

Minnesota Small Cities Development Program Commercial Rehabilitation Guide

(January 2023)

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Department of Employment and Economic Development

Small Cities Development Program Unit



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Preface

The Commercial Rehabilitation Guide was developed to assist in the implementation and management of Small Cities Development Program (SCDP) projects.

Please refer to the Commercial Rehabilitation, Environmental Review, and Labor Standards folders located online, [SCDP google drive](#), for electronic “sample” forms and templates referred to in this document. Modify and customize these to better suit your needs.

The materials are presented in a manner that will assist program administrators in understanding the process. The order of completing tasks may vary among implementing entities.

This guide is not intended to cover every program requirement or possible situation that may occur while managing a commercial rehabilitation program. If you have questions, please contact your respective SCDP representative.

Environmental Review

An environmental review is a mandatory procedure for all SCDP funded projects which receive its funding through the Community Development Block Grant (CDBG) funding. The completion of an environmental review is the first step in the grant implementation process once grant funds have been awarded. All grantees must conduct an environmental review for their grants before SCDP can release funds. If a funded activity already had an environmental review completed for another funding source, or the same activity from a previous year, that information can be used in the SCDP environmental review. However, certain steps must be taken independent of the previous review, to satisfy U.S. Department of Housing and Urban Development (HUD) requirements.

The environmental review process examines the effect that a project may have on people and the natural environment surrounding a specific location and ensures compliance with the National Environmental Protection Act of 1969 (NEPA) and its related laws.

To meet these requirements, eligible communities receiving SCDP funds must complete the environmental review process and submit a comprehensive Environmental Review Record (ERR) before the Minnesota Department of Employment and Economic Development (DEED), Small Cities unit can commit any funds to a project. While some tasks can be delegated to nonprofit organizations or private entities, the grantee (city or county) assumes legal responsibility for the completion, accuracy, and timeliness of the environmental review.

The process and requirements for an environmental review depends on the size, location, and activities involved in a particular project. In general, projects with greater potential for environmental impact require a higher level of review. The city or county receiving SCDP funds must determine the appropriate level of review for their programs and submit the corresponding documentation to DEED Small Cities unit for final review prior to posting or publishing for comment. Refer to the “Environmental Review Requirements Flow Chart”

When administering a commercial rehabilitation program, a community may not have specific locations selected for its SCDP funded activities at the time of full application. To help facilitate this type of program, HUD allows communities to conduct tiered environmental reviews. Tiered reviews divide the environmental review process into two parts; Tier 1 or Broad Tier review examines the general environmental conditions and considerations within the slum and blight targeted area, while a Tier 2 review provides detailed information for a specific location. A tiered environmental review is normally used for rehabilitation activities that are Categorical Excluded Subject to Section 58.5 such as commercial rehabilitation. Refer to the “Cat Excluded – Guide” on how to complete this step.

DEED Small Cities unit uses this tiered environmental review approach to streamline the SCDP allocation process. After the environmental review has passed the objection period, DEED Small Cities unit will issue an Authority to Use Grant Funds letter, a fully executed grant contract, payment calendar and a disbursement request form. This allows the grantee to move forward with its SCDP program. After the grantee identifies specific property addresses, Tier 2 reviews will be completed for each property.

Rehabilitation projects should not proceed until the Tier 2 reviews are completed

The following provides additional details on the process and requirements for Tier 1 or Broad-Level Tiered Environmental review and Tier 2 environmental reviews.

A Tier 1 review or Broad-Level Tiered Environmental review begins by defining the boundaries of the target area that will encompass all subsequent projects included in the review. Depending on the level of review, the grantee must then provide the following for each compliance area:

1. Broad -Level Tiered Environmental Review addressing the entire target area in the compliance determination narrative with written standards describing how the grantee will demonstrate compliance. If compliance with certain requirements cannot be resolved through the Tier 1 review, then a narrative on how the grantee will address these areas at the Tier 2 review level will need to be described.
2. Certificate of Categorical Exclusion for HUD funded projects.
3. All partner worksheets and supporting documents.

Grantee's must complete the entire Broad -Level Tiered Environmental process and submit any additional resources or documentation to the DEED Small Cities unit before any funds can be released. For more information on the environmental review process, please review [HUD Environmental Training Webinar for New Grantees](#) on SCDP's website under the Forms tab.

As mentioned, when specific sites are selected for program activities, grantees are then required to complete a Tier 2 review that addresses those compliance areas that were not resolved in the Broad -Level Tiered Environmental review. This site-specific environmental review (Tier 2) documents if all compliance standards are met or may need mitigation measure prior to the grantee proceeding with the project.

Historical Review

- A major component of the Tier 2 process is to conduct a historical review of the properties that you will be rehabilitating.
- If a property is at least 45 years old, you will need to send the State of Historical Preservation Office (SHPO) a photograph of the property, year the property was built, any known history of the building or any other information pertinent to your area, and all the rehabilitation activities proposed for the building.
- SHPO will perform an evaluation of the property to assess if the building has historic properties. SHPO clearance will be needed to secure a valid Tier 2 review. Please refer to the Commercial Rehabilitation Forms Folder for the sample document.

Reminder

You cannot commit funds to a project until you have completed your Tier 2 form, including any required documentation/consultation and mitigation measures, if required. If your service area is not in a historic district and properties are not historically significant, SHPO has a turn-around time of about 30 days after you send in property photographs and relevant information. If your service area is in a historic district or if a property has historic significance, SHPO review may take longer.

Asbestos Inspections

All commercial projects must include an inspection for asbestos. The inspection must be conducted by a certified asbestos inspector. Only those areas that are being rehabilitated that may contain materials associated with asbestos containing products need to be inspected.

Developing Policies and Procedures

Planning strategically for when an application gets approved for funding and when implementation begins is critical for a smooth start. The first step is to establish a team to create a policy and procedure manual to use as reference in the administration of your program. Typically, staff that will have a role in working with the program delivery will have a role in this process. The local policies and procedures will be used as guidance for daily decisions until close out.

If the author of the successful SCDP application does not have a role in administrating your program, read the awarded application very carefully before creating a policy and procedure manual. The policy presented in the application will be what DEED Small Cities unit expects to be in the program policy and procedure manual.

Sample Policies and Procedures

Sample policies and procedures are provided separately. Some elements are listed below:

Fair Housing, Equal Opportunity and Affirmative Action

Begin your policies with a clear statement of the community's position about nondiscrimination. Indicate that no one shall be denied assistance based upon race, color, creed, religion, national origin, sex, marital status, reliance on public assistance, age, disability, or familial status.

Commercial Owner's Responsibilities and Expectations

Please refer to the "What to Expect and Not to Expect from the Commercial Rehabilitation Program" and the "Walk Away Policy" in the Commercial Rehabilitation Forms Folder as a tool to assist owners in becoming familiar with their roles, responsibilities, and expectations. These forms can assist when it is necessary to cease a project if the owner is not cooperative.

Who is Eligible for Assistance?

The policies and procedures should outline eligibility criteria, describing the downtown or slum and blight area, the type of retail businesses and how you will handle issues such as ownership of the property. This includes the following:

- The building owner is the eligible applicant. Tenants of commercial buildings cannot apply for SCDP assisted loans.
- Commercial slum & blight area as per the application.
- Buildings occupied by retail or independently small businesses.
- The property to be rehabilitated cannot have an existing SCDP-assisted loan that has not yet expired.
- The length and form of ownership that is acceptable.
 - Eligible property types may include commercial buildings with trustees or contract for deed holders if all parties on the title sign all the necessary repayment and installment agreements that are included as part of the grantee's program.
- Financing options

Commercial funds can only be used to rehabilitate legally recorded commercial buildings on a parcel. If there are two buildings on a parcel each building would need to have its own legal description to qualify for separate funds.

The policy should also address the current condition (before rehabilitation) of the property and if there are available resources for a successful rehabilitation. All policies should contain a definition of “suitable for rehabilitation” to help make decisions about denying participation due to current property conditions, if necessary.

Reminder

DEED Small Cities unit does not allow funding to be used for government buildings, religious institutions, or rehabilitation of any commercial structure in a 100-year floodplain.

The national objective for this activity is the elimination or prevention of slum and blight conditions. Therefore, commercial rehabilitation activities must be in a targeted slum and blight area. The targeted area has to be officially designated by the grantee and must meet the definition for designation.

Eligible Improvements

Policies should clearly indicate what improvements are eligible and provide examples of what improvements are not eligible. All improvements should be consistent with the community’s rehabilitation standards as well as local and state building codes. Commercial rehabilitation activities should be specifically related to the building and not business assistance.

Eligible Improvements include, but are not limited to the following:

- Improvements to the exterior of the building such as but not limited to roofing, façade, tuckpointing/siding, windows, and signage attached to the building.
 - Projects associated with mixed-use rehabilitation should use the mixed-use funds to address windows that are connected to residential areas (housing units or common areas such as hallways) as well as windows with lead-based paint hazards for pre-1978 buildings.
- Addressing documented code violations such as ADA and health/safety situations.
- Energy improvements are limited to a companion item to an already occurring activity or addressing a documented code violation.
 - Examples: installing insulation to a wall would be eligible for SCDP funding only if the siding is being addressed. Replacing existing lighting with energy efficient lighting due to a code violation documented by a master electrician.
- Replacement of HVAC equipment can be included if there is a code violation documented by a master plumber. If the equipment is nearing its useful life, the clear documentation of the age and any existing mechanical issues should be clearly documented in the file.
- Funds can be used to address shared improvements between two storefronts such as roofs, awnings, or ADA ramps when both building owners involved are participating in the program.

Ineligible Improvements include, but are not limited to the following:

- Remodeling for any purpose outside of those improvements listed as eligible.
 - Remodeling is viewed as altering the structure of the building. Changing a flat roof to a pitch roof is an example of ineligible remodeling as it changes the original structure of the building. If you feel your project cannot meet local or building code standards without remodeling consult your SCDP representative.
- Examples of allowable remodeling would be ADA accessibility or historic restoration of the façade.
- Installation of energy efficient lighting or a new furnace system without a code violation that is documented by a building official or master plumber or a master electrician, as applicable.
- Steel roof. If existing roof is not steel (i.e., asphalt shingle) material, SCDP funds can pay up to the cost of a shingle roof with the owner paying the cost difference to install a steel roof.
- Fireplaces, wood stoves, or central air conditioning unless there is a documented code violation.
- Parking lots
- Sidewalks, except when addressing documented safety or accessibility issues on private property only.
- 200-amp electric services, unless need is justified under special circumstances approved by DEED Small Cities representative.
- Buildings that provide medical services such as Hospitals or Urgent Care or Manufacturing or Industrial businesses.
- Business equipment or signage not affixed to the building.
- Room additions.

Exceptions to these rules may be granted only under extraordinary circumstances and with approval from DEED SCDP Representative.

Selection of Materials and Colors

The owner will select colors, style, types, brands, and pattern of many of the materials used in the rehabilitation that fit the colors and styles of the downtown area. Refer to any local zoning terms the community has as well. Final decisions regarding judgment calls on what fits the area will be made collectively among the community, administrator and owner. The policies should indicate how selections will fit into the downtown, material costs and types that will be deemed cost reasonable by the program. Product types range from “economy”, “standard”, and “premium”. SCDP requires only “standard” items to be used in rehabilitation projects.

Rehabilitation Standards

DEED Small Cities unit requires that every CDBG funded rehabilitation program have written rehabilitation standards. Include your agency’s standards as well as any local zoning ordinances in the program’s policies and procedures.

There must be a written policy regarding what is feasible and unfeasible for rehabilitation (Suitable for Rehabilitation).

Financial Assistance Terms

The maximum and minimum financial assistance, as well as terms, to be provided by the SCDP funds should be clearly stated in your policies.

Commercial rehabilitation activities require a minimum 20% leverage from other sources. Policies should describe the type and terms of the SCDP loan available to the owner; deferred loans and/or installment loans. The financing plan should be clearly described.

Reminder

The SCDP commercial loan requires a minimum 5-year repayment agreement. The minimum SCDP commercial loan amount is \$5,000.00 and the maximum SCDP loan amount is \$40,000.

Marketing

Describe strategies the grantee will initiate to ensure that all building owners in the targeted area learn about the program and have an opportunity to participate. Describe outreach efforts to engage business owners and enlist contractors.

Minimum outreach efforts could include:

- Promoting the program through various forms of media.
- Direct mailing to commercial property owners in the targeted area for rehabilitation.
- Outreach to Section 3 and Women or Minority-Owned Business Contractors.

Applicant Selection

Describe the applicant selection process. Examples include:

- First-come, first-serve.
- Priority based on community factors such as the need for an ADA service entrance that is associated with a concurrent downtown revitalization project.

Contracting Procedures

Describe the method that will be used to select contractors. The executed construction contract will be between the contractors and owner. If the lowest and most responsible bid is not selected, inform the owner they will be responsible for the difference between the lowest bid and the contractor's bid they chose. Documentation should be retained in the project file briefly detailing why the lowest, responsible bid was not awarded the contract.

Make sure the construction contract has a termination clause. The factors that would be a basis for stopping work and payments needs to be outlined in a written policy so there is a standard method to refer to if or when things go bad.

Establish timelines for specific activities to occur with the owner and contractor, which should include the schedule for interim inspections, construction payments, and required contractor documentation.

Change work order procedures need to be addressed. You need to describe the criteria justifying and approving the change work order. A change order is valid only if it is an unforeseen condition or an unforeseen repair.

When conflicts arise between the contractor and owner, describe the procedures you will follow to resolve the conflict. This can be described in a dispute process outlined in the policy and procedure manual.

Labor Standards

Commercial Rehabilitation activities are subject to Davis-Bacon wage rates. You will need to include guidance and acceptable methods for incorporating Federal Labor Standard clauses and federal prevailing wage decisions into bid specifications and contracts for construction work. Refer to the Labor Standards folder for additional guidance.

File Documentation

Describe what you intend to track and refer to the documents by the name you have given them. At a minimum, you will need to track the following:

- Applications and property eligibility determinations
- Property inspections
- General information notice to tenant (if applicable)
- Applicant's approval
- Work write-up
- Solicitation of bids
- Selection of construction bids
- Construction management
- Davis-bacon requirements, including certified payrolls
- Escrow of matching funds
- Contractor payments
- Close out documentation

Conditions of Assistance

Describe the process for recapturing funds when an owner transfers or sells the property. For installment loans, describe the consequences of late or missing payments. This information should be included in the note and mortgage. Also explain the subordination terms.

SCDP loans cannot contain assumable language. SCDP loan repayment agreements should not contain any other funding source dollar amounts.

Project Approval

If the property is eligible and funds are available, potential properties/applicants do not need to receive approval by a city body or any type of loan committee as this could only slow the process down and/or allow politics to enter the process.

Mixed-use Rehabilitation

When a project is utilizing both commercial and mixed-use funds on a building, the work must be viewed as separate activities. This includes separate bid packets, contracts, as well as loans and/or repayment agreements. The same bidder/contractor may be awarded both bids, but the contracts must be separate to meet the National Objective of each activity. See the Rental Rehabilitation Guide for more information on mixed-use rehabilitation.

Appeal and Complaint Procedures

There must be a formalized appeal and complaint procedures process for property owners to follow if they have concerns about decisions made or complaints about the quality of work, contractor actions or other issues. The process should include timelines for responses to move the process along and resolve any outstanding issues.

The procedure for packaging and reviewing applications, including the amount of information released to the reviewing body, must be described. Include information on what will be in each package and the basis for approval and procedures for appeal. They may be other policies or procedures that are unique to your program. Be sure to include them. Clearly written policies are critical, particularly if disputes arise.

Amending Policies and Procedures

There must be a method for amending the policies, if necessary, include process, approving entity, etc.

There may be other policies or procedures that are unique to your program. Be sure to include them. Clearly written policies are critical, particularly if disputes arise.

Marketing Your Program

Marketing to Business Community

Marketing to business owners and having them participate in the program is also crucial for success. Describe the strategies and potential projects the community proposes to apply for. Be sure all property owners in the downtown or designated slum and blight area hear about the program and have an opportunity to participate. Generating a list of reliable business owners should occur prior to applying to the SCDP Program.

When you think of successful marketing campaigns, there are three things in common:

- They target the audience most likely to buy their product,
- They make it easy for the customer to buy the product, and
- They present their product in the most favorable light.

SCDP commercial rehabilitation funds are also a product to be marketed. You want to reach the right audience, make the process as painless as possible for all involved, and present the program as a benefit to the community.

So how do you attract the right audience? Focus your efforts on marketing your program through several mediums to reach the widest variety of building owners in slum and blight the targeted area.

Be Realistic When Construction Can Begin

Given the timing of the SCDP announcements from DEED Small Cities unit, the length of time for Environmental clearances and program preparation, applicants may have to wait until the following construction season for work to begin on their properties.

Use Multiple Marketing Methods

The following marketing tips are taken from other successful programs:

- ***Interact with local organizations***, such as MN Chamber of Commerce
- ***Involve local leadership*** (*City Council, Mayor, City Administrator, City Clerk*) speak to potential businesses and utilize their connections
- ***Prepare a one-page description of your program in laymen's terms***. Just give the basics that will help eligible applicants realize that this is an opportunity for them and will weed out those clearly ineligible.
- ***Contact those who provided interest statements during application process or are on a previous waiting list***.
- ***Make it easy for the customer to "buy" your product***. The target area is not large; visit each business and talk about how the program could benefit them. Leave an application packet.
- ***Place posters where eligible applicants congregate***. Locations such as laundromats, stores, churches, diners, clinics, banks can be helpful.
- ***Ask for time on local radio stations or public television stations*** to talk about the program, who you are trying to reach and what you are trying to accomplish.
- ***Publish information in local "shoppers"***. Adding an add to a local "shopper" can reach a large audience at a reasonable, or no, cost.

- ***Consider Housing Fair outreach.*** While a housing fair is not directly related to commercial rehabilitation this is a great way to get local developers, contractors, and other organizations together to disseminate information out to the community.
- ***Include information in utility billing.*** Include in the bills the email addresses or phone numbers for staff contacts available and respond to requests quickly.
- ***Door to door*** – Enlist community groups to help spread the word.

Capitalize On Indirect Marketing

- Rehabilitation is contagious. There's no advertisement like the sight of roofs being fixed, unsightly siding being repaired, deteriorated windows being replaced, and new signage.
- Word-of-mouth is the best advertising. Encourage satisfied property owners and contractors to spread the word that this is a program that works well. If you treat the applicants and contractors with respect and deliver what you promised, you will have pleased customers, a happy local council, and the support you need to operate your program.

To assist in promoting the program encourage commercial owners to display a project identification sign with the MN DEED logo and the following statement *“This project has been financed in part with funds provided by the MN DEED Small Cities Development Program through the City/County of Grantee Name.”* See the Commercial Rehabilitation Forms Folder for a template.

Note: This should not be encouraged for any residential rehabilitation activities.

Consider Equal Opportunity and Fair Housing Issues

Marketing efforts should consider those who have visual, hearing, or other disabilities. You may want to use various media, use large print, make in-person visits to the downtown businesses, etc. to ensure that all owners in the targeted area are informed about the program and have an opportunity to participate. Any public meetings should be handicap accessible and, if necessary, you should provide for interpretation services for those who speak a language other than English, use sign language or have other needs.

Marketing efforts should ensure that those who are eligible to participate are not excluded because they did not or could not receive information about the program.

Recruiting Contractors

Marketing to Contractors and having them participate in the program is crucial for success. You need contractors to participate in the program, but you will need to sell your program before you will get the best contractors to work with you. DEED SCDP requires contractors to be licensed if their trade requires them to be licensed. Refer to the Contractor Application Sample in the Commercial Rehabilitation Forms Folder. Remember to maintain current documentation of contractor's current licenses in project files.

Ensure the contractors know that labor standards will apply to all commercial rehabilitation projects.

Here are some ideas for recruiting contractors and things to keep in mind:

- ***Directly contact licensed area contractors or advertise, such as posting a flyer at the local lumber yards.***
- ***Invite contractors to an early-morning coffee and rolls meeting.*** Describe your program as it relates to their interest: the rehabilitation standards and specifications to be used, the role of the owner, pay-out procedures, labor standards requirements, the need for in-progress inspections, and how you will close projects. Be honest about what you expect from them and how long it will take to get paid.
- ***Create a list of eligible contractors, identify contractors by location and trade so only contractors are contacted for jobs they are likely to bid.*** If the list is sorted by location and trade, owners will not be

wasting their time wading through pages of names of contractors who never would consider bidding their job. Make sure to check contractor references and update the list annually.

- **Check out the [HUD Section 3 Opportunity Portal](#)** for Section 3 contractors in the area.
- **Make your bidding, award, labor standards reporting, and payment procedures as “user friendly” as possible.** Evaluate every procedure and form with an eye toward streamlining it to make it easy for busy contractors to use. Remember that you must keep adequate safeguards and records to support payments and actions.
- **Consider using a “customer satisfaction” survey.** Some agencies send owners a survey after work is complete to identify problems with the program or certain contractors. These surveys are useful, but not required, in determining which contractors work best with certain types of clients and those who should not be continuing to work with your program.
- **Write clear specifications and pay bills on time.** These two actions will do more than anything else to attract and keep good contractors.
- **Consider sending notices to local, minority-owned newspapers, unions, technical and trade schools.**
- **Conflicts of Interest.** Elected officials who are professional contractors, or have any ownership in a construction company, are not allowed to bid on projects within their community. DEED SCDP unit could make an exception for specialty work if no other contractor is available to complete the work. Consult with your SCDP Representative.

Application Process

DEED Small Cities unit suggest that administrators create their own application form. This allows for customized creation to best suit the grant and provides flexibility to collect information within one application that could be used for other funding sources as well. When creating the application, ensure all the information collected will have a use. If information is collected but has no use (i.e., used to potentially qualify for another program), that information should not be collected.

Listed below are suggested items to be included in the application. These items will assist with the implementation and reporting requirements for the SCDP program:

- Name and address of building owner(s)
- Best phone number(s)
- Email address
- Ownership interest(s) in the building
- Address of the building to be rehabilitated
- Existing, or proposed, building use
- Is the building used commercially by the owner or is it rented to a commercial tenant?
- Is mortgage, property taxes and any city-owned utility payments current?
- Current market value from county property tax statement
- Current zoning classification of the building
- Year built or estimate if not known
- Is the building of historic significance or located in a Historic District? If so, is it listed on the National Register?
- Are the owner(s) maintaining current building insurance?
- Has the building received previous assistance from a SCDP program?
- If so, what improvements were done under any of that program and are there any limitations from past programs?
- Proposed improvements

Applicants who are clearly *ineligible* should be informed quickly so their time and the staff's time are not wasted.

- Have a system for letting those receiving calls know who is available to handle inquiries every day.
- You must also plan for reaching those with disabilities. How will you enable those with hearing or sight impairments to apply? Be sure to contact advocacy agencies for assistance.
- Try to find access to a nearby TTY machine for those with hearing impairments so you can identify this telephone number in your literature or become familiar with the use of the Minnesota Relay System at The Minnesota Department of Commerce.
- Read over all your marketing materials ensuring it is clear and easily understood.
- Are your offices accessible for those with limited mobility? Plan for rehabilitation staff to make on-site interviews under special circumstances.

When inquiries begin to come in, it is important that accurate information is provided and that those making inquiries are treated courteously.

You will need to verify information stated in the application and document that information in the project file. Refer to the Commercial Rehabilitation Forms Folder for a sample form to customize and suit your needs.

Tips from Veterans of Past Rehab Programs:

Shortly after an application comes in and if time and traveling permits, staff may want to make efforts to screen the property. The evaluation should focus on any issues that may cause the property to be designated as unsuitable for rehabilitation or would compromise eligibility, such as the building being beyond suitable repair, in a floodplain, or outside of the target area.

Processing Applications

Activities to complete after the application is received:

- Verify that the property is within the borders of the target area. Indicate the location of the building within the target area map and include in the project file.
- Determine that the applicant owns the property, that their local taxes are current, they have no past due assessments or judgments on their property, and that they have owner's insurance that will equal or exceed the amount of the SCDP loan.
- Screen for conflicts of interest. If a conflict exists, consult the SCDP Representative.
- Obtain signed release form to allow for photos to be taken. Photos can be necessary for SHPO clearance, useful when creating the specifications, used in resolution of disputes, and document the condition of the property prior to assistance.
- When tenants are present in the building the "General Information Notice For Tenants In A Commercial Building" form should be mailed.
 - The "Notice to Prospective Tenant" form should be used when tenants of the building change while the project is in process
- Verify when the building was built for historic significance. Check with the county assessor, or local historic society, for any records.
- Obtain signature(s) on "Important Privacy Notice" form
- Verify owner's leverage match.

Reminder:

The SHPO process needs to be discussed in advance with the client. If the property is in a Historic District or has been determined to be historically significant, a section 106 environmental review site specific will need to be completed. If the building is 45 years or newer, a section 106 environmental review is not necessary.

Refer to the Commercial Rehabilitation Forms Folder for sample forms.

SCDP Policies Regarding Documentation of Leverage

Third party verification of owner's match is not required but encouraged to ensure the project will succeed.

Escrow funds should be deposited in a construction account earmarked for the specific project prior to the Proceed to Work Order being issued.

Project File Documentation

Confirm Eligibility/Approve and Execute Loan

- Ensure ownership documentation is in the project file.
- Ensure conflict screening form is in the project file.
- Ensure applicant's building is in the targeted area. Provide a map of the building in the target area boundary.
- Notify applicant of status:
 - If eligible, provide letter and copy for the project file.
 - If ineligible, provide letter with reason(s) why and copy for the administration file.
- Prepare a file for the person conducting the property inspection.
- Once inspection has been conducted, complete the Tier Two Environmental Review to address the related laws/authorities that were not met during the Broad Tier Environmental review.

Administrative Tasks for Activities:

- Check file for completeness and consistency with application.
- Notify applicant of outcome either approved or denied and place a copy of the letter in the file for documentation. Refer to the Commercial Rehabilitation Forms Folder for sample letters.
- Assign rehab work items to funding sources.
- Prepare Loan Repayment Agreement(s). Have property owner sign "Repayment Agreement."
- Have separate agreements if project contains installment and deferred loans.
- SCDP funds may cover recording fees that apply only to SCDP loans.
- You may choose to wait to file as change orders may occur prior to end of process.

It is very important that the rehabilitation program have built-in "checks and balances" to catch procedural or factual errors. When possible, the review should be completed by a different person.

The first activity in this Step, "review file," should include a system to review the following:

- Is all the necessary paperwork present and complete?
- Does the file clearly demonstrate the eligibility of the applicant, given the program guidelines?
- Does the file have all the pieces in place on the eligibility of the property and the improvements?
- If other funding sources will be included, is there evidence of commitments that these funds will be available when needed?

When there has been a thorough review of the file and staff are comfortable with the results, the closing can be scheduled.

Hold loan closing. Owner(s) will be provided the Notice of Right of Rescission (for signatures) and the "Truth in Lending Statement" (if applicable) to comply with lending requirements. Please refer to the Commercial Rehabilitation Forms Folder for sample documents.

The contractor should wait to begin ordering materials and/or perform any work until after the three-day rescission period has passed and staff has issued the Notice to Proceed.

Inspecting the Property

Administrative Tasks and Activities

1. Identify property deficiencies in a walk through and discuss with the applicant.
2. Verify property is not a governmental building or religious institution.
3. Verify the building is occupied by retail or independently small business.
 - A vacant building may still be eligible if there is an indication or a lease to show a business will occupy the building prior to or soon after the rehabilitation has been completed. A business is needed in the unit for project reporting.
4. Verify that property is not in a floodplain.
5. Assess any nuisance issues with property, if applicable to policies or local ordinances. If issues exist, re-inspect after issues are addressed.
6. Enter the date of initial inspection in tracking system.
7. Have owner sign permission statement to take photographs of property, if not yet obtained.
8. Take exterior and interior pictures of property as they are needed for SHPO (historic) review if 45 years old or older and are essential for recalling “before” and “after” conditions. Visit [Minnesota State Historic Preservation Office’s \(SHPO\)](#) page on submitting a project for review for forms and guidance.

Conduct On-Site Inspection

- Use inspection report form appropriate for type of property and standards.
- Make sure the form is signed, dated, and has a cover sheet.
- When inspecting the interior of a building for possible code violations that may be addressed with SCDP funding, a report documenting the building and its components conditions as a whole is the best way for an owner to understand the project. It also is handy for the rehabilitation staff to use when inspecting for work completion and payments.
- During the initial inspection, the rehabilitation staff should “read the client.” Then, plan the number of interim inspections. There are essentially three factors to consider in deciding how often to inspect:
 - The complexity of the job.
 - The capability of the owner.
 - The knowledge and experience of the contractor.

Prepare Work Write-up

Prepare the Work Write-Up/Spec and be sure to incorporate requirements from SHPO as applicable with historic buildings or other mitigation measures determined by the Tier 2 review compliance check.

Calculate the rehab assistance available, including minimum owner funding match, and cost estimate for the project. Keep this amount in mind when preparing the bids. Contractors do not appreciate bidding on items that will knowingly be beyond the rehab funding available for the project. If only one bid is received, DEED Small Cities unit will look for documentation to assess “cost reasonableness” of the project.

What is needed for a good cost estimate?

- Current material and labor cost information
- Accurate information about customary mark-ups and profit margins
- An experienced staff person (or access to someone) who is familiar with local practices and prices
- Line-item estimates

What should a Work Write-up include?

The Work Write-up should include a detailed description of the installation and workmanship standards and forms the basis for contractors’ bids. In other words, it tells the owner and contractors who are bidding the job exactly what will be fixed or replaced, how it will be done, and what materials will be used. If SHPO, or any other mitigation measures, are determined are required those specifications will need to be incorporated into the work write-up.

A Work Write-up should answer the following questions:

1. What work will be done?
2. How will it be done?
3. Where will it be installed?
4. What material will be used?
5. Work should meet state and local buildings codes as well or manufactures instructions.

6. Will the materials and products used meet fit the colors and styles of the downtown area, meet the local zoning terms of the community (if applicable), and be “cost reasonable”, be of a standard quality.

Avoid using: “etc.,” “standard size,” “approximately,” “as needed,” “all missing or damaged,” “any” in Work Write-ups as it leaves what work should occur up for interpretation.

Reminder

Work Write-ups prepared for bidding should incorporate findings from asbestos inspection, if findings exist. Work items with asbestos should be clearly labeled and indicate that only certified asbestos contractors can conduct the work. Some contractors may prefer to also receive a copy of the asbestos inspection.

Review Work Write-Up with Owner

Owners need to understand the relationship between proposed work they have identified and the improvements the program can correct with SCDP funds.

This is a critical step in the rehabilitation process because owners will become upset if they feel they are not getting what they really want and yet be financially responsible for the work being completed. Lack of proper communication may result in the applicant dropping out of the project or the project being very challenging to complete.

Once the owner signs off on the Work Write-Up, the project can proceed.

Preparing the Bid Package and Provide to Bidders

1. Create a detailed Work Write-up (or specs).
 - Meet with the Owner(s) to review Work Write-up.
2. Prepare bid package.
 - Include all Federal Labor Standards documents
 - Review bid package with owner.
 - Enter the date when owner approved the Work Write-up and date when bids are due.
 - Review contracting procedures with owner.
 - Describe the contractor selection process. If the lowest bidder is not selected, describe the consequences to the building owner.
 - Describe importance of timelines.
 - Describe change work order procedures
 - Describe termination of contract terms.

Work Write-up Cover Sheet for Contractor should be used when submitting the bid. It identifies the owner’s name and the project number.

Instructions to Bidders

These should include a review of requirements to participate in your program:

- Adequate insurance, current licenses, appropriate training, and a completed “Contractor Application” form (if not previously submitted) on file with the agency.

- Instructions should provide information on:
 - Deadline for receipt of bids and where bids should be sent.
 - How long bids are considered valid.
 - How bids will be awarded — who selects and on what basis?
 - Who will be executing the contract for work?
 - The participation in a Pre-construction Conference, if required.
 - The requirement for a Proceed to Work Order before beginning work.
- Federal Wage Rate Requirements
- General conditions may be attached to the Work Write-up to provide owners specific guidance about such matters as:
 - Who is responsible for securing permits?
 - How to handle change orders?
 - Who removes debris?

Labor Standards Forms

The work write ups must include certain mandatory Federal Labor Standards Provision forms and the applicable Federal wage decision in the specifications and contracts.

- The current applicable wage decision.
- Federal wage decisions are available online at www.sam.gov and clicking on the Wage Determinations button.
- HUD 4010 – Federal Labor Standards Provisions.
- Additional forms that will need to be collected prior to bid award should also be included in the bid packet to ensure the contractor will meet the provisions.
 - Contractor/Subcontractor Certification
 - Contractor Profile form
 - Section 3 and WMB form

Refer to the Labor Standards folder for additional guidance and forms.

Contractor/Owner Contract

The contract will include the Conditions of Project, Work Write-up or Scope of Work and Federal Labor Standards documents. Some agencies make this a separate document but by including it in this package makes expectations known ahead of time.

Ensure the Contractor/Owner Contract addresses Equal Employment Opportunity, Affirmative Action and Section 3 requirements.

Contractor/Owner Warranty

The Contractor/Owner warranty will provide an understanding to everyone concerned what is being guaranteed and for how long.

Selecting the Contractor and Financing

1. Recruit available contractors.
2. List of contractors contacted with bid packets.
3. Open sealed bids with owner(s) if possible.
4. Evaluate responses for accuracy and cost reasonableness.
5. If only one bid is received, make a note to the file that the bid was reasonable based on your cost estimate or try to re-bid project.
6. Collect “Contractor/Subcontractor Certification” and “Contractor Profile” forms. Compare to the current wage rate prior to awarding the bid.
7. Owner selects contractor.
8. If contractor is not the lowest, responsible bidder, the owner will need to pay the difference and deposits funds in an escrow account or provide evidence of a construction account.
9. A bid summary spreadsheet should be completed for documentation and SCDP monitoring.
10. Owner signs Contractor/Owner contract.
11. Confirm and identify all sources of funds and assign improvements to each funding source.
12. Commercial projects require funds other than those from the SCDP to be eligible.
13. Obtain any escrow funds needed

Consider how many rehabilitation projects that a contractor can handle at one time. Beware that some contractors might be working on projects with an active SCDP grant(s) in other communities as well.

Tips from Veterans of Past Rehab Programs:

While a preconstruction conference for the commercial rehabilitation program is not required, it is highly encouraged. An hour or two spent on the front end with the contractor and owner could save hours of work and hard feelings later.

Managing Construction

Preconstruction Conferences and Proceed to Work

- It is important to hold a Preconstruction Conference with contractor and owner.
- If the tenant in the building has changed, provide the “Notice to Prospective Tenant” and obtain signatures.
- Release the Notice to Proceed Work Order only after the Right of Rescission period has pass. Place a copy of the forms in the project file for documentation and SCDP monitoring.

The “Notice of Contract Award” must be completed and submitted to DEED Small Cities unit within 14 days after the contract has been awarded. Refer to the Labor Standards folder for sample forms.

Tips from Veterans of Past Rehab Programs:

- If possible, hold the preconstruction conference on-site, after the three-day rescission period has passed. This allows all parties to conduct a walk-through of the property and review the Rehab Work Write-up, item-by-item, and discuss what will and will not be done with a proposed timeline with everyone involved present.
 - While having the owner and contractor together for the preconstruction conference is usually best, it is acceptable to hold separate meetings with the owner and the contractor if there is a schedule conflict between the two parties.
- Have a written agenda so you are certain to cover all relevant points.
- Issue a Notice to Proceed after the preconstruction conference.
- Take notes and place them in the case file. Have the owner, contractor and rehabilitation staff sign and date the notes. They may be very important later.
- Discuss the owner’s role in monitoring progress and the contractor’s obligation to let rehabilitation staff know when they have reached critical stages in the construction process and an interim inspection is necessary.
- Discuss how work will be conducted during business hours and relocation issues with the owners (tenants as applicable) and contractors. Document any steps that should be taken.
- Explain to the owner and the contractor that any work items that are not indicated on the approved Rehabilitation Work Write-up, will not be paid with program funds.
- Discuss with the contractor what they need to do, if a change order is needed, what funds will be used to pay for the change order and how to proceed documenting the needed change order. The rehabilitation staff needs to inform the owner of the change order and how this will be paid for and most importantly discouraging “side deals.”
- Remind everyone that interpretation questions of the Rehabilitation Work Write-up should be directed to the rehabilitation staff; the contractor or owner should not try to interpret.
- Discuss payment requests and leave a supply of forms with the contractor.
- Discuss Davis-Bacon prevailing wage reporting requirements, including weekly payroll reporting.
- Leave a supply of certified payroll forms with the contractor.
- Discuss how disputes will be resolved. The rehabilitation staff should be included in any dispute discussion and will attempt to mediate the conflict.
- Cover the close-out procedures. Explain each document and what they mean.

- Review the work schedule. Everyone should understand when work is expected to begin, how it will proceed, and when it is expected to be completed.
- Issue a Notice to Proceed after the preconstruction conference.

Change Orders

Experienced administrators do everything possible to write the Scope of Work so that change orders are unlikely to occur, but when a call comes from an owner or a contractor, you need to have a policy to address it. This should be covered in your policy and procedure manual.

- Change orders are only allowed if unforeseen events occur.
- Examples: Framing materials around a window were found to be rotten and in need of replacement, unknown electrical or plumbing violations revealed during rehab process.
- Contractor error in estimating the project or doing the work is *not* allowed as a change order for increasing the cost of the job.
- Have a process for review of each Change Order by the rehabilitation staff so they are not perceived as “routine” by contractors.
- Change Orders must be agreed to by all parties in writing.
- Change Orders must be reviewed for cost additions or deductions, materials to be used, etc., and marked as such.
- Other records that are affected by the Change Orders, such as the construction contract and/or the owner’s repayment agreements or mortgages, may also need to be adjusted.
- If Change Order occurs, place a copy in the file for documentation and SCDP monitoring.
- Once a project has been completed and closed, it should not be reopened to be bid out for additional work.
- If there is a clear code violation that was not addressed during the original inspection and was discovered within a relatively short period of time after closing, please contact your SCDP Representative for consideration on a case-by-case basis.

Paying Contractors and Inspections

DEED Small Cities unit requires a minimum of one inspection. Interim inspections may be held, as needed. On-site inspections should be completed before any contractor payments are made – either interim or final.

There is more than one acceptable way to document inspections.

- Using the actual Work Write-up or specs and dating and initialing each item as it is completed and inspected.
- Some agencies use a Field Inspection Report as another way to document what the rehabilitation inspector found, which can serve as a “punch list” if items need to be corrected before completion.

The following should be documented in the individual files to support rehabilitation payments:

- Lien waivers from the contractor and subcontractors for all work covered by the payment request.
- Completed certified payroll forms including the “statement of compliance” page.
- A Completion Certificate signed by the parties involved: the contractor, owner and rehabilitation staff that documents the payments to date and the balance on the contract
- If the owner refuses to sign, but rehabilitation staff believes that payment is justified, pay contractor without the signature. You may want to bring in another inspector for affirmation, or for a 2nd opinion for situations with gray areas.
- Sworn Construction statement must be obtained for final payment.
- Copies of the above-mentioned documents must be placed in the file for documentation and SCDP monitoring. Refer to the Commercial Rehabilitation Form Folder for sample forms.
- Document all sources of funding in the individual project files.

Note: These documents do not have to be submitted to DEED Small Cities unit for individual draws but will need to be maintained in the file record for monitoring.

Traditionally, agencies withhold a portion of the final payment until the Completion Certificate is signed and all work items are resolved.

Remember, payments should only be made for work that has been completed and inspected.

The “Final Labor Standards Compliance Report” must be completed and submitted to DEED Small Cities unit after all construction is completed, all payrolls are received and reviewed, all workers have been paid appropriately, and any violations have been resolved and/or reported to DEED SCDP unit. See Labor Standards folder for applicable form.

Rehabilitation staff should keep their active “field files” with them when they are out of the office. It can be time consuming to have to trek back to the office if a call comes in for an unexpected inspection.

Rehabilitation staff should make their notes as soon as they get back to their vehicle. It is amazing how quickly cases can blur together if rehabilitation staff must rely on memory of what they saw and what had transpired on-site.

File a lien on the property by recording repayment agreement with the county. Place copy in the case file for SCDP monitoring.

Send the owner a Close-out Package which consist of a closeout letter and an optional customer satisfaction survey.

Tips from Veterans of Past Rehab Programs:

Create a separate “field file” that the rehabilitation staff can use during on-site inspections. It should contain a copy of the Work Write-up and the Owner Contractor Contract. This will assist when disputes arise, and work can be accurately evaluated.

After the Loan Possibilities

Condition of Repayment

Describe the triggering actions and the process to follow upon a transfer or resale of the project within the deferred loan. If the loan requires regular repayment, describe the consequences of missing payments. How will this payment affect your program income balance for the year?

Subordination Request

DEED Small Cities unit do not process subordination requests. A subordination plan should in your policy and procedural manual. It is the grantee's responsibility to process subordination request, either to approve or deny requests. DEED SCDP's policy allows owners to refinance to secure a better interest rate and/or shorter term during the term of the loan and/or obtain a construction loan to rehabilitation the building but will not allow owners to take out any cash for other expenses.

Income From Loans Repaid

Definition of Program Income

If any combination of repayments received by the grantee within a federal fiscal year (October 1 to September 30) reaches or exceeds \$35,000, the entirety of those repaid funds will be Program Income and be treated as federal funds. SCDP requirements will apply to their re-use. Reporting to the Small Cities Unit is required by October 15th of each year until all funds have been expended.

Definition of Local Income

If the combination of the repayments falls below the \$35,000 during the federal fiscal year (October 1 to September 30), those repaid funds are considered Local Funds. These funds should be used to further rehabilitation in the community similar to how the original funds were utilized. Reporting to the Small Cities unit is not required.

A repayment will be triggered if owner's sell or transfer the building prior to the deferred loan expiring. Any money paid back to program is treated either as Program Income or Local Income. Under either scenario, DEED Small Cities unit expects the repaid funds to be used to further rehabilitation in the community.

The grantee may need to wait until September 30 of any given year until a determination can be made if the funds received during that period will have a Program Income or Local Income label. DEED Small Cities unit expects that SCDP requirements will be applied to the re-use of these funds.

Please consult the SCDP A to Z Guide for further information on Program Income and Local Income.