TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

September 1, 2017

Texas Community Development Block Grant Program

Re: 2017 Revisions to the Texas CDBG Project Implementation Manual

Dear Stakeholders –

On behalf of the Texas Department of Agriculture (TDA), thank you for your input and comments regarding the draft of the 2017 Texas CDBG Project Implementation Manual (hereinafter "2017 TxCDBG Implementation Manual").

The final version of the 2017 TxCDBG Implementation Manual is now posted on TDA's website on the Community Development Block Grant (TxCDBG) Program for Rural Texas webpage. Changes made to the draft TxCDBG Implementation Manual published on June 8th, 2017, are highlighted in green in the 2017 TxCDBG Implementation Manual and on the attached chart.

Due to your recommendations from the draft 2017 TxCDBG Implementation Manual as well as additional guidance from HUD, additional changes have been made since the draft issuance.

The most notable changes, listed in order by chapter, include:

1. A203 Request for Payment –Updates to A203 have been made to improve its functionality since its original release on June 8th.
2. Direct Deposit Form – Due to changes on the Texas Comptroller's website, the link to the direct deposit form is no longer operable; therefore, we have included the Direct Deposit form (A209) in the sample documents. Ch. 2, 2.1.5
3. Civil Rights Documents – To ensure receipt of all civil rights documents, civil rights documentation must be submitted 1) by mail/hand-delivery to TDA; or 2) by email only if all civil rights documents including the Code of Conduct are included in one pdf and then attached to the email. Ch. 2, 2.2, and Form A209
4. Administrative Costs – Clarifying existing policy, certain costs including administrative costs may be incurred up to 60 days after the contract term. Ch. 2, 2.2
5. Floodways - Limited to infrastructure and effective immediately, floodways are limited to the area between ground level and the base flood level; therefore, CDBG monies may be used to fund construction projects above or below a floodway if certain conditions are met. Additional HUD written guidance is pending. Ch. 3, 3.1
6. Notice requirements for Limited English Proficiency (LEP) – Vital documents including environmental notices must be translated, either by publishing/posting in both English and the LEP language if LEP requirements are triggered. Ch. 3.1, Step 4; Ch. 10, II., 10.2.7
7. Conditional project completion – Guidelines on how to report a conditional project completion have been updated since June 8th; additions include filing the revised Project Completion Report (PCR) which now contains a conditional project completion option. Ch. 12, 12.2.5, and Form A1200

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8. Contractor/Company Contract Agreement Certification – To assist the Grant Recipient in contract preparation, the Grant Recipient must fill out a checklist acknowledging that required contract language is included in the contract between Grant Recipient and the business being funded. Section D, D.1.3, and Form D1
9. Cumulative Impact Analysis – For Texas Capital Fund projects, guidance has been provided on how to address the cumulative impact section of the Environmental Assessment (A302). Section D, D.1.4

Since the publication of the proposed 2017 TxCDBG Implementation Manual on June 8, 2017, a few minor edits have been made to correct typos, clarify policy, and/or address raised issues. These changes, along with the policy changes above, are summarized in the attached chart and the TxCDBG Implementation Manual. Except as otherwise noted, the policy changes apply to all open and future contracts as of September 1, 2017.

Additionally, the Texas Historical Commission (THC) has provided the following information:

> When submitting a Historic Preservation Notice to THC (i.e. for projects not exempt from a SHPO Review under TDA's programmatic agreement), please be advised that THC has added a "private/due diligence option" to its form found on eTrac (their new electronic submission form). Please do not select this option. This option is only for private property owners who are not federally assisted. If this option is selected, the Grant Recipient will not receive clearance from THC.
>
> If you have any questions in this regard, please contact David Brown, CDBG Environmental Regulations and Labor Standards Officer.

Again, thank you for your feedback. Your expertise is so appreciated as we pursue ways to assist the rural areas of our state.

Sincerely,

Suzanne Barnard
Director for CDBG Programs

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SUMMARY OF POLICY CHANGES AND MINOR EDITS

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Overview	P.1.8	Conflicts of Interest Policy	Moved to Ch. 2 and 5.
Overview	P.2.4	Record of Complaint and Resolution	Requires Grant Recipient to retain all records regarding any complaints and their resolution.
1	1.1.4	Administrative Thresholds	Deletes *Exception Certificate of Expenditure* (Form A106); refers the Grant Recipient to use guidelines found in Ch. 12, 12.2.5.
1	1.2.1	Upload of documents	Due to security reasons, documents are not allowed to be uploaded via other platforms such as Google Docs, Dropbox, etc.
1	1.2.2	Newly revised Request of Payment (A203)	Progress Reports information are now included with Request for Payments. Quarterly progress reports (A104 and D9) are no longer required.
2	2.1.2	Conflicts of Interest	Revised Conflict of Interest policy follows guidelines from 24 CFR 570.489 (g) and (h) and separates conflict of interest requirements for procurement and non-procurement activities. Examples given.
2	2.1.5 and A209	Direct Deposit	Deletes language regarding Texas Comptroller's website as link no longer works. Provides A209 Direct Deposit Form as sample.
2	2.2	Group A Documents – Code of Conduct	Requires Code of Conduct (Sample found in Appendix C) to be part of Group A documents.
2	2.2	Civil Rights documents	Due to large size of documents, requires Grant Recipients to either: 1) send by hard copy all civil rights documentation and Code of Conduct to contract specialist; or 2) combine all civil rights and code of conduct docs into one PDF and then email the pdf as an attachment to the contract specialist. Must mail/hand-deliver if PDF close to or greater than 10 megabytes.

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CHAPTER	SECTION/FORM	TOPIC	CHANGE
2	2.2	Administrative Costs	Requires all costs to be incurred within the contract period with the exception of: 1) pre-agreed costs; 2) admin. costs incurred up to 60 days after the contract end date; or 3) admin. costs for the preparation of a Single Audit.
2	2.3.1	A203	Discusses the new Request for Payment (A203) and gives instructions for completing. Provides new language.
2	2.3.1	Force Account	Requires that Request for Payments for force account must be sent to contract specialist by mail only.
2	2.3.1	Attachments close to or > 10 megabyte	Disallows receipt of any attachment close to or > 10 megabyte.
2	A203	Request for Payment and Project Status Report	Combines Quarterly Status Report (A104) and Request for Payment (A203) into one report. Updated since June 8th, 2017.
2	A208	Match Calculator	Adds match calculator to TxCDBG Manual.
2	A209	Direct Deposit Form	Provides for Direct Deposit Form required by Comptroller's Office. Link no longer works upon change in Comptroller's website.
3	3.0.2	Timing of Environmental Review & Choice Limiting Actions	Provides a discussion of choice limiting actions with respect to environmental requirements.
3	3.0.3	Option Contracts	Discusses the use of an option contract for compliance with environmental review requirements.
3	3.1	One Environmental Review	Requires one environmental review for each project, including all functionally- and geographically-related activities.

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CHAPTER	SECTION/FORM	TOPIC	CHANGE
3	3.1	Administration and Engineering Exemption	Deletes the requirement that Grant Recipients file an exemption for administration and engineering services separate from the environmental review. Not considered a choice limiting activity.
3	3.1	Floodways	Allows construction to be funded in a floodway in certain instances. Note: Policy is based on a recent inter-agency consensus between HUD and FEMA, which has been confirmed with the HUD regional office. Further HUD written guidance is pending.
3	3.1	Projects that are or become Exempt	Clarifies language regarding projects that are exempt or become exempt.
3	3.1, Step 2., A. Levels of Environmental Review	Levels of Review	Explains fully the various levels of environmental review.
3	3.1, Step 4	Notice Requirements and LEP	Provides that vital documents such as environmental notices must be translated if LEP requirements triggered.
3	3.2.3	Summary of Levels of Environmental Review	Notes the addition of a resource regarding environmental review and required documentation required in the ERR (A309).
3	A301	Request for Exemption from SHPO Review	Requires that the community also provides maps of locations with their Request for Exemption from SHPO Review.
3	A309	Summary of Environmental Review	Provides resource for determining environmental review.
4	4.1.3	Direct Benefit Guidelines	Includes scattered first-time water or sewer service lines as those projects requiring program guidelines.

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CHAPTER	SECTION/FORM	TOPIC	CHANGE
4	4.1.6	Re-survey of beneficiaries	Clarifies the requirement of resurveying first-time water or sewer service beneficiaries.
4	4.2.2	Septic Tank Replacement	Inserts 30 TAC 285.36 requirements regarding filler for replaced/abandoned septic tanks/pits.
4	4.2.6	Permanent Signage	Slightly modifies required wording for permanent signage.
5	5.1, 5.2.0, Step 8.1, Step 8.2, 5.5	Negotiation of Profit	Deleted negotiation of profit as a program requirement for competitive and non-competitive contracts > $50K.
5	5.1.2	Conflict of Interest	Requirements repeated for procurement.
5	5.2.1	TDA Pre-Application Q&A	Previous Q&A posted on website is now Appendix H.
5	5.2.1	Selection Review Committee	Requires that at least one member is either an elected official; a member of the elected governing body; or a city employee that has authority to act on behalf of the local elected official body.
5	5.2.1, Step 4	RFP/RFQ package	From Pre-application Q&A, conforming language about multiple funding requests and pre-application RFP/RFQ.
5	5.2.1, Step 4.1 & 4.2	RFP/RFQ package	From Pre-application Q&A, conforming language regarding sample contracts submitted in RFP/RFQ.
5	5.2.1, Step 4.2	RFQ	Conforming change; replaces Table 1 reference with Table 2.
5	5.2.1, Step 5	RFP/RFQ package	From Pre-application Q&A, conforming language regarding advertisement.
5	5.2.1, Step 8.2	Negotiation	Provides that, after the selection of the engineer, communities should use that opportunity to negotiate the best price or added value.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
5	5.2.1, Step 9	Environmental Exemption	Deletes environmental exemption unless planning (Ch. 3).
5	5.2.1, Step 10	Local governing body	Conforming change.
5	5.2.1, Step 11	Financial Interest Report (FIR)	Discusses that the FIR now requires information regarding labor standards once reported on the Labor Standards Report.
5	5.4.2, Step 3	Small Purchase	Deletes the requirement to send copy of solicitation to MWBE@texasagriculture.gov .
5	5.4.2, Step 6	Small Purchase	Deletes the requirement for the submission of the Labor Standards Report.
5	5.4.4, Step 8	Sealed Bid	Discusses that the FIR now requires information regarding labor standards once reported on the Labor Standards Report
5	5.4.5	Required Contract provisions	From Pre-application Q&A, conforming language regarding sample option contract language.
5	5.4.5	Required Contract provisions	Requires Equal Protection clause to be included contracts with admin/engineers associated with construction.
5	5.4.5	Lobby certification	Includes the Certification Regarding Lobbying for award > $100,000.
5	5.4.8	Changes to Contract	Clarifies that the contract must be executed before modifying.
5	5.4.8	Labor Standards Report (LSR)(A706)	Conforming change; deletes LSR (A706) and references to LSR.
5	5.4.9	Recovered materials	Requirements for Recovered Materials are deleted.
5	5.5	Negotiations of profit	Requirements for Negotiations of Profit deleted.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
5	5.6	Financial Interest Report (FIR)	Discusses requirements for filing FIR which includes sending FIR to TDA contract specialist and Labors (with the exception of FIR for admin/engineering/other professional services).
5	5.6.2	Competitive Proposal	Conforming change – used monitoring checklist found in Appendices D and E
5	5.6.3	Sam.gov	Requires verification of both firm and owner to Sam.gov.
5	5.6.3	Certificate of Lobbying	Requires contractor submit Certificate Regarding Lobbying with their bids for awards > $100,000
5	A503	Financial Interest Report (A503) and Labor Standards Records	Combines the Financial Interest Report (A503) with the Labor Standard Report (A706) for a new Financial Interest Report (A503)
6	6.0.1	Choice limiting actions	Discusses the issue of choice limiting actions and environmental compliance when securing real property
6	6.1	Real property	Clarifies that public improvements must be constructed on property that is publicly owned or recorded as a right of way/easement.
6	6.1	Real property	Denotes that leaseholds less than 15 years do not satisfy the interest in property requirement.
7	7.2, Step 4	Wage decision	Clarifies policy that Grant Recipient is to confirm wages prior to due date of Request for Quotes.
7	7.2, Step 5	Eligibility on Sam.gov	Requires the contractors be verified on Sam.gov before authorizing the award of the construction contract.
7	7.2, Step 4 & 5	FIR	Conforming change; deletes LSR.

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CHAPTER	SECTION/FORM	TOPIC	CHANGE
7	7.2, Step 6	HUD 4010	Provides for the inclusion of HUD 4010 in construction contract. Gives link to form.
7	7.2, Step 9	FIR	Conforming change; deletes LSR and requires Grant Recipient to file the (revised) FIR.
7	7.2.1	Restitution	Gives waiver process if fine is equal to or <$100.
7	A705	Additional Wage Classification	Adds new HUD form.
7	7.2.1 and A713	Notice of Determination to Assess Liquidated Damages	Provides sample letter /notice of liquidated dames from Grant Recipient to contractor who is out of compliance with Davis Bacon wage determinations. Referenced sample letter in Ch. 7.
8	8.3	Force Account Recordkeeping	Requires that all pages of the Alternate Force Account Sheet (A800) be submitted and sent to TDA by hard copy, either mail or in person.
8	A800	Alternate Force Account	Adds signature lines on each tab of the form for supervisors to certify the information is correct.
10	I., Step 4	Equal Opportunity (EO)	Conforming change; include EO clause into admin/engineering contracts > $10,000 related to construction.
10	I., Step 4	Section 3	Clarifies that Section 3 applies to all TxCDBG projects; deletes $200K threshold
10	I., Step 4	Fair Housing and LEP	Clarifies language regarding fair housing and LEP requirements.
10	I., Step 4	Code of Conduct	Conforming change.
10	I., Step 11 and II., 10.2.2	Section 3	Requires Section 3 Annual Report (A1011) to be submitted to contract specialist on October 20th of each year. Previously required to be sent in with quarterly report.
10	II.,10.2	Civil Rights Procedures	Deletes requirement that every resolution must be associated with a TxCDBG contract.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
10	II., 10.2.6	Fair Housing	Allows the inclusion of a penalty clause to be permissive.
10	II., 10.2.7	LEP	Provides additional guidelines to comply with Limited English Proficiency (LEP) requirements for written publications. Clarifies how to use American Factfinder. Provides that vital documents must be translated and outlines publication requirements for environmental.
10	A1010	LEP	Updates safe harbor guidance for LEP
10	A1011	Section 3 - New Dates	Adds current reporting requirement on Annual Section 3 Report.
10	A1013	Sample Citizen Participation Plan	Deletes language regarding what is considered vital documents under LEP guidelines.
10	A1014	Resolution	Adds Code of Conduct to omnibus resolution.
10	A1016	Checklist	Updates civil rights checklist.
11	II., 11.1.2	Contract Amendments	Requires that a brief description of the proposed project be included in the public notice of the amendment.
12	12.2.1, 12.2.5	Conditional Project Completion	Deletes A106 and language allowing funds to be reserved 60 days after contract end date and moves some language to 12.2.5.
12	12.2.1	A106	Deletes references to *Exception Certificate of Expenditure* (Form A106).
12	12.2.1	Certifications	Conforming change – certification language.
12	12.2.5	Conditional Project Completion	Allows in exceptional circumstances, such as regulation approvals, conditional approval of projects. Provides guidelines. (Language updated since original draft published June 8th, 2017.)
12	A1200	Project Completion Report (PCR)	Amends PCR to allow for Conditional Project Completion.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
13	13.3	Monitoring Review - 10 Day Call	Clarification that the term "10 Day Call" is the same as "10 Day Confirmation".
14	14.1.3	Audit Report Requirements	Refers the Grant Recipient to the application manual for audit report requirements.
Section B	B.1, Step 3	Quarterly Progress Report	Conforming change.
Section B	B.1, Step 4	Map Inclusion	Specifies submission requirements for maps.
Section B	B.1, Step 7	Revision of plans	Outlines the submission requirements if plans revised. Allows for only one-time revision.
Section C	C.1.1	Contract for Deed	Disallows housing rehab for homes secured through contract for deed financing.
Section C	C.3.1	Beneficiary Report	Deletes the requirement of quarterly progress reporting (A104) for housing rehab. Annual filing of beneficiary report is no longer required.
Section C	C.3.8	Lead based paint	Outlines that for those houses built on or after 1978, no lead based paint testing is required.
Section C	C.4, Step 3	Income-eligibility	Provides examples of required documentation to substantiate income eligibility.
Section C	C.4, Step 7	Construction	Requires that a lien be filed with respect to 5 year forgivable loan. Provides sample of Release of Lien.
Section C2	C.1, Step 2	Contract for Deed	Disallows housing rehab for homes secured through contract for deed financing.
Section C2	C.2	Beneficiary Report and LSR	Annual filing of beneficiary report is no longer required.
Section D	D.1.1	LMI Program Objective – Multiple Locations	Allows up to 20% of the newly created jobs to be filled by persons employed by the business at a different location to satisfy LMI requirements.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Section D	D.1.2	Quarterly Job Creation Reporting Requirements	Deletes Quarterly Progress Report language and makes conforming change.
Section D	D.1.3	Contract Special Conditions	Requires Grant Recipient to include checklist denoting page numbers of contract clauses.
Section D	D.1.4	Cumulative Impact Analysis	Discusses how to address the cumulative impact section of the Environmental Assessment (A302).
Section D	D.2.2	Form D9	Deletes Quarterly Progress Report (Form D9) language.
Section D	D.1.3, Form D1	Checklist for TCF & Guidelines	Adds contractual requirements checklist for TCF and guidelines to checklist.
Section D	Form D7	Survey for Employee	Updated since June 8th, 2017. Includes income-limit functionality.
Appendix A		Links to Resources	Updates links.
Appendix B		Required Contract Language	Conforming change – includes language for Termination for Convenience; Termination for Cause; and language regarding administrative, contractual, and legal remedies.
Appendix B		Equal Opportunity Clause (EO)	Included EO clause for admin/engineering contracts > $10,000 associated with construction contracts.
Appendix B		$200K Section 3 Threshold	Makes conforming change; deletes $200K threshold
Appendix B		Recovered Materials Contract Language	Deletes Recovered Materials required language.
Appendix		Sample Code of	Makes conforming changes regarding conflict of

CHAPTER	SECTION/FORM	TOPIC	CHANGE
C		Conduct	interest for procurement and non-procurement actions.
Appendix D	Step-by-Step, Step 1	Selection Review Committee	Conforming change from Ch. 5; requires that at least one member is either an elected official; a member of the elected governing body; or a city employee that has authority to act on behalf of the local elected official body.
Appendix D	Step-by-Step, Step 3; RFP	Negotiation of profit	Conforming change from Ch. 5; deletes the requirement of negotiation of profit.
Appendix D	Step-by-Step, Step 8	Environmental Exemption	Conforming change from Ch. 5; deletes environmental exemption requirement for Administration.
Appendix E	Step-by-Step, Step 1	Selection Review Committee	Conforming change from Ch. 5; requires that at least one member is either an elected official; a member of the elected governing body; or a city employee that has authority to act on behalf of the local elected official body.
Appendix E	Step-by-Step, Step 3; RFQ	Negotiation of profit	Conforming change from Ch. 5; deletes the requirement of negotiation of profit.
Appendix E	Step-by-Step, Step 4; RFQ	RFQ	Conforming change; replaces Table 1reference with Table 2.
Appendix E	Step-by-Step, Step 8	Environmental Exemption	Conforming change from Ch. 5; deletes environmental exemption requirement for Administration.
Appendix F	Sample Instructions to Contractors; Certification Regarding Lobbying	Certification Regarding Lobbying	Conforming change from Ch. 5; requires contractor submit Certificate Regarding Lobbying with their bids for awards > $100,000.
Appendix F	Sample Contract	Recovered Materials	Conforming change from Ch. 5; deletes recovered materials requirement.
Appendix G	Sample Instructions to Bidders	Certification Regarding Lobbying	Conforming change from Ch. 5; requires contractor submit Certificate Regarding Lobbying with their bids for awards >$100,000.

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CHAPTER	SECTION/FORM	TOPIC	CHANGE
Appendix G	Sample Contract	Added Contract Clauses	Added the following contract clauses to Materials contract: Debarment & Suspension; Access to Records; Retainage of Records; Termination for Cause; and Termination for Convenience.
Appendix G	Sample Contract	Liquidated Damages	Deleted surety reference in Liquidated Damages.
Appendix G	Sample Contract	Section 3	Added instructions regarding whether Section 3 language should be included in Materials contract.
Appendix G	Sample Contract	Anti-lobbying language for contracts > $100,000	Adds clause requiring Certification Regarding Lobbying.
Appendix G	Certification Regarding Lobbying (New)	New Form	Requires contractor submit Certificate Regarding Lobbying with their bids for awards > $100,000.
Appendix H	TDA Pre-Application Procurement Q&A		Inserts Q&A originally posted on TDA's website into 2017 TxCDBG Implementation Manual.
Appendix I	Conflict of Interest Policy		Provides the regulations for conflict of interest.