies of permits issued, and the executed construction contract with a contractor procured in accordance with CDBG, State, federal procurement standards.

APPENDIX N

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AWARD CRITERIA

Only jurisdictions that complete the Request for Waiver form, submit required project documentation, and comply with all the terms and conditions of the waiver will have their projects competitively scored by the NOFA Unit.

Request for Waivers will only be submitted to the Director if the application scores high enough to receive an award.

Waivers **will not** be considered if they are not requested at the time the application is submitted to the Department, or do not receive project funding.