CHAPTER 8
FORCE ACCOUNT LABOR

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CHAPTER 8
FORCE ACCOUNT LABOR

8.0 Introduction

In some instances, a Grant Recipient may perform construction work under what is generally known as force account**.** The Grant Recipient decides not to contract out the work but performs the work using its own employee workforce. The use of force account must be approved by TDA, even if the Grant Recipient will not claim the costs as grant reimbursement or matching funds, to ensure that the Grant Recipient has the capacity to complete the project in-house.

Force account work is not subject to Davis-Bacon Act wage requirements because governmental agencies and States or their political subdivisions are not considered contractors or subcontractors within the meaning of the Davis-Bacon Act. However, any part of the work not done under force account but contracted out is subject to Davis-Bacon and Related Acts (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) as described in *Chapter 7, Labor Standards.*

In addition to force account construction work, Grant Recipients may utilize local staff to administer and/or engineer their TxCDBG funded community development projects. This is also considered force account.

8.1 Force Account Concepts

Definition of Force Account
Professional services, construction, rehabilitation, repair, or demolition that is performed by municipal or county employees, or by employees of a benefitting utility.

Definition of Employee
Determining whether a worker is an employee, or an independent contractor depends on many factors including the nature and degree of control by the principal/payer, see IRS 20-point Checklist for Independent Contractors.

Documenting Employee Status
Therefore, to qualify as force account, an employee must be documented on the employer's payroll records as either regular or temporary employees. Status may also be documented through W-2 wage and tax statements.

Force account applies to the following:

- Permanent employees of a Grant Recipient;
- Temporary employees of a Grant Recipient hired, not contracted (persons hired through a staff leasing service are considered contracted staff persons, not employees of the Grant Recipient), to specifically perform work on a federally funded or federally assisted construction project—the Grant Recipient must provide evidence that it adhered to its hiring and employment policies for temporary employees;
- Employees of a county who are carrying out public facilities improvements for a Grant Recipient through an intergovernmental agreement as prescribed by the Texas Government Code, Interlocal Cooperation Contract, Chapter 791; or
- Employees of a public utility district or utility company on a case-by-case basis.

When using local staff, the local governing body must assure the Grant Recipient has written personnel and employment policies that address specifically prohibited discriminatory practices against federally protected classes. These policies must comply with all applicable federal and state statutes and regulations.

Since the Grant Recipient is using its own employees, it is not required to pay the minimum prevailing wage of that region as prescribed by the Department of Labor (DOL). However, the Grant Recipient must continue to pay the employees their regular wages.[1]

Request to Use Force Account

Force Account costs will NOT be reimbursed without prior approval from TDA.

- The Grant Recipient may request use of force account methods for administration, engineering, or construction activities in the original application document, by including *Request to Use Force Account Labor* **(Form A808)** in the *Required Uploads* page of the TDA-GO application. TDA staff will notify the Grant Recipient if this request is not approved.
- If a Grant Recipient did not include force account in its TxCDBG application for funding but circumstances arise that could best be handled by force account, the Grant Recipient may then request approval to change methods from TDA by uploading the *Request to Use Force Account Labor* **(Form A808)** to the *Grant Overview* page of the TDA-GO grant document.
- **Form A808** includes the following information – Description of the construction activities to be completed by force account;
  - Justification or doing the work by force account;
  - Details of Grant Recipient's experience with projects of like or similar nature;
  - Information on workload as it may affect capacity to do the work within the time frame or work schedule;
  - A complete estimated cost schedule/breakdown) showing:
    - The number of work hours and cost per hour for each category of labor, and
    - List of non-salary costs such as materials, supplies, and equipment owned by the Grant Recipient, equipment that must be rented, etc.;
  - Certification that personnel that will perform the work are employees of the Grant Recipient, a city/county, a public utility district, or a utility company—if temporary workers are hired, certification that the employer's policies for temporary employees will be followed; and
  - List of names and qualifications of personnel performing specialized work, such as inspection, testing, electrical work, etc. as applicable.
  - Sample payroll records or other personnel cost records, if formats other than the TxCDBG forms included in this manual will be used.

Advantages of Force Account

- Exempt from DBRA, CWHSSA, and the Copeland Acts;
- Cost effective if the activity is one that traditionally is done by city/county personnel;
- Jobs are kept in the community; and
- Greater local control over scheduling and costs.

Disadvantages of Force Account

- No warranty for work performed by the Grant Recipient;
- Construction may be slower and not meet Grant Agreement timeframe;
- Extensive record keeping is required;
- Skilled local workers and appropriate equipment may be insufficient;
- Additional documentation is required for each Payment Request;
- Delayed payments due to required documentation review;

[1] HUD Handbook 1344.1.

- Procurement requirements for necessary materials; and
- Ongoing inspections may not be readily available to ensure quality construction.

8.2 Allowable Force Account Costs

The Office of Management and Budget (OMB) regulations establish cost standards for federally funded or federally assisted projects.[2] Only actual expenditures incurred by the Grant Recipient as a result of the TxCDBG project are considered allowable costs. This applies whether these costs are being reimbursed with TxCDBG funds or used as match. These costs can include labor, materials, equipment, and professional services.

8.2.1 Wages and Benefits

Reasonable wages, which are paid by the Grant Recipient for work performed on the TxCDBG project, either as match or reimbursement, must be supported by adequate documentation. This documentation includes personnel cost calculation forms, time sheets, and payroll records. Compensation is considered reasonable when it is comparable to wages that are paid for similar work in other areas of that same government entity. When comparable work is not found within that entity, a salary survey should be conducted. Only time worked on the project may be claimed for grant reimbursement or matching funds.

Overtime Wages
Overtime costs incurred by the Grant Recipient for employees that work more than 40 total hours per week, including work on a TxCDBG project, are eligible costs. Health insurance and other fixed cost benefits should **not** be increased on the overtime calculation; however, any benefits paid by the employer based on wages may be adjusted for the overtime rate.

NOTE: Salaries and expenses of elected officials, such as mayor, county judge, city council, or county commissioners, of a political subdivision are considered a cost of local government and are **not** allowable grant costs.

Fringe Benefits
Allowable fringe benefits, if applicable, must be provided under a locally approved plan or policy and may be reimbursed in proportion to the amount of the employee's time spent on TxCDBG activities. Allowable fringe benefits may include the following compensation or contributions made by the Grant Recipient:

- Vacation
- Holidays
- Sick leave
- Social security
- Life/health insurance
- Unemployment insurance
- Worker's compensation
- Retirement

8.2.3 Material Costs

Materials used in the construction of the project are eligible expenses. However, all materials must be procured according to the procedures described in *Chapter 5 Procurement*.

[2] 2 CFR Part 200, Subpart E

NOTE: Competitive procurement requirements still apply to materials on hand. Therefore, it is highly recommended that a subrecipient procure materials specifically for the proposed force account activity rather than using materials on hand.

If the Grant Recipient uses materials already on hand, rather than purchasing materials specifically for the project, reimbursement will be based on the actual cost of the material at the time of purchase

EXAMPLE: Grant funds cannot be used to replenish the Grant Recipient's stock of materials based on current prices. TDA will verify that state-mandated competitive procurement procedures were used to purchase the materials on hand.

If the Grant Recipient uses grant funds to procure materials in good faith and a portion of these materials is not actually used for the project, the Grant Recipient must reimburse TDA for the materials not actually installed. Alternatively, the Grant Recipient may request TDA approval to consider uninstalled materials to be incidental to completion of the project, if the value of the remaining inventory is minimal.

8.2.4 Equipment Costs

Grant Recipients may be compensated for the **use of equipment** on TxCDBG projects, including construction equipment.

All methods of charging for equipment usage must be based on an hourly rate.

- Only actual hours of construction time at the project site are eligible. **In use** means that the equipment is in actual operation performing eligible work.
- Standby equipment costs are not eligible.
- The hours charged for equipment use must agree with the corresponding hours documented for the equipment operator. If two pieces of equipment are used in tandem by a single operator, please include an explanation in the request for payment.

FEMA Equipment Rates

TDA will generally allow Grant Recipients to use the most recent FEMA Schedule of Equipment Rates for documenting compensation for the use of equipment currently owned by the Grant Recipient.

Rates on the FEMA Schedule of Equipment Rates:

- Are for equipment in good mechanical condition, complete with all required attachments;
- Include all eligible costs of ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incident to operation.[3] ; Fuel and maintenance costs are not eligible for separate reimbursement;
- Do not include the labor costs of the equipment operator—labor costs should be claimed separately;
- Are based on hours of use, except for vehicles used to transport people (work crew, engineer, or other city personnel authorized to document progress for drawdown requests) must be based on mileage using the FEMA rate per mile; if the Grant Recipient requests reimbursement for a passenger vehicle based on a FEMA hourly rate rather than the rate per mile, documentation must be provided that the vehicle was used for eligible purposes other than transporting people; and
- When the FEMA equipment rate capacity and/or horsepower of a piece of equipment does not match the community's equipment specifications, default to the less expensive of the two closest equipment classifications in the FEMA Schedule of Equipment Rates.

[3] Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121

The current rates can be found on the FEMA website, the link can be found in Appendix A.

Rental Cost Reimbursement
TDA will pay for the time that rented equipment is in use on the TxCDBG project using an hourly rate (actual rental cost divided by a 40-hour work week), plus fuel costs, not to exceed the total rental costs.

NOTE: TDA will compare the hourly rental rate to the FEMA rate. If the rental costs are significantly higher than the FEMA rate, the Grant Recipient may be required to provide additional explanation or justification for the difference.

The table below summarizes some keys points on the different methods of charging equipment use.

	FEMA Rates	**Rental Cost Reimbursement**
Equipment	Owned or lease-to-purchase	Rented
Basis for Reimbursement	Hours of use and FEMA rates	Hours of use and weekly rental cost (if reasonable)
Maximum Reimbursement	Actual number of hours worked x FEMA rate	Actual rental cost, plus fuel
Separate Fuel and Maintenance Costs	**NOT** eligible	Eligible
Separate Labor (Operator) Costs	Eligible	Eligible

If the Grant Recipient prefers to document equipment usage costs through depreciation or other methods, contact TDA.

8.2.5 Other Force Account Costs

Generally, Grant Recipients using force account for construction are expected to have available the small tools and other incidental items needed to complete the project. However, TDA will allow up to $250 in incidental costs for safety equipment and small tools with the following documentation:

- Written statement from the chief local official explaining why each item is needed to complete the project and certifying that the use of each item will be entirely dedicated to the TxCDBG project; and
- Invoice for original purchase.

For force account administration, costs for small office supplies are eligible to the extent that they are necessary for properly documenting all federal, state, and program requirements.

8.3 Force Account Recordkeeping

The Grant Recipient must maintain thorough documentation of all costs. This applies whether these costs are being reimbursed with TxCDBG funds or used to document all or part of the Grant Recipient's required match. All costs charged to the project must apply to a particular line item of the TxCDBG Grant Agreement budget.

The Grant Recipient may upload the *Force Account Time Sheet* **(A800)** to the *Grant Overview* page in the TDA-GO system to document the eligible hourly costs for the project. This form may be updated and re-uploaded as additional employees and equipment are assigned to the project. Costs for

employees and equipment not listed on this document will not be reimbursed. This form may be updated as needed.

In addition, TDA recommends using the same *Force Account Times Sheet* (**Form A800)** to document the hours claimed for each employee and/or piece of equipment for each specific Payment Request.

- Save a copy of **Form A800** using the naming convention [Grant Recipient Name] [Grant Document Number] Payment Request [#] ;
- Retain the completed tabs labeled Personnel Master and Equipment Master;
- Remove all previously submitted data from the tabs labeled Construction Time Sheet and Non-Construction Time Sheet;
- Enter time sheet data for all hours claimed for either grant reimbursement OR matching funds for the period reported in the current Payment Request.
- If the employees' supervisor is not a Payment Processor in TDA-GO, attach a signed copy of the timesheet to the Payment Request.

If a community specific time sheet is created and provided by the Grant Recipient as opposed to the recommended forms above, the documentation must meet all requirements of 2 CFR 200.430 (i)(1)(i-viii), *Standards for Documentation of Personnel Expenses*.

The community-specific forms must document:

- Actual hours worked by the employee on the project, **and** the time spent on other work;
- Duties performed for the grant project; and
- Approval and signature of the employee's supervisor or other personnel authorized by the Grant Recipient.
- All TxCDBG time sheets should correspond to the Grant Recipient's regular employee time sheets to the extent that no one should be charged to the project if they are not in attendance. The Grant Recipient may be required to supplement certified time sheets with the corresponding Grant Recipient's payroll records.

Documentation Required for Each Request for Payment

All requests for payment that include force account costs must include:

- A map of the project area that clearly identifies the areas where work has been completed, the areas where work is included in the current request for payment, and the areas where work will be performed in the future; and
- Adequate back-up documentation (E.g., invoices, time sheets, etc.) to support the requested amount.

Upon completion of the construction, a *Certificate of Construction Completion for Force Account* **(Form A807)** must be submitted to TDA. The certificate must provide a detailed description of the quantities installed and scope of work completed by force account crews.

Resources

Resource Number	Description	URL
	IRS 20-point Checklist for Independent Contractors	https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee
A800	Force Account Times Sheet	TDA Forms page
A807	Certificate of Construction Completion for Force Account	TDA Forms page
A808	Request to Use Force Account Labor	TDA Forms page

*Note: these items will be updated as needed.