Office of Rural Affairs

TxCDBG Implementation Training Workshop 2016

Presenters:
David Brown, Travis Brown,
Vada Dillawn, Melissa Gonzales, Sonia Hernandez, Christy Pardee, Chris Reynolds

TxCDBG Organization

- Assistant Commissioner – Dan Hunter
- Administrator – ORA Rick Rhodes
- State Director – Suzanne Barnard
- Assistant Director – Erica Garza
- Team Leads:
  - Program Monitor – Del Serna
  - Program Implementation – Trent Engledow
  - Contract Specialist – Melissa Gonzales
- Environmental Regulations and Labor Standards Officer – David Brown

Today's Speakers

Speakers (alphabetical order):

- David Brown - CDBG Environmental Regulations and Labor Standards Officer (Ch. 3, 5, 7)
- Travis Brown – Contract Specialist (Ch. 2)
- Vada Dillawn – Program Implementation Specialist (What's New; Overview; Ch. 6, 10, 13)
- Melissa Gonzales – Lead Contract Specialist (Ch. 1, 11)
- Sonia Hernandez – Contract Specialist (Ch.4)
- Christy Pardee – Contract Specialist (Ch. 12)
- Chris Reynolds – Program Implementation Specialist (Section D)

Today's Presentation & Format

- Provides an overview of the updated 2016 *TxCDBG Project Implementation Manual* and related topics
- Highlights changes and/or areas of interest within the TxCDBG program
- At the end of each chapter, you will be allowed up to 10 minutes to ask questions
- Email contract specialist

Grant Administration Certification

- To administer a TxCDBG contract, the administrator (city/county staff or contracted)
  - Must attend CDBG training annually; or
  - Receive alternative annual certification by viewing webinar or taking a comprehensive test
- An administrative consulting firm need NOT send its entire consulting staff to a workshop.
- A city or county choosing to self-administer must have at least one workshop attendee in its employ

Basics: Two Main Components

Federal (HUD)	State (TxCDBG)
• Entitlement Areas	• Cities less than 50,000 • Counties less than 200,000 • Nonentitlement

- Authorized under Title I of the Housing and Community Development Act of 1974, as amended.
- The U.S. Department of Housing and Urban Development (HUD) is the administering agency for the CDBG Program.

National Program Objectives

- Grant Recipients undertaking public facilities activities must document how they have met the CDBG National Program Objective (NPO) specified in their application.
- The NPO is not met until funds have been expended and documentation has been completed.
- Every grant or loan must meet one of three "national objectives."
  1) Principally benefit low and moderate income (LMI) persons.
  2) Eliminate or prevent slums and blight.
  3) Address imminent health and safety problems.

Conflict of Interest

Applies to the procurement of professional services, supplies, equipment, construction, acquisition, businesses, or other private entities.

- No person who has any CDBG function/responsibility, or who is in a position to participate in a decision-making process or gain inside information, may obtain a financial interest or benefit from the CDBG activity

Note: Regulations apply during the person's tenure and for one year thereafter.

Conflict of Interest (Cont.)

Some determinations of conflicts of interest:

- A conflict of interest exists when the same individual or firm is hired to provide both administration and engineering services
- A conflict of interest exists when the same individual or firm has an interest in both a benefitting business identified in the contract Performance Statement and any consultant or construction contracts required to complete the project.
- HUD has further issued an opinion that a conflict of interest prohibited by Federal Regulation exists for a Council of Government (COG) which is providing administrative support to the regional review committee and is also an application preparer/administrator.

2016

2016 Policy Changes – Sealed Bids

- For sealed bid contracts > $50K, profit no longer is required to be disclosed by the bidder
  - Still a requirement for non-competitive contracts/modifications > $50K and competitive contracts/modifications > $50K

2016 Policy Changes - Engineering

- Engineering Budget Ceilings
  - Cannot exceed 25% of **combined construction and acquisition/relocation activities except in exceptional circumstances.**
  - If funding deobligated (i.e. remaining unused funds at the end of a project), then both engineering and administrative budgets will be adjusted to ensure the 16% admin ceiling and the 25% engineering ceiling is met

Example 1:

- Cost of project $300,000
- Budget - Admin (16%) $ 48,000
- Budget – Engineering (25%) $ 75,000

- End of Project –only $200,000
- New Admin Ceiling (16%) $ 32,000**
- New Engineering Ceiling (25%) $ 50,000**

** Exceptions may apply

Example 2:

- Cost of project $300,000
- Budget - Admin (10%) $ 30,000
- Budget – Engineering (16%) $ 48,000

- End of Project –only $200,000
- New Admin Ceiling (16%) $ 32,000**
- New Engineering Ceiling (25%) $ 50,000**

** No adjustment necessary

Exception to Adjustment of Ceiling If Funds Deobligated

- Must request exception in writing
- Project must be completed within the original contract period
- Factors:
  - unforeseen circumstances
  - the timely completion of obligations
  - additional time beyond the normal scope of work
  - good faith efforts

2016 Policy Change – Final10% of Engineering Costs

- For Engineering to receive final 10% of payments, all regulatory approvals required by the contract (such as (TCEQ interim well approvals or TDLR inspections) must be received before final payments of Engineering are made.

2016 Policy Change – Tap-In

- For certain TCF public infrastructure projects where more than one business is affected
- Requires Grant Recipient to show the effect of such public investment – in order to support a National Program Objective - by collecting hiring and employment information from benefitting businesses

2016 Policy Changes - MBE

- Federal Requirement:
  - 2 CFR 200.321
    - take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible
- New affirmative action:
  - Email bid solicitations to MWBE@texasagriculture.gov

2016 Policy Change – Risk Based Monitoring

- Monitoring will no longer review all contracts
- Contracts will be evaluated as either:
  - Low Risk - self-monitor and report to TDA (Form 1302)
    - 10% of low risk contracts will be randomly selected for a desk review
  - Medium risk contracts – Desk Review
  - High risk contracts – On-site Review

2016 Policy Changes – Section 3

- Previously:
  - Annually reported based on the Calendar Year
- Change:
  - Reporting will be based on the Federal fiscal year (10/01 – 9/30)
- For 2016:
  - Report Section 3 Annual Report (A1011) from January 1, 2016 – September 30, 2016
  - Due October 20, 2016

2016 Policy Change – Housing Rehab

- Housing Rehabilitation has expanded to include nonprofit organizations as eligible owners.
- Eligible for funding - Single family units owned by a community based development organization (CBDO)and occupied primarily by LMI

2016 Policy Change – Housing Rehab cont.

- Maintain as Eligible Housing for Minimum of Five (5) Years
  - If sold before 5 years, will have to proportionately repay TDA
- 1- 4 units
- Must bring up to HUD Section 8 existing housing quality standards and Texas Minimum Construction Standards.

2016 Policy Recommendation – Procure Pre-Application

Recommendation:

Procure Professional Service Providers (Admin/Engineering) BEFORE applying for CDBG funding

Why the recommendation?

- **2 CFR §200.319 Competition:**

(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, **statements of work**, or invitations for bids or requests for proposals must be excluded from competing for such procurements.

What about the contract?

- **Contingency Contract Language**
  - "Payment of the fees associated with Part III – Payment Schedule of this Agreement shall be contingent upon CDBG funding. In the event that grant funds are not awarded to the City / County by TDA through the TxCDBG program, this agreement shall be terminated by the City / County."
- **Delayed Contract Execution**
  - TDA does not prohibit delaying execution of the contract until notification of funding award
  - At a minimum, complete the formal selection process, including council/court vote on selection if required
- **Discuss options with local legal counsel!**

What Can We Do?

- **Procure administrative and engineering services <u>BEFORE</u> the preparation of an application.**
  - **The solicitation must be explicit about grant fund cycle.**
    - Example: "For the 2017-2018 Community Development Fund"
  - **If the applicant is applying for more than one grant fund, some steps can combined but each application must be explicitly listed.**
    - Ex. combined publication announcing separate RFPs for administrative services for 2017-2018 CD Fund and for 2016 Main Street Program.

Permanent Signage

- Ch. 4 – Permanent signage is no longer required for all infrastructures located above ground and enclosed by a fence
- **New rule** – Signage required for:
  - Public Buildings, park areas, or other structures open to the public
  - Commercial facilities funded through the TCF Real Estate program (small program)

Permanent Signage

No longer required for:

- Water pump stations
- Water wells
- Water storage tanks
- Wastewater treatment facilities
- Lift stations

Permanent Signage

Requires permanent signage:

- Fire stations
- Significant improvements to existing facilities *if open to public*
- Community centers
- Fire stations
- Parks
- Pavilions
- Health Centers
- Shelters

CHAPTER I

Administration & Reporting

Incurring Costs

Pre-Agreement Costs

- ✓ Prior to the contract start date of the TxCDBG grant award
- ✓ Necessary, eligible, and meet national objective
- ✓ Allowable only to the extent that they would have been allowable if incurred after the contract start date
- ✓ **TDA's discretion**
- ✓ Must meet Environmental & Special Conditions Requirements

TDA/Grant Recipient Contract Execution

Steps in getting Contract Executed

1. TDA will email the contract to Grant Recipient
2. Recipient Reviews, Signs, and Returns 1 signed contract to TDA for execution
3. TDA will send a copy of the fully executed contract to the Grant Recipient.

90 Day Rule

Within ninety (90) days after the contract award date:

- "Readiness to proceed" issues regarding the current award; and
- Outstanding issues on existing contracts regarding compliance with program requirements

Contract Execution – (Cont.)

In addition to the contractual obligations owed between the State and the Grant Recipient, the contract specifies the following as Exhibits:

- ✓ Exhibit A - the Performance Statement
- ✓ Exhibit B - the Budget
- ✓ Exhibit C – Project Implementation Schedule
- ✓ Exhibit D – Special Conditions

Establish a Local Administrative Structure

Administrative Activities Checklist - A102

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
A. Initial Administrative Procedures				
Set up all files pertaining to TxCDBG contract activities.				
Solicit for professional services / administration services and maintain all necessary and relevant documentation.				
Prepare the professional services / administration services contracts for attorney review.				
Arrange and conduct the 4-Month Conference Call				
B. Environmental Review/Special Conditions Clearance Procedures				
Designate environmental review liaison and environmental certifying officer.				
Establish and maintain environmental review file.				
Prepare environmental assessment.				
Coordinate activities with federal or state agencies responsible for implementing applicable laws.				
Publish and disseminate public notice.				
Document consideration of any public comments.				
Issue environmental impact statement (if applicable).				
Request release of funds, send certification to TDA.				
Clear project of CDBG contract special conditions.				
C. Fair Housing/Equal Employment Opportunity				
Designate a Civil Rights Officer				
Implement and document current and required new activities to affirmatively further fair housing during the contract period.				

Local Management of TxCDBG Project

The local management of our projects is generally undertaken by 2 methods:

- Local governing body designates an existing agency or public employee as the project manager, or
- Local governing body contracts with a third party to manage the contract activities.

Note: *TxCDBG Grant Recipients who obtain the services of an administrative consultant or a professional engineer have the final legal responsibility for the locally maintained grant files, the timely submission of reports, and compliance with program guidelines.*

Administrative Thresholds

12-Month Rule — Release of Construction Funds

12-Month Rule — Applicant Threshold

24-Month Rule — Applicant Threshold

12-Month & 24-Month Threshold Requirements

Applicable To:

- Community Development
- Colonia Construction Fund
- Colonia Planning Fund
- Disaster Relief/Urgent Need Fund
- Texas STEP Fund
- Planning/Capacity Building Fund
- Community Enhancement Fund

Not Applicable To:

- Texas Capital Fund
- Colonia Self-Help Centers Fund
- Colonia Economically Distressed Areas Fund

Establish A Record Keeping System

- Grant files must be kept at city or county buildings where records are kept
- Records shall be retained for the greater of 3 years from closeout of the grant to the state

A103

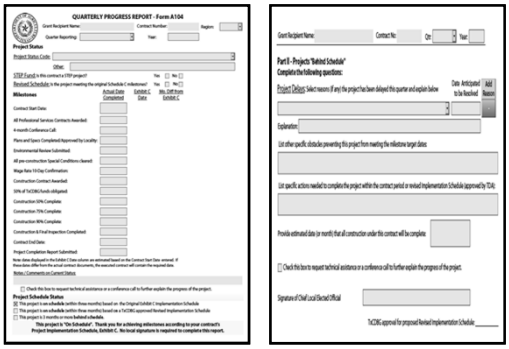
FILING SYSTEM GUIDE

Quarterly Progress Reports

Quarter	Months Included	Due On
• 1st • 2nd • 3rd • 4th	• Jan - Mar • Apr – Jun • Jul – Sep • Oct - Dec	• Apr 20 • Jul 20 • Oct 20 • Jan 20

A TxCDBG contract will be considered "out of compliance" for late or incomplete Quarterly Progress Reports

Quarterly Progress Reports – (Cont.)


QUARTERLY PROGRESS REPORT - Form A104

Grant Recipient Name: Contract Number: Region:

Quarter Reporting: Year:

Project Status

Project Status Code:

Other:

STEP Fund? Is the contract a STEP project? Yes ☐ No ☐

Revised Schedule? Is the project meeting the original Schedule I milestones? Yes ☐ No ☐

Milestones	Actual Date Completed	Exhibit C Date	Mo. Diff from Exhibit C
Contract Start Date:			
All Professional Services Contracts Awarded:			
6 month Conference Call:			
Plans and Specs Completed/Approved by Locality:			
Environmental Review Submitted:			
All pre-construction Special Conditions cleared:			
Wage Rate 10-Day Confirmation:			
Construction Contract Awarded:			
50% of TxCDBG Funds obligated:			
Construction 50% Complete:			
Construction 75% Complete:			
Construction 90% Complete:			
Construction & Final Inspection Completed:			
Contract End Date:			
Project Completion Report Submitted:			

Milestones in the Exhibit C Date column are estimated based on the Contract Start Date entered. If these dates differ from the actual contract document, the executed contract will contain the required date.

Notes / Comments on Current Status

☐ Check this box to request technical assistance or a conference call to further explain the progress of the project.

Project Schedule Status

☒ This project is on schedule (within three months) based on the Original Exhibit C Implementation Schedule

☐ This project is on schedule (within three months) based on a TxCDBG approved Revised Implementation Schedule

☐ This project is 3 months or more behind schedule.

This project is "On Schedule". Thank you for achieving milestones according to your contract's Project Implementation Schedule, Exhibit C. No local signature is required to complete this report.

Grant Recipient Name: Contract No: Qtr: Year:

Part II - Projects "Behind Schedule"

Complete the following questions:

Project Delays: Select reasons (if any) the project has been delayed this quarter and explain below

Date Anticipated to be Resolved | Add Reason

Explanation:

List other specific obstacles preventing this project from meeting the milestone target dates:

List specific actions needed to complete the project within the contract period or revised Implementation Schedule (approved by TDA):

Provide estimated date (or month) that all construction under this contract will be complete:

☐ Check this box to request technical assistance or a conference call to further explain the progress of the project.

Signature of Chief Local Elected Official

TxCDBG approval for proposed Revised Implementation Schedule: _____

Contracts Behind Schedule

Contracts that report on any Quarterly Report that the project is **more than three months behind** schedule must:

- Complete **Part II** of Quarterly Report;
- Submit, with the Quarterly Report, a **revised timeline** for completion;
- At the discretion of parties to the TxCDBG grant conduct a **conference call.**
- **Approval will be given by the TDA contract specialist on the quarterly report sent back to Grant Recipient.**

Contracts Behind Schedule – (Cont.)

Contracts that, at the time of the Quarterly Report, are **more than 3 months behind the revised schedule** approved by TDRA must:

- Submit a **narrative Plan of Action**
- Submit a **revised timeline** for completion.
  - Both the **Plan of Action** and **revised timeline** must each be signed by all members of the Project Team;
- At TDA's discretion schedule an **on-site technical assistance**;
- Conduct **monthly conference calls** to discuss the project milestones.

4-Month Conference Call

"Project Team": include the chief local elected official (or authorized representative), project administrator, and project engineer and if procured, Administrative and engineering consultants

4-Month/Award Conference Call

1. May occur at Award Conference if all are appointed
2. Review TxCDBG contract Performance Statement (Exhibit A), Budget (Exhibit B), Project Implementation Schedule (Exhibit C) milestone dates; and Special Conditions (Exhibit D)
3. Review 12 Month Rule requirements
4. Identify the need for Acquisition of Real Property and review URA requirements (The **Uniform Relocation** Assistance and **Real Property** Acquisition Policies **Act** of 1970 (**Uniform Act**); and
5. Identify and report potential project issues or delays.

CHAPTER 2

Financial Management

Financial Management – 2 CFR 200

- 2 CFR 200 promulgated by the Office of Management & Budget
- Replaces and consolidates eight OMB Circulars
- HUD amended parts 84 and 85 by taking out all of the substantive parts and putting them into 2 CFR 200
  - 24 CFR parts 84 & 85 are still effective for all federal awards made on or before December 26, 2014
  - TDA has adopted the majority of 2 CFR 200
  - Effective date – October 1, 2015

Financial Management: Financial Capacity

- Establish internal controls/Maintain files
  - Separation of duties
  - 2 Signatures on Checks
- Recommend Separate, No Interest Bearing Account
- Annual Audit Requirements vs. Single Audit

Signatures

- Use authorized signatures only
- Headline: "*County Officials Shocked by Charges – Former Employee Forged Signatures*" (*Times Tribune* – Lackawanna County, Pennsylvania, Dec. 13, 2014)
  - Forged Signatures for Request for Release of Funds
  - Jeopardized several CDBG contracts from 2009-2013

Financial Management: Application

- Organizational-Wide Financial Audit - Cannot be a Partial audit
- Applications with Financial audits with adverse opinions will be highly scrutinized; Applications that have Financial audits with disclaimer opinions will not be accepted

Financial Management: Signatories & Direct Deposit

- Authorized Signatories Designation Form A202:
  - Designate 2 responsible persons to sign contracts, requests for payments, etc.
  - Authorize designations through Resolution passed by City Council/County Commissioners
- Direct Deposit (highly recommended):
  - Complete the Direct Deposit Authorization Form 74-176 http://www.window.state.tx.us/directdep/

Financial Management: Release of Funds

Submit within 12 Months:

- Group A Documents:
  - Basic Start-up & Federal Requirement Designate Documentation
- Group B Documents:
  - Construction Documentation

For Final Construction Funding, Submit:

- Group C Documents:
  - Closeout Documentation

Financial Management

Threshold	Budget Available
General Administration Budget Line Item	
Acceptance of all Group A Documents	**0 to 50%***
Acceptance of all Group A and Group B Documents	51 to 90%
Issuance of Administratively Complete letter by TDA	91 to 100%
Engineering Budget Line Items (multiple line items may be considered cumulatively to determine thresholds)	
Acceptance of all Group A Documents	0 to 50%
Acceptance of all Group A and Group B Documents	51 to 90%
Acceptance of all related Certificate(s) of Construction Completion and Reg. Approvals **	91 to 100%
Construction Budget Line Items	
Acceptance of all Group A and Group B Documents	0 to 95%
Acceptance of all Group A, Group B, and Group C Documents	96% to 100%

*Previously 35%

**Engineering must receive all regulatory clearances before final distribution

Financial Management: Deobligation of Funding

- New rule: If funding deobligated, must deobligate both administrative and engineering costs respectively.
- May be exception but has to be substantiated

Financial Management: Drawdown

- Drawdown at least once every 9 months
- For each budget line item
- Minimum Drawdown $2.5K or greater
- Exceptions:
  - Exceeds 25% of budgeted line item and Grant Recipient only requesting for that line item
  - Final Retainage of construction contract
  - Ok'd by TDA
  - Final drawdown of one or more line items

Financial Management: Denial of Payment

Reasons for Delay / Denial of Payment:

- Insufficient Backup
- Grant Recipient out of compliance
- Ineligible expenses
- For Projects Involving First-Time Water or Sewer Services Beneficiaries, re-survey prior to Bidding Construction

Unusual or Special Costs, seek written TDA's approval

Financial Management: Ineligible Expenses

Examples of Ineligible Expenses:

- Administrator not certified
- Water meters for homes with no identified TxCDBG beneficiaries
- Software or related equipment not physically related to the funded improvement
- Generators not permanently installed
- Costs for obtaining Permits
- Commercial advertising or public relations costs
- Costs associated with the preparation of an CDBG application

Financial Management: Retainage

- 5% retainage from all Construction Contracts until the following:
  - **COCC (Certificate of Construction) Form A710 received and approved**
  - **Final Wage Compliance Report – Form A709 received and approved**
  - **All programmatic requirements, claims, and disputes have been met**

Financial Management

Accounting Adjustments

- Drawing Funds from Incorrect Budget Line Item
  - If discover that there is an error, contact TDA contract specialist
  - Unusual and Should Not Occur Frequently

Financial Management: Matching Funds

- TxCDBG projects require Matching Funds
  - Matching funds should be for eligible project related costs
- Match can consist of the following examples:
  - Cash ($);
  - Waived Fees (require TDA approval); and/or
  - Donated property
    - Exclusions: easements, rights- of -way, existing locations for the same infrastructure
- Subject to TxCDBG Program Requirements
  - Some exceptions:
    - Construction Contract funded with non-CDBG $
      - May be exempted from Davis Bacon
    - Private funds used for Econ. Development

Financial Management: Reducing Match Commitment

- Ratio of Local Funds to TxCDBG Funds Must be expended
- If Project Costs are Less (Deobligated), Grant and Matching Funding Proportionally Reduced
- Use Match Calculator on TDA's Website

Financial Management: Match Funding from Other Sources

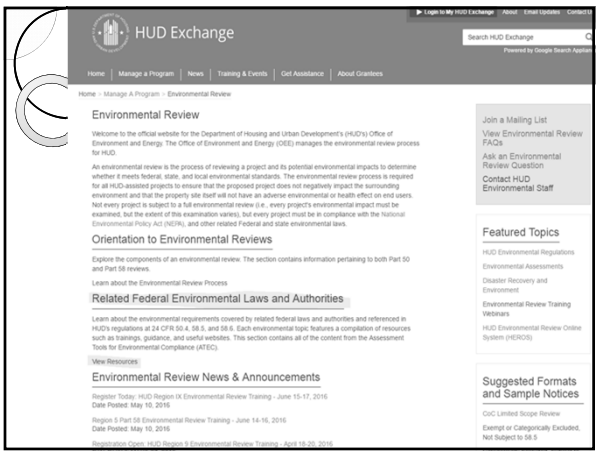
- Grant Recipients must provide:
  - Amount of Funds Received;
  - Scope of Project Funded by Other Sources; and
  - Completion of that project.
- If funding source known after submission of application, notify TDA with funding award letter

What's New!

- Requires Engineers to receive all regulatory approvals before receiving the final 10% payment of their contract
- If funding is deobligated at the end of project, then requires both administrative and engineering fees to be proportionately reduced so that they equal no more than 16% or 25% of actual construction plus acquisition costs.
- Includes commercial advertising, public relations costs, fees associated with the preparation of an application as ineligible costs

CHAPTER 3

Environmental

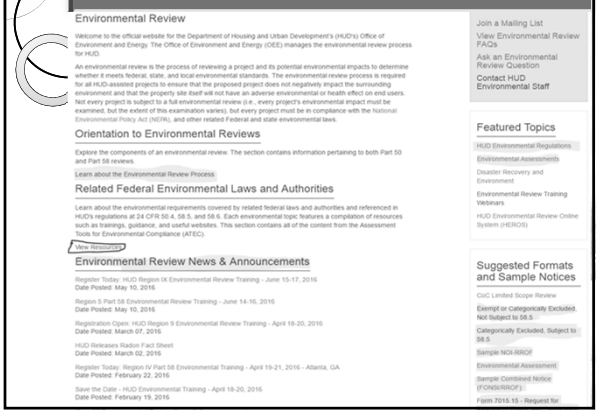


One CPD or HUD Environmental WS

Please use this to include the Worksheets in the website. There is helpful information and even information that may help you eliminate unnecessary work.

For example some questions on these worksheets provide absolute questions that will stop further review of an item. Examples to follow:

Overview



Environmental Review

Welcome to the official website for the Department of Housing and Urban Development's (HUD's) Office of Environment and Energy. The Office of Environment and Energy (OEE) manages the environmental review process for HUD.

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Not every project is subject to a full environmental review (i.e., every project's environmental impact must be examined, but the extent of this examination varies), but every project must be in compliance with the National Environmental Policy Act (NEPA), and other related Federal and state environmental laws.

Orientation to Environmental Reviews

Explore the components of an environmental review. The section contains information pertaining to both Part 50 and Part 58 reviews.

Learn about the Environmental Review Process

Related Federal Environmental Laws and Authorities

Learn about the environmental requirements covered by related federal laws and authorities and referenced in HUD's regulations at 24 CFR 50.4, 58.5, and 58.6. Each environmental topic features a compilation of resources such as trainings, guidance, and useful websites. This section contains all of the content from the Assessment Tools for Environmental Compliance (ATEC).

View Resources

Environmental Review News & Announcements

Register Today: HUD Region IX Environmental Review Training - June 15-17, 2016
Date Posted: May 10, 2016

Region 5 Part 58 Environmental Review Training - June 14-16, 2016
Date Posted: May 10, 2016

Registration Open: HUD Region 9 Environmental Review Training - April 18-20, 2016
Date Posted: March 07, 2016

HUD Releases Radon Fact Sheet
Date Posted: March 02, 2016

Register Today: Region IV Part 58 Environmental Training - April 19-21, 2016 - Atlanta, GA
Date Posted: February 22, 2016

Save the Date - HUD Environmental Training - April 18-20, 2016
Date Posted: February 19, 2016

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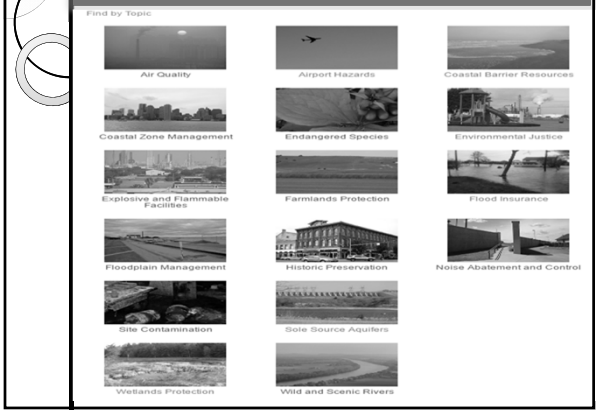
HUD Environmental Review Online System (HEROS)

Suggested Formats and Sample Notices
CoC Limited Scope Review
Exempt or Categorically Excluded, Not Subject to 58.5
Categorically Excluded, Subject to 58.5
Sample NOI-RROF
Environmental Assessment
Sample Combined Notice (FONSI/RROF)
Form 7015.15 - Request for

"Resources"



Resources and then "Worksheet"

Coastal Barrier Resources

Introduction

The Coastal Barrier Resources Act (CBRA) of 1982 designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of the John H. Chafee Coastal Barrier Resources System (CBRS) and made these areas ineligible for most new Federal expenditures and financial assistance. The Coastal Barrier Improvement Act (CBIA) of 1990 reauthorized the CBRA and expanded the CBRS to include undeveloped coastal barriers along the Florida Keys, Great Lakes, Puerto Rico, and U.S. Virgin Islands.

There are a total of 584 system units, encompassing approximately 1.3 million acres of land and associated aquatic habitat. The system units are generally comprised of private lands that were relatively undeveloped at the time of their designation within the CBRS. The boundaries of these units are generally intended to follow geomorphic, development, or cultural features.

The law encourages the conservation of hurricane-prone, biologically rich coastal barriers by restricting Federal expenditures that encourage development. HUD financial assistance may not be used for most activities in CBRS units.

HUD Guidance

Is the project located in a Coastal Barrier Resource System (CBRS) unit? With very limited exceptions, federal assistance is not allowed for projects in a CBRS unit. Federal monies can be spent within CBRS units only for certain exempted activities (e.g., a nature trail) after consultation with the FWS (see 16 USC 3505 for exceptions to limitations on expenditures).

Compliance and Documentation

The environmental review record should contain **one** of the following:

- A general location map establishing there are no Coastal Barrier Resource System units in the city or county
- A map issued by the FWS or FEMA (or from their website) showing that the proposed project is not located within a designated Coastal Barrier Resource System Unit. The FEMA map panel number must be cited within the Environmental Review Record
- Approval of the project from the FWS, including all prior correspondence

View Coastal Barrier Resources - Worksheet

Statute

16 U.S.C. 3501

Resources

HUD's Guidelines for CBRA Compliance

Fish and Wildlife Service's CBRA Web Page for Guidance

Fish and Wildlife Service's CBRA Mapper

Federal Related Laws and Authorities

Air Quality

Airport Hazards

Coastal Barrier Resources

Coastal Zone Management

Environmental Justice

Endangered Species

Explosive and Flammable Facilities

Farmlands Protection

Flood Insurance

Floodplain Management

The worksheet

Coastal Barrier Resources (CEST and EA)

General requirements	Legislation	Regulation
HUD financial assistance may not be used for most activities in units of the Coastal Barrier Resources System (CBRS). See 16 USC 3504 for limitations on federal expenditures affecting the CBRS.	Coastal Barrier Resources Act (CBRA) of 1982, as amended by the Coastal Barrier Improvement Act of 1990 (16 USC 3501)	
References		
https://www.hudexchange.info/environmental-review/coastal-barrier-resources		

Projects located in the following states must complete this form.

Alabama	Georgia	Massachusetts	New Jersey	Puerto Rico	Virgin Islands
Connecticut	Louisiana	Michigan	New York	Rhode Island	Virginia
Delaware	Maine	Minnesota	North Carolina	South Carolina	Wisconsin
Florida	Maryland	Mississippi	Ohio	Texas	

1. Is the project located in a CBRS Unit?

☐No → *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide a map showing that the site is not within a CBRS Unit.*

☐Yes → *Continue to Question 2.*

Worksheet 2

Federal assistance for most activities may not be used at this location. You must either choose an alternate site or cancel the project. In very rare cases, federal monies can be spent within CBRS units for certain exempted activities (e.g., a nature trail), after consultation with the Fish and Wildlife Service (FWS) (see 16 USC 3505 for exceptions to limitations on expenditures).

2. Indicate your selected course of action.

☐ After consultation with the FWS the project was given approval to continue

→ *Based on the response, the review is in compliance with this section. Continue to the Worksheet Summary below. Provide a map and documentation of a FWS approval.*

☐ Project was not given approval

Project cannot proceed at this location.

Worksheet Summary

Compliance Determination

Provide a clear description of your determination and a synopsis of the information that it was based on, such as:

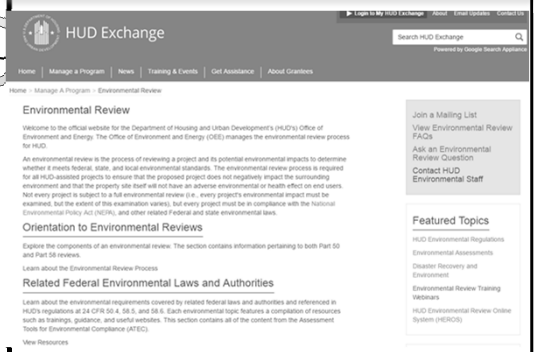
- Map panel numbers and dates
- Names of all consulted parties and relevant consultation dates
- Names of plans or reports and relevant page numbers
- Any additional requirements specific to your region

Are formal compliance steps or mitigation required?

☐ Yes

☐ No

Let's Log In



https://www.hudexchange.info/programs/environmental-review/

TDA Website

https://texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/RuralCommunityDevelopmentBlockGrant(CDBG)/Forms.aspx

Let's Log Into the TDA Website

Recent Issues from HUD 2014

- Native Americans – TDAT
- Acquisition of Property 24CFR58.22 – Option Agreement
- Aggregation of projects – Geo and Functionally Related, businesses and Capital Fund.
- Dates and Notaries
- Endangered Species and Mitigation
- Floodplain / Wetlands
- Project Descriptions

Native American Clearance 36CFR800

- 30 Day Rule Entity vs. Consultant (Gov. to Gov.)
- Recent Change and addition of new interests
- Unrecoverable Statutory Violation

Acquisition and 58.22

- Choice Limiting Actions
- Option Agreement
- Date of Resolution for HUD Funds
- Statutory Violation

Project Aggregation 58.32

- Include the business
- Water is water (a system is a system)
- Touching vs. Area (Geographically)

Mitigation & Endangered Species

- Show how it is known (Proof)
- What was done for mitigation
- TPWL / USFWL: Contact or no contact?
- Photos, Photos, Photos
- Site Visit. Really????

Other Notables

- Dates and Notaries and RROFs
- Floodplain and Wetlands
- Project Descriptions vs. "Activity" Publication and RROF

CHAPTER 4

Contract Special Conditions

Pre-Construction

Permit and Approval Certification Form A401

This form is used to list all permits, authorizations, or other written approvals required by state or federal regulations other than TxCDBG requirements. Examples of these approvals include:

Pre-Construction – (Cont.)

Direct Benefit Guidelines

- Projects that provide direct benefit to homeowners selected through an application process must receive approval for the proposed program guidelines prior to the selection of program recipients and prior to TDA's release of funds for such activities.

Colonia Street Lighting Funds

- TxCDBG grants that include street improvements in Colonia areas are required to include adequate street lighting in the project.
- If current street lighting in the target area is determined to be absent or inadequate, must demonstrate that between 5% and 15% of the TxCDBG grant funds allocated for street improvements are designated for street lighting.

Projects Involving Model Subdivision Rules/Ordinances (Colonia Fund Only)

- Certain communities are considered "economically distressed areas" and are subject to comprehensive platting requirements known as Model Subdivision Rules.

Temporary Signage

Temporary Project Signage

All construction projects utilizing TxCDBG funding must have temporary signage erected in a prominent location at the construction project site.

Project Requiring Permanent Signage

Required for any TxCDBG funded public structure or project any TxCDBG funded public buildings, park areas, or other structures open to the public, in addition to commercial facilities funded through the TCF Real Estate program.

Examples :
- Fire stations
- Significant improvements to existing facilities/park areas *if open to public*
- Community centers
- Fire stations
- Parks
- Pavilions
- Health Centers
- Shelters

Project Completion

Water Well Projects
- Must submit a letter from TCEQ that the constructed well is approved for interim use and may be temporarily placed into service

Septic System Replacement Projects
- Must provide documentation that final plans, specifications, and installation of its sewer system improvements (septic systems) have been reviewed and approved by the City or County Health Department through authority granted by TCEQ.

Building, *Parking Lot, and Sidewalk* Projects
- Must submit documentation that the building, parking lots and/or sidewalks are in compliance with TDLR requirements concerning the elimination of architectural barriers

Required Designs/Plans/Specs

Project Specific:

The Grant Recipient shall receive and maintain a copy of the final project record drawing(s) and/or engineering schematic(s), as constructed using funds under this contract.

- ✓ Digital format
- ✓ The accompanying documentation from the engineer shall include a signed statement of when the map was authorized and that the digital map is a true representation of the original sealed document.

Tap - In

New - For projects where more than 1 business benefits:

- ✓ TDA may require Tap-In for Texas Capital Fund CDBG projects to show evidence that a National Program Objective met (Form D8)
- ✓ Within one year after project, benefitting businesses asked to use *best efforts* toward employing LMI
- ✓ Grant recipients to provide to each beneficiary business:
  - ✓ A copy of this rule
  - ✓ Low and moderate guidelines for the project area
  - ✓ Summary of the proposed TCF infrastructure improvements with map

Common Pitfalls

1. Fail to erect permanent signage when required
2. Failure to submit the final RAS (Registered Accessibility Specialist) Report to TDA.

CHAPTER 5

Procurement Procedures

Procurement Standards

- Reminder: As of December 26, 2014, new federal regulations govern procurement standards in the TxCDBG Program.
- New standards for Procurement - 2 CFR §200.317 – 200.326.
- Replaced HUD regulations at 24 CFR §85.36.
- Full and open competition (2 CFR §200.319).

Methods of Procurement

- **Competitive Proposal**
  - Procurement of professional and administration services.
- **Sealed Bids**
  - Procurement of construction.
- **Small Purchase (<$50,000)**
- **Micro-purchase** (≤$2,000 for construction, supplies, or services)
- **Non-competitive Proposal**

Competitive Proposal

- All professional and administrative services related to TxCDBG projects must be procured competitively, regardless of the source of funds.
- If any part of a contract is paid for with TxCDBG funds, the Grant Recipient must follow the Competitive proposal procedure in Chapter 5.
- Step by Step Procurment in Appendix D and E.

Competitive Proposal

- **2 CFR 200.319 (a)**
- ***Contractors that develop or draft specifications, requirements, statements of work or invitations for bids or request for proposals must be excluded from competing for such procurements***
- **Key – Open & full competition**

Competitive Proposal – Contract price

- **2 CFR 200.323 (a) & (b) Negotiation of profit**
- For contracts/modifications > $50K, profit must be negotiated as a separate element of the price
- For engineering, this negotiation of profit takes place after engineering firm chosen based on its qualifications.

Step-by-Step Selection Procedures

- Establish local Selection Review Committee
- Determine the Scope of Services
- Establish written selection criteria
- Develop RFP package
- Advertise
  - Send in copy to **MWBE@texasagriculture.gov**
- Distribute the RFPs for Professional Service
- Evaluate and Rate proposals
- Select the Administrator or Engineer
  - Architect, Engineer, and Surveyor must be selected based on qualifications. Then negotiate price with the selected professional service provider.
  - Disclose Profit if > $50K
- Clear the Administrator (SAM; environmental exemption before signing contract)
- Award contract

Construction Contracts: Sealed Bids

- Procurement of construction, materials, or equipment contracts whose total cost is **more than $50,000**
- Sealed bids are publicly solicited and a firm, fixed-price is awarded to the responsible respondent whose bid, conforming with all the material terms/conditions of the invitation for bids, is lowest and best in price

Sealed Bidding

- Prepare bid package
- Comply with Davis-Bacon Act requirements
  - ✓ Confirm wage decision within ten days but not less than five days before bid opening.
- Advertise invitation for bids
  - ✓ Publish once a week in a newspaper for 2 consecutive weeks prior to bid opening
  - ✓ Advertising the invitation for bids in the Dodge Report, Texas Contractor, Minority Business Development Center
  - ✓ Send copy to **MWBE@texasagriculture.gov**
- Hold the bid opening
- Clear the contractor on SAM prior to award
- Award the contract
- Execute the contract

Sealed Bidding

- The Grant Recipient must obtain acknowledgement of receipt from all bidders for any bid addenda issued prior to bid opening.
- The Texas Local Government Code requires that invitation for bids must be published at least once a week for two consecutive weeks in a newspaper published locally. The date of the first publication must be before the 14th day before the date set to publicly open the bids.

DATE OF FIRST PUBLICATION 9-1-15	DAY 1 (Fourteenth day before the date set to publicly open bids.) 9-2-15	DAY 2 9-3-15	DAY 3 9-4-15	DAY 4 9-5-15	DAY 5 9-6-15	DAY 6 9-7-15
DAY 7 9--8-15	DAY 8 9-9-15	DAY 9 9-10-15	DAY 10 9-11-15	DAY 11 9-12-15	DAY 12 9-13-15	DAY 13 9-14-15
DAY 14 9-15-15	BID OPENING 9-16-15					

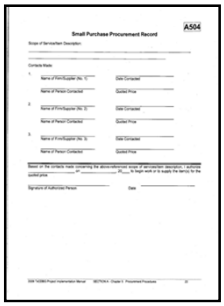
Financial Interest Report – Form A503

- Submit for all contracts of $2,000 or more within 30 days of executing the contract:
  - ✓ A503
  - ✓ Bid Tabulation
  - ✓ Bid Schedule

Small Purchase Procurement

- The Small Purchase procurement method uses relatively simple and informal procurement methods to secure construction services, supplies, equipment, or non-professional services that cost, in the aggregate, **less than $50,000** in accordance with state law.
- The Local Government Code prohibits separate, sequential, or component small purchases to avoid the competitive bidding requirements.

Construction Contract: Small Purchase Procurement (Cont.)


A504

Small Purchase Procurement Record

Scope of Service/Item Description:

Contacts Made:

1. Name of Firm/Supplier (No. 1): Date Contacted
   Name of Person Contacted: Quoted Price
2. Name of Firm/Supplier (No. 2): Date Contacted
   Name of Person Contacted: Quoted Price
3. Name of Firm/Supplier (No. 3): Date Contacted
   Name of Person Contacted: Quoted Price

Based on the contacts made concerning the above-identified scope of service/item description, I authorize _____ to begin work or to supply the item(s) for the quoted price _____.

Signature of Authorized Person: _____ Date: _____

- Obtain Wage Decision
  - Complete **Wage Rate Issuance Notice - Form A702 (**If under $2,000 not required)
- Confirm Wage Decision
  - Complete **Ten Day Confirmation (Form A703)**
- Contact three vendors
  - Submit **Small Purchase Procurement Record (Form A504)** to assigned Regional Coordinator
- Verify Eligibility Status
  - Record on **Labor Standards Record (Form A706)**
- Submit **Labor Standards Record (Form A706**) to **labor@TexasAgriculture.gov**

Micro-Purchases

- Micro-purchases is non-competitive procurement which may be used for supplies or services valued at $2,000 or less.
- Purchase orders may be awarded without soliciting any competitive quotations if the Grant Recipient considers the costs to be reasonable and local laws and policies do not prohibit this method of procurement.
- Grant Recipient must verify that contractor is not debarred under the System for Award Management (www.SAM.gov).
- TDA will monitor the use of micro-purchases to ensure that they are not being used to circumvent competitive procurement.

Non-Competitive Procurement

- Grant Recipient **must** obtain written permission from TDA prior to using the Non-Competitive Procurement method.
- All requests for exceptions to competitive procurement requirements must be submitted in writing by the Grant Recipient
- Must qualify according to one of the following exceptions under 2 CFR §200.320(f):
  - (1) The item is available only from a single source;
  - (2) Public exigency or emergency will not permit a delay resulting from competitive solicitation;
  - (3) TDA expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - (4) After solicitation of a number of sources, competition is determined inadequate.

Construction Contract - Bonding

- Bid Bond – Required by 2 CFR §200.325 (a). Must be for 5% of bid price.

In addition Texas Government Code 2253.021 requires:

- Performance Bond
  - ❖ Required on **all** public works projects costing more than $100,000 for counties and cities
- Payment Bond
  - ❖ Required on **all** public works projects costing more than $25,000 for counties and $50,000 for cities
  - ❖ If a locality fails to obtain a bond from the prime contractor, they become liable for paying workers, subcontractors and material suppliers

Change Orders

- The Grant Recipient must have sufficient grant or local funds available to meet any increased costs
- Change orders may not:
  1. Increase the original contract price by more (25%)
  2. Decrease the original contract price by more than (25%) for municipalities and (18%) for counties without the consent of the contractor

Change Orders (Cont.)

A505

Texas Department of Agriculture
Construction Contract Change Order

To request approval, submit:

- ✓ *Construction Contract Change Order Approval Request* **(Form A505** – now automated**)**
- ✓ Chief local elected official's signature on either Form A505 or a cover letter
- ✓ Any necessary supporting documentation
- ✓ Explanation of any unusual items

Change Orders (Cont.)

- **ALL** Change Orders must be submitted for review, whether or not the work will be paid with grant or matching funds, so that we have a complete record of the construction contract.
- TxCDBG recommends that the Grant Recipient submit a Change Order **prior** to fully executing it.
- If executed without TxCDBG approval, the Grant Recipient is obligated to pay for any changes that are not approved.
- Change Orders may also trigger an amendment or modification to the Performance Statement and/or Budget and should be submitted together
- Any difference in price from the Labor Standards Record (Form A706-rev) to the Certificate of Construction Completion (Form A709) must be accounted for on the Change Order.

Procurement of Recovered Materials

- Pursuant to 2 CFR 200.322, grantees & contractors must comply with section 6002 of the Solid Waste Act
- For purchases > $10K of designated recovered materials identified by the EPA at 40 CFR Part 247
- Highest % of recovered material "practicable, while adhering to competitive bidding processes"
- Examples:
  - Construction materials (cement)
  - Concrete

Common Pitfalls

- Make sure that the Grant Recipient has properly executed the Determination of Exemption for Activities Listed at 24 CFR §58.34 *prior* to execution of engineering and grant management contracts.
  - Failure to comply could result in sanctions.
- Ensure that invitations for bids are published during two consecutive weeks in accordance with state law.
  - TDA cannot waive statutory requirements for published notices.
- Ensure that all required contract provisions and inserts are included in bid packets and contracts.
- Recordkeeping – maintain copies of bids and proposals received.

Reminder from 2015

- Micro-purchases – new procurement category.
- Contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements (2 CFR §200.319(a))
- Grant Recipients must negotiate profit as separate element of price for contracts not competitively procured greater than $50,000 and for competitive proposal contracts/modifications greater than $50,000 (2 CFR §200.323(b)).

CHAPTER 6

Acquisition

Acquisition Laws & Rules

- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)
- 49 CFR Part 24
- HUD Handbook 1378 - Tenant Assistance, Relocation & Real Property Acquisition
- Section 104(d) of the Housing & Community Development Act

URA Purpose

- ✓ To ensure that owners of real property acquired for federal and federally assisted projects are treated fairly and consistently,
- ✓ To encourage and expedite acquisition by agreements with such owners and to minimize litigation
- ✓ To ensure that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently and equitably

Acquisition of Real Property

- Acquisition procedures apply to any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs.
- Applies to:
  - ✓Parcels of private or public property acquired for the project
  - ✓Permanent and temporary easements
  - ✓Property leased for a period of 15 years or more

Types of Acquisition - Voluntary

Voluntary Acquisition

- No specific site is needed; other properties could be acquired.
- The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits.
- Acquiring entity informs the owner in writing that property will not be acquired through eminent domain authority.
- Acquiring entity informs the owner in writing of the property's market value.

Types of Acquisition – Voluntary (Cont.)

Acquiring entity does not have eminent domain authority, for instance:

- Property owner is a governmental entity, such as a school district.
- Economic Development project - The acquiring entity's eminent domain authority is limited by law.

Types of Acquisition – Involuntary (Cont.)

- Acquiring entity has eminent domain authority which could potentially be invoked.
- Specific site is required for the project.
- Acquiring entity must provide the landowner with owner rights brochures:
  - When a Public Entity Acquires Your Property
  - Landowner's Bill of Rights (Required under the Texas Property Code)
- Appraisal of Property may be required.

Methods of Acquiring Property

- Donation
- Just Compensation
- Negotiated Purchase
- Condemnation
  - Proceeding with acquisition through seizure of property using eminent domain authority requires TDA authorization.

Eminent Domain

- Who has Eminent Domain authority?
  - Municipalities and Counties – conferred under the Local Government Code.
  - Water Supply Corporations and Water Districts – conferred by the Texas Water Code.
  - Political Subdivisions and various governmental entities.

Acquisition Steps - Voluntary

Voluntary Acquisition

1. Determine parcels needed for project and submit Initial Acquisition Report (Form A600) to TDA.
   - Chief local official must certify that acquisition meets all conditions qualifying it as Voluntary per 49 CFR 24.101(b)(i)-(iv).
   - Appraisal requirement not applicable.
2. Notify owner in writing of interest in property and that eminent domain authority will not be used to acquire land.
3. Notify owner in writing of estimated market value.

Acquisition Steps – Voluntary (Cont.)

Voluntary Acquisition

4. Parties may negotiate the purchase price.
5. Ensure environmental review is completed and that TDA has authorized use of grant funds.
   - Failure to comply with HUD regulations could result in disallowed costs.
6. Execute sale, lease, or donation agreement and record the deed with the county.

Acquisition Steps - Involuntary

1. Determine parcels needed for project and submit Initial Acquisition Report (Form A600) to TDA.
   - Requires TDA approval.
   - If estimated value is $10,000 or less, request TDA approval for waiver valuation.
2. Notify property owner of interest in property and provide owner rights brochures.
3. If an appraisal of property is required, notify owner of right to accompany the appraiser.

Acquisition Steps – Involuntary (Cont.)

4. Have property appraised, if required.
   - Appraiser must be licensed/certified by state law (Occupations Code)
   - Fee appraiser must be competitively procured according to TxCDBG policy and Professional Services Procurement Act.
5. Appraisal **must** be reviewed by a Review Appraiser.
6. Make just compensation offer based on appraisal or according to market value if waiver valuation.
   - Provide owner basis for the offer of just compensation.

Acquisition Steps – Involuntary (Cont.)

Involuntary Acquisition – (Cont.)

7. Parties may negotiate the purchase price.
   - If negotiated price exceeds just compensation amount, prepare an Administrative Settlement statement (submit to TDA).
8. Ensure environmental review is completed and that TDA has authorized use of grant funds.
   - Failure to comply with HUD regulations could result in disallowed costs.
9. Execute sale, lease, or donation agreement and record the deed with the county.

Donation of Real Property

When notifying the property owner of interest in acquiring land, the Acquiring Entity may invite an owner to donate property.

- Applies to Voluntary and Involuntary procedures.
- All applicable notices are still required, including notice of just compensation value.
- Owner must waive right to an appraisal in writing.

Relocation

- Section 104(d) of the *Housing and Community Development Act of 1974* provide for relocation requirements for CDBG funded project.
- Relocation assistance may be required for displaced persons.
  - Displaced Person - Any person who moves from the real property or moves his or her personal property from the real property as a direct result of rehabilitation or demolition for a project.
- Procedural regulations found at 49 CFR 24 Subsection C.
- Relocation requirements generally do not apply to Voluntary Acquisition unless there are displaced tenants.

Common Pitfalls

- Do not assume that owner's willingness to donate/sell land automatically constitutes Voluntary acquisition.
  - Voluntary or Involuntary determined by potential use of eminent domain authority and whether land is site specific.
- Complete an appropriate level of environmental review and obtain TDA approval to use grant funds before finalizing agreement (see 24 CFR §58.22).
- Acquiring Entity should consult with their legal counsel to ensure compliance with federal and state policies.

Common Pitfalls – (Cont.)

- Ensure that a complete Initial Acquisition Report (Form A600) has been filed with TDA.
  - Include description and map.
  - Form must be certified by the Chief Elected Official or designee.
  - File updated report with TDA if acquisition is later necessary for the project.
- Include acquisition in the scope of activities of TxCDBG Contract Performance Statement.
- Accurately determine if Acquiring Entity has eminent domain authority.

What's New!

- Permits and licenses such as railroad permits do not constitute real property acquisition and therefore, are not subject to URA
- If private to private acquisition, URA does not apply.
  - Environmental might apply.
  - Test - if private to private acquisition would not have occurred if not for the federal project, then acquisition must pass environmental scrutiny.

CHAPTER 7

Labor Standards

Labor Standards – Basic Process

- Type of construction - Does DBRA Apply?
- Appoint a LSO
- Obtain the proper wage decision (WD): www.wdol.gov
- Issue the Wage Rate Notice
- Include the Wage Decision in the bid documents
- Complete the 10 Day Call
- Check contractor for Eligibility (SAMs)
- Award / Execute the Contract
- Pre-Con conference
- Submit the LSR
- Review Payrolls during construction
- Submit construction Completion reports/ FWCR

Labor Standards - Exemptions

- Construction contracts of $2,000 or less;
- Construction contracts of $100,000 or less are exempt from CWHSSA only;
- Single-family homeowner residences (Making Davis Bacon Work-2006. (Exhibit 2))
- Rehabilitation of residential property designed for fewer than eight families; (Making Davis Bacon Work-2006. (Exhibit 2))
- Demolition and/or clearance activities (for example, debris removal), unless related to construction (demolition and clearance as independent functions are not considered construction);
- Labor/installation charges on equipment or materials purchases, if that portion of the contract is less than 20% of the total cost of the item(s) purchased.
- Construction work performed by the employees of the Grant Recipient (force account) that are engaged on an otherwise covered project; and
- Construction work performed by a public utility extending its own utility system

Construction Types

- **HIGHWAY CONSTRUCTION** -- Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, sidewalks, paths, parking areas, and other similar projects not incidental to building or heavy construction.
- **BUILDING CONSTRUCTION** -- Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures greater than four(4) stories, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Construction Types

- **RESIDENTIAL CONSTRUCTION** -- Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.
- **HEAVY CONSTRUCTION** -- Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued. For example, separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

Labor Standards – Implementation Procedures

- Submit the LSO Appt. Form: A701
- Send in the 10 DC PRIOR TO BID OPEN: A703
- Complete the Labor Standards Record: A706
- Additional Wage Classification as needed A705
- Certificate of Construction Completion A709
- Final Wage Compliance Report A710
- SEND TO LABORS INBOX

Labor Standards – Common Pitfalls

- LSO Appt. Form – Before anything
- 10 Day Call being done AFTER bid open
- No Bid Open / RFQ Date for 10 DC
- LSR for Non DBRA No Bid Open Date / RFQ
- No 10 DC / LSR for Non open Bidding
- Bid Opening Date change between 10 DC and LSR
- Additional Wage Classification (AWC) requests – issues
- COCC and Award vs. Executed Dates
- Signatures

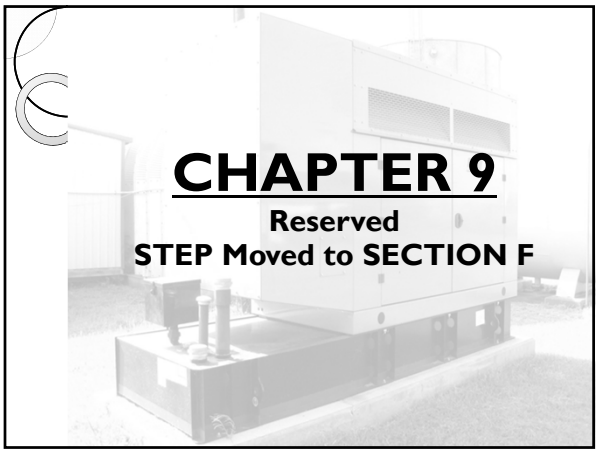
Common Pitfalls

- Dollar amounts on LSR/ COCC/ FWCR
- Dates for LSR/ COCC/ FWCR: Award vs. Execute
- Sub Contractor Clearance
- Employee Interviews – You have to do them
- Payrolls not submitted and not in order (use no-work week too)
- Change Orders – send them in

What's New!

- Provides that drilling a test well may be considered either a component of construction or a professional service.
- SPP or Request for Proposals: "Bid Open Date"
- 10 Day Call Is being enforced
- Additional Wage Classification Forms – Be neat!

Force Account REALLY???



CHAPTER 10

Civil Rights

What's New!

To simplify, one resolution (A1014) to adopt/reaffirm:

- ☑ Citizen Participation Plan
- ☑ Section 3 Policy
- ☑ Excessive Force Policy
- ☑ [If Grant Recipient employs 15 or more employees], Section 504 Policy and Grievance Procedures; and
- ☑ Fair Housing Policy

What's New! (Cont.)

- ☑ Citizen Participation Plan
- ☑ LEP Plan
- ☑ For each civil rights policies/resolutions, must adopt/reaffirm at least 2 years prior to contract Start Date
- ☑ Publication requirements for Citizen Participation Plan, Sec. 504, and AFFH allow either:
  - Publishing in newspaper/other publication;
  - Public postings (**courthouse/city hall <u>AND</u> location of target area supported by affidavit**); or
  - Public postings (affidavit) **<u>AND</u> Website**
    - **Screenshot**

Protections

Protections for the following classes:

- Race
- Color
- Religion
- Sex
- Disability
- National origin
- Age
- Familial Status

Civil Rights Officer (CRO)

- Select Civil Rights Officer
- Best Practice: Local Staff Member
- Send Designation including name and title of designated officer to TDA

Citizen Participation Plan

- **Encourage participation** in the CDBG Project especially for low to moderate income groups
- **Requires:**
  - Plan
  - Grievance and complaint procedures
  - Notice

Equal Rights Requirements

- Equal Opportunity
- Section 3
- SBE/MBE/WBE
- Excessive Force
- Section 504*
- Fair Housing
- Limited English Proficiency

*Required for Grant Recipients with 15 or more employees.

Equal Opportunity

- EO policy/ordinance/resolution
- Include EO Guidelines in bid packets
- For construction contracts > $10K, include required EO contract language

HUD Act of 1968 – Section 3

Housing and Urban Development Act of 1968, as amended
24 CFR Part 135

To ensure that economic opportunities generated by certain HUD funded projects shall, **to the greatest extent feasible**, and consistent with existing Federal and State laws, **be directed to low- and very low-income persons** (particularly those receiving assistance for housing), and **to the businesses that provide economic opportunities to these persons**

Section 3 Thresholds

- Section 3 Applicable only to Construction Projects
- *Grant Recipient thresholds* - The amount of the assistance exceeds $200,000
- *Contractor and subcontractor thresholds* - The amount of the assistance to Grant Recipient exceeds $200,000; and the contract or subcontract exceeds $100,000

Section 3 Goals

- 10% of all Construction contracts awarded to Section 3 businesses,
- 3% of all Non-construction contracts awarded to Section 3 businesses,
- 30% of new hires are Section 3 persons

Section 3 Policy

- Prepare Section 3 Plan
- Include in construction contract > $100K, required contract language
- Include EO Guidelines in bid packets
- Reporting Requirements:
  - Contractor Certificate of Compliance
  - Financial Interest Report
  - Sec 3 Annual Report – Federal Fiscal Year (Oct 1-Sept. 30)

A1002-rev

Sample Section 3 Policy

In accordance with 12U.S.C. 1701u (Section 3), the (name of Grant Recipient) agrees to implement the following steps, which, to the greatest extent feasible, will provide job training, employment and contracting opportunities for Section 3 residents and Section 3 businesses of the areas in which the program/project is being carried out.

A. Introduce and pass a resolution adopting this plan as a policy to strive to attain goals for Section 3 as set forth in regulations to increasing opportunities for employment and contracting for Section 3 residents and businesses.

B. Assign duties related to implementation of this plan to the designated Equal Rights Officer.

C. Notify Section 3 residents and business concerns of potential new employment and contracting opportunities by posting notices in Section 3 neighborhoods and areas. Public meetings and related advertisements, public notices, bidding advertisements and bid documents, notification to local business organizations such as the Chamber(s) of Commerce or the Urban League, local advertising media including public signage, project area committees and citizen advisors boards, local HUD offices, regional planning agencies, and all other appropriate referral sources. Include Section 3 clauses in all covered solicitations and contracts.

D. Maintain a list of those businesses that have identified themselves as Section 3 businesses for utilization in TxCDBG funded procurements, notify those businesses of pending contractual opportunities, and make this list available for general Grant Recipient procurement needs.

E. Maintain a list of those persons who have identified themselves as Section 3 residents and contact those persons when hiring/training opportunities are available through either the Grant Recipient or contractors.

F. Require that all three contractors and subcontractors with contracts over $100,000 commit to this plan as part of their contract work. Monitor the contractors' performance with respect to meeting Section 3 requirements and require that they submit reports as may be required by HUD or TDRA to the Grant Recipient.

G. Submit reports as required by HUD or TDRA regarding contracting with Section 3 businesses and/or employment as they occur, and submit reports within 20 days of calendar year end which identify and quantify Section 3 businesses and employees.

H. Maintain records, including copies of correspondence, memoranda, etc., which document all actions taken to comply with Section 3 regulations.

As officers and representatives of (name of Grant Recipient), we the undersigned have read and fully agree to this plan, and become a party to the full implementation of this program.

Signature _____ Title _____ Date _____

Participation by MBE/SBE/WBE

- Take affirmative steps – Small Businesses and Women & Minority Owned
- Utilize State and Federal Resources:
  - Minority Business Development Centers
  - Small Business Administration
- *NEW!* Send in published solicitations to:
  - MWBE@texasagriculture.gov

Excessive Force

- Required by 24 CFR 91.325(b)(6)
- Prohibits use of excessive force against non-violent civil rights demonstrators

Section 504

- ✓ **Prohibits discrimination on the basis of disability**
- ✓ **15 or more employees**
- ✓ **Notice**
  - **Grievance procedures**
  - **Civil Rights Officer identified**
  - **Postings:**
    - **Public postings (city hall/county courthouse and target area with affidavit)**
    - **newspaper/publication**
    - **public posting (city hall/county courthouse supported by affidavit) and website**

Section 504 (Cont.)

- Self Evaluation
- Use Auxiliary Aids
- Accessible Facilities – for projects >$50K, coordinate with Texas Department of Licensing and Regulation (TDLR)
- Reasonably accommodate

Affirmatively Further Fair Housing

- **One activity per contract term**
- **Best practice: pass an ordinance/proclamation/resolution and conduct one activity**
- **List of suggested activities in Manual**

Limited English Proficiency (LEP)

Plan
- ☑ Determine need for LEP services
- ☑ American FactFinder
- ☑ If LEP needed, Translate Key Documents

A1010

Limited English Proficiency Plan

Grant Recipient:	
Community Population:	
Population with Limited English Proficiency:	
Languages spoken by more than 5% of population per ACS:	

Program activities to be accessible to LEP persons:
- Public Notices and hearings regarding applications for grant funding, amendments to project activities, and completion of grant-funded project
- Notices regarding environmental reviews, civil rights, and other program requirements
- Other program documents: _____

Resources available to Grant Recipient:
- Translation services: _____
- Interpreter services: _____
- Other resources: _____

Language Assistance to be provided:
- Translation (oral and/or written) of advertised notices and vital documents for: _____
- Referrals to community liaisons proficient in the language of LEP persons: _____
- Public meetings conducted in multiple languages: _____
- Notices to recipients of the availability of LEP services: _____
- Other services: _____

_____
Signature - Civil Rights Officer or Chief Local Official

Applicable Federal Laws

Equal Opportunity
Civil Rights Act – Title VI & VIII
- Age Discrimination Act
- Section 504 of the Rehabilitation Act
- Section 104 of the HCD Act

Handicapped Accessibility
- Section 504 of the Rehabilitation Act
- Architectural Barriers Act
- ADA (Americans with Disabilities Act)

Applicable Federal Laws (Cont.)

Employment and Contracting
- EEO, Executive Order 11246
- Section 3 of the HCD Act
- Section 109 of the HCD Act
- Section 504 of the Rehabilitation Act

Excessive Force
- HUD Program Requirement – 24 CFR Part 91, Sec. 225(b)(5) and Sec. 325(b)(6)

Publications Required

Publications required:

- Complaint/grievance procedures
- If Grant Recipient employs > 15 people, Section 504 grievance procedures
- AFFH

Publication requirements allow either:

- Public posting (**courthouse/city hall AND location of target area supported by affidavit**); or
- Publishing in newspaper/other publication
- Public Posting (courthouse/city hall supported by affidavit) and website

Discrimination Complaints

- **Texas Workforce Commission, Civil Rights Division http://www.texasworkforce.org**
- **Equal Employment Opportunity Commission http://www.EEOC.gov**
- **For housing complaints, Texas Workforce Commission housingcomplaints@Twc.state.tx.us and US Dept. of Housing and Urban Development**

CHAPTER 11

Contract Amendments

Reasons for Amendments/Modifications

- Additive or deductible alternates in bid
- Project costs in excess of contract funds
- Change Orders
- Necessary engineering design changes
- TCEQ clearance letter differs from Performance Statement Activities
- Acquisition
- Funds available to extend project

Performance Statement Changes

All changes **must** be related the project.

Limits on Performance Statement Change Requests
Any requested changes in the scope of work will be reviewed to determine if the revised project is supported by the original application.

TDA will not approve requests to add a different or new project or activity that was not included in the application, including a new project proposed because the original project has been determined unsuccessful or not feasible.

Performance Statement Changes (Cont.)

TDA may consider approval of a new project if the Grant Recipient is unable to complete the original project due to either:

1) a natural disaster event, documented by presidential or governor's declaration; or
2) a decision by a federal or state agency which prevents the contractor from completing the original project.

If the proposed amendment alters the original application score to the degree that the project would not have been recommended for funding based on that criteria, the amendment request will not be approved.

Performance Statement Levels

There are two levels of Performance Statement changes:

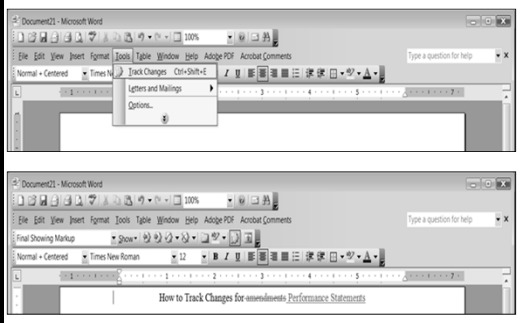
- **Performance Statement Modification**– changes the scale of the original project, including changes that increase beneficiaries in the same target area or decrease beneficiaries up to 25%. Also documents minor changes or corrections to the project description.
- **Performance Statement Amendment requiring Citizen Participation** – changes the scale of the project beyond the original target area, decreases the persons benefiting from the project (greater than 25%).

Documentation Required

The following items are **required for all Performance Statement changes**:

- *Contract Change Request Form* (Form A-1101);
- Revised Performance Statement, using "track changes" or similar format to indicate all added, deleted, or changed text (submit electronic copy in Word Format, no balloons);
- Re-evaluation of environmental findings; and
- Revised project maps showing the locations of the original and amended project activities if any change in the project location or target area is proposed.

Track Your Changes



Performance Statement Modification

Is this a Modification?	
Will the project as requested serve the same number of beneficiaries as the current Performance Statement? ☐ no change in beneficiaries, regardless of quantities; ☐ increase in beneficiaries, but no new target area; or ☐ decrease in beneficiaries of less than or equal to 25% (based on number of persons or households).	☐Yes ☐ No
Are the activities' categories the same as the current Performance Statement?	☐Yes ☐ No
Does the project still solve the same problem identified in the current Performance Statement?	☐Yes ☐ No
If the answer to all three questions is "Yes", the requested change may be submitted as a Modification. However, TDA reserves the right to require a full amendment at its discretion. *If the answer to any question is "No," please submit the requested change as a Contract Amendment or contact your Contract Specialist for further guidance.*	

Performance Statement Modification

Each request for a Performance Statement Modification will be reviewed by TDA to ensure that the proposed changes:

- ✓ Do not require an amendment;
- ✓ Do not change the scope of the project, and;
- ✓ Continues to meet a National Program Objective.

If the changes to the Performance Statement will also require a change to the TxCDBG contract Budget, or a change order to the construction contract, these items should be submitted with the Performance Statement request.

Performance Statement Amendment: Requiring Citizen Participation

- ➢ Substantial changes to the Performance Statement require full contract amendments and will only be considered after the citizens of the Grant Recipient have had an opportunity to comment on the proposed changes.
- ➢ Citizen Participation is required for amendments that propose changes that do not meet the qualifications for a Performance Statement modification.

Required Documentation: Amendments

In addition to the documents required for Performance Statement change requests, the following items are also required for a contract amendment:

- Confirmation that the project will meet Exhibit C milestones
  (Exhibit C, Project Implementation Schedule to the TxCDBG contract) by the required dates OR a revised Exhibit C proposing a new timeline for completion;
- A resolution from the local governing body (i.e., city council or commissioner's court) that indicates support for the proposed changes; and
- Public notice of the public hearing held regarding the amendment.

Budget Changes

- A Grant Recipient may request to transfer TxCDBG funds between budget categories in order to reflect the actual costs of the project.
- If the changes to the Budget will also require a change to the TxCDBG Performance Statement, or a change order to the construction contract, these items should be submitted with the Budget change request.

Budget Changes: Limits

- Requests to move TxCDBG funds from construction and/or acquisition activities to Engineering or General Administration activities **must be submitted to TxCDBG prior to the date of the final inspection** documented on the Certificate of Construction Completion (COCC).
- TDA will not approve a budget change to allow the General Administration activity grant funds to exceed 16% of construction and acquisition/relocation grant funds.
- If a proposed budget change causes the Engineering activity grant funds to exceed 25% of construction and acquisition/relocation grant funds, additional justification must be submitted for TDA approval and may not be approved.

Budget Changes: Documentation Required

The following documentation is **required for all Budget changes**:

- *Contract Change Request Form* **(Form A1101)**; and
- Revised Contract Budget (Exhibit B), using "track changes" or similar format to indicate all added, deleted, or changed text (submit electronic copy in Word Format, no balloons)

Budget Modifications

A Grant Recipient may request to transfer funds between budget categories identified in the Budget without triggering an amendment to the original contract if:

- ✓ The cumulative dollar amount of transfers among budget categories is less than or equal to 20% of the total amount of the contract as specified in Exhibit B of the TxCDBG contract;
- ✓ The transfer of budgeted funds will not change the scope or objective of the project(s) funded through the TxCDBG contract; and
- ✓ If funds are to be transferred into professional services, the total dollar amount in the line item does not exceed the following:
  - General Administration – 16%.
  - Engineering (all line items) – 25%.

Budget Amendment

A contract budget amendment is necessary whenever a transfer of contract funds between budget categories is greater than 20% of the contract amount, or

- Results in changes in the scope of the project funded.
- A Budget Amendment is also required for budget changes resulting in an engineering budget that exceeds 25% of the total grant construction and acquisition budgeted funds.

Contract Period Extensions

When considering a contract extension amendment, TDA will only consider circumstances clearly beyond the control of the Grant Recipient.

Contract extensions always require a Contract Amendment.

To avoid interruptions to the contract or possible exclusion of reimbursement for project costs, Grant Recipients should submit a request for a contract extension as soon as a delay is foreseen. Contract extension requests should be submitted approximately **sixty (60) days prior to the expiration date** of the contract.

Contract Period Extensions (Cont.)

A request for contract extension received **less than 30 calendar days** prior to the expiration date **will only be considered** if:

- The project was reasonably expected to be completed within the contract period; **AND**
- Either a natural disaster event, documented by presidential or governor's declaration, or a decision by a federal or state agency occurred in the 60 days prior to the contract expiration date which prevented the chief elected official from certifying the project's completion. Normal weather conditions are not considered extenuating circumstances.

Extension Request Documentation

The following documentation shall be submitted for a contract extension:

- A revised timeline showing how the Grant Recipient plans to complete the project within the proposed period – the timeline should reflect milestones described in Exhibit C of the TxCDBG contract as well as any other key dates specific to the project; and
- *Contract Change Request Form* **(Form A1101).**

CHAPTER 12

Contract Closeout

Contract Closeout

Closeout Procedures Begin When…

- CDBG funds have been expended except closeout costs (audit, final 10% administration/**engineering**, other TDA approved costs);
- All project activities described in TxCDBG Performance Statement have been completed;
- TxCDBG contract terms and conditions have been met.

Contract Closeout
Final Public Hearing

- Held after completion of the project;
- Notice is published in the non-legal section of the newspaper with at least 72 hours prior to hearing;
- Hearing held in a convenient location and time (on or after 5:00 p.m.) with accommodations for citizens with disabilities;
- Must meet the needs of non-English speaking residents where a significant number of non-English speaking residents can be reasonably expected to participate.
  - Adhere to LEP Plan

Contract Closeout Documentation

- Project Completion Report (PCR) Form A1200
- Attachments:
  - Publication notice for Final Public Hearing
  - Map showing project as actually built
  - Section 3 Annual Report (Form A1011)
  - Evidence of benefit for work on private property (e.g. utility bills)
- PCR due within 60 days after the contract end date or if construction is completed prior to contract end date, then PCR is due within 60 days after construction is completed.
- Email to TDA
- PCR is reviewed by TxCDBG Program staff for accuracy and completeness.

Contract Closeout Documentation

- Well projects/contracts
  - Requirement: TCEQ approval for interim use
  - Rule: Final 10% Engineering Costs Withheld until all agency approvals met (TCEQ/TDLR)

Contract Closeout
Part I: Project Completion Report (Form A-1200)

Part I: General Reports

- ✓ Total Persons Benefitting
- ✓ Certificate of Expenditures
- ✓ Civil Rights & Citizen Participation
- ✓ Certifications

PROJECT COMPLETION REPORT
A1200

Grant Recipient Name | Contract Number

Grant Recipient Name: | DUNS No.: | Award Form

Contract No: | Contract Start Date: | Contract End Date: | Impact Form

Part I. General Reports

Total Persons Benefitting: Total Contract Beneficiaries: | Low-to-Moderate Income Beneficiaries:

Certificate of Expenditures:

Activity	TxCDBG Budget	TxCDBG Funds Drawn To Date	TxCDBG Funds Received Locally	TxCDBG Funds Received Locally (Pend)	Local Certification	Percent Complete
Total						

Civil Rights & Citizen Participation:
☐ Equal Opportunity Requirements ☐ Section 3 Requirements ☐ Promotion of MBE Participation ☐ Executive Force Policy ☐ Section 504 Requirements ☐ Fair Housing Requirements

Fair Housing Activity (describe):

Final Public Hearing Comments:

Final Public Hearing Date: | Hearing Publication Date: | Work Completed Date:

Certifications:
As chief elected official of the contracting jurisdiction, I certify that:
a. The activities described in the Project Completion Report, contract identified in this report, have, to the best of my knowledge, been carried out in accordance with the contract agreement;
b. The information contained in this Project Completion Report is accurate to the best of my knowledge;
c. The grantee has complied with all applicable laws and regulations;
d. TxCDBG funds were not used to reduce the level of local financial support for housing and community development activities;
e. No attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless (a) such funds are used to pay the proportion of such fee or assessment that relates to the costs of such improvements that are financed from sources other than under this contract or to assess or collect funds, or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, contractor certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (a);
f. Grantee has complied with the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, and that the contract was receiving service or a benefit from the use of the new or improved facilities and activities; and
g. Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims and the State of Texas is under no obligation to make any further payment to the recipient under the contract agreement in excess of the amount identified in the Certificate of Expenditures table as "TxCDBG Reserved Funds".

Name and Title (Print)	Signature	Date

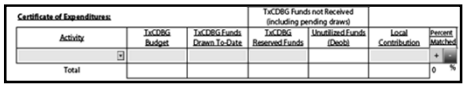
Attachments: The following documents support this report:
Publication, Final Public Hearing | Project Map | Evidence of Benefit

☐ Original Submittal, also submitted via email ☐ Original Submittal, not previously submitted via email ☐ Revision Date revised:

Project Completion Report (PCR)
Part I: Certificate of Expenditures

Part 1: Certificate of Expenditures

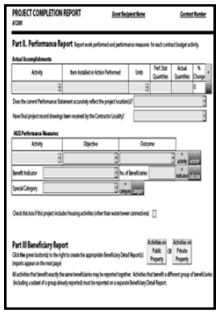
- Reserve funds for eligible third party claims, and /or de-obligated unused contract funds.
- TxCDBG not liable for costs incurred and reserved if costs are not submitted to TDA within 60 days after contract's end date, except:
  - 10% administration (due 30 days after "closeout" letter);
  - Final audit costs (due on Single Audit due date); and
  - Extended reserve costs authorized on Form A106 (due 30 days after "closeout" letter).



Project Completion Report (PCR)
Part II: Performance Report

Part II: Performance Report

✓Actual Accomplishments
✓HUD Performance Measures



Project Completion Report (PCR)
Part III: Beneficiaries Report

Part III Beneficiary Report

✓List all Activities
✓Beneficiaries by Demographic
✓Beneficiaries by Income
✓ Part III(a) – Activities on Public Property
✓ Part III(b) – Activities on Private Property
  - First-time public water or sewer service
  - Housing rehabilitation or OSSF installation
✓ Part III also report Beneficiaries by Income

Project Completion Report (PCR)

Part IV: Final Financial Interest Report

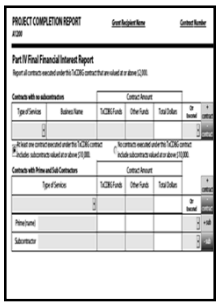
Part IV Final Financial Interest Report

✓List all contracts and final contract amounts

✓Includes contractors, professional services providers, construction contractors and subs, and suppliers with contracts of **$2,000** or more

✓All initially reported on Financial Interest Report (Form A503)

✓If there are subcontractors, use the Contracts with Prime and Sub contracts option


PROJECT COMPLETION REPORT
A1204

Grant Recipient Name

Contract Number

Part IV Final Financial Interest Report

Report all contracts executed under the TxCDBG contract that are valued at or above $2,000.

Contracts with no subcontractors

Contract Amount				
Type of Service	Business Name	TxCDBG Funds	Other Funds	Total Dollars	Or Journal contract

Yes at least one contract executed under the TxCDBG contract
Include subcontracts valued at or above $10,000.

No contracts executed under the TxCDBG contract
Include subcontracts valued at or above $10,000.

Contracts with Prime and Sub Contractors

Contract Amount				
Type of Service	TxCDBG Funds	Other Funds	Total Dollars	Or Journal contract
Prime (name)				+ sub
Subcontractor				sub

Acceptance of Closeout Reports

- The PCR and closeout documents are initially reviewed by the TxCDBG Contract Specialist.
- Program Monitor conducts a final quality assurance review of the PCR and determines when contract is administratively complete.

Common Pitfalls

- Certificate of Expenditures does not accurately report amounts of reserved funds or unutilized funds.
- Actual accomplishment on Part II of the PCR does not match final quantities in construction pay estimates.
- Beneficiaries do not match Performance Statement

What's New!

- Remember if funds deobligated:
  - 16% Administration Threshold
  - 25% Engineering Threshold

CHAPTER 13

Monitor Review

Role of Program Monitor

- Comprehensive monitoring of Grant Recipient's compliance with program policies.
- Final review of Project Completion Report and closeout documents
- Program oversight
- Provide technical assistance

Compliance Objectives

- Review Grant Recipient's performance for compliance with TxCDBG program requirements.
- Identify and investigate possible fraud and abuse
- Identify technical assistance needs

New - Risk-Based Reviews

- Grant Recipient self-administered monitoring reviews
- TDA Desk Reviews
- On-Site Reviews

Monitoring Review

- In general, occurs when either:
  1. Approximately 75% of total contract funds expended or construction is nearly complete; Contract not previously monitored; construction substantially complete; or
  2. Project Completion Report received.
- Other reasons:
  - Need for interim review identified
  - Grant Recipient request
  - Complaint received
  - Program staff request (with management approval)

Self-Monitoring Review

- Risk Assessment Tool Developed
  - Examples of Factors:
    - >$500K Grant
    - Type of project
    - Prior performance
    - Amount of Match
    - New to TxCDBG program
- Grant Recipient & TxCDBG Certified Administrator must conduct and certify self-review.
- Concurrent Review of Financial Management Records by TDA
- 10% Selected for Desk Review

Self-Monitoring Review - Steps

1. Grant Recipient notified
2. TDA requests documentation
   - Financial Management
   - Self-monitoring checklist
3. TDA reviews financial management records & may notify Grant Recipient of corrective action required
4. Acceptance by TDA following receipt of certified results and completed review of financial records

Desk Review

1. Usually for medium risk
2. Part of 10% low risk
3. Interim review
4. TDA's discretion

Desk Review

1. TDA notifies Grant Recipient & requests documents
2. TDA reviews all records for compliance
3. TDA follow up within 30 days of desk review with written report

On-site Review

1. TDA policy requires on-site review
2. Risk assessment results in a high risk rating and at least 50 % TxCDBG funds drawn.
3. Complaint received or serious matter
4. TDA reserves the right to conduct on-site review.

Monitor Review Report

- Following the review, attempt to resolve preliminary findings.
- Non-Compliance Letter
  - Details findings and/or concerns
  - Provides resolutions and/or recommendations to resolve findings and/or concerns
    - Resolution of a finding may require a corrective action plan
    - Finding may result in disallowed costs
- The Grant Recipient must provide a complete response in writing within **30** days from the date of the findings letter.

Decision Categories

- ✓ In Compliance
- ✓ Substantially the same as Performance Statement
- ✓ Concerns
- ✓ Technical Assistance Provided
- ✓ Findings require Corrective Action

Non-compliance Procedures

- ✓ TDA send Monitor Review Report within 30 days (desk review and on-site)
- ✓ Grant Recipient needs to respond w/n 30 days or date specified
- ✓ Failure to resolve non-compliance
  - ✓ Funds on hold/deoblig
  - ✓ Disallowance of costs
  - ✓ Reduction of admin fees

CHAPTER D

Texas Capital Fund

Texas Capital Fund – Section D

Infrastructure & Real Estate Programs

- Provide funds to eligible Grant Recipients for infrastructure and/or real estate improvements that support a specific business (either a for-profit or a non-profit entity) that is expanding or beginning operations in the Grant Recipient's jurisdiction.

Eligible Use of Funds

- Acquiring, constructing, reconstructing, rehabilitating, or installing commercial or industrial buildings, structures, and other real property improvements;
- Railroad spurs or similar extensions by local Grant Recipients and sub-recipients;
- Public Infrastructure;
- Assisting a private, for-profit business; and
- Providing economic development services in connection with otherwise eligible CDBG economic development activities

LMI (Low/Mod) Jobs National Program Objectives

- Economic development activities designed to create or retain permanent, full-time jobs where at least 51% of the jobs involve the employment of low and moderate income (LMI) persons may qualify under the Job Creation or Retention criteria of the Low/Mod Benefit National Program Objective.
- The business and the Grant Recipient may elect to document income by certifications, referrals, or census tract data. Income limits can be obtained from TDA.

Documenting Jobs

Job creation requirements are computed on a Full Time Equivalent (FTE) basis as follows:

- Full time employee status requires a minimum work schedule of 35 hours per week.
- Part time employee status requires a minimum work schedule of 20 hours per week – two part time employees equal one FTE.
- Employment must be consistent.

For an employee to be considered towards job creation requirements, the person must:

- Be employed at least 30 days prior to the submittal of closeout documents or contract expiration, whichever comes first; and
- Be employed at the location identified in the TxCDBG contract Performance Statement.

Documenting Jobs (Cont.)

Jobs **not** eligible to meet the National Objective include:

- Seasonal jobs,
- Temporary jobs,
- Contract labor jobs,
- Jobs transferred from other locations, and
- Jobs held by principals of the Benefitting Business(es).

Quarterly Reporting Requirements

- Quarterly Progress Report (Form D9)
  - Due the 20th of April, July, Oct. & Jan.
- Employee Certification Report (ECR) (Form D5) & Texas Workforce Commission's (TWC) Texas Employer's Quarterly Report
  - Due the 20th of May, Aug, Nov & Feb

Contract Special Conditions

In addition to the items listed in Chapter 2, the following documentation must be submitted prior to the release of TxCDBG grant funds for any activity:

- Starting Payrolls for the Benefitting Business(es) and/or other company locations within a 50 mile-radius of the company location
- Agreement between Grant Recipient and Benefitting Business(es)
- Repayment Agreement between Grant Recipient and TDA (if applicable)
- Repayment Agreement between Grant Recipient and Benefitting Business(es) (if applicable)
- For Real Estate Improvements: Lease Agreement between Grant Recipient and Benefitting Business(es)

Contract Special Conditions (Cont.)

In addition to the items listed in Chapter 2, the following documentation must be submitted prior to the release of TxCDBG grant funds for construction or real estate activities:

- Loan Agreement between Benefitting Business(es) and a lender for private funding required to complete the project (if applicable)
- Environmental Site Assessment (if applicable See Chapter 3)
- For Infrastructure Improvements: Evidence of the Start of Building Construction (if applicable)
- For Real Estate Improvements:
  - ✓ Tri-Party Agreement between Grant Recipient, Benefitting Business(es), and a lender (if applicable)
  - ✓ Appraisal for property to be purchased
  - ✓ Evidence of Flood Insurance for property to be purchased
  - ✓ Evidence of the owner's Title Insurance commitment for property to be purchased

Funds Committed by Business

These programs often include private investment which funds a project separate from the infrastructure construction funded by the grant. Work completed on private property and entirely with private funds may be excluded from many federal and program requirements; however, note that some federal regulations still apply.

- Environmental review must still include the privately funded work. The scope should include:
  1. All activities funded through the TxCDBG funds
  2. All activities conducted at the location where jobs will be created/retained
  3. All sites included in the TCF project
  4. All other activities conducted as part of the same overall project

Funds Committed by Business (Cont.)

- Davis-Bacon Labor Standards requirements apply to the entire construction contract.
- If any acquisition of real property is required to meet the job creation/retention.
- If funds are used for materials or service contracts, even if the contract is primarily funded through private investment competitive procurement requirements apply.

Evidence of Occupancy

GR must notify TDA of the date that the business occupies the project site benefitting from the TCF funded infrastructure or real estate improvements within 60 days of occupancy.

- Certificate of Occupancy issued by appropriate local authorities to the business and a current payroll report for the benefitting business
- If a Certificate of Occupancy is not required by local authorities, the Grant Recipient may submit a letter from a third party licensed professional approved by TDA who is knowledgeable about required safety standards (i.e. a project engineer, an architect, a city/county inspector, or fire inspector) stating that a formal Certificate of Occupancy is not required and certifying the date that the benefitting business was approved to use the facility and/or improvements funded through the TCF grant.
- Should occur prior to the business starting operations

Evidence of Occupancy (Cont.)

The date of occupancy will determine:

- the first date that jobs created or retained by the project may be considered eligible; and
- the date on which the first payment is due to TDA under the Repayment Agreement (3 months after the date of occupancy).

Repayment Requirements

TCF monies awarded for real estate improvements and private infrastructure awards will require repayment. (excludes administration and engineering)

- Real Estate Improvements – are intended to be **owned** by the GR and **leased** to the business and require full repayment. Payments repaid by the business through a lease agreement.
  - minimum three year lease period or until the TCF contract between the Grant Recipient and the Department has been satisfactorily closed (whichever is longer);
  - lease period not to exceed twenty (20) years or ten (10) years for awards less than $300,000;
  - No interest;
  - minimum monthly payment not less than $500; and
  - payments begin the first day of the third month following the construction completion date.
  - Optional: purchase option, if the option is effective after the minimum five year ownership/dilution requirement, and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured

Repayment Requirements (Cont.)

Private Infrastructure Improvements - Infrastructure that will be located on the business site, or on adjacent and/or contiguous property to the site that is owned or leased by the business(es), principals, or related entities, requires full repayment. Grant funds used for this infrastructure are intended to be repaid by the business through a repayment agreement with the following terms:

- no interest;
- not to exceed twenty (20) years or 10 years for awards less than $300,000;
- minimum monthly payment not less than $500; and
- payments begin the first day of the third month following the construction completion date.

Contract Special Conditions – Prior to Close-out

The following items are required to be submitted no later than the date that the Project Completion Report is submitted.

1. Texas Department of Licensing and Regulation final approval letter for the project site identified in the TxCDBG contract Performance Statement;
2. Evidence of Hazard and Liability Insurance for the project site identified in the TxCDBG contract Performance Statement;
3. Final Payroll Report for the Benefitting Business(es)
   a) The report must include all employees that were working for the business prior to the execution date of the Grant Recipient TCF contract AND all newly hired employees reported for job creation requirements.
   b) The period reported on the final payroll must be at least 30 days prior to the TCF contract end date, but no more than 30 days prior to the date that closeouts are submitted if the closeouts are submitted before the contract expires. Sufficient documentation must be provided with the ending payroll to show that employees have been on the job for no less than one (1) month.

Contract Special Conditions – Prior to Close-out (Cont.)

c) For **each employee** the report must contain at a minimum:

Full name;
- ✓ A unique Employee Identification Number, which must not include all or part of the employee's Social Security Number;
- ✓ Full-time and Part-time employment status;
- ✓ Date Hired;
- ✓ Wages; and
- ✓ Hours Worked.

4. *Family Income/Size Certification* **(Form D7)** for each LMI employee.

Closeout

- ☑ The Grant Recipient must submit the *TCF Project Completion Report (PCR)* (Form D1200) with attachments no later than 60 days after the contract end date.
- ☑ 2 ways to report jobs created on PCR
  - ☑ Jobs creation and Contract Compliance – report jobs as described in Section D.1.1.
  - ☑ Job creation and HUD requirements – uses HUD formula based on both positions and hours worked. Used only for HUD reporting purposes.
- ☑ Any business that does not gather, complete and provide this data to both the Grant Recipient and TDA will not satisfy the National Program Objective to benefit low and moderate income families

Downtown Revitalization & Main Street Programs

The TCF Main Street Improvements and Downtown Revitalization Programs provide funds to eligible cities for infrastructure improvements in the central business district. These programs address the National Program Objective (NPO) of aiding in the elimination of slum or blighted areas.

Closeout - Downtown Revitalization and Main Street Programs

- The Grant Recipient must submit the *TCF Project Completion Report (PCR)* **(Form D1200) with attachments** no later than 60 days after the contract end date.
- Recent applications for Main Street and Downtown Revitalization programs have not allowed applicants to have an existing Main Street or Downtown Revitalization contract prior to an application deadline date, regardless of extensions granted. If a TxCDBG application requires applicants to close an existing grant contract prior to submitting an application for new funding, the Grant Recipient **MUST** submit complete closeout documentation no later than **60** days before the application deadline in order to allow for a thorough review of the documents and completion of a monitoring review.

Slum/Blight National Program Objectives

Economic development activities in the Main Street Improvements and Downtown Revitalization programs must qualify under the Slum/Blight National Program Objective Area Basis.

- The economic development activity must take place in an area that has been designated by the Grant Recipient as meeting a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;
- Has a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration; and
- The assisted activity must address one or more of the conditions that contributed to the deterioration of the delineated area.

Quarterly Reporting Requirements

- The Grant Recipient must submit a *Quarterly Progress Report* **(Form A104)** each quarter during the course of the TCF contract.
- The Grant Recipient must document the status of the contract activities (e.g. start of building construction, etc.) by reporting the dates that specific milestones are accomplished and providing narrative explanations as appropriate.