

STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS

---

---

**SUBJECT:** Performance Requirements and Penalty Language

---

**NUMBER:** 2.10.95

**EFFECTIVE:** March 2017

---

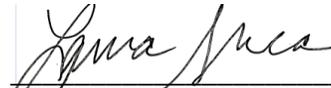
**SANDY CDBG-DR**

**PAGE 1 OF 2**

**APPROVAL**



Samuel R. Viavattine  
Deputy Commissioner  
Sandy Recovery Division



Laura Shea  
Assistant Commissioner  
Sandy Recovery Division

---

**PURPOSE:**

The March 5, 2013 Federal Register Notice (FR-5696-N-01) requires grantees to “incorporate performance requirements and penalties into each procured contract or agreement.” This is a “flow through” requirement which means that it also applies to all subrecipients and contractors. For all procured contracts using CDBG-DR funds, a provision dealing with performance and penalties must be included.

**POLICY:**

Effective and efficient operation of the project is necessary to promote the best interests of all parties, especially the public. To the extent that actions of the Contractor result in failure to meet performance standards, the (Subrecipient) may suffer damages that could be difficult or impossible to quantify. As a result, situations may arise where the imposition of liquidated damages may be required to compensate for the failure to meet performance standards. For ease of administration and to ensure that all subrecipients and contractors understand and comply with this provision, all subrecipients are required to include the following language in ALL contracts where CDBG-DR funds constitute some portion of the funding:

**PERFORMANCE STANDARDS AND GUARANTEES**

*If the Contractor fails to meet any of the performance standards or conditions of the contract, the (Subrecipient) may withhold payment for damages from the fees or premiums due to the Contractor in an amount equal to the damages stated in this section. Such payments shall not relieve the Contractor of its obligation to remedy any breach of the performance standards to which they relate. Nothing in this section shall limit the (Subrecipient's) right to seek damages or any other remedy at law or equity not specified in this section.*

**SUBJECT:** Performance Requirements and Penalty Language

---

**NUMBER:** 2.10.95

**EFFECTIVE:** March 2017

---

**SANDY CDBG-DR**

**PAGE 2 OF 2**

---

<i>Scope Description</i>	<i>Performance Requirement</i>	<i>Time Frame</i>	<i>Performance Guarantee</i>

**PERFORMANCE STANDARDS AND GUARANTEES ASSESSMENT PROCEDURE**

*Prior to the assessment of any of the damages as a result of failure to meet performance standards in this section, the (Subrecipient) shall provide written notice to the Contractor specifying the nature and details of each violation, including reference to the section(s) under which the damages are proposed to be assessed and the amount of the assessment. The (Subrecipient's) notice, which will be sent to the Contractor after receipt of the Contractor's measurement report, will specify whether the Contractor will be required to pay the amount of the assessment to the (Subrecipient) or whether the assessed amount will be withheld from the Contractor's next payment(s).*

*Payment of the Contractor's invoice without resolution of such claims, shall be without prejudice to the Contractor's and (Subrecipient's) rights and obligations to continue to attempt to resolve such claims or if they are not resolved, assess performance guarantees therefore.*

*The (Subrecipient's) decision not to invoke performance guarantees in any instance of performance deficiency shall not be deemed to be a waiver of the (Subrecipient's) right to invoke performance guarantees in any other instance.*

Subrecipients are responsible for securing a copy of all procured contracts and verifying that this clause has been included prior to payment of the first invoice submitted for that contract.