

# **INTRODUCTION**

The goal of the Texas Community Development Block Grant (TxCDBG) program is to develop viable communities by providing decent housing and a suitable living environment, as well as by expanding economic opportunities—principally for persons of low-to-moderate income.

Eligible applicants are non-entitlement cities under 50,000 in population and non-entitlement counties that have a non-metropolitan population under 200,000 and are not eligible for direct CDBG funding from HUD may apply for funding through any of the Texas CDBG programs.

In awarding funding pursuant to Texas Government Code, Section 487.351(c), the Texas Department of Agriculture (TDA) shall give priority to eligible activities in the areas of economic development, community development, and rural health to support workforce development.

The objectives of the TxCDBG program are:

- Improve public facilities to meet basic human needs, principally for low-to-moderate income persons;
- Improve housing conditions, principally for persons of low-to-moderate income;
- Expand economic opportunities by creating or retaining jobs, principally for low-to-moderate income persons; and
- Provide assistance and public facilities to eliminate conditions hazardous to the public health and of an emergency nature.

## **Prior to 2021**

Prior to 2021, all TxCDBG Grant Applicants were required to apply for and administer Community Development Block Grant (CDBG) funds using over 100 different paper forms, checklists, reports, and applications— all of which were emailed and/or snail-mailed to TDA staff.

## **Welcome to TDA-GO**

The TxCDBG program is currently administered through the TDA-GO grant management system. This interactive, online application system has been designed with the Grant Applicant / Grant Recipient in mind—easy-to-navigate and easily updated. TDA-GO will store all necessary forms for your grant application in one place and be accessible from a computer through a unique log-in for each user.

## **Weblinks to Get Started in TDA-GO**

To register a new organization (city, county, consulting firm, etc.) and/or individual users:

<https://form.jotform.com/232744761156156>

- The initial registration for your organization must be completed by an Authorized Official (AO) for the organization
- Each user will receive notification of approval from the online systems administrator.
- Individual users will be assigned to the organizations by which they are employed. Non-employees contracted to provide services for a grant will be assigned to that specific grant and will not be considered members of the local government organization.

To log in to the TDA-GO system: <https://tda-go.intelligrants.com>

To visit the TxCDBG website: <https://www.texasagriculture.gov/CDBG>

## **Key TDA-GO Roles**

Authorized Official (AO)	Person authorized by resolution as signatory for grant agreements and payment requests
Project Director (PD)	Local official or employee of Grant Recipient designated to prepare and submit grant related documents in TDA-GO; must be certified as TxCDBG Certified Administrators to take action once the grant agreement is executed
Payment Processor (PP)	Local official or employee of Grant Recipient authorized to prepare and submit payment request documentation only
Consultant (C)	Third party staff authorized through procured contract or other agreement to prepare and submit grant related documents in TDA-GO; must be certified as TxCDBG Certified Administrators to take action once the grant agreement is executed
Agency Viewer (AV)	Local official or employee of the Organization that is granted view only access to applications in the TDA-GO system

# Key TDA-GO Functions

## Navigating the Document

The TDA-GO grant document, referred to in the system as the Application for the entire project, is navigated using the navigation menu that appears on the left side of every TDA-GO page. The menu includes several major sections, with headings shown as dark blue bars:

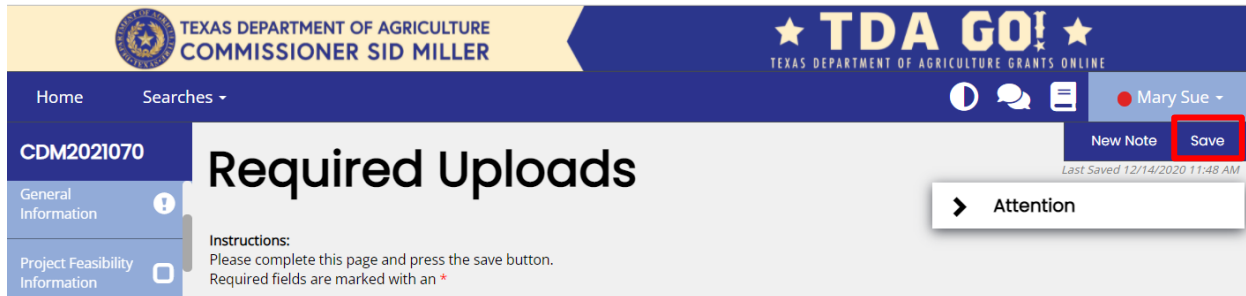
- **Application** – Forms originally completed by the Grant Recipient when applying for grant funding.
- **Award** – Includes the grant agreement and other project information that may be updated throughout the agreement period.
- **Status Options** – See discussion below.
- **Tools** – Includes tools for managing access to and recording action history for the grant document.
- **Related Documents** – Subdocuments that are related to the grant agreement and submitted for TDA action, including Payment Requests and Performance Reports.

The screenshot displays the TDA-GO navigation menu on the left side of a web application. The menu is organized into several sections, each with a dark blue header bar. The sections and their contents are as follows:

- Home** and **Searches +** are at the top.
- CDV21-0110** is the main document identifier.
- Forms** (dark blue bar) contains the following items:
  - Application** (dark blue bar):
    - Applicant Contact Information (with a checkmark icon)
    - General Information (with a checkmark icon)
    - Project Feasibility Information (with a checkmark icon)
    - Community Needs Assessment (with a checkmark icon)
    - Project Beneficiaries and Locations (with a checkmark icon)
    - Budget Details (with a checkmark icon)
    - Required Uploads (with a checkmark icon)
    - Pre-Agreement Strategy (with a checkmark icon)
    - Certification (with a checkmark icon)
    - CDV - Community Development Fund (with a checkmark icon)
  - Award** (dark blue bar):
    - Agreement Certification (with an empty square icon)
    - Grant Overview (with an empty square icon)
  - Status Options** (dark blue bar):
    - Amendment Request in Process (CDBG)
  - Tools** (dark blue bar):
    - Landing Page
    - Add/Edit People
    - Status History
    - Attachment Repository
    - Modification Summary
    - Document Validation
    - Notes
    - Print Document
  - Related Documents** (dark blue bar):
    - Initiate Related Doc (with a document icon)
    - Payment Request

## Saving the Page

Throughout the life of the project, the Grant Recipient will provide information, including reporting data and documents, to TDA through the TDA-GO system. System roles with permission to complete these entries will have a Save button in the top right corner of the page.



*Figure 1. Note the Save button in the top right corner of the page.*

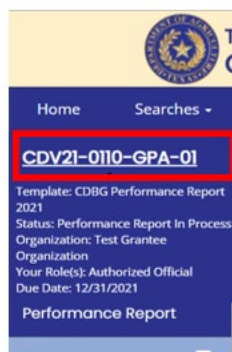
**NOTE:** Certain pages are restricted so that only TxCDBG Certified Administrators (assigned Project Director or Consultant roles) will have permissions to Save the page. Other pages and/or fields are limited to Authorized Officials.

## Changing Status

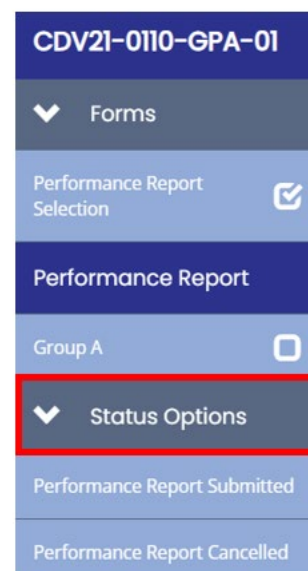
Reports and requests are submitted in TDA-GO by changing the status of the TDA-GO form. The status options available vary based on the current status of the grant and role of the individual user. Changing the status of a document means updating the role responsible for the next step in the approval process; the previous role may no longer have **Save** permissions once the status is updated.

Identify the **current status** by hovering over the Application/Grant Agreement number.

Find the available status options by scrolling down the blue navigation menu. Select the appropriate menu option for the action you wish to take.



*Figure 2. Hover over the application number for the current status*



*Figure 3. Status options*

# CHAPTER 1

## ADMINISTRATION AND REPORTING

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# CHAPTER 1

## ADMINISTRATION AND REPORTING

### 1.0 Introduction

Prior to implementing any work on a TxCDBG project, a Grant Recipient should put systems in place to track and report on project activities as required by the TDA Grant Agreement. This chapter highlights the essential steps and concepts needed for successful project management.

### 1.1 Project Start-up

#### 1.1.1. Pre-Agreement Strategy

The Pre-Agreement Strategy refers to pre-award costs incurred by the Grant Recipient, directly in accordance with the proposed project and in anticipation of the TxCDBG Grant Agreement. Such costs must be necessary to comply with the proposed delivery schedule or period of performance and are allowable only to the extent that they would have been allowable after the regular start date of the TxCDBG Grant Agreement. Allowable costs must have the written approval of TDA. **All existing grant rules apply to the pre-agreement period.**

The grant application includes an opportunity to request approval to utilize the pre-agreement strategy in order to pursue early implementation of the proposed project. TDA will notify the Grant Recipient if, in its sole discretion, the agency declines the pre-agreement request. Fund specific requirements and restrictions on the type of activities eligible as pre-agreement costs are addressed in each fund's Application Guide.

The screenshot shows the 'Pre-Agreement Strategy' page on the TDA GO! portal. The header includes the Texas Department of Agriculture logo and 'COMMISSIONER SID MILLER', and the 'TDA GO! TEXAS DEPARTMENT OF AGRICULTURE GRANTS ONLINE' banner. A left sidebar lists navigation options: Home, Searches, CDM2021074, Project Feasibility Information, Community Needs Assessment, Project Beneficiaries and Locations, Budget Details, Required Uploads, Pre-Agreement Strategy (highlighted), Certification, CDM - Downtown Revitalization Program, Tools, and Status Options. The main content area is titled 'Pre-Agreement Strategy' and includes an 'Attention' icon. Instructions state: 'Please complete this page and press the save button. Required fields are marked with an \*'. The section 'Pre-agreement request for administration & engineering' contains a statement: 'The applicant intends to proceed with its project per the pre-agreement costs strategem: \*' with radio buttons for 'Yes' (selected) and 'No'. Below this are two numbered paragraphs of terms and conditions. At the bottom, there are fields for 'Signature' and 'Date'.

Figure 1. Pre-Agreement Strategy signature page

TDA will allow the Grant Recipient to incur costs for CDBG activities before the TxCDBG Grant Agreement start date and to charge these pre-agreement costs to the grant, provided that the activities are:

- Eligible costs
- Meet the objectives of the program; and
- Are authorized pursuant to applicable state and/or federal law.

To be eligible for either TxCDBG grant funding or match funding, costs incurred during the pre-agreement phase must occur:

- On or after the TDA pre-agreement date found in the TxCDBG Grant Agreement *Exhibit B, Section B*;
- On or after the administrative or engineering services contract award date – formal approval by elected body; **and**
- During the contract period identified in the administration/engineering services contract, i.e., **Time of Performance** in *Appendices D and E*, the services contract period may begin prior to the date that the services contract was executed.

**NOTE:** The Grant Recipient **may not** incur costs or expend any project funds for construction prior to:

- Meeting the Environmental Review requirements in the TxCDBG Grant Agreement, see *Chapter 3 Environmental Review*; and
- Meeting all special condition requirements of the TxCDBG Grant Agreement for the release of construction funds, see *Chapter 4 Grant Agreement Special Conditions*.

### **1.1.2 Grant Agreement Execution**

In addition to the TxCDBG Grant Agreement obligations between the state and the Grant Recipient, the Grant Agreement includes the following exhibits:

- **Exhibit A – Performance Statement and Award Specific Conditions –**
  - **Section A Eligible Uses of Funds** – The Performance Statement outlines the scope of the work to be performed under this Grant Agreement by activity,
  - **Section B Prohibited Activities** – This standard clause reflects activities that cannot be funded through TDA grants,
  - **Section C Timeline** – The Timeline identifies key dates for the Grant Agreement period. Failure to meet these milestones may impact the Grant Recipient for the current grant and/or future grant applications, and
  - **Section D Special Conditions** – Provisions 1 through 8 are specific to Community Development Block Grants, followed by special conditions specific to the requested project.
- **Exhibit B – Project Budget** – Exhibit B specifies the agreement's budget by line item, including matching funds committed by the Grant Recipient that are necessary to complete the project described in the Performance Statement;
- **Exhibit C – General Terms and Conditions** – Exhibit C includes standard provisions for federal grants; and
- **Exhibit D – Certifications and Assurances** – Exhibit D includes standard certifications to which all TxCDBG Grant Recipients must agree.

Figure 2. How to view your grant

The Grant Agreement is considered executed in TDA-GO after two certifications are completed:

- the chief local official for the Grant Recipient or other local official, designated by resolution and registered in TDA-GO as the Authorized Official (AO), and
- the authorized TDA designee.

**NOTE:** In TDA-GO, clicking the Save button **only** saves information entered into the on-screen fields. The Status must **also** be changed to send the information to TDA.

### Ready to Proceed Rule

Prior to executing the TxCDBG Grant Agreement, TDA will ensure that any existing Grant Agreements are in good standing and any outstanding issues are resolved to TDA's satisfaction within ninety (90) days after the grant award date. This includes, but is not limited to:

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

If the outstanding issues identified by TxCDBG staff at the time of the funding award are not addressed within the required ninety (90) days, TDA will not execute the Grant Agreement and the TxCDBG funds awarded may be withdrawn and reallocated.

## 1.1.3 Establish a Local Administrative Structure

Each Grant Recipient must establish a local administrative structure to complete the grant. The eligible activity and National Program Objective (NPO) requirements are not met until the project is completed, beneficiaries are served, and there is appropriate documentation to ensure that the project is consistent with the designated NPO.

### When establishing a local administrative structure, the Grant Recipient must:

- Establish a record-keeping system to document compliance with all federal, state, local, and program requirements by:
  - Keeping all grant files at city or county offices or buildings in which government records are maintained and accessible to the public throughout the Grant Agreement period; and



- Retaining all records for the greater of four (4) years from closeout of the grant to the state, or the period required by other applicable federal and state laws and regulations.
- **NOTE:** Each TxCDBG subgrant is funded by a larger grant from the U.S. Department of Housing and Urban Development; “closeout of the grant to the state” refers to when this total sum is exhausted. This should not be confused with the closeout of the grant to the individual subrecipient or “Grant Closed” (formerly referred to as “Administratively Complete”). Refer to the TxCDBG website for the current record retention schedule. Review and comply with all local charters, resolutions, ordinances, and policies that may be relevant to the project; and
- Determine whether day-to-day administration of the project will be conducted by local staff or by a certified third-party consultant, and which party will conduct each administrative activity.

**NOTE:** TxCDBG Grant Recipients have the final legal responsibility for the locally maintained grant files, the timely submission of reports, and compliance with program guidelines.

**BEST PRACTICE:** TxCDBG recommends that the Grant Recipient review the *Administrative Activities Checklist (Form A102)*, item-by-item, and identify the activities to be performed by the Grant Recipient’s staff and those that will require outside assistance. It is also helpful to walk each staff member responsible for implementing the grant through the TxCDBG program requirements.

## **1.1.4 Administrative Thresholds**

### **Project Schedule**

The Grant Recipient will comply with the project schedule included in the Grant Agreement. Failure to meet any of the milestones below may result in sanctions, as outlined in the TxCDBG Implementation Manual, Texas Administrative Code, other published guidance, and the conditions of the Grant Agreement.

<b>Milestone</b>	<b>Standard consequences for failure to satisfy the milestone on or before the date identified in the Grant Agreement</b>
Environmental review/plans and specifications recommended to be complete	Scoring penalty may applied to future grant applications.
Group B forms required to be complete	The Grant Recipient is ineligible to apply for future grant awards until the milestone is satisfied and/ or TDA may initiate grant termination.
Project recommended to be complete, including inspections	N/A – There is no standard penalty for failure to meet this milestone. However, additional technical assistance may be required based on project circumstances.
Grant Agreement period ends	If a Grant Agreement extension is required, the Grant Recipient is ineligible to apply for future grant awards until the existing project is documented as complete.
Final payment and closeout documentation required to be submitted	Deobligation of all remaining grant funds.

### **Document Groups**

TDA program requirements use several document groupings to implement certain thresholds. The documents required to be considered in compliance with each group are listed below<sup>1</sup>:

<sup>1</sup> See also the TDA-GO Checklist on the [TDA Implementation Manual](#) website

## Group A Documents

- Executed TxCDBG Grant Agreement;
- **Grant Overview** – The **Primary Administrative Contact within TDA-GO** fields, Labor Standards Officer, and Civil Rights Officer fields must be completed;

Home Searches

CDV21-0108

Forms

Application

Applicant Contact Information

General Information

Project Feasibility Information

Community Needs Assessment

Project Beneficiaries and Locations

Budget Details

Required Uploads

Pre-Agreement Strategy

Certification

CDV - Community Development Fund

Award

Agreement Certification

**Grant Overview**

Tools

### Grant Overview

Instructions:  
Please complete this page and press the Save button.  
Required fields are marked with an \*

Designated Personnel

Primary Administrative Contact within TDA-GO!

Name

Email

Phone Number

As the Authorized Official, I designate the following individuals to be responsible for critical program requirements:

- Labor Standards Officer - individual responsible for overseeing the labor standards portion of the contract for assuring compliance with all requirements under Chapter 7 of the TxCDBG Project Implementation Manual
- Civil Rights Officer - local official / staff member responsible for oversight and compliance of fair housing and equal opportunity activities as required by the TxCDBG Grant Agreement and Chapter 10 of the TxCDBG Project Implementation Manual

0 of 100

0 of 100

☐ Authorized Official

Date

Figure 3. Grant Overview page

- **Performance Report – Group A Report** – Upload all documents identified and complete all applicable fields, see *Chapter 10 Civil Rights*:
  - Resolution adopting or reaffirming community policies to comply with civil rights requirements,
  - Fair housing activities,
  - Required Non-discrimination Notices, and
  - Limited English Proficiency (LEP) plan – This plan must be specific to the location and the community or area served by the current project.
- **Organization Compliance Document – Reference Attachments (OC-RA)** – Upload all documents identified and complete all applicable fields
- **Banking and Financial Documentation** – see *Chapter 2 Financial Management* for details on submitting banking and financial information to TDA:
  - *Federal Request for Taxpayer Identification Number* (TIN) (Form W9), and
  - *State Application for TIN*.
- **Related Documents – Materials and Services Report (MSR)**: The MSR must be submitted and accepted for each requested vendor or services provider, see *Chapter 5 Procurement Procedures*. At a minimum, an MSR for administrative services and engineering services, if applicable, is expected unless the use of force account has been approved for these services, see *Chapter 8 Force Account*.

## Group B Documents

- **Grant Overview** – For the *Special Conditions* section, upload documentation needed to satisfy all pre-construction related conditions, see *Chapter 4 Grant Agreement Special Conditions*;
- **Performance Report – Environmental Review**. Authority to Use Grant Funds (AUGF) is approved by TDA staff, see *Chapter 3 Environmental Review*;

- **Performance Report – Real Property Acquisition.** Acquisition Plan page AND Acquired Parcel page must be completed for each property related to the construction activity, see *Chapter 6 Acquisition*;
- **Performance Report – Group B Report** – Upload these documents and complete all applicable fields,
  - Section 3 presentation meeting notes and/or agenda from a public meeting, and
  - Photo of temporary signage.
- **Related Documents – Materials and Services Report (MSR)** – A separate MSR must be completed for each requested vendor or services provider. To satisfy Group B, at least one MSR submitted in TDA-GO must document execution of a contract for construction. Non-construction grants must document execution of a contract for the primary grant activity, see *Chapter 5 Procurement Procedures*.

### Group C Documents

- **Performance Report – Group C Report** – Certified administrator and Labor Standards Officer must complete all applicable fields.

### Construction Complete Group Documents

- **Grant Overview** – For the *Special Conditions* section, upload documentation needed to satisfy all construction-related conditions, see *Chapter 4 Grant Agreement Special Conditions*;
- **Related Documents – Materials and Services Report (MSR)** – For all vendors or service providers other than grant administration services:
  - All sections, including the MSR Final Wage Compliance (if applicable) and Work Completed pages, must be completed documenting:
    - **All** programmatic requirements are met,
    - **All** claims and disputes have been settled,
    - **All** warranties have been received, and
    - **All** liens have been released, see *Chapter 5 Procurement Procedures*, and
  - The MSR Status must be updated to Contract Completion Submitted; and
- **Related Documents – Payment Requests** – Invoices or similar documentation for costs greater than or equal to the amount of matching funds required by the Grant Agreement.

### Project Complete Group Documents

- Final payment request,
- Project Completion Report (PCR), and
- All requested documentation for monitoring review(s), see *Chapter 13 Monitor Review*.

### The Mid-Point Progress Threshold

The Grant Recipient must submit all Group A and Group B documents by the date identified as **Group B Forms Required to Be Complete** in the Grant Agreement *Exhibit A, Section C Timeline*.

If a Grant Recipient fails to meet this requirement, TDA will begin the process of Grant Agreement termination. The TxCDBG Grant Agreement ensures that the Grant Recipient will have an opportunity to resolve the deficiency as a part of the termination proceedings. For non-compliance with the Mid-Point Progress Threshold, TDA will initiate a Mid-Point Progress Report in TDA-GO. The Grant Recipient must complete and submit this report within thirty (30) days of the report's initiation, providing a justification for the delay and a schedule detailing milestone dates for completing the Group A and Group B requirements. TDA will evaluate the response and may continue termination proceedings or suspend those proceedings pending documentation of the Grant Recipient's progress based on the newly proposed timeline.

**NOTE:** All funds may be placed on hold while the Grant Recipient is out of compliance with the progress milestone.

## Progress Thresholds for New Applications Submitted After the Award of a TxCDBG Grant Agreement

The Grant Applicant must demonstrate satisfactory progress in all current open Grant Agreements to be eligible to submit a new application. The following table illustrates the progress threshold requirements for each TxCDBG fund category.

**NOTE:** The Grant Applicant Progress Thresholds included in each application guide may vary from the example table below; each Application Guide and applicable thresholds will supersede this section.

Fund Category	Original Agreement Period	Mid-Point Progress Threshold	Final Progress Threshold
State Urgent Need Fund	18 months	12 months after agreement start date	18 months after agreement start date
Disaster Relief Fund	12 months	9 months after agreement start date	12 months after agreement start date
FAST Fund	18 months		18 months after agreement start date
Community Development Fund	24 months	12 months after agreement start date	24 months after agreement start date
Downtown Revitalization/ Main Street Fund	24 months		
Colonia Fund (Except Self-Help)	24 months		
Planning Capacity Building Fund	24 months		
Community Enhancement Fund	24 months		

There are two types of Progress Thresholds, each applicable to TxCDBG Grant Agreements where the Grant Agreement start date is at least the identified number of months prior to the application due date under consideration.

- Mid-Point Progress Threshold Requirement** – This rule requires applicants for future TxCDBG funding with existing TxCDBG Grant Agreements for which the threshold date has passed to submit all Group A and Group B documents for that Grant Agreement to be eligible to submit a new grant application.
- Final Progress Threshold Requirement** – This rule requires the Grant Recipient to complete its TxCDBG project prior to applying for future TxCDBG funding. The Grant Recipient is considered to have met the Final Progress Threshold if:
  - All activities in the TxCDBG Grant Agreement's Performance Statement are complete;
  - A payment request for all remaining TxCDBG funds, excluding single audit costs and other costs explicitly approved in writing as reserved funds by the TxCDBG Director, has been submitted; and
  - The *Project Completion Report* (PCR) has been submitted via TDA-GO.

In very limited instances in which the Grant Recipient cannot meet this requirement, please refer to *Chapter 12.2.2 Conditional Project Completion*. Grants that do not meet the parameters for Conditional Project Closeout will be held to the Final Progress Threshold even if the reasons for the delay are outside of the Grant Recipient's control.

This threshold will not prevent an eligible applicant from receiving TxCDBG State Urgent Need (SUN) Fund assistance when the applicant meets the eligibility criteria for the SUN Fund.

## **1.1.5 Public Participation**

TxCDBG applicants and funded Grant Recipients are required to carry out public participation in accordance with the Citizen Participation Plan adopted for the TxCDBG Program. In this section, the term “Grant Recipient” includes applicants for TxCDBG funding. By submitting the TxCDBG application and Grant Agreement, the Grant Recipient certifies that it has and will comply with the requirements of this Citizen Participation Plan.

Each Grant Recipient must maintain a citizen participation file that includes the applicant's complaint procedures, any technical assistance provided by the applicant, and public notices, minutes, and attendance lists for public hearings.

### **Complaint Procedures**

The Grant Recipient must have written citizen complaint procedures that provide a timely written response to complaints and grievances. Residents must be made aware of the location, days, and hours when copies of the procedures are available.

### **Technical Assistance**

When requested, the Grant Recipient shall provide technical assistance to groups representative of persons of low-to-moderate income in developing proposals for the use of TxCDBG funds. The level and type of assistance shall be determined by the Grant Recipient based upon the specific needs of the community's residents.

### **Public Hearing Provisions**

A key component of the program is the opportunity for residents to express their needs and concerns, regarding TxCDBG funded projects, to the Grant Recipient.

- The Grant Recipient must hold a public hearing prior to authorizing submittal of the grant application.
- If the project is funded, the Grant Recipient must hold a public hearing concerning any proposed substantial change, as determined by TDA, in the use of TxCDBG funds, see *Chapter 11 Grant Agreement Amendments*.
- Upon completion of all project activities, the Grant Recipient must hold a public hearing and review its program performance, including the actual use of TxCDBG funds.

Public hearings, as required by the fund specific Application Guide and *Chapters 11 and 12* and *Section B* of this manual, must comply with the following:

- Hearings must be held in a location convenient to the project beneficiaries;
- Hearings must be held at, or after, 5 p.m. on a weekday or on a Saturday or Sunday;
- Grant Recipient must provide accommodations for citizens with disabilities;
- Hearings must be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can be reasonably expected to participate. The Grant Recipient must adhere to its Limited English Proficiency (LEP) Plan, see *Chapter 10 Civil Rights*;
- Grant Recipient must provide notice of the hearing to citizens at least seventy-two hours (three days) prior to the scheduled hearing — including the date, time, location of the hearing, and the topics to be considered; and
- Records related to the hearing must be made available to the public.<sup>2</sup> Required documentation includes the public hearing notice, sign-in sheet with a list of attendees, the minutes of the hearing, and a summary of public comment(s).

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<sup>2</sup> Texas Government Code, Chapter 552 (Texas Public Information Act).

## Public Notice Provisions

Public Notices are required at several stages of the grant, as described in each fund's Application Guide and *Chapters 3, 10, 11, and 12*, and *Section B* of this manual.

- Public Notice may be given in one of three ways:
  - Publish the notice in a newspaper of general circulation;
  - Post the notice in at least two public places accessible to the general public at the time of the posting including the courthouse/city hall and a location within the target area (if applicable); OR
  - Post the notice in one public place accessible to the general public at the time of the posting, such as the courthouse/city hall, **and** post on Grant Recipient's website.
- Posted Notices must be in a location accessible to the general public at the time of the posting.
- The Public Notice must include all required information in English and any other appropriate language(s) per the Grant Recipient's LEP plan, see *Chapter 10 Civil Rights*.
- The Grant Recipient must retain the following documentation of the Public Notice:
  - **Published Notices** – Submit to TDA either a copy of the notice or the full newspaper page on which the notice occurred.
    - The publication text, title, date of publication, name of the newspaper, and page number must be clear and readable, and supported by affidavit, see *Affidavit of Posting - Citizen Participation Public Hearing (Form A101)*.
    - The original newspaper tear sheet or a photocopy of the notice and a publisher's affidavit must be kept with the Grant Recipient's local file for the public, TDA monitors, and other state or federal inspectors.
  - **Website Notices** – Screen shots of the notice, **with the date visible**, must be retained as documentation of the posting.
  - **Posted Notices** – Legible photographs showing the location of the posting are required.
  - **Posted Notices** – Must be supported by affidavit, see *Affidavit of Posting - Citizen Participation Public Hearing (Form A101)*.

## 1.1.6 Key Geographic Terms

The TxCDBG program relies on several key geographic areas to determine eligibility and compliance requirements for each project.

**Project Area/Location** – This term is used when identifying the physical location of infrastructure improvements, facilities, or other elements of the project.

**Benefit Area** – This term identifies the location of all households benefiting from the project. Refer to the *TxCDBG Guide to Meeting a National Program Objective*, located on the TDA website, for guidance on identifying this area for each type of project.

**Census Geography** – This term refers to geographic areas designated by the U.S. Census Bureau, such as census tracts, block groups, and blocks. Census data provided based on these geographies may be used for scoring and/or income documentation purposes as allowed by program requirements; however, these geographies are not a substitute for properly identifying the benefit area of a project.

**Grant Recipient's Jurisdiction** – The county boundaries or city limits may be important to defining certain projects and the jurisdiction within which the Grant Recipient has authority to implement the project. While these boundaries alone do not define a benefit area, some services may be provided solely or primarily within a Grant Recipient's jurisdiction.

**Environmental Review – Aggregate Project Area** – This area includes the physical locations of all work funded by the project, AND all work that is geographically or functionally related to the project even if not funded by the grant, and the surrounding areas impacted by such work, see *Chapter 3 Environmental Review*.

**Section 3 Service Area** – This area surrounds the physical location(s) of grant funded construction work and identifies geographic area where potential workers may reside. This area must have a minimum population of 5,000 persons, see *Chapter 10 Civil Rights*.

**Geographies for Specific Fund Categories** – see the fund specific Application Guide for additional details:

- Colonia area – an unincorporated community located in a non-metropolitan county within 150 miles of the Texas-Mexico border, established prior to November 1990, and lacking public infrastructure.
- Downtown Area – traditional economic center of a TxCDBG community.
- Main Street Area – the area identified as part of the Texas Historical Commission (THC) Main Street Program.
- Blighted Area – the area identified by local resolution as meeting the HUD definition of a slum or blighted area. Grant Recipients should not designate the entire community or entire downtown area as blighted unless the entire area meets the definition.
- Emergency Service Provider's Service Area – the area where the service provider is the primary provider for fire or EMS services. This area may or may not align with city or county boundaries and excludes geographies where the entity provides mutual aid.

## **1.2 Reporting and Recordkeeping**

### **1.2.1 Establish a Record-keeping System**

Grant files must be kept at city or county offices or buildings in which government records are maintained and be accessible to the public throughout the Grant Agreement period. Any alternate record storage location must be approved in writing by TDA. All records included in *Filing System Guide (Form A103)* must be included in the local records.

Records shall be retained for a minimum of four (4) years from closeout of the grant to the state. TDA will announce the closeout of each state grant and the individual Grant Agreements that may begin the four-year retention period.

Documents must be submitted to TDA through TDA-GO unless specifically requested in another format. However, documents cannot be uploaded nor accessed on platforms such as Google docs, Dropbox, etc. due to security risks and such action is considered a violation of TDA security policy.

## **1.2.2 Conflict of Interest**

The Grant Recipient must identify any potential conflicts of interest for the TxCDBG funded project. Conflict of interest provisions apply to:

- Any person or entity including any benefitting business, utility provider, or other third-party entity that is receiving assistance, directly or indirectly, under a TxCDBG Grant Agreement or award; or
- Any person or entity that is required to complete some or all work under the TxCDBG Grant Agreement in order to meet a National Program Objective (NPO), that might potentially receive benefits from TxCDBG awards.

The general rule is that no person/entity described above:

- Exercises or has exercised any functions or responsibilities with respect to TxCDBG activities;
- Is in a position to participate in a decision-making process; or
- Is in a position to gain inside information with regard to such activities may obtain a financial interest or benefit from a TxCDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a TxCDBG-assisted activity, or with respect to the proceeds of the TxCDBG-assisted activity, either for themselves or those with who they have family or business ties, during their tenure or for one (1) year thereafter.

TDA will evaluate persons in similar roles for benefitting organizations, such as utilities providing service through the project or businesses creating jobs as a result of the project, in determining a conflict of interest. The person may not have an interest in any contract or agreement related to the TxCDBG proceeds/program for themselves or their family/business ties during their tenure or one year after conclusion of their tenure.

Any conflict of interest or apparent conflict of interest **must** be disclosed to TDA in writing as soon as it is known. TDA, in its sole discretion, will determine whether the situation meets the program definition for a conflict of interest.

**EXAMPLE:** Central City, Texas applied for TxCDBG funds for a first-time sewer project in the West Addition neighborhood. One of the residents included in the project is the mother-in-law of City Council member Bob Thompson. Councilman Thompson does not have a financial interest in the project; however there is a conflict of interest due to the TxCDBG funded benefit to be provided to his family member.

### **Exception to Conflicts of Interest**

TDA may grant an exception to the restrictions on non-procurement conflicts of interest on a case-by-case basis if TDA determines that such exception will serve to further the purpose of the TxCDBG project and the effective and efficient administration of the project. The written request must address all of the following<sup>3</sup>:

- A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- An opinion of the attorney for the State or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate State or local law.

**Under no circumstances can TDA provide a waiver or exception for conflicts of interest related to procurement of goods or services.**

**EXAMPLE:** A mayor pro-tem of a city is willing to sell the city a parcel of property on Main Street which would be the ideal location for a proposed senior community center. This transaction would involve the

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<sup>3</sup> 24 CFR §570.489(h)(4)



acquisition of real property and is *not* considered procurement of goods or services. Therefore, the city could ask TDA to grant an exception to the apparent conflict of interest.

### Some Determinations of Conflicts of Interest

- Grantee officials or staff who have relatives who may benefit from a sub-applicant's programmatic activities.
- Elected officials voting on awarding of contracts to vendors where a family member is on the staff.
- Selection of a single individual or firm to serve as both the grant administrator and the project engineer.
- Selection of an individual or firm to provide administrative or engineering services, where the individual or firm has previously assisted in preparing the grant application.

### Code of Conduct

Every Grant Recipient must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts, see *Sample Code of Conduct (Form A1002)*. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Grant Recipient. The Grant Recipient may choose to broaden local conflict of interest policies to additional family members and relatives.

## 1.2.3 Grant Overview Information

Each Grant Recipient must update the information on the TDA-GO *Grant Overview* page as appropriate.

- **Assignment of Responsibilities**
  - Primary Administrative Contact – Local contact or consultant who should be contacted for status updates, clarifications, etc.
  - Labor Standards Officer – Local contact or consultant responsible for overseeing the labor standards portion of the grant. This entry must be made by the Authorized Official.
  - Civil Rights Officer – Local contact responsible for oversight and compliance of fair housing and equal opportunity activities. This entry must be made by the Authorized Official.
- **Grant Agreement Special Conditions** – Documentation demonstrating compliance with each condition must be uploaded when the condition is satisfied.
- **Force Account** – See *Chapter 8 Force Account* for details.
- **Eligible Costs not Reported on MSR** – Record all project costs that have not been reported on the Materials and Services Report, see *Chapter 5 Procurement Procedures*.  
**EXAMPLE:** Costs for acquisition of property or grant-funded utility connection fees.
- **Special Requests** – For requests not otherwise identified in TDA-GO, briefly describe the request, and provide all appropriate supporting documentation.  
**EXAMPLE:** Requests for non-competitive procurement approval or requests related to conflicts of interest.

The TDA-GO *Grant Overview* also includes a section titled *Hold Status*. TDA staff will update this section as necessary based on identified compliance and/or progress issues. *Hold Status indicates:*

- *All Action on Hold – Do not proceed with project; or*
- *Payment Hold – Proceed at own risk, issue must be resolved prior to release of funds.*

## 1.2.4 Payment Requests and Progress Reports

Payment requests and progress reports are completed in TDA-GO. *Performance Reports* include the following:

- ENV - Environmental Review (*Chapter 3*)

- ACQ - Acquisition Report (*Chapter 6*)
- GPA - Group A Report (*Chapter 2*)
- GPB - Group B Report (*Chapter 2*)
- GPC - Group C Report (*Chapter 2*)
- RPT - Performance *Report* (general) – Progress reports of the status of each project shall be provided by the Grant Recipient on a voluntary basis, or when TDA requests a progress report.

TxCDBG staff may request updated progress information as needed. Failure to respond to such requests, as well as unresolved programmatic issues, monitoring findings, and/or audit findings will result in the Grant Agreement being considered out of compliance. The Grant Agreement shall remain out of compliance until all issues have been satisfactorily resolved. Non-compliance could affect future funding for a locality and may result in holds on submitted payment requests.

TxCDBG Grant Agreements that continue to fall behind schedule and do not meet the target dates established by the timeline may be subject to termination and deobligation of funds. In very limited circumstances, extension requests for such projects will be considered where extenuating circumstances beyond the control of the Grant Recipient exist and the Grant Recipient demonstrates diligent efforts to resolve the issues preventing progress on the projects, see *Chapter 11.3 Grant Period Extensions*.

## 1.2.5 Signatures and Methods of Signing

Signature stamps or other methods of signing **on behalf of another person**, including “electronic” or “digital” signatures that cannot be authenticated will not be accepted. TDA staff may request additional documentation, as needed.

## Resources

Resource Number	Description	URL
	How to Complete and Submit Performance Reports	<a href="#">TxCDBG Current Training Materials</a>
A100	Authorized Signatories	<a href="#">TxCDBG Implementation Manual</a>
A101	Affidavit of Posting - Citizen Participation Public Hearing	<a href="#">TxCDBG Implementation Manual</a>
A102	Administrative Activities Checklist	<a href="#">TxCDBG Implementation Manual</a>
A103	Filing System Guide	<a href="#">TxCDBG Implementation Manual</a>
	TxCDBG Guide to Meeting a National Program Objective	<a href="#">TxCDBG Fund Categories and Applications</a>
	TDA-GO Checklist	<a href="#">TxCDBG Implementation Manual</a>
	Records Retention	<a href="#">TxCDBG Records Retention Website</a>
A1002	Sample Code of Conduct	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.

# CHAPTER 2

# FINANCIAL MANAGEMENT

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# CHAPTER 2

## FINANCIAL MANAGEMENT

### 2.0 Introduction

The Grant Recipient must review the financial requirements of the agreement and set up a financial accounting system consistent with the requirements of the TxCDBG program. The financial requirements for local governments receiving TxCDBG funds are governed by regulations issued by the United States Department of Housing and Urban Development (HUD), the Federal Office of Management and Budget (OMB), and federal, state, and local policy.

The TxCDBG program is responsible for monitoring the Grant Recipient's compliance with applicable financial management standards, processing payment requests in TDA-GO for TxCDBG funds, and for audit review. Federal regulations governing financial management include 24 CFR Part 570, Subpart I, which governs the state TxCDBG program; Section 570.489 which details program administration requirements; and select parts of Section 2 CFR Part 200—including all of Subpart E, Cost Principles.

### 2.1 Accounting Procedures

The Grant Recipient is responsible for ensuring that all TxCDBG expenditures are authorized in the approved budget. Accounting records for TxCDBG project funds must be maintained separately from the general municipal/county funds. These records should be developed and maintained to be consistent with the Grant Recipient's general accounting records.

Grant Recipients must take the steps outlined below to ensure an adequate local accounting system for TxCDBG funds.

#### 2.1.1 Establish Internal Controls

The Grant Recipient should establish internal controls that provide responsible management of TxCDBG funds. The system of internal controls should meet the following criteria:

- All applicable federal, state, and local conflict of interest provisions;
- The foundation of a good internal control system is the segregation of duties. The duties of authorization (signing a check or releasing a wire transfer), custody (having access to the blank check stock or the ability to establish a wire transfer), and recordkeeping (ability to record the transaction in the accounting system) should be separated so that no one individual can complete a transaction from start to finish. No person should ever have complete control over every phase of a transaction;
  - The person who authorizes payments to contractors should not draft and issue the payment checks.
  - The local government should require at least two signatures on checks.
- **BEST PRACTICE:** Fiscal recordkeeping for TxCDBG Grant Agreements should be maintained separately for each grant;
- Where feasible, monthly bank reconciliation and/or direct deposit monthly statements should be made by someone who is not responsible for handling cash or issuing checks;
- The person issuing checks for grant expenses should not also handle payroll preparation or issuance of paychecks; and

- Other internal controls may include reviewing randomly selected transactions and their supporting documentation, taking periodic asset counts, or checking financial reconciliations.

State law and the charters of home rule cities contain fidelity bond requirements for certain city and county officials. For their own protection, TDA recommends that all Grant Recipients additionally obtain a fidelity bond for each employee or official having access to project assets, accounting records, or checks.

- The bond, either position or blanket type, should be in an amount at least equal to the total project assets that would be available to the project at any time. TDA may require adequate fidelity bond coverage in instances when the Grant Recipient lacks sufficient coverage to protect the federal government's interest.
- If the latter requires an additional premium to be paid on the Grant Recipient's existing policy, this extra cost can be reimbursed out of the general administration budget category of the TxCDBG Grant Agreement.

## **2.1.2 Establish/Maintain Document Files and Records**

TxCDBG grant funds must be carefully tracked and documented.

**BEST PRACTICE:** TDA strongly recommends that the Grant Recipient establish a separate, non-interest-bearing bank account for grant and local match funds.

- If the Grant Recipient chooses to deposit grant funds into an interest-bearing account, contact TDA.<sup>1</sup>
- If the Grant Recipient elects not to use a separate account, separate financial records must still be maintained in addition to the Grant Recipient's general accounting operations and must be available upon request by TDA or other relevant agencies.
- If the Grant Recipient elects not to use a non-interest-bearing account, any interest earned as a result of deposited grant funds may be required to be returned to the federal Treasury.

### **Financial Records Must Include the Following:**

- **Transaction Register** – The Grant Recipient's TxCDBG financial records must include a log documenting all costs and transaction dates in sequential order by payment request.
  - The log must include dates of deposited grant funds, the name of the vendor/service provider, the invoice number or similar identifier, total costs incurred for the payment, source of funds (grant reimbursement, matching funds, additional local/other funds), the Grant Recipient's check number disbursing funds, the check dates, and the dates of posted payments for each disbursement according to bank records.
  - Although some of this information may be submitted in each payment request, **it is the responsibility of the Grant Recipient to maintain the complete financial transaction register.**
- **Source documentation**, including the following:
  - Record of direct deposit payments;
  - Verification of deposits;
  - Monthly bank statements with canceled checks;
  - Check register/transaction ledger;
  - Employee time and attendance sheets related to costs claimed;
  - Equipment time record sheets related to costs claimed;
  - Property inventory;
  - Deeds, easement documents, and purchase agreements for acquisition of property;

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<sup>1</sup>2 CFR §200.305(b)(9)

- Purchase orders, invoices, receipts, and contractor requests for payments; and
- All original source documents.

Financial records must clearly identify costs within the following categories:

- Costs requested for reimbursement through grant funds;
- Costs to be claimed as matching funds, paid by the Grant Recipient or a partnering entity; and
- Costs to be paid by local funds that exceed the Grant Agreement match amount or otherwise are not being claimed against the match commitment.

### **2.1.3 Establish Responsible Persons**

The Grant Recipient must identify by resolution the persons authorized to execute payment requests.

- An authorized official within the TDA-GO system must assign the payment processor or project director role to each of these individuals for each grant. A minimum of two persons authorized to approve payments is required.
- The TDA-GO roles and/or resolution must be updated when a payment processor changes due to elections, illness, resignations, etc., see *Authorized Signatories (Form A100)*.

**BEST PRACTICE:** Identify persons in the resolution by position title instead of by name.

### **2.1.4 Establish Grant Account with TDA**

As part of the grant award process, TDA must establish the account to which grant funds will be disbursed. The Grant Agreement may be withheld from execution until the following information is received:

- Federal Request for *Taxpayer Identification Number* (TIN) (Form W9) – All Grant Recipients must have an updated federal W9 on file.
- State Application for TIN – Provided by the Texas Comptroller of Public Accounts, a new or updated TIN form is required for each grant award.

Upload current W9 and TINS forms to the Grant Recipient's TDA-GO *Organization Information* page to avoid repeated submissions if the Grant Recipient receives multiple grants.

- *Direct Deposit Authorization Form* (Form 74-176) – Provided by the Texas Comptroller of Public Accounts, a separate 74-176 form must be completed for each grant award.
  - TDA does NOT currently request unredacted bank account information to be submitted within TDA-GO.
  - The direct deposit must be uploaded to the *Financial Management System Self-Assessment* (FMS) prior to release of the Grant Agreement. Refer to the applicable Application Guide for additional information about the FMS.
  - If updates are needed to the direct deposit on file at any time during the grant period, email a newly completed form for each TxCDBG grant to [CDBGReporting@TexasAgriculture.gov](mailto:CDBGReporting@TexasAgriculture.gov).
  - The Grant Recipient is strongly encouraged to receive payments from TDA posted directly to the local bank account. Grant payments released after the form is submitted and processed will be deposited using this method, but the deposit may take up to thirty (30) days.
  - If the Grant Recipient declines to participate in direct deposit options, manually strike through Sections 3, 4, and 6 of the form and write in **Warrant Requested**.

## **2.1.5 Grant Agreement Detailed Budget Summary Table**

Exhibit B of the Grant Agreement contains the basic project budget to which the Grant Recipient must adhere, specific grant funded activities with their associated budgets, and the total amount of funds committed as match.

The match commitment is not contractually assigned to specific budget lines, but the Grant Recipient may view the recommended budget lines for matching funds by navigating to the *Budget Details* page of the *Application* in TDA-GO.

## **2.2 Thresholds for Fund Disbursement**

TDA requires certain documents to be submitted to TDA to meet required thresholds prior to releasing several categories of grant funds. Additional documentation may be required based on the specific fund category or project description and will be listed in the TxCDBG Grant Agreement.

General Requirements:

- Disbursement thresholds describe the period when funds may be requested, but do not prevent the Grant Recipient from continuing to incur costs.
- Regardless of any thresholds that may impact disbursement of funds, all costs must be incurred within the agreement period, **except**:
  - Costs approved under written pre-agreement strategy;
  - Administration costs incurred up to sixty (60) days after the Grant Agreement end date; or
  - Administration costs for preparation of a single audit, see *Chapter 12 Grant Closeout*.
- All requested documents must be uploaded directly to TDA-GO and approved by TDA staff. Documents will not be accepted by email or any other method unless previously approved by TDA staff.

**NOTE:** TDA will deobligate all funds that are:

- Identified by the Grant Recipient as deobligated funds;
- Not requested for payment (i.e., no payment request submitted to TDA) with appropriate documentation within sixty (60) days after the Grant Agreement end date; or
- Not approved for extended reserve, see *Chapter 12.2.1 Confirmation of Final Project Details* for additional information.

### **Maximum General Administration Services and Engineering Services Reimbursement**

The TxCDBG grant application guide describes the maximum allowable expense for administration and engineering costs for each particular fund category and/or competition. Unless specifically stated otherwise:

- The administration costs may not be more than 16% of the TxCDBG grant funds budgeted for (or expended for) combined construction and acquisition/relocation activities, or the maximum dollar amount, whichever is less.
- Engineering costs may not be more than 25% of the TxCDBG grant funds budgeted for combined construction and acquisition/relocation activities (except in exceptional circumstances), or the maximum dollar amount, whichever is less.

### **Adjusted Administration and Engineering Services Reimbursement when Funds are Deobligated**

- If construction and/or acquisition funds are deobligated from the Grant Agreement during the closeout process, the ratios for administration and engineering costs will be recalculated to ensure that final costs are within the allowable percentage of the actual construction and

acquisition grant funds utilized. Any costs more than the recalculated ratios will be considered over budget. The Grant Recipient may not request payment for over budget costs and must repay any such costs already received but may claim these costs to meet a Grant Agreement's match requirements.

- Grant Recipients deobligating construction and/or acquisition funds may request an exception to the recalculated budgets for administration and engineering services if the project was completed during the original Grant Agreement period, i.e., no extensions. The request letter must be uploaded to the *Grant Overview* page, *Special Requests* section, and must include a description of the following:
  - Unforeseen circumstances beyond the Grant Recipient's control resulted in the deobligation of funds;
  - The timely and effective completion of contractual project obligations in their professional/administration services agreement;
  - Additional time invested in the project beyond the normal scope of work; and
  - Good faith efforts by the Grant Recipient and the administration or engineering services provider to use allowable grant amendment options to fully utilize the grant funding included in the TxCDBG Grant Agreement.

For the following fund disbursement thresholds, see *Chapter 1 Administration and Reporting* for a list of specific requirements.

### **Group A Documents**

No grant funds will be disbursed until all Group A documents have been accepted.

Once all Group A requirements have been approved by TDA staff, the Grant Recipient may request the following, as costs are actually incurred:

- Up to 50% of the administration budget and
- Up to 50% of the engineering budget.

### **Group B Documents**

Once all Group B documents have been approved by TDA staff, the Grant Recipient may request the following, as costs are actually incurred:

- Up to 90% of the administration budget,
- Up to 90% of the engineering budget, and
- Up to 75% of the construction activity budget(s).

### **Group C Documents**

Once all Group C documents have been approved by TDA staff, the Grant Recipient may request the following, as costs are actually incurred:

- Up to 95% of the construction activity budget(s).

### **Construction Retainage for Multiple Contractors**

In addition to the grant budget funding retention for the overall construction activity(s), Grant Recipients that have awarded multiple construction agreements must retain at least 5% of each prime agreement. However, TDA will allow release of this retainage upon completion of the TDA-GO MSR for a specific contractor, so long as 5% of the total construction activity budget line is retained until all Group C requirements are satisfied.

The Grant Recipient must ensure that contractors have satisfactorily fulfilled all provisions of the construction agreement, including resolution of any punch list items, the clean-up phase of the project, and payment of any payroll restitution or liquidated damages owed in accordance with the Davis-Bacon Act and related federal and state law.



### Construction Complete Group Documents

Once all Construction Complete Group requirements have been approved by TDA staff, the Grant Recipient may request the following, as costs are actually incurred:

- Up to 100% of the engineering budget; and
- Up to 100% of the construction activity budget(s).

### Project Complete Group Documents

Once all Project Complete Group requirements have been approved by TDA staff, the Grant Recipient may request up to 100% of the administration budget.

The payment request for the final administration costs must be submitted no later than sixty (60) days after the Grant Agreement end date and BEFORE submission of the Project Completion Report. The TDA-GO Payment Request cannot be submitted once the closeout process is begun; however, approval and processing of the payment may occur after the Grant Agreement is determined to be “Grant Closed” (formally referred to as “Administratively Complete”), see *Chapter 12 Grant Agreement Closeout*.

Summary of Funding Thresholds	Grant Budget Available
<b>General Administration Grant Budget</b>	
Acceptance of all Group A documents	0 to 50%
Acceptance of all Groups A and B documents	51 to 90%
Acceptance of all Project Complete Group documents (approved after Issuance of Grant Closed notice by TDA)	91 to 100%
<b>Engineering Grant Budget</b> (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 Construction Complete Group documents and any regulatory approvals required by the Grant Agreement, such as Texas Commission on Environmental Quality (TCEQ) interim well approvals or Texas Department of Licensing and Regulation (TDLR) inspections	91% to 100%
<b>Construction Grant Budget(s)</b>	
Acceptance of all Group A and Group B documents	0 to 75%
Acceptance of all Group A, Group B, and Group C documents	76% to 95%
Acceptance of all Group A, Group B, Group C, and Construction Complete Group Documents	96% to 100%

## 2.3 Matching Funds

Matching funds are defined as actual revenues provided by the Grant Recipient or other units of local government in a joint application, as committed in the Grant Agreement. TDA encourages projects that contain matching funds and requires Grant Recipients to meet their match ratio commitments. Requests to claim force account costs as match funds must comply with *Chapter 8 Force Account*.

### 2.3.1 Acceptability of Matching Funds

Funds can be considered as matching funds only if the matching funds will be used for:

- Activities described in the Grant Agreement Performance Statement; or
- Activities that are directly related to supporting the activities proposed for TxCDBG funding.

Match can only be considered if the Grant Recipient has used an acceptable and reasonable method to document the value of the match. Except for cash match, the Grant Recipient must submit a schedule which shows how the value of each type of match was determined.

**NOTE:** Local match can only be counted for expenditures that would not occur if the TxCDBG Grant Agreement were not funded. Local match will only be considered for expenses that meet the eligibility and prior approval requirements of TDA.

### Cost Eligibility

Matching funds are subject to all TxCDBG cost eligibility requirements; however, the following items are *not* eligible for grant funding but *may* be eligible for matching funds:

- **Donated Property** – The value of property owned by either the Grant Recipient or the utility that will own new grant-funded facilities, excluding easements, rights-of-way, existing locations for the same infrastructure system, or similar property, may be claimed as matching funds as long as the donated property changes hands, i.e., an entity cannot donate property to itself as match.
- **Waived Fees** – Fees associated with grant or match funded infrastructure that are normally collected by either the Grant Recipient or the utility that will own the infrastructure but that are waived for the TxCDBG project may be claimed as matching funds with prior TDA approval. These fees may include assessment fees, capital improvement fees, utility connection fees for low- to-moderate-income households, and similar fees.
- **First-time Water/Sewer Service for Non-LMI Households** – At TDA’s discretion, costs associated with yard lines for non-LMI households may count as matching funds. E.g., relocation of a water line that impacts yard-lines of both LMI and non-LMI households.

### Federal, State, and Program Requirements

Matching funds are generally subject to all TxCDBG program requirements. However, the following exception applies:

- For construction agreements funded entirely through non-TxCDBG funds but used to complete the TxCDBG project, the construction agreement may be exempt from Davis-Bacon Act and related requirements, see *Chapter 7 Davis-Bacon Labor Standards*.

## **2.3.2 Reducing the Commitment of Matching Funds**

Each Grant Recipient is required to expend the same ratio of local funds to TxCDBG funds as documented in the Grant Agreement.

If the overall project costs are less than the budgeted funds, the Grant Recipient may proportionally reduce both the grant fund and matching fund amounts without a budget amendment. The formula for calculating a proportional reduction in grant and match funds is:

$$\text{Total Project Cost} \div (1 + (\text{Exhibit B Match Amount} \div \text{Exhibit B Grant Amount})) = \text{Adjusted Grant Funds}$$

The *TxCDBG Match Calculator (Form A208)* can assist in calculating the correct ratio of grant and match funds based on actual project costs.

Unless the terms of the award or fund category require a larger match ratio, TDA will not require or verify matching funds greater than 100%.

- For projects in which the local match commitment exceeds the amount of TxCDBG grant funds, the matching funds may be reduced to the point that local funds are equal to or greater than the TxCDBG grant funds expended on the project without reducing grant funds.
- Approval from TDA to proportionally reduce matching funds is required if the overall project costs are proposed to be reduced by deleting work from the TxCDBG Grant Agreement Performance

Statement and requires a Grant Agreement Amendment, see *Chapter 11 Grant Agreement Amendments*.

**NOTE:** A proportional reduction of match does not require a grant amendment.

## **2.3.3 Matching Funds Provided by Other Funding Agencies**

All sources of funding, other than TxCDBG funds, must be identified and secured at the time of application.

If additional funding is obtained after the submission of the application, the Grant Recipient should submit the funding award notification and/or other documentation to TDA by uploading the document to the TDA-GO *Grant Overview* page as a *Special Request* within **thirty (30) days** of any change in the expected sources or uses of funds that exceed the lesser of **\$250,000 or 10%** of previously disclosed sources. The Grant Recipient must submit the following documentation:

- The amount of funds actually received from each source;
- The scope of the project funded through sources other than TxCDBG—to confirm that the funds are match to the TxCDBG-funded project; and
- Completion of the project as reported to all agencies.

Other sources include state and federal funding agencies other than TxCDBG, as well as local water supply corporations or other local entities participating in the project.

All projects funded in whole or in part through TxCDBG funds must comply with federal, state, and program requirements. Except as otherwise indicated, the procedures and requirements of the TxCDBG Project Implementation Manual apply to all work described in the TxCDBG Grant Agreement Performance Statement, including work performed by or funded in part through other state or federal agencies.

If a construction agreement includes both a TxCDBG project and a separate project not included in the Performance Statement nor claimed as matching funds to be paid by the Grant Recipient or another funding source, the construction agreement and bid schedule should clearly indicate the work and the costs associated with each project.

## **2.4 Payment Request Procedures**

Detailed step-by-step instructions for submitting a Payment Request in TDA-GO may be found on the TDA website.

If TDA staff identifies minor revisions to the data, staff may make certain adjustments and note those changes in the TDA Comments box.

**EXAMPLE:** The payment request exceeds a funding threshold (e.g., Groups A, B, C, etc.) that has not been satisfied, but the costs are otherwise eligible, TDA staff will reduce the grant amount requested and note the amount which may be claimed on subsequent payments. If costs included on the reported invoice are not eligible for the TxCDBG program, TDA staff will note the disallowed amount in the appropriate column and reduce the grant amount requested.

Under no circumstances will any TDA staff member increase the amount of grant funds requested on behalf of the Grant Recipient. If additional costs can be claimed, TDA staff may return the payment request to be revised and recertified by the Grant Recipient.

Once a payment request has been submitted, the Grant Recipient may check the status of the request in TDA-GO by navigating to the same payment request. The document landing page will include the current status of the request.

If TDA staff needs additional information or is unable to proceed, the payment processor or administration consultant will be contacted within ten (10) business days of the payment request submittal.

### **2.4.1 Minimum Payment Request Amounts and Disbursement**

Grant Recipients may request reimbursement for eligible costs as often as needed, with the provision that the minimum request is \$2,500. The exceptions to the minimum payment request of \$2,500 rule are as follows:

- The request exceeds 25% of an activity budget and the Grant Recipient is requesting funds only for that line item;
- The Grant Recipient is requesting funds for the final retainage of a construction agreement;
- The Grant Recipient has received prior approval from TDA; or
- The request is the final request for one or more activity budgets.

Standards for Payment Requests and Disbursement of Grant Funds include:

- Grant Recipients must base their payment request on actual costs incurred;
- Grant Recipient must disburse funds as soon as administratively feasible, and a maximum of five (5) business days — not including state and federal holidays — from the time of receipt/deposit of funds to the time of actual local disbursement; for state and federal holidays, the Grant Recipient should note such holidays on their ledger to assist in determining compliance with this requirement; and
- Grant Recipients must request funds under each budget activity at least once a year or as directed by TDA.

### **2.4.2 Delays, Ineligible Costs, and Denial of Payment**

Invoices and documentation that do **not** meet the minimum requirements established in this chapter will be **declined**.

All payment requests require certification by two payment processors and TDA staff will decline requests that do not include the second certification as required by the CDBG program.

If some or all costs are not eligible, or are not adequately supported with backup documentation, or if the Grant Recipient is out of compliance with one or more program requirements, TDA staff will either place the payment request on hold, pending resolution of the issue, or decline the payment request. The Grant Recipient will be notified of the reasons for holding or denying requests.

If the Grant Recipient is not able to resolve the identified deficiencies within five (5) business days, the payment request will be declined. The request may be re-submitted once the deficiencies have been resolved. Refer to *Acceptable Back-up Documentation for Eligible Costs (Form A207)* for specific requirements.

#### **Ineligible Costs**

The TxCDBG Guide to Meeting a National Program Objective, found on the TDA website, includes information on the statutory eligibility of project activities, and application guides contain eligibility information specific to the funding opportunity. In addition, the following list includes common items that

will **not** be approved for grant or match funding. This list is not exhaustive and project-specific costs must be considered on a case-by-case basis. Please contact TDA staff for specific guidance.

- Water meters for homes with no identified TxCDBG beneficiaries, including vacant homes, homes not connected to the TxCDBG-funded infrastructure, and other homes not approved as beneficiaries in the application and Grant Agreement.
- Commercial water meters.  
**NOTE:** In limited circumstances, commercial meters that serve residents may be eligible e.g., manufactured home parks, apartments, etc. Contact TDA staff for specific guidance.
- Operating and maintenance expenses of public facilities, improvements and services are ineligible for TxCDBG funding.
- Inflow and infiltration identification methods (smoke testing, televised inspection), and line cleaning (vacuuming, jetting, etc.) when used to identify general project locations.  
If these methods are used to identify specific sections of wastewater line that require maintenance to reduce or eliminate the amount of inflow or infiltration routed to the treatment facilities, they are considered maintenance activities. The process of identifying benefit areas for wastewater line replacement must be completed prior to the submission of an application for the scope of the project to be fully identified and to expedite construction completion.
- Costs for televised inspection and similar methods are considered eligible if used for pre-construction testing on a specific reach of line (manhole-to-manhole) and/or inspection of newly constructed lines to verify proper installation. Televising for line replacement using the pipe-burst method is generally eligible as a construction cost.  
**NOTE:** An additional classification/wage rate is required for workers of the prime construction contractor or subcontractor who operate the televising equipment (CCTV Operator).
- Software is generally ineligible unless it is integral to the function of an improvement and not utilized for billing or other operation and maintenance (O&M) purpose.
  - Software required for the operation of a supervisory control and data acquisition Software for Supervisory Control and Data Acquisition (SCADA) system is eligible.
  - If software is used for both functional and O&M billing purposes, up to 50% of the software costs may be considered eligible.
- Generators that are not permanently installed; trailer mounted generators are not considered permanently installed.
- Cost of obtaining permits or other documentation that would be required regardless of the current projects, including Certificates of Convenience and Necessity (CCN) applications, renewal of Texas Commission of Environmental Quality (TCEQ) permits, etc.
- Commercial advertising and public relations costs such as the replacement or addition of a logo, water system name, or other cosmetic painting on TxCDBG-funded water tanks and other structures.
- Costs associated with professional administration where the administrator had not been certified by TDA.<sup>2</sup>
- Remobilization costs, unless determined by TDA to be outside of the Grant Recipient's control;
- Cost or fees charged for the preparation of a TxCDBG application; and
- Other similar costs.

Refer to 2 CFR Part 200, Subpart E: Cost principles for the basic guidelines of eligible costs. If the Grant Recipient will be incurring any special or unusual costs, the Grant Recipient shall seek prior written approval from TDA.<sup>3</sup>

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<sup>2</sup> 4 TAC §30.10

<sup>3</sup> 2 CFR §200.407

## **2.4.4 Payment Revisions**

Detailed step-by-step instructions for submitting a Payment Revision in TDA-GO may be found on the TDA website.

**NOTE:** The practice of expending funds not in agreement with the purpose for which they were requested demonstrates insufficient capacity to manage and implement TxCDBG funded projects and may result in disallowed costs and/or ineligibility for program funding. Failure to submit this revision as soon as the error becomes known during the Grant Agreement period may also result in costs being disallowed. Please contact TDA staff with any questions.

## **2.5 Program Income**

Program income is defined as gross income received by the Grant Recipient that was generated from activities funded in whole or in part by the TxCDBG Grant Agreement. As program income generated from a TxCDBG federally funded project, it is subject to all federal requirements. If a Grant Recipient earns program income, contact TDA.<sup>4</sup>

The TxCDBG program is required to receipt program income payments, including general program income returned to the TxCDBG program, general program income retained by the unit of general local government (UGLG), revolving fund, and state revolving fund payments, in HUD's Integrated Disbursement and Information System (IDIS) on an annual basis. As a nationwide database, IDIS provides HUD with current information regarding the program activities underway across the nation, including funding data.

Total program income under \$35,000 received by Grant Recipients in a single year from activities, other than revolving loan funds that are retained by a Grant Recipient, do not have to be reported as program income and would not be receipted in IDIS. All funds received from revolving loan funds are considered program income regardless of amount. Once the annual total equals or exceeds \$35,000, the entirety is to be reported.

An exemption in the definition of program income is when renting property; program income is the gross income less any costs incidental to the generation of that income.

**EXAMPLE:** If renting a TxCDBG funded community center for events, the portion of the rental payments used for maintenance and staff would be incidental to the operations, and therefore would not be considered program income.

Grant Recipients that generate program income must contact TDA for directions on reporting and returning program income to the State.

## **2.6 Investigation of Fraud Allegations**

Allegations of fraud may be reported to TDA or to the HUD Office of the Inspector General. The report must include a written statement in support of the alleged fraud, waste, abuse, and/or mismanagement. Allegations of fraud involving any TxCDBG funds will be investigated immediately after being brought to the attention of TDA, through whatever source.

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<sup>4</sup> 2 CFR §200.307 and 24 CFR §570.489

Contact information to report **FRAUD** or **WASTE** in HUD-funded programs and operations:

HUD Inspector General Hotline  
451 Seventh Street, SW  
Washington, D.C. 20410  
HUD-OIG Hotline toll-free 800-347-3735 | FAX: 202-708-4829

See *Appendix A* for email and website information.

An investigation will be conducted if the allegations are made in connection with the services provided by a Grant Recipient using TxCDBG funds. TDA will immediately:

- Notify the Grant Recipient of the allegation and advise that TDA will investigate; or
- Advise the Grant Recipient that it must conduct a preliminary investigation and submit a written report within seven working days from the date of notification. The report must include:
  - The nature of the allegation, dollar amount involved, whether a fidelity bond exists and its dollar coverage;
  - Who is involved, i.e., individual(s) accused of fraud, Grant Recipient's name, names of the Grant Recipient's council/commission, and the Grant Recipient's chief elected officer;
  - When the allegations were made;
  - Time period involved;
  - Where the incident occurred; and
  - How the alleged incident occurred.

The TxCDBG compliance staff will review the report and decide whether further investigation is warranted.

- If further investigation is not warranted, the file is closed, or the Grant Recipient is directed to conclude the issue administratively.
- If it is determined that further investigation is warranted, TDA will conduct a full investigation of the allegations and may recommend withholding payments to the Grant Recipient, pending completion of the investigation. The scope of the investigation will be determined by the facts surrounding the incident.

Upon completion of the investigation, if applicable, TDA will:

- Prepare an incident report that includes all findings and any initial corrective action taken to date by TDA;
- Prepare a plan for corrective action, debt collection, and a plan for prosecution, if applicable;
- Request a claim against the fidelity bond to be filed, if applicable;
- Proceed with the resolution process on any costs which are questioned as a result of the investigation;
- Conduct a follow-up visit to ensure that corrective action has been implemented; and
- Initiate debt collection procedures with the Grant Recipient, as applicable.

## **Resources**

Resource Number	Description	URL
	How to Submit a Payment Request	<a href="#">TxCDBG Current Training Materials</a>
	How to Use a PR to Make a Balance Adjustment	<a href="#">TxCDBG Current Training Materials</a>
A207	Acceptable Back-up Documentation for Eligible Costs	<a href="#">TxCDBG Implementation Manual</a>
A208	TxCDBG Match Calculator	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.



# CHAPTER 3

## ENVIRONMENTAL REVIEW

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# CHAPTER 3

## ENVIRONMENTAL REVIEW

### 3.0 Introduction

The TxCDBG Grant Recipient is responsible for compliance with federal environmental review requirements. This chapter includes a summary of federal policy and program procedures and is intended to provide a basic understanding of the process. Grant Recipients and personnel completing the environmental review are responsible for staying informed of any periodic policy updates provided by HUD and TDA. Likewise, Grant Recipients and their environmental preparers must be familiar with the resources and materials found on the HUD Environmental Review website, also known as **HUD Exchange**, and should contact the TDA Environmental Specialist at **CDBG\_EnvReview@TexasAgriculture.gov** for technical assistance.

The State of Texas has designated TDA as the administrator of HUD's non-entitlement CDBG program. TDA occasionally consults with regional HUD environmental specialists to ensure consistency with federal policy requirements. However, TDA's interpretation of policy may be more stringent and will be enforced in accordance with the State's regulatory authority to administer the TxCDBG Program.

HUD regulations and guidance use the term Responsible Entity (RE) to refer to the unit of general local government responsible for meeting environmental review requirements—the Grant Recipient is the RE for all TxCDBG projects. This means that the Grant Recipient is responsible for completing the review, with or without assistance from a third party, and certifying the results. When the certifying officer signs the documents, they certify that not only has the project been found to have, or not have, significant impacts on the environment, but also that the required process was completed to reach this finding.

The certifying officer is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body authorizing the signatories either by job title or name. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants. The local governing body may appoint an alternate official to serve as the certifying officer with the understanding that either the primary or alternate will assume the same administrative and legal responsibilities described in 24 CFR §58.13. Either official authorized by the local government may approve environmental actions or execute required environmental forms in TDA-GO.

**BEST PRACTICE:** The Grant Recipient's chief elected official (mayor or county judge) signs the environmental review documentation.

TDA will monitor the Grant Recipient's compliance with HUD environmental review requirements; **failure to comply with these requirements will jeopardize the project and could lead to disallowed costs, repayment of funds, and suspension from the program for the Grant Recipient and administrators involved with the environmental review process.**

### **3.0.1 Basis of Environmental Review**

A key concept in performing an environmental review is to consider the impact of proposed project activities on the prospective project site(s). Likewise, an environmental review must assess any potential adverse impact that the environment in a planned site location may have on the project itself. HUD regulations require a Grant Recipient to group together and evaluate as a single review all individual activities which are related either on a geographical or functional basis or are logical parts of a composite of contemplated actions.

**EXAMPLE:** If TxCDBG funds are being used to acquire a site for a new construction project, the ultimate effect of the project is not solely the acquisition of the site, but also the construction of the project, including the installation of any associated infrastructure. Therefore, the environmental review must address the impacts of both the TxCDBG funded land acquisition and the privately financed construction of the project. The review must address the actual project site and the surrounding area.

The basics of an environmental review include, but are not limited to the following questions:

- What is there currently?
- What will be there once the project is completed?
- How will this be accomplished?

### **3.0.2 Timing of the Environmental Review and Choice-Limiting Actions**

**An environmental review must be performed and the State's release of funds granted before any construction funds—regardless of source—are committed to an activity or a project. No activity or project may be undertaken if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.** This prohibition on “choice-limiting actions” prohibits acquisition of real property and physical activity—including demolition, rehabilitation, and construction—as well as contracting for, or committing to any of these actions. Grant Recipients are responsible for clarifying with TDA which activities may be performed prior to receiving the AUGF and for immediately self-reporting to TDA suspected Choice Limiting Actions should they occur before the State's release of funds.

Therefore, Grant Recipients are required to complete their environmental reviews, Requests for Release of Funds, and clearance-related paperwork before:

- Any commitment of TxCDBG funds for activities not including administration services or engineering services; and
- Any commitment of non-TxCDBG funds or before undertaking activities that would have an adverse environmental impact or limit the choice of alternatives.

For the purposes of the environmental review process, “commitment of funds” includes the execution of a legally binding agreement (such as conveyance of interest in property or construction contract).

**SPECIAL CASE: 24 CFR 58.34 (a) (10)** – It is the responsibility of the Grant Recipient to fully document and verify with TDA that an activity and/or circumstance fulfills the requirements of the 58.34(a)(10) exemption **prior** to committing any potential choice limiting actions. TDA considers an imminent threat to public safety to be one in which immediate intervention is necessary. TDA will not approve use of this level of review after a choice limiting action has occurred.

**SPECIAL CASE: Project in Progress** – A party may begin a project in good faith as a private project and is not precluded from later deciding to apply for federal assistance. If the choice-limiting action was undertaken prior to the resolution authorizing submittal of the TxCDBG application, the activity

that was started is **not** required to be suspended. However, when a unit of local government applies for CDBG funding, it must cease **further choice-limiting actions**, including additional commitment of funds, on the project until the environmental review process is complete.

**SPECIAL CASE: Option Contract** – A contract to purchase or lease property for a TxCDBG project before the environmental review is completed is considered a commitment of funds and a choice-limiting action and must be avoided until after the environmental review process is completed and TDA has issued a release of funds.<sup>1</sup> See *Chapter 6 Acquisition of Real Property* for details on acceptable option contracts.

**SPECIAL CASE: Supplemental Funding** – Generally, each TxCDBG grant is considered a stand-alone grant and is NOT considered supplemental funding, even if the work identified in the Grant Agreement has been included in an environmental review under a separate Grant Agreement.

**EXAMPLE:** When the scale of a grant project is reduced due to costs after the environmental review is conducted, and the unconstructed work is proposed to be funded by a new grant application, the second application is a new, stand-alone project — much of the research collected by the Grant Recipient previously may be applicable, while the review and clearance process will not rely on the existing separate grant.

An environmental review level of Categorically Excluded (b), Not Subject to 58.5 on the basis of 24 CFR 58.35(b)(7). Approval of supplemental assistance to a TxCDBG project previously approved may only be selected in cases where:

- The grant is part of a large, phased project, the full scope of which has been discussed and documented with TDA staff;
- The grant application identifies the project as supplemental assistance, funding a specific phase of the larger project;
- TDA staff has evaluated the proposed phase of work and determined that the original environmental review remains relevant and "supplemental funding" is an appropriate basis for the level of review;
- Administration and engineering contracts are structured to account for both the overall phased project and the specific phase being funded at that time; and
- No costs are charged for the environmental review based on supplemental funding.

Please contact TDA at [CDBG\\_EnvReview@TexasAgriculture.gov](mailto:CDBG_EnvReview@TexasAgriculture.gov) if any of the preceding special cases apply to your project.

## 3.1 Environmental Review Process

The environmental review process should begin as soon as the Grant Recipient determines the projected use of HUD assistance.<sup>2</sup> TDA considers the earliest determination of “the projected use of HUD assistance” to occur with the adoption of the resolution authorizing submission of the grant application, or a similar formal action taken by the Grant Recipient (Responsible Entity) to prepare for or file an application for TxCDBG funding<sup>3</sup>.

The *Environmental Review Performance Report* is created in TDA-GO during the funding process and can be found in the *Related Documents* section of the Application/Grant Document. Detailed

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<sup>1</sup> 24 CFR §58.22(a)

<sup>2</sup> 24 CFR §58.30(b)

<sup>3</sup> 24 CFR §58.30

instructions for completing this report are available on the TDA website as *“How to Prepare and Submit the Environmental Report”*.

### **3.1.1 Step 1. Determine Project Description**

A complete and clear project description is the first step in the environmental review process. The project description should provide, at a minimum:

- Location-specific information and geographic boundaries, including location names (not only stand-alone coordinates);
- A delineation of all activities included in the overall scope of the project, including acquisition;
- A description of the existing conditions of the site;
- All elements described in the TxCDBG Grant Agreement Performance Statement must be included in the description;
- Activities not funded by TxCDBG but are part of the aggregate impact of the project on the environment must also be included in the description and in the environmental assessment, including any business attached to the TxCDBG project.

The project description is the foundation for the review process and must be consistent throughout the environmental review, including the Environmental Review Main Form and in all required publications.

**BEST PRACTICE:** Include in the project description alternative construction activities and locations where additional work may be completed if budgeted project funds allow. These activities and locations must be included in the scope of the environmental review study.

Grant Recipients must complete an environmental review for **each** project, including all functionally-related and geographically-related activities, and the associated administration and engineering work.

- **Professional and Related Services** – Executing a service contract for administration or engineering work necessary to complete the project is not considered a “choice-limiting action” and does not violate 24 CFR §58.22. Therefore, it is not necessary to file an exemption for administration and engineering services separate from the environmental review for the related activity. However, these activities must be included in the project description contained in the environmental review record and must also be included in scope of project activities listed in the published finding of no significant impact and/or notice of intent to request release of funds.
- **Projects in a Floodway** – Infrastructure projects in areas mapped as “floodways<sup>4</sup>” may only be funded if:
  - The infrastructure is installed below the floodway using directional drilling below ground level; any potential erosion issues will be addressed in the 8-Step Process (see the Additional Guidance for Certain Review Requirements section); or
  - The infrastructure is elevated above the floodway and installed above the base flood level, such as pipelines mounted to existing bridges above the base flood mark.
  - No housing or other structures, as defined by FEMA,<sup>5</sup> “not functionally dependent” on the waterway will be funded if located within the floodway itself.<sup>6</sup>
  - Critical Actions, as defined by HUD,<sup>7</sup> shall not be approved in Floodways.
  - For additional guidance, see also HUD’s Notice CPD-17-13, “Notice for Interpreting the Limits of the Floodway for Linear Infrastructure Projects Complying with HUD Floodplain Management Regulations, 24 CFR Part 55.”

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<sup>4</sup> 24 CFR 55.2(b)(5)

<sup>5</sup> 44 CFR 59.1

<sup>6</sup> 24 CFR 55.2(b)(6)

<sup>7</sup> 24 CFR 55.2(3)(i)

- Per HUD Revised Part 55 rule, rehabilitation of existing structures located in the floodplain when there is also a floodway on the property/parcel is allowable, including rehabilitation within the footprint of an existing structure. A permanent covenant to preserve all floodplain areas from future development and new construction on the parcel is required.
- **Projects in a Floodplain** – Grant Recipients completing projects in a floodplain must complete the 8-Step Process and participate in the National Flood Insurance Program (NFIP). The Grant Recipient must maintain documentation with the Environmental Review Record (ERR) of participation in the NFIP. <https://www.fema.gov/flood-insurance/work-with-nfip/community-status-book> website.

### **3.1.2 Step 2. Determine the Level of Review**

The Grant Recipient must determine the most appropriate level of review for the TxCDBG funded project, see *Summary of Levels of Environmental Review and Documentation Required in ERR (Form A309)*. It is critical that the project receives an adequate review to meet statutory requirements; however, it is not appropriate to require reviews that exceed the statutory guidance.

For information regarding level of review for environmental, please refer to the HUD's resources and guides on environmental review located at [www.HUDEXchange.com](http://www.HUDEXchange.com).

The Grant Recipient should determine the appropriate level of review, which TDA will confirm or require to be adjusted as the review process progresses. Three regulations identify activities that fall under review levels less than the Environmental Assessment. See also *Summary of Levels of Environmental Review and Documentation Required in ERR (Form A309)*.

#### **1. 24 CFR §58.34: Exemption**

Certain activities are, by their nature, highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may qualify for an Exempt Level Environmental Review. For complete details, refer to the environmental regulations.

- Environmental and other studies;
- Information and financial services;
- Administration and management activities;
- Engineering and design costs;
- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters or imminent threats to public safety or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD; and
- Any of the categorically excluded activities subject to Section 58.5 as listed in 58.35(a), provided there are no circumstances which require compliance with any other Federal laws and authorities listed in Section 58.5 of the regulations. For instance, projects located in one of the following areas cannot qualify for conversion to the Exempt level of review:
  - A floodplain (which triggers the decision making steps found in §55.20);
  - A known critical habitat for endangered species;
  - A historic property; or

- A known hazardous site.

## 2. 24 CFR §58.35(b) Categorically Excluded, Not Subject To §58.5 (CENST)

The following activities, listed at 24 CFR Section 58.35(b), have been determined to be categorically **excluded** in accordance with National Environmental Policy Act (NEPA) requirements and are not subject to 24 CFR §58.5 compliance determinations:

- Tenant-based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities including, but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if: approval is by same the RE, and re-evaluation is not required, per §58.47

## 3. 24 CFR §58.35(a) Categorically Excluded, Subject To §58.5 (CEST)

The list of categorically excluded activities is found in 24 CFR Section 58.35. While the activities listed in §58.35(a) are categorically excluded from NEPA requirements, the Grant Recipient must nevertheless demonstrate compliance with the laws, authorities, and Executive Orders listed in 24 CFR §58.5.

The following are categorically **excluded** activities subject to §58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20%.
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For residential properties with one to four units:
    - The density is not increased beyond four units;
    - The land use is not changed; and
    - If the building is located in a floodplain or in a wetland, the footprint of the building is not increased.
  - For multi-family residential buildings (with more than four units):
    - Unit density is not changed more than 20%;
    - The project does not involve changes in land use from residential to non-residential; and
    - The estimated cost of rehabilitation is less than 75% of the total estimated replacement cost after rehabilitation.
  - For non-residential structures including commercial, industrial and public buildings:
    - The facilities and improvements are in place and will not be changed in size or capacity by more than 20%; and

- The activity does not involve a change in land use, e.g., from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to four-family dwelling where there is a maximum of four units on any one site. **Individual action** refers to new construction, development, demolition, acquisition, disposition or refinancing (does not include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in-between;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;
- Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- Combinations of the above activities.

**Categorical Exclusion Converted to Exemption 24 CFR §§58.34(a)(12) and 58.35(a)** HUD regulations at §58.34(a)(12) permit some projects to convert from a Categorical Exclusion project to Exempt status. The Grant Recipient must first carefully determine that none of the statutory requirements under Section 58.5 apply to the project. The Environmental Preparer will select the appropriate Basis for Determination on the Environmental Review Checklist if the project can be converted to exempt under Section 58.34(a)(12). Cleared activities included in the review are considered exempt from the time of conversion onward. If any compliance factor is marked “yes” for “Are formal compliance steps required” OR “Are mitigation steps required,” on the Environmental Review Checklist, the review may not convert to Exempt.

#### **4. Environmental Assessment (EA)**

Activities which are neither exempt nor categorically excluded under each category will require an *Environmental Assessment* documenting compliance with NEPA, HUD, and with the environmental requirements of other applicable Federal laws.

For all levels of environmental review, the Grant Recipient must determine whether the activity triggers any of the other requirements of the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD’s requirement for disclosure of properties located in airport runway clear zones.<sup>8</sup>

Unless otherwise approved in writing by the TDA Environmental Specialist, the Environmental Review must be completed within one year after the level of review is determined. This period begins on the date the Environmental Review Checklist page is begun in TDA-GO, and generally should not be after the start date of the grant agreement. If this timeline is not feasible due to especially complex review elements or extenuating circumstances, send a request for extended review period and supporting documentation to **CDBG\_EnvReview@TexasAgriculture.gov** no later than 30 days before the end of the 12-month timeline. Grants with an approved extension to the regulatory timeline will not be issued a finding for noncompliance with the deadline; grant agreement special conditions or application scoring criteria that measure timeliness of environmental review continue to be applicable.

### **3.1.3 Step 3. Complete Checklists**

The HUD Exchange includes various checklists intended to help the Grant Recipient address all issues and regulations for HUD environmental review requirements. These checklists have been incorporated into the TDA-GO *Environmental Review Performance Report* as separate pages that become available based on the information provided in the report. For each of these checklists, the Grant Recipient must

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<sup>8</sup> 24 CFR §58.6



respond to each element with information from a credible and verifiable source to be included in the Environmental Review Record.<sup>9</sup>

Using *the Environmental Review Checklist* in TDA-GO select the appropriate level of review to generate the required environmental review checklist. These checklists and the supporting documentation form the Environmental Review Record (ERR).

Guidance and a more detailed explanation of laws and regulations most commonly applicable to TxCDBG projects can be found on the HUD Exchange Environmental Review webpage.

Documentation of compliance with these laws must be included in the ERR. If the project will affect or be affected by any of these laws and authorities, the Grant Recipient should initiate consultation with the appropriate regulatory agency. All written correspondence should reference the TxCDBG Grant Agreement number. **Photos of the current conditions of the project site and surrounding area from the field inspection must be included** in the ERR to document the project site visit required by several checklist items and must be uploaded directly to the TDA-GO *Environmental Review Checklist*. Photos must include all proposed locations, visible existing infrastructure related to the project, and be clearly labeled for public and state review.

## **Additional Guidance for Certain Review Requirements**

### **Historic Preservation Requirements<sup>10</sup>**

Section 106 consultation must be completed *before* the checklist and ERR can be certified by the ENV Preparer for public comment.

As part of the Statutory Checklist, under Categorical Exclusion 24 CFR §58.35(a) and Environmental Assessment projects, each Grant Recipient/Applicant must have concurrence from the State Historic Preservation Officer (SHPO) that the project will not adversely affect historically or archaeologically significant areas or structures. The SHPO in Texas is the Executive Director of the Texas Historical Commission. TDA has entered into a Programmatic Agreement with the Texas Historical Commission (THC) which under very specific conditions may allow for an exception to the requirement for SHPO clearance.

- Grant Recipients/Applicants meeting certain criteria may satisfy the Historical Preservation requirements by certifying the *Exemption Request for Section 106* on the Section 106 page of the Environmental Review Performance Report.
  - When the Request for Exemption from Section 106 fields are completed and saved, TDA will review and mark the form as either Exemption Approved or Exemption Declined. It is the preparer's responsibility to verify TDA's decision on the Section 106 page. **TDA's determination of a responsible entity's Section 106 exemption request is at the sole discretion of the department and considered final.**
  - If the exemption is approved, no additional Section 106 actions are required so long as the project stays within the parameters of the exemption stipulation. If any further actions are taken or changes made in the project scope, design, materials or location, the Grant Recipient must notify TDA and reevaluate this section to ensure this exemption approval remains valid.
  - If the project does not meet the criteria outlined in the Programmatic Agreement, or if the Grant Recipient/Applicant does not provide an adequate project description or other information needed to determine compliance, TDA will decline the exemption and full documentation of Section 106 requirements must be completed.

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<sup>9</sup> 24 CFR §58.38(b)

<sup>10</sup> Section 106 of the National Historic Preservation Act of 1966

- If the project does not have an exemption from SHPO Review approved by TDA, the Grant Recipient must submit the **SHPO Historic Preservation Notice** and allow at least thirty-five (35) calendar days for the SHPO to review. A copy of the Historic Preservation Notice and response must be kept in the Environmental Review Record.
- A project that does not have a Section 106 exemption approval must also consult with the Tribal Historic Preservation Officer (THPO) for each tribe that has declared an interest in the area. The relevant tribal contacts for each county can be found in HUD's **Tribal Directory Assistance Tool (TDAT)**. Click the *Generate Tribal Consultations* letter in TDA-GO to prepare the required government-to-government consultation letters for the identified tribes.  
**BEST PRACTICE:** Grant Recipients must send consultation letters and emails directly to the THPO. Consultants/Environmental Review Preparers may email consultation letters to the THPO on behalf of the Grant Recipient, but *the email must include the Authorizing Official as a cc recipient and must identify the sender as a third party assisting the local government* with administrative tasks for government-to-government consultation. Allow a minimum of thirty (30) calendar days for a response to consultation letters sent electronically, and thirty-five (35) days for consultation letters sent by certified mail. Copies of these letters, responses, and evidence of delivery to the tribal contacts (read receipt email delivery or certified mail) must be retained in the Environmental Review Record.
- Currently, the most reliable information for both tribal contact information and geographic area of interest is TDAT. HUD updates TDAT periodically, after which TDA will update the contact information and/or tribal listings in TDA-GO. Additional tribes may be added over time where the geographic area of interest and contact information has been published by a similarly reliable source.
- If the environmental review identifies tribal governments with interest in the project area that are not listed in TDA-GO, the Grant Recipient is responsible for consulting with those tribes.

## 8-Step Decision Making Process for Floodplain Management and Protection of Wetlands

Except for actions covered by 24 CFR §55.12(a), eight steps are required to make decisions for a project proposed to occur in a floodplain or wetland, including public notices and an examination of practicable alternatives. This process must be documented on the **Environmental Review Part 55** page of the Environmental Review Performance Report.

The steps to be followed in the decision-making process are found in 24 CFR Part 55 – Subsection C as follows:

### Step 1. Floodplain/Wetlands

Determine whether the proposed TxCDBG funded project is located in the following:

- 100-year floodplain;
- 500-year floodplain for critical actions; or
- Results in new construction in a wetland.

A critical action means any activity for which even a slight chance of flooding might be too great because such flooding might result in a loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain, or extend the useful life of those structures or facilities that are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, such as hospitals or residential care facilities, see **HUD Floodplain Management**.

To determine whether a wetland exists, refer to 24 CFR §55.2(b)(11).

**NOTE:** Updated Part 55 floodplain management rules have been issued by HUD. The revised 8-step process for floodplain decision-making requires the use of the new Federal Flood Risk Management

Standard (FFRMS) floodplain map. This rule expands the floodplain of concern from the 100-year floodplain to a newly defined “FFRMS floodplain.” The FFRMS floodplain is an expanded area both horizontally and vertically from the 100-year floodplain that is based on future flood risk. The rule requires that newly constructed or substantially improved structures within this newly defined floodplain be elevated or floodproofed to this higher FFRMS floodplain elevation for protection.<sup>11</sup>

For areas not yet mapped in the FFRMS floodplain maps, the Grant Recipient may use the FEMA Flood Insurance Rate Map (FIRM). Local documentation may be used if no federal resources provide floodplain mapping for the area,

If the action does not occur in a floodplain or result in new construction in a wetland, then no further compliance with this part is required. This determination is recorded on the TDA-GO environmental review page.

## **Step 2. Floodplain/Wetlands**

Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland. Engage the affected and interested public and agencies in the decision-making process.

- The public notices required may be combined with other project notices wherever appropriate. Early & Final Floodplain and Wetland notices may NOT be combined together in the same publication.
- Notices required under this part are considered vital documents under the Grant Recipient’s Limited English Proficiency Plan, see *Chapter 10 Civil Rights*.
- All notices must be made available to the public by:
  - publishing in an appropriate, locally printed news medium OR
  - posting the notice in one public place accessible to the general public at the time of the posting, such as the courthouse/city hall, **and** posting on Grant Recipient’s website as described in Chapter 1.1.5.
  - In addition, the notices must be sent to federal, state, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.
- A minimum of 15 calendar-days shall be allowed for comment on the public notice.
- A notice under this paragraph shall include
  - Project name
  - Proposed location
  - Description of the activity
  - The total number of acres of floodplain or wetland involved
  - The related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity
  - The HUD approving official or the certifying officer of the responsible entity authorized by 24 CFR Part 58
  - The phone number to call for information with the operating hours of HUD or the responsible entity’s office, and any website at which a full description of the proposed action may be reviewed

## **Step 3. Floodplain/Wetlands**

Identify and evaluate practicable alternatives to locating the proposed action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland.

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<sup>11</sup> [https://www.hud.gov/program\\_offices/comm\\_planning/environment\\_energy/ffrms](https://www.hud.gov/program_offices/comm_planning/environment_energy/ffrms)

- Except as provided in 24 CFR §55.20(c)(3) of this section, HUD or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:
  - Locations outside and not affecting the 100-year floodplain (or the 500-year floodplain for a Critical Action) or wetland;
  - Alternative methods to serve the identical project objective, including feasible technological alternatives; and
  - A determination not to approve any action proposing the occupancy or modification of a floodplain or wetland.
- Practicability of alternative sites should be addressed considering the following:
  - Natural values such as topography, habitat, and hazards;
  - Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and
  - Economic values such as the cost of space, construction, services, and relocation.

#### **Step 4. Floodplain/Wetlands**

Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

- **Floodplain Evaluation** – The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include
  - Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;
  - Living resources such as flora and fauna;
  - Cultural resources such as archaeological, historic, and recreational aspects; and
  - Agricultural, aquacultural, and forestry resources.
- **Wetland Evaluation** – In accordance with Section 5 of Executive Order 11990, the decision-maker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Among these factors that should be evaluated are:
  - Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;
  - Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;
  - Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and
  - Other uses of wetlands in the public interest including, but not limited to, recreational, scientific, and cultural uses.

#### **Step 5. Floodplain/Wetlands**

Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and to restore and preserve its natural and beneficial functions and values.

- Minimization techniques for floodplain and wetland purposes include but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Flood-proofing and elevating structures, including freeboard above the required base flood elevations, are also minimization techniques for floodplain purposes.

- Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one-acre of wetland. Compensatory mitigation includes but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.
- Actions covered by 24 CFR §55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include
  - Preparation of and participation in an early warning system;
  - An emergency evacuation and relocation plan;
  - Identification of evacuation route(s) out of the 500-year floodplain; and
  - Identification marks of past or estimated flood levels on all structures.

### **Step 6. Floodplain/Wetlands**

Reevaluate the proposed action to determine

- Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and
- Whether alternatives preliminarily rejected at Step 3, paragraph C of 24 CFR §55.20 are practicable in light of information gained in Steps 4 and 5, paragraphs D and E, of this section.
  - The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.
  - A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the base flood elevation for sites located in floodplains, as appropriate on the applicable source under 24 CFR §55.2(b)(1). For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

### **Step 7. Floodplain/Wetlands**

If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland, **publish** a final notice that includes

- The reasons why the proposal must be located in the floodplain or wetland;
- A list of the alternatives considered in accordance with paragraphs(c)(1) and (c)(2) of 24 CFR §55.20; and
- All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial functions and values.

In addition, the public notice procedures of 24 CFR §55.20(b)(1) shall be followed, and a minimum of seven calendar days for public comment before approval of the proposed action shall be provided.

### **Step 8. Floodplain/Wetlands**

Upon completion of the decision-making process in Steps 1 through 7, proceed with the Environmental Review and other actions to implement the proposed action. There is a continuing responsibility on the Grant Recipient to ensure that the mitigating measures identified in Step 7 are implemented.

## **Tiered Review**

A Tiered Review may be appropriate when the Grant Recipient is evaluating a collection of projects that would fund the same or very similar activities repeatedly within a defined local geographic area and timeframe, but where the specific sites and activities are not yet known.,

**EXAMPLE:** A first-time water/sewer connection project that spans a larger geographical area for which qualifying households have not yet been selected.

For the project as a whole, complete a Broad-Level Tiered Environmental Review using the format provided on the HUD website.<sup>12</sup> This review will identify which review requirements must be addressed site-by-site. For each specific site, document compliance with the review requirements identified in the Broad-Level Tiered Environmental Review.

The Grant Recipient may request a Release of Funds based on the Broad-Level review; however, the Site-Specific review must be completed prior to obligating funds for each site.

### **Environmental Impact Statement**

An Environmental Impact Statement (EIS) is required when the Grant Recipient's Environmental Assessment results in a Finding of Significant Impact, indicating that its proposed project or activity will significantly impact the human environment. It is unlikely that any TxCDBG-funded activity will trigger an EIS. In the event a Grant Recipient finds itself involved with this level of review the Grant Recipient should immediately contact the TDA Environmental Specialist for further instructions.

## **3.1.4 Step 4. Publish Notices**

Applicable for reviews under the categories, "Environmental Assessment" and "Categorically Excluded, subject to [24 CFR] §58.5" discussed earlier in this chapter:

Once the Grant Recipient has verified compliance with related laws and authorities, the public must be notified of the results.

- Notices must comply with HUD regulations:
  - For Environmental Assessment (EA) projects, the Combined Notice meets the requirements of a Finding of No Significant Impact (FONSI) pursuant to 24 CFR §58.45 and *Notice of Intent to Request Release of Funds* (NOI/RROF) pursuant to 24 CFR §58.70. 24 CFR §58.43
  - For Categorically Excluded, Subject to 24 CFR §58.5 -- *Notice of Intent to Request Release of Funds* (NOI/RROF) pursuant to 24 CFR §58.70. 24 CFR §58.43
- TDA-GO will automatically populate details from the *Environmental Review Main Form* into the notice. The notice must always be congruent with the *Main Form*, e.g., a location name change on the *Main Form* must be documented on the notice and vice versa.  
**Note:** Notices will not be automatically disseminated by TDA.
- Local Comment Periods (Initial comment period on the local government level): The local comment period begins the day after the date the notice is published or posted. If the last day of the local comment period should fall on Saturday, Sunday or a Federal holiday, comment periods shall be extended to the next business day. If comments are received, the Grant Recipient must consider the comments and make modifications, if appropriate, in response to the comments before the Environmental Review Main Form in TDA-GO is certified by the authorizing official.
- The required notice(s) is generally published in a newspaper of general circulation in the community, see *Chapter 1 Administration and Reporting, Section 1.1.5*, for detailed instructions regarding public notices and documentation.

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<sup>12</sup> <https://www.hudexchange.info/programs/environmental-review/tiered-environmental-reviews/>

- For notices posted in public locations rather than published in the newspaper:
  - The Grant Recipient must allow three additional days for public comments on the review if the notices are posted rather than published in the newspaper, as required by 24 CFR §§58.43 and 58.45.
  - See Section 3.1.3, *8-Step Decision Making Process for Floodplain Management and Protection of Wetlands* for limitations on posting floodplain notices.
  - *Affidavit of Posting (Form A101)* is required for notices posted rather than published. The affidavit must be notarized following the comment period.
- This NOI/RROF **must** also be sent, at a minimum, to the following:<sup>13</sup>
  - Local news media;
  - Individuals and groups known to be interested in its activities; and
  - Appropriate tribal, local, state, and federal agencies and TDA.
- **For Environmental Assessments** – Notice of the FONSI must be sent to the regional office of the U.S. Environmental Protection Agency (EPA) having jurisdiction. To prepare for public comment, select the **Print** button on the *Environmental Review Main Form* in TDA-GO. This will allow the environmental preparer to print the checklists required for the ERR.
- **Public Comment Periods** – Required notices must afford the public the following minimum comment periods:<sup>14</sup>
  - When the level of review is Notice of Finding of No Significant Impact (FONSI), the period that the Grant Recipient must accept public comment on the Notice is (fifteen) 15 days when published, or if no publication, eighteen (18) days when mailing and posting.
  - When the level of review is Notice of Intent to Request Release of Funds (NOI-RROF), the period that the Grant Recipient must accept public comment on the Notice is seven (7) days when published, or if no publication, ten (10) days when mailing and posting.
  - When the level of review is concurrent or combined notices, the period that the Grant Recipient must accept public comment on the Notice is fifteen (15) days when published or, if no publication, eighteen (18) days when mailing and posting. Public comment periods must account for public access to the notice.
  - All time periods shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time **on the day following** the publication or the mailing and posting date of the notice which initiates the time period.<sup>15</sup> Public comment periods must account for public access to the notice.

Public comment periods and publications are **not** required for the following review categories:

- Exempt level.
- Categorically excluded and not subject to 24 CFR §58.5.

### **3.1.5 Step 5. Certifications**

Two certifications are required in the TDA-GO *Environmental Review Main Form*:

1. The environmental preparer must affirm the ER determination and checklist in TDA-GO. If a public comment period is required, this certification must occur *prior* to the public comment period.
2. The authorizing officer must accept responsibility for the review by certifying the *Environmental Review Main Form*. If a public comment period is required, this certification must occur *after* the public comment period.

For reviews under the categories **Environmental Assessment and Categorically Excluded**:

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<sup>13</sup> 24 CFR §58.43

<sup>14</sup> 24 CFR §58.45

<sup>15</sup> 24 CFR §58.21

After the public comment period has expired and all comments, if any, are resolved, the Grant Recipient's certifying officer must complete the RROF Certification. See also HUD form 7015.15, found on the HUD Environmental Review webpage.

- The authorizing official's certification identified above certifies the RROF.
- Only the designated certifying officer may sign the RROF.
- Because the certification form certifies that the dates of the comment periods have expired, the request form **must** not be signed prior to the **day after the end of the public comment period**.

**NOTE:** False claims or information could lead to criminal and/or civil penalties.<sup>16</sup>

A RROF is not required for the following review categories:

- Exempt and
- Categorically excluded, not subject to 24 CFR §58.5.

### **3.1.6 Step 6. Submit Clearance Documentation to TDA**

The Grant Recipient must complete all required sections on the Environmental Review Main Form in TDA-GO based on the level of review identified in Section 3.1.1. To request an environmental release of funds, select *Submit Performance Report* in the Status Options section of the navigation menu.

### **3.1.7 Step 7. State Objection Period and Release of Funds**

Applicable for reviews under the categories **Environmental Assessment** and **Categorically Excluded Subject to 24 CFR §58.5**:

- On the working day after the Environmental Review is submitted in TDA-GO, the TDA Environmental Specialist will begin the State Objection Period, which is a minimum requirement of at least fifteen (15) days. The State Objection time period is *in addition* to the time already allowed for public commentary as described above.
- Any person or agency may object to a certified RROF. However, the objections must meet the conditions and procedures set forth in 24 CFR Part 58, Subpart H.
- If there are no objections received after fifteen (15) days, TDA will issue an Authority to Use Grant Funds (AUGF).

Applicable for reviews under the categories Exempt Level of Review and Categorically Excluded Not Subject to 24 CFR §58.5:

- No State Objection Period is required.
- TDA will issue an AUGF following its review of the *Environmental Review* page in TDA-GO. The AUGF may be accessed and printed from TDA-GO for the local ERR.

The AUGF is also referred to as the **environmental clearance**.

- Once the AUGF is issued, the Grant Recipient may commit grant funds and other funds to the project, and may proceed with activities that were limited under §58.22. This clearance is for the environmental condition only; other special conditions in the Grant Agreement must also be met before any construction funds can be released.
- The authorization is completed based on the certifying official's signature certifying that all required procedures have been completed, along with the limited support documentation provided.

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<sup>16</sup> 18 U.S.C. §§1001, 1010, & 1012; 31 U.S.C. §§3729 & 3802



- If approved, TDA will certify the AUGF Certification section found at the bottom of the Main Form. For a hard copy of the RROF and AUGF for local records, the full Main Form should be printed in its entirety.

**NOTE:** The AUGF is **not** an indication that TDA has reviewed and approved the entire Environmental Review Record for the project.

### **3.1.8 Step 8. State's Post-Release Review**

Following the Authorization to Use Grant Funds, TDA will conduct a post-release monitoring review in accordance with 24 CFR §58.18. This review may occur at any time after the release of funds and prior to the closeout of the Grant Agreement. TDA may request support documentation for selected requirements or the full ERR.

If TDA determines that the Grant Recipient's environmental review was inadequate or incorrect, the Environmental Specialist will provide technical assistance and guidance for corrections, which may include the following:

- Additional support documentation or clarification,
- A finding of non-compliance,
- A hold on grant funding until all issues are resolved,
- Requirements to conduct a new Environmental Review that complies with all requirements, and/or
- Disallowed costs for serious findings involving statutory or regulatory requirements that cannot be remediated.

### **3.1.9 Step 9. Re-Evaluation of the Environmental Determination and Subsequent Amendment Procedure**

The environmental determination must be re-evaluated any time that the Grant Recipient **proposes substantial changes in the nature, magnitude, or extent of the project.**<sup>17</sup> The re-evaluation assists in determining whether the original determination and/or finding are still valid. Grant Recipients are responsible for self-reporting to TDA suspected re-evaluation violations should a non-cleared activity be taken or non-cleared location impacted prior to conducting a re-evaluation or prior to receiving an additional AUGF if an updated FONSI is required.

Project amendments that **may** result in the need for an updated FONSI include—but are not limited to:

- Any change in project scope.  
**EXAMPLE:** Adding water line improvements to a sewer line improvement project.  
**EXAMPLE:** Adding sewer plant improvements to a sewer line improvement project.
- Any **new** project location not addressed in the original review.  
**EXAMPLE:** Adding additional streets to a street reconstruction project.  
**EXAMPLE:** Changing the location of a proposed water tower.
- An **increase** in infrastructure capacity of more than 20%.  
**EXAMPLE:** Increasing a proposed water storage tank from 100,000 gallons to 150,000 gallons.  
**EXAMPLE:** Adding traffic lanes to widen a street.
- A **change** in method or design that impacts the physical environment.

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<sup>17</sup> 24 CFR §58.47

**EXAMPLE:** Adding lift stations not previously proposed to a sewer line improvement project.

**EXAMPLE:** Adding fire hydrants to a water line improvement project where none had been proposed.

- A **change** to accommodate new circumstances and/or environmental conditions that have arisen during project implementation.

**EXAMPLE:** Addressing damage caused by a natural disaster.

**EXAMPLE:** Changing strategies from rehabilitation of a building to reconstruction or expansion as a result of the actual building conditions.

### Re-Evaluation of the Finding by the Grant Recipient

Any project changes that were addressed by the original Environmental Review will likely not require additional clearance requirements, including notices.

- The Grant Recipient should clearly document that the changes are not substantial and that the EA/FONSI or Categorical Exclusion/Exempt determination are still valid after each re-evaluation. The Environmental Review Record should be updated with any new project locations, etc.
- Documentation for each re-evaluation must be recorded in TDA-GO using the *Environmental Review - Re-evaluation* page, located within the existing *Environmental Review Performance Report*. TDA recommends a hard copy of the re-evaluation page for each amendment be printed and kept, along with supporting source documentation, in local records.
- A separate letter is not required unless additional information is requested.

If the Environmental Specialist has concerns regarding the proposed changes to the Grant Agreement, TDA staff will contact the Grant Recipient and administrative consultant to discuss the concerns.

If the proposed project amendment is a change in scope or activity and is **not** covered by the original Environmental Review, then the Grant Recipient must start at the beginning of the process, including a new Environmental Review, public notices, public comment and objection periods, and new release of funds by TDA.

TDA recommends that the Grant Recipient include any anticipated alternatives (including additive alternatives) to the original project in the original Environmental Review. TDA also recommends if a construction bid is substantially less than anticipated and additional construction funds will be available, that the Grant Recipient begins the request for a grant amendment as soon as possible. Thus, in the event the amendment is approved, and a new or re-evaluated environmental clearance is obtained, administrative requirements will not delay construction.

## 3.2 Environmental Laws and Regulations

The following provisions of law authorize state governments to assume HUD's Environmental Review responsibilities. TDA will act for HUD for Environmental Reviews, decision-making, and action that would otherwise apply to HUD under the National Environmental Policy Act ("NEPA") and other provisions of laws that further the purposes of NEPA, as specified in 24 CFR Part 58. These regulations are referenced in 24 CFR §58.1(b).

### 3.2.1 Laws

The foremost environmental law is NEPA and implementing Executive Order 11514 (35 FR 4247, 3 CFR, 1966-1970 Comp., p. 902), as amended by Executive Order 11991 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508). This is not an all-inclusive list—as projects can cross over into other laws and authorities not listed here.

## **NEPA**

**42 U.S.C. §4321** – The purposes of this Act are to declare a national policy, which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a Council on Environmental Quality.

## **Housing and Community Development Act, Section 104 (g)**

**42 U.S.C. §5304** – In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this title, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to recipients of assistance under this title who assume all of the responsibilities for environmental review, decision-making, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects.

## **Executive Order 11514**

Protection and Enhancement of Environmental Quality

## **Executive Order 11991**

Relating to Protection and Enhancement of Environmental Quality

## **Historic Preservation Requirements:**

- National Historic Preservation Act of 1966, 54 USC §§300101 *et seq.*
- Archeological and Historic Data Preservation Act of 1974, 54 USC §§312501-312508.
- Executive Order No. 11593, Protection and Enhancement of the Cultural Environment.
- Antiquities Code of Texas, Chapter 191, Texas Natural Resources Code.
- Tribal Consultation in Projects that are reviewed under 24 CFR Part 58.
- See *Appendix A* for web address/link.

## **3.2.2 Regulations**

### **24 CFR Part 51 – Environmental Criteria and Standards**

**Description** – These regulations provide environmental standards for determining project acceptability and necessary measures to ensure that activities assisted by HUD achieve the goal of a suitable living environment. The environmental criteria include noise abatement and control and the siting of HUD-assisted projects near hazardous operations including explosives, flammables, runway clear zones at civil airports, and accident potential zones at military airfields.

### **24 CFR Part 55 – Floodplain Management and Protection of Wetlands**

**Description** – HUD regulations to implement Executive Orders Nos. 11988 (as amended by Executive Order 13690) and 11990 on development in floodplains and wetlands. See HUD Exchange for more information and publication requirements. This could add 15 days to the Environmental Process.

### **24 CFR Part 58 – Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities**

**Description** – The procedures outlined in these regulations are used by entities that assume HUD's Environmental Review responsibilities in determining program compliance with the intent of the NEPA and other related statutes. Applicable HUD programs under these regulations include only those in which a specific statute allows governing entities to assume the Federal responsibility.

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### 36 CFR Part 800 – Protection of Historic Properties

**Description** – The Advisory Commission on Historic Preservation Rules, used by HUD for all HUD projects.

## Resources

Resource Number	Description	URL
	24 CFR part 58	<a href="https://www.ecfr.gov/current/title-24/subtitle-A/part-58">https://www.ecfr.gov/current/title-24/subtitle-A/part-58</a>
	HUD Exchange – Environmental review	<a href="https://www.hudexchange.info/programs/environmental-review/">https://www.hudexchange.info/programs/environmental-review/</a>
	Notice for Interpreting the Limits of the Floodway for Linear Infrastructure Projects Complying with HUD Floodplain Management Regulations	<a href="https://www.hudexchange.info/resource/5662/notice-cpd-17-13-notice-for-interpreting-the-limits-of-the-floodway-for-linear-infrastructure-projects-complying-with-hud-floodplain-management-regulations/">https://www.hudexchange.info/resource/5662/notice-cpd-17-13-notice-for-interpreting-the-limits-of-the-floodway-for-linear-infrastructure-projects-complying-with-hud-floodplain-management-regulations/</a>
	Process for Tribal Consultation in Projects that are Reviewed Under 24 CFR Part 58	<a href="https://www.hudexchange.info/resource/2448/notice-cpd-12-006-tribal-consultation-under-24-cfr-part-58/">https://www.hudexchange.info/resource/2448/notice-cpd-12-006-tribal-consultation-under-24-cfr-part-58/</a>
	Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations, 24 CFR Parts 50 and 58	<a href="https://www.hudexchange.info/resource/3197/guidance-categorizing-activity-as-maintenance-environmental-regulations-24-cfr-parts-50-and-58/">https://www.hudexchange.info/resource/3197/guidance-categorizing-activity-as-maintenance-environmental-regulations-24-cfr-parts-50-and-58/</a>

\*Note: these items will be updated as needed.

# CHAPTER 4

## GRANT AGREEMENT SPECIAL CONDITIONS

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# CHAPTER 4

## GRANT AGREEMENT SPECIAL CONDITIONS

### 4.0 Introduction

In addition to the standard federal, state, and program requirements, special conditions may apply to the TxCDBG Grant Agreement based on the specific project activity or location. **Grant Recipients must document proof of compliance with all applicable provisions.** The special conditions are found in Exhibit A, Section D of the Grant Agreement and on the *Grant Overview* page in TDA-GO.

### 4.1 Special Conditions - Pre Construction

#### 4.1.1 Permit and Approval Certification

In addition to TxCDBG programmatic requirements, the Grant Recipient is responsible for ensuring compliance with all permits, authorizations, or other written approvals required by state or federal regulations. Examples include:

- Texas Commission on Environmental Quality (TCEQ) approval of plans and specifications for water and sewer projects;
- Texas Historical Commission (THC) approval for construction in a designated Main Street area;
- Texas Department of Licensing and Regulation (TDLR) approval for building construction projects;
- Texas Department of Transportation (TxDOT) approval for construction of a bridge project; and other approvals required by state or federal agencies prior to construction.

Although no standard reporting is required, the Grant Recipient must retain copies of all permits and approvals in the local grant files. When corresponding with other agencies about a Grant Recipient's TxCDBG project, please be sure to reference the Grant Agreement number.

**NOTE:** The Texas Engineering Practice Act requires most public works projects to be designed, supervised, inspected, and accepted by a registered professional engineer. If the project is exempt from this requirement, the Grant Recipient must document the exception through a letter certified by the chief local official.<sup>1</sup>

#### 4.1.2 Temporary Project Signage

All construction projects utilizing TxCDBG funding must have temporary signage erected in a prominent location at the construction project site. For projects with a Citywide benefit but multiple project locations, (E.g., water meter replacement throughout the city, manhole replacement throughout the city, etc.) the temporary signage may be located in a central location such as City Hall or the County Courthouse provided that the temporary signage is accompanied by a description or map of the specific locations. For additional guidance for similarly scattered project locations, contact TDA staff. A photo of

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<sup>1</sup> Texas Occupations Code, §1001.053

this signage must be submitted with Group B Performance Report to TDA prior to the release of construction funds.

Temporary signage requirements include:

- Placement in a prominent visible public area that is not blocked or obscured,
- Constructed of durable materials,
- Minimum size of 11" x 17" with lettering no smaller than one-half inch, and
- Required text (or similar)\*:  
**This project is funded by the Texas Department of Agriculture with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Program.**

**NOTE:** The text requirement above is satisfied by using the text in this manual. Alternate wording may be approved by TDA upon request.

Temporary signage may be reused for future TxCDBG projects as appropriate.

### **4.1.3 Direct Benefit Guidelines**

Information on determining if a project provides a "direct benefit" may be found in the *TxCDBG Guide to Meeting a National Program Objective*, located on the TDA website.

TxCDBG funded projects that provide direct benefit to homeowners selected through an application process must receive the following:

- TDA approval for the proposed program guidelines *prior* to the selection of program recipients;
- TDA's release of funds for such activities. Applicable projects are those that provide housing rehabilitation, first-time on-site sewage facilities, replacement of on-site sewage facilities, or scattered first-time water or sewer service yard lines (that are not associated with the installation of a main trunk line). As appropriate, the following documents must be submitted and approved by TDA prior to the release of any TxCDBG construction funds for direct benefit activities:
  - *Sample Housing Rehabilitation Guidelines (Form C2)*
  - *Housing Rehabilitation Work Write-ups and Cost Estimate Worksheet (Form C3)*
  - *On Site Sewer Facilities (OSSF) – Sample OSSF Guidelines (Form CII2)*
  - *Yard line Assistance Guidelines Template (Form CII2.A).*

If these guidelines were submitted with the application, the Grant Recipient is not required to resubmit these documents. Contact TDA staff regarding approval of the guidelines.

### **4.1.4 Colonia Street Lighting Funds**

TxCDBG-funded projects that include street improvements in colonia areas are required by state law to include adequate street lighting in the project.<sup>2</sup> Prior to the release of any TxCDBG construction funds, the Grant Recipient must submit a written determination of whether street lighting is adequate for the TxCDBG funded target area. If current street lighting in the target area is determined to be absent or inadequate, the written determination must include an engineer's cost estimate, bid tabulation, or other documentation to demonstrate that between 5% and 15% of the TxCDBG grant funds allocated for street improvements are designated for street lighting.

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<sup>2</sup> Texas Government Code, §487.354

#### **4.1.5 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. Communities meet the definition of economically distressed areas if they are:

- Unincorporated areas located outside of the corporate limits of municipalities and outside of the extraterritorial jurisdiction of municipalities;
- Lacking adequate water or sewer services to meet the minimal needs of residents; and
- Eligible for the Texas Water Development Board Economically Distressed Areas Program.

Counties that are awarded grant funds under the Colonia Fund to benefit economically distressed areas are required to document compliance with these requirements, pursuant to Chapter 232 of the Texas Local Government Code. No grant funds may be expended until the Grant Recipient has submitted to TDA a resolution adopting the Model Subdivision Rules, which must contain provisions equivalent to or more stringent than the provisions included in Texas Administrative Code, Title 31, Part 10, Chapter 364, Model Subdivision Rules.

The Grant Recipient may execute the TxCDBG Grant Agreement prior to adoption and enforcement of the Model Subdivision Rules; however, any TxCDBG funds expended before the Grant Recipient follows this requirement will be disallowed and not eligible for reimbursement.

#### **4.1.6 Projects Involving First-Time Water or Sewer Service Beneficiaries**

To ensure that projects involving first-time service will serve the anticipated number of beneficiaries, TDA requires that Grant Recipients document the number of first-time service beneficiaries **prior** to bidding construction. If fewer than 75% of the beneficiaries proposed in the application intend to connect to the TxCDBG funded infrastructure, the project may not proceed without written approval from TxCDBG.

Prior to bidding construction for a project with first-time service activity, the Grant Recipient **must** submit to TxCDBG the following:

- A list of households that were identified in the original application, including any additional households that will receive first-time service.  
**NOTE:** If the households to receive first-time service were not identified in the application, i.e., using an average household size to calculate beneficiaries, a list of the households identified using the selection guidelines for housing activities should be submitted instead, see *Section C Housing Rehabilitation* for additional guidance on selection guidelines;
- The list must identify the households that have granted temporary construction easements for the project or similar authorization to conduct grant activities on the property;
- The list must identify the low-to-moderate income (LMI) status of all households, with TxCDBG Standard Questionnaires for all households retained in local files unless requested by TDA staff; and
- The list must be certified via signature or written statement by the chief local official or authorized signatory.

No TxCDBG construction funds will be released until the list has been approved.

**NOTE:** TxCDBG funded projects that include construction activities on private property are considered to provide direct benefit to homeowners, even if the project does not provide first-time utility service. As such, grant funds may only be expended for this work for households documented as LMI.



**EXAMPLE:** Yard line replacement made necessary due to a more expansive 03J project that will relocate the collection line is a direct benefit to those households, and grant funds must benefit 100% LMI households.

This Special Condition does **NOT** require the Grant Recipient to resurvey the households if they were originally surveyed at the time of application. Please contact TDA staff if you have any questions regarding this Special Condition.

**4.1.7 Buy America Preference**

The Grant Recipient must comply with the requirements of the Build America, Buy America (BABA) Act, 41 USC 8301 note, and all applicable rules and notices, as may be amended, if applicable to the Grant Recipient's infrastructure project. Any funds obligated under this grant agreement are subject to BABA requirements as described in Chapter 4 of the TxCDBG Project Implementation Manual, unless excepted by a waiver.

Pursuant to the Buy America Build America Act (BABA), Grant Recipients that are awarded funding for infrastructure projects beginning in Program Year 2023 must ensure that the required items used in the project are produced in the United States. HUD’s phased implementation will apply BABA documentation requirements to additional items each year – new grant awards must comply with the BABA requirements applicable to the period in which they are awarded.

Item Description. <sup>34</sup>	BABA Requirements Apply to New Awards Beginning
All iron and steel	9/1/2023
Specifically listed construction materials: a. Metals other than iron or steel (non-ferrous metals), b. Lumber, c. Composite building materials, and d. Plastic and polymer-based pipe and tube materials, including PVC pipe.	9/1/2024
All construction materials and manufactured products.	9/1/2025
Items not applicable for BABA documentation: a. Tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project; b. Equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project c. Purchases that are not intended for construction, alteration, maintenance, or repair of infrastructure.	n/a

<sup>3</sup> White House Memorandum M-22-11

<sup>4</sup> **HUD Public Interest Phased Implementation** Waiver

The Buy America preference applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. An item meets BABA requirements if:

- Iron and steel - all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- Construction materials and manufactured products –
  - the item was manufactured in the United States; or
  - the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product; or
  - the components of the manufactured product meets another standard for determining the minimum amount of domestic content of the manufactured product established under applicable law or regulation.

The Grant Recipient must provide an itemization to identify the products, quantities, and costs as support documentation.

- The bid tab must be sufficiently detailed to itemize each separate product or material and indicate BABA applicability, OR a separate schedule must be attached to identify BABA applicability for all products or materials.
- If a change to the contract includes new products or materials, and updated itemization must be submitted with the change order.

Documentation of BABA compliance must be provided for a minimum of 95% of all iron, steel, manufactured products, and construction materials used in the project, according to the phased implementation schedule. The BABA Compliance Form (**Form A400**) documents covered material costs as paid by either the construction contractor(s) or the Grant Recipient. This form must be updated throughout the project and attached to each Payment Request for construction costs. TDA has not received guidance as to the documentation necessary to support the Buy America status of the project. Until further guidance is provided, the Grant Recipient must provide written evidence from the manufacturer or supplier that:

- Identifies the item purchased;
- Affirms the location of manufacture as within the United States; and
- If signed by an authorized company representative.

In rare instances, a BABA waiver may be available. To request such a waiver, the Grant Recipient must provide a letter to the TxCDBG Director requesting a BABA waiver, citing the relevant exception, and providing a narrative justification and any supporting documentation for how the exception applies to the project. NOTE: TDA does not have the authority to waive BABA requirements; all requests for waivers will be evaluated by TDA and, if applicable, forwarded for review and potential approval by both HUD and the Office of Management and Budget. **Any project delays due to the waiver process will not be considered for proposed Grant Agreement extensions.**

#### **4.1.8 Grant Agreement-Specific Special Conditions**

At its sole discretion, TDA may require programmatic special conditions specific to a project. Such conditions may be incorporated into the original Grant Agreement or amended into the Grant Agreement as necessary.

## **4.2 Special Conditions – Project Completion**

Certain projects require written approval from other state or federal agencies upon completion of construction. For applicable projects, the written approval must be submitted to TDA, as well as being included in the local files. However, under specific circumstances, when the approval cannot be obtained by the Project Completion Report deadline, see *Chapter 12.2.5* to determine if a Conditional Project Completion Report is applicable.

### **4.2.1 Water Well Projects**

Prior to submission of the Project Completion Report (PCR) to TDA for the water system improvements described in the Performance Statement of the TxCDBG Grant Agreement, the Grant Recipient must submit a letter from the Texas Commission on Environmental Quality (TCEQ) that the constructed well is approved for use and may be placed into service.<sup>5</sup>

### **4.2.2 Septic System Replacement Projects**

Prior to submission of the Project Completion Report for on-site sewer facilities improvements described in the TxCDBG Grant Agreement, the Grant Recipient must provide documentation that final plans, specifications, and installation of its sewer and/or septic system improvements have been reviewed and approved by the City or County Health Department through authority granted by TCEQ.

**NOTE:** All septic tanks installed in the State of Texas are required to be inspected by TCEQ or an authorized representative licensed by TCEQ. All existing facilities being replaced or abandoned must have the wastewater removed by a registered waste transporter, and all tanks or pits shall be filled or otherwise decommissioned.<sup>6</sup>

### **4.2.3 Building, Parking Lot, and Sidewalk Projects**

This special condition applies to projects where accessibility to the public is a fundamental goal of the project and/or is a key factor in meeting the National Program Objective.

**EXAMPLE:** Sidewalk improvements, public health clinics, senior centers, etc. are only able to meet the National Program Objective if members of the public are able to access the building/improvements.

Prior to submission of the Project Completion Report for buildings, parking lots and/or sidewalks constructed, or renovations where:<sup>7</sup>

- The building or facility is subject to Chapter 469 of the Texas Government Code and
- The estimated construction cost is at least \$50,000.

The Grant Recipient must submit a copy of the Registered Accessibility Specialist's (RAS) signed and dated inspection transmittal letter. This letter affirms that the building, renovations, parking lots and/or sidewalk construction activities follow Texas Department of Licensing and Regulation (TDLR) requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act and Texas Accessibility Standards. If violations were found during TDLR inspection the Grant Recipient must submit a copy of the TDLR response form stating that violations have been addressed.

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<sup>5</sup> 30 TAC Chapter 290, Rules and Regulations for Public Water Systems

<sup>6</sup> 30 TAC §285.36.

<sup>7</sup> Texas Government Code, §469.101

For building construction projects where the general public is not expected to access the building, the following requirements apply:

- The Contractor shall provide documentation to TDA verifying that plans and specifications for construction, significant renovation, or modification of a building or facility subject to §469.101 of the Texas Government Code has been registered with the Texas Department of Licensing and Regulation (TDLR);
- Plans and specifications must be designed by an architect or engineer licensed in the state of Texas. Documentation verifying submittal of the plans to TDLR must include an “Architectural Barriers Project Registration Confirmation Page,” complete with the license number of the designing architect or engineer; and
- The Grant Recipient is responsible for recordkeeping, which documents full compliance with all requirements concerning the elimination of architectural barriers as specified in the Architectural Barriers Act, Texas Administrative Code, and Texas Accessibility Standards.

Additionally, all communities must ensure that all their project activities follow all provisions of the Americans with Disabilities Act of 1990 (ADA).

#### **4.2.4 Projects in a Floodplain**

Grant Recipients completing projects in a floodplain must participate in the National Flood Insurance Program (NFIP). The Grant Recipient shall provide documentation to TDA prior to Grant Agreement termination which indicates that it has received approval from the Texas Water Development Board as the NFIP State Coordinating Agency that ordinances or orders, as appropriate, necessary for the Grant Recipient to be eligible to participate in the NFIP have been adopted.

#### **4.2.5 Projects Requiring Designs/Plans/Specifications**

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 the TxCDBG Grant Agreement.

- These maps must be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as CD, which are compatible with computer systems owned or readily available to the Grant Recipient.
- The digital copy provided shall not include a digital representation of the engineer’s seal but the accompanying documentation from the engineer shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the Grant Recipient.
- Complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be received and maintained by the Grant Recipient in written form.
- Upon request, the Grant Recipient shall provide TDA a copy of all the electronic files and other data received. Additional information on the data and format requirements is contained in the TxCDBG Grant Agreement.

#### **4.2.6 Projects Requiring Permanent Signage**

Permanent signage identifying the location as a TxCDBG-funded project is required for any TxCDBG-funded public buildings, park areas, or other structures open to the public. Some examples of projects requiring permanent signage include community centers, parks/recreation facilities, fire stations, and significant improvements to existing facilities. Project signage is an eligible construction cost.

Requirements of permanent signage include:

- Placement in a prominent visible public area that is not blocked or obscured,

- Constructed of permanent materials,
- Minimum size of 12" x 18" with lettering no smaller than one-half inch, and
- Required text: **"This project is funded by the Texas Department of Agriculture with funds allocated by the U.S. Department of Housing and Urban Development through the Community Development Block Grant Program."**

#### **4.2.7 Facility, Vehicle and Equipment Reporting**

Grant Recipient shall submit a report detailing the ongoing services and or functions of the facility, emergency vehicle, or equipment funded with TxCDBG grant funds. The initial report shall be submitted in TDA-GO by 12/31 of the year in which the Grant Agreement is determined to be *Grant Closed* and shall continue to be submitted annually for the subsequent four years.

This condition is most commonly associated with grants under the Community Enhancement Fund and FAST Fund.

#### **4.2.8 Violence Against Women Act Certification**

Pursuant to the *Violence Against Women Act Reauthorization of 2022*, the Grant Recipient must certify that local policies do not interfere with the residents' Right to Report Crime and Emergencies from One's Home. The certification will confirm that no ordinances, local regulations, or policies adopted by the local government and currently in effect contain any financial or regulatory penalty imposed on property owners or residents as a result of any use of emergency services, or that the Grant Recipient is actively addressing such local regulations.

Form A1025 must be submitted with Group A documentation as described in Chapter 2 Financial Management – no grant funds will be disbursed until this documentation is provided.

## **Resources**

Resource Number	Description	URL
	TxCDBG Guide to Meeting a National Program Objective	<a href="#"><u><b>TxCDBG Fund Categories and Applications</b></u></a>

\*Note: these items will be updated as needed.

# CHAPTER 5

## PROCUREMENT PROCEDURES

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# CHAPTER 5

## PROCUREMENT PROCEDURES

### 5.0 Introduction

Procurement is the process through which an entity obtains goods and services from vendors. Both the federal government and the state of Texas have established a set of procurement rules that apply to TxCDBG-funded projects. The procurement procedures set forth in this chapter comply with both sets of regulations. In addition to applicable federal and state regulations, many local governments have laws and regulations regarding procurement. Grant Recipients must comply with all local laws governing procurement policies. In the event that federal, state, and local law conflict, the most stringent regulation applies.

### 5.1 Procurement Procedures

#### 5.1.1 Features of Good Procurement Systems

A good procurement system should facilitate the Grant Recipient's ability to:

- Identify and specify standards for the goods or services the Grant Applicant desires. Invitations for bids or requests for proposals must be clearly written and must describe the technical requirements of the equipment or services;
- Obtain an independent cost estimate for the goods or services;
- Seek competitive offers to obtain the best possible quality at the best possible price.
- Promote the maximum use of small (SBE), minority-owned (MBE), women-owned businesses (WBE), and Section 3 businesses using suggestions found in *Chapter 10 Civil Rights*;
- Have adequate quality assurance and oversight systems in place to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders;
- Review all procurements to avoid unnecessary and duplicative purchases and to ensure costs are reasonable; and
- Use a written agreement that clearly states the responsibilities of each party; the method of contracting, fixed price, cost plus fixed fee, purchase orders, etc. should be appropriate.

Procurement for eligible costs must **not** include the following:

- Cost-plus-a-percentage-of-cost or percentage of construction cost methods of contracting. Contracts using this method will be disallowed entirely, ineligible for any cost reimbursement or match credit;
- Line items that do not describe actual work to be completed. Any line item for profit, overhead, contingency, or other related terms that do not describe actual work to be performed will not be reimbursed;
- Retainer contracts/agreements are considered non-competitive and are not an allowable form-of procurement;
- Conflicts of interest. TDA cannot grant an exception to, or waiver of conflict-of-interest regulations related to procurement, regardless of mitigating circumstances, see *Chapter 1 Administration and Reporting*; or

- Any situation considered to be restrictive of competition such as specifying a brand name product.<sup>1</sup>

Grant Recipients must provide adequate documentation to demonstrate that the selection process was carried out in an open, fair, uniform, and thorough manner and ensure that federal and state procurement requirements were met. Failure to maintain proper documentation may result in disallowed costs. These records must include, but are not limited to, the following information:

- Rationale for the method of procurement;
- Solicitation/response;
- Evaluation and selection criteria;
- Contractor selection or rejection; and
- The basis for the cost or price. The Grant Applicant should clearly identify during the procurement process any items included in the bid / purchase that are not associated with funded project activities included in the TxCDBG contract.

TDA recommends that the Grant Recipient's attorney review bid packets and contracts before execution in order to ensure that all federal and state TxCDBG requirements, local laws and requirements specific to that municipality or county are incorporated. An Attorney's Review Certification form for construction contracts is included with the sample bid packet documents in Appendix F.

A Grant Recipient may delegate procurement responsibilities be implemented by a subrecipient or partner organization; however, procurement actions related to the grant must comply with this chapter unless otherwise exempted, regardless of the party carrying out the purchase.

The TDA-GO Materials and Services Report (MSR) is used to report procurement of any goods or services throughout the grant project. The Grant Recipient will update the MSR several times throughout the project. The MSR is referenced at the appropriate steps in each of the sections below, and detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

## **5.1.2 Methods of Procurement<sup>2</sup>**

The Grant Recipient must use one of the following methods of procurement:

- **Competitive Proposals for Administration/Professional Services** – For purchases where conditions for sealed bids are not appropriate, this is the preferred method for the procurement of non-construction services. .
- **Sealed Bids (Formal Advertising)** – For purchases greater than \$50,000 the preferred method for a construction contract is a publicly solicited bid with a firm, fixed price—either lump sum or unit price—and awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. State law allows governmental entities to procure some goods and services through an interlocal agreement with an authorized purchasing cooperative. The cooperative must comply with state and federal competitive bidding requirements.
- **Small Purchase** – The acquisition of supplies or services greater than \$2,000 and less than or equal to \$50,000. Small purchase procedures are relatively simple and informal procurement methods for securing services, supplies, or other property. Price or rate quotations must be requested from at least three qualified sources.

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<sup>1</sup> 2 CFR §200.319(b)(1-7)

<sup>2</sup> 2 CFR §200.320



- **Micro-purchases** – For the purchase of supplies or services that are in the aggregate less than or equal to \$2,000, Grant Recipients may use simplified acquisition procedures instead of small purchase procedures as described above. Grant Recipients must, to the extent practicable, distribute these purchases equitably among qualified suppliers.
- **Noncompetitive Proposals** – Procurement through solicitation of a proposal from only one source and may be used only under special circumstances which are applicable for all purchase levels. All special circumstances must be approved in writing by TDA prior to the use of Noncompetitive Proposals.

The Grant Applicant must obtain **written** approval from TDA prior to using any method of procurement not described in this chapter (e.g., use of the competitive sealed proposal method for procurement of construction services or equipment).

## **5.2 Selecting a Provider – Non-Construction Services**

### **5.2.1 Applicability of Competitive Proposals (Administration and Professional Services Contracts)**

The Competitive Proposal procurement method applies to all administration services and professional services contracts paid in whole or in part with TxCDBG funds.

Competitive Proposal procurement is used when conditions are not appropriate for the use of sealed bids and is the preferred method of selection of professional services such as grant administration, engineering, architectural, or surveying services. Unlike sealed bidding, the competitive proposal method permits consideration of technical factors other than price and negotiation of contract price or estimated cost, and other contract terms and conditions. All contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price *and* other factors considered.

#### **Important Competitive Procurement Requirements**

- All administration and professional services related to TxCDBG projects must be procured competitively, regardless of the source of funds that will pay for the service contracts.
  - Administration and professional services paid in whole or in part with TxCDBG funds must use the step-by-step procurement procedures described below.
  - Administration services and professional services paid solely with local or matching funds must use the TxCDBG process or a competitive procurement process found in local policies.
- If procurement procedures are not performed correctly, fees for administration and/or professional services will not be eligible for reimbursement with grant funds or count towards community match funds.
- If pre-qualified lists of persons, firms, or products are used for acquiring goods and services, the Grant Recipient must keep the list current and include enough qualified sources as to ensure open competition.<sup>3</sup>
- TxCDBG funds and matching funds may not be used to reimburse for services provided prior to the date of the TxCDBG Grant Agreement except for eligible pre-award costs and/or activities approved by TDA through the pre-agreement process, see *Chapter 1 Administration*

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<sup>3</sup> 2 CFR §200.319(d)

*and Reporting* regarding the timeframe in which costs are eligible under the pre-agreement plan.

- Grant Recipients that designate a Council of Governments (COGs) as the subrecipient to carry out an eligible activity, such as administration services, must award a subrecipient interlocal agreement before the provider conducts any work to prepare the TxCDBG application for TxCDBG grant funding.
- If an administration or professional services contractor is preselected and a contract is entered into prior to grant award, the contract should include a statement that in the event TxCDBG funds are not awarded to the applicant, the contract shall be terminated by the applicant.
- The cost of preparing a TxCDBG application is an ineligible cost and is not reimbursable.

### **Price as a Selection Factor**

Texas statutes make a distinction between **professional services** and other non-construction services. The professional services generally used for TxCDBG projects means services within the scope of the practice, as defined by state law, of:

- Accounting
- Architecture
- Landscape architecture
- Land surveying
- Professional engineering
- Real estate appraising or
- Provided in connection with the professional employment or practice of a person who is licensed or registered as:
  - A certified public accountant
  - An architect
  - A landscape architect
  - A land surveyor
  - A professional engineer; or a state certified or state licensed real estate appraiser.

For the procurement of architectural, engineering, or land surveying services, price may **not** be used as a selection factor and the Grant Recipient must choose the most highly qualified provider of these services on the basis of demonstrated competence and qualifications. Once the most qualified respondent is chosen, then a fair and reasonable price may be negotiated.<sup>4</sup>

In contrast, for administration services and other non-construction services not listed above, including grant writing and planning, price must be included in the proposal and considered in the selection process, but Grant Recipients may determine whether it will be a selection factor.

### **Non-Construction Services Exempt from Competitive Procurement**

The procurement requirements described in this chapter will not apply to

- Administration and professional services performed by an employee of the Grant Recipient; and
- A sub-applicant interlocal agreement with an agency of the state, such as an agreement with a COG, whereby a Grant Recipient designates the subrecipient to carry out an eligible activity, such as administration services, for the Grant Recipient.<sup>5</sup>
  - Even though the procurement requirements described in this chapter do not apply with an agency of the state, use of an interlocal agreement to secure grant-related services

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<sup>4</sup> 2 CFR §200.320(b)(2)(iv) and Texas Government Code, §2254.004

<sup>5</sup> Texas Government Code, Chapter 791

- must be consistent with the principles of fair and open selection processes; all conflict-of-interest situations apply as described in *Chapter 1.2.2 Conflict of Interest*, and the selection and / or price determination must not include any prohibited procurement strategies described in Chapter 5.1.1.
- To be considered a subrecipient agreement not subject to the requirements of this chapter, the written agreement must include at a minimum:
    - Statement of work, including a description of the work to be performed, a schedule for completing the work, and a budget, with sufficient detail to provide a sound basis for the Grant Recipient effectively to monitor performance under the agreement.
    - Identification of the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.
    - Requirement that subrecipient to carry out each activity in compliance with all Federal, state, and program requirements, including the current TxCDBG Project Implementation Manual.
    - Remedies for noncompliance and provisions on termination in accordance with 2 CFR part 200, subpart D.

## Engineering Services

The Texas Engineering Practice Act requires most public works projects to be designed, supervised, inspected, and accepted by a registered professional engineer. If the project is exempt from this requirement, the Grant Recipient must document the exception through a letter certified by the chief local official.<sup>6</sup>

## Testing Services

- The Grant Recipient shall determine whether the testing is a component of construction or a non-construction/professional service, and then must be consistent with that decision in procurement and requests for reimbursement.  
**EXAMPLE:** Drilling a test well can be considered either a component of construction or a professional service; however, if the test well is procured as an engineering contract (or subcontract), all payment requests must be charged to the engineering line item. To determine if the Davis-Bacon Act applies to a test well, please refer to the U.S. Department of Labor (DOL) Field Operations handbook, 15d05, for additional guidance.
- Testing services, which require professional services, must comply with the State of Texas' Professional Services Procurement Act.<sup>7</sup>
- Other services necessary to complete the TxCDBG funded project may be requested for approval by completing the Special Requests section of the TDA-GO *Grant Overview* page.

## Administrator Training Certification

Administrators must be certified annually by TDA to be eligible to be paid from TxCDBG grant funds or match funds. See [TDA's website](#) for current certification procedures, which may include attending training, completion of a certification exam, or both.

Each person within a firm who will be primarily responsible for administration or serve as the administrative point of contact for a TxCDBG Grant Agreement must be certified. Grant Recipients need to be aware that administration costs will be delayed or disallowed if the selected administrator has not received such annual certification.<sup>8</sup>

<sup>6</sup> Texas Occupations Code, §1001.053

<sup>7</sup> Texas Government Code, Chapter 2254

<sup>8</sup> 4 TAC §30.80

Grant Recipients are ultimately responsible for the successful administration of the TxCDBG Grant Agreement awarded. However, should an administrator/firm have a documented record of performance deficiencies resulting in a series of non-compliance findings and/or concerns, TDA may require said person or firm to develop a personal written corrective action plan (CAP). The administrator/firm may be penalized as deemed allowable by program rules, regulation, policies, agreement provisions, and law.<sup>9</sup>

### **Non-Construction Services to Prepare Grant Applications**

If a provider intends to provide administration, planning, engineering, or similar services for a TxCDBG Grant Agreement, if funded, the provider must not have any involvement in preparation of the application for grant funds until after formal award of a services contract for project implementation services. If a Grant Administrator has been involved with discussions or decisions regarding a grant application prior to the procurement process for administration services, that firm may not be selected as the Grant Administrator.

- If the community chooses to execute the contract(s) for administration, planning, engineering, or other non-construction services prior to submittal of the application, include language stating that payment for project implementation services are contingent on receipt of grant funds.

**EXAMPLE:** Payment of the fees associated with Part III – Payment Schedule of this Agreement shall be contingent upon TxCDBG 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.

- The community may also choose not to execute the contract(s) for project implementation services prior to funding; however, the award of the contract must be reflected in the minutes of the governing body.
- A non-construction services contract must include only one TxCDBG-funded project unless explicitly approved by TDA in writing. TxCDBG grants are intended to fund stand-alone projects as described in the respective Performance Statement. Separate services contracts are appropriate to ensure all requirements for each grant are satisfied and to ensure that costs are charged to the appropriate grant.

## **5.2.2 Step-By-Step Selection – Pre-Qualified Provider Method**

The Pre-Qualified Provider Method was discontinued effective September 1, 2023. TDA no longer solicits or posts administrator and planner qualifications as part of a formal procurement process.

TDA website makes available the contact information of individuals and firms that have requested to be included as interested service providers. The list is provided as a courtesy only does not verify that individual(s) or firms(s) listed are a current certified administrator.

## **5.2.3 Step-by-Step Selection Procedures for Competitive Proposal (Traditional)**

The Grant Recipient must use the full traditional competitive proposal method for non-construction services.

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<sup>9</sup> 4 TAC §30.13

### **Step 1. Establish Selection Committee**

The selection committee establishes the criteria or evaluation factors to be used for selection and rating of competing respondents. The committee must include at least one local elected official or a city/county employee with authority to act on behalf of the local elected official in this capacity—such as the mayor, county judge, or a member of the elected governing body. The committee may consist of the entire local governing body, a subset of the governing body, other officers or employees of the locality, or employees or officers of third-party public utilities served through the project.

The selection committee members must have no potential conflicts of interest with any of the individuals, firms, or agencies under review, e.g., family relationships, close friendships, business dealings, and shall adhere to the conflict of interest policy stated herein, see *Chapter 1.2.2 Conflict of Interest*.

**BEST PRACTICE:** The selection committee should consist of three or more persons.

Update the MSR with selection committee members. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

### **Step 2. Determine the Scope of Services**

The scope of work for a non-construction services contract describes all desired tasks that a Grant Recipient expects a provider to perform under a contract. The scope of work should itemize the tasks needed, with timeframes and achievable goals as appropriate and is the basis for the Request for Proposals (RFP)/Request for Qualifications (RFQ) and services contract.

### **Step 3. Establish Written Selection Criteria**

The committee's written selection criteria should include, at a minimum, a clear and accurate description of the technical requirements of the services to be procured. Such descriptions shall not contain features that unduly restrict competition. TDA strongly recommends that the Grant Recipient use a scoring method for reviewing administration and professional services proposals, see Appendices D and E.

The specific criteria to be used by the Grant Recipient should fit the needs of the desired services and the specifics of the proposed project. The importance of each of these factors should be determined before the review process begins by assigning weighted values to each factor.

The local governing body has final authority to approve all contracts and should be closely involved in the establishment of the written selection criteria. Sample rating sheets for administration and similar services are found in *Appendix D*. A sample rating sheet for Engineers/Architects/Surveyors is found in *Appendix E*.

### **Step 4. Develop the Request for Proposals/Qualifications Package**

The Grant Recipient must develop an Request for Proposal (RFP) (administration / planning/ similar services) or Request for Qualifications (RFQ) (architectural / engineering / surveying services) package to issue to potential respondents. RFP/RFQs must identify all evaluation criteria factors and their relative importance.

Each RFP/RFQ should include only one TxCDBG-funded project. If the Grant Recipient would like to issue a single RFP/RFQ that includes several stand-alone TxCDBG project(s) or pending applications, the packet must clearly identify each separate grant project or application cycle and the services requested. The RFP/RFQ must request separate pricing information for each grant project, if applicable, and must state whether contracts may be awarded to multiple respondents based on the single RFP/RFQ.

TDA will **not** accept RFP's/RFQ's that include future application cycles beyond the program year for which an application is currently or next expected to be available.

**BEST PRACTICE:** Treat each grant as a separate procurement, requiring separate RFP's/RFQ's scoring, and award, even if the advertisements are combined.

#### **Step 4.1. Request for Proposal of Administration, Planning, and Similar Services**

The RFP package for administration, planning, or similar services must contain three parts. Samples of each of the required documents are found in *Appendix D*.

1. **Cover Letter:** The purpose of this letter is to solicit proposals from interested parties. This can be tailored to the Grant Recipient's specific project.
2. **Request for Proposals (RFP):** The RFP provides detailed instructions to respondents and the criteria to be used in evaluating proposals.

The RFP must include the following components:

- The request for proposal, including specifications and attachments, must clearly describe the scope of services required and identify the factors that will be used to evaluate proposals; and
- Either the sample administration services or professional services rating sheet for administration services or similar rating sheet with weighted criteria.

The RFP should also request the following:

- A statement of qualifications;
- Proposed cost of services/fee structure (required);
- Related experience with federal programs;
- Capacity to perform the specific proposed task;
- Experience in developing and/or implementing civil rights/equal opportunity/fair housing activities; and
- References—a list of past/current clients so that the proposals can be ranked based on past performance. The selection committee should contact these references and evaluate the respondent's experience, work performance, and capacity to perform.
- .

**BEST PRACTICE:** It is possible to solicit and procure for application preparation services and administration services in one step. The RFP must clearly indicate that proposals are being solicited for both application preparation and administration services, and must clearly separate the scope and cost of the services associated with preparing an application and the scope and cost associated with administration of the grant.

Costs associated with application preparation services are not eligible costs under the TxCDBG program.

3. **Sample Contract:** A sample professional services/administration services contract containing the terms and conditions of the contract between the Grant Recipient and the service provider should be provided as part of the RFP package.

This contract should contain four parts:

- Part I - Agreement
- Part II - Scope of Work
- Part III - Payment Schedule
- Part IV - Terms and Conditions

## Step 4.2. RFQ for Professional Services, Including Architectural/ Engineering/Surveyor Services

1. **Cover Letter:** The purpose of this letter is to solicit proposals/statements of qualifications from interested parties. This can be tailored to the Grant Recipient's specific project.

2. **Request for Qualifications (RFQ):** The RFQ for professional services provides detailed instructions to respondents and the criteria to be used in evaluating proposals.

The RFQ must include the following components:

- The request for qualifications, including specifications and attachments, must clearly describe the scope of services required and identify the factors that will be used to evaluate proposals.
- Either the sample engineer/architect/surveyor rating sheet for professional services or similar rating sheet with weighted criteria.

The RFQ should request that the proposal include/address the following factors:

- Statement of qualifications;
- Work experience;
- Capacity to perform the specific proposed task;
- Technical expertise;
- Ability to meet schedules;
- Proximity to the area of the proposed work;
- Familiarity with the area of the proposed work; and
- References — a list of past/current clients

Samples of each of the required documents are found in *Appendix E*.

**BEST PRACTICE:** *It is possible to solicit and procure for preliminary engineering services (application services) and design engineering services (project implementation) in one step. A preliminary engineering report, such as the Budget Details section of the TxCDBG application which consists of a budget justification identifying project activities/materials with cost estimates, must be prepared by a registered professional. The RFQ must clearly indicate that proposals are being solicited for application and project implementation and must clearly separate the scope of the services associated with preparing the preliminary engineering report for the TxCDBG application and the scope associated with implementation consisting of designing the plans and specifications for the project.*

Costs associated with application preparation services are not eligible costs under the TxCDBG program.

3. **Sample Contract:** A sample engineering/architecture/surveying services contract containing the terms and conditions of the contract between the Grant Recipient and the service provider should be provided as part of the RFQ package.

**This contract should contain four parts:**

- Part I - Agreement
- Part II - Scope of Work
- Part III - Payment Schedule
- Part IV - Terms and Conditions

## Step 5. Advertise the RFP/RFQ

In order to create competition for the work, the Grant Recipient must advertise the RFP/RFQ. A sample advertisement is provided that can be altered for the appropriate service. See samples in *Appendices D and E*. For preapplication procurement of vendors, there is no prohibition on combining the required advertisements for several RFP/RFQ processes into one publication; however, the Grant Recipient must:

- Advertise in a locally distributed newspaper and
- Advertise the solicitation for at least ten days before the proposal submission deadline.

Retain a tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit for proof of advertising for monitoring purposes.

In addition, the Grant Recipient must facilitate contracting opportunities for Section 3 businesses, as well as minority-owned businesses and women-owned businesses by reporting the RFP/RFQ opportunity to at least one organization providing access to and assistance with bid opportunities, particularly those that recognize small and disadvantaged businesses that are likely to include Section 3 Businesses. Retain screenshots or other confirmation to document compliance with this requirement.

Examples of acceptable organizations include:

- Public/non-profit organizations;
- Private plan rooms; or
- Local Workforce Solutions Offices (WIOA One Stop Shop), if applicable, see <https://www.twc.texas.gov/directory-workforce-solutions-offices-services>.

Update the MSR with information from the advertisements. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

#### **Step 6. Send RFP/RFQ to at Least Five Individuals/Firms**

Prepare a list of potential firms/individuals. TDA's list of certified administrators or firms is available on the TDA website, and the Texas Comptroller of Public Accounts' Historically Underutilized Business (HUB) Directory is available on its website. In accordance with Section 3 of the Housing and Urban Development Act of 1968, successful applicants using TxCDBG funding for housing or other public construction are required, to the greatest extent feasible, to provide training and employment opportunities to lower-income residents and contract opportunities to businesses in the project area.

Grant Recipients should actively take steps to encourage proposals from SBEs, MBEs, and WBEs, as well as Section 3 business concerns. See *Chapter 10 Civil Rights*. Although Grant Applicants are not directly responsible for meeting a specific minority business participation goal, TDA reports to HUD on the levels of MBE and WBE hiring under all TxCDBG Grant Agreement. TDA recommends sending the solicitation to a minimum of two service providers that meet the definition for SBE, MBE, WBE, or Section 3 businesses.

Send the RFP/RFQ package to a minimum of five individuals/firms by email, fax, and/or return receipt mail.

- Document reasons for selecting such individuals/firms for local files.
- Document evidence of contacting five individuals/ firms.
  - If email/fax, print verifiable evidence that email/fax sent.
  - If USPS mail, send return receipt.

The proposal deadline must allow at least ten days after the RFP/RFQ was sent to these individuals/firms.



**BEST PRACTICE:** TDA recommends that the direct solicitation is sent to more than the minimum five (5) individuals/firms to ensure compliance with TxCDBG program rules and encourage a more robust procurement process.

### **Step 7. Evaluate and Rate the Proposals**

After the proposal submission deadline, the selection committee must rate the proposals received by the deadline, using only the specific selection criteria identified in its RFP/RFQ. This selection process must be thorough, uniform, and well documented through the rating sheets developed in Step 3.

For professional services (engineering/architectural/surveyor) price/cost may **not** be considered until after the successful respondent has been chosen.

### **Step 8. Select Respondent**

The selection committee recommends that the contract be awarded to the respondent with the highest total score if this method is used, or has the most qualifications in the proposal evaluation. The recommendation must meet the reasonable, responsible, and responsive tests according to federal procurement procedures:

- **Reasonable** – Refers to the most suitable, fit, and appropriate respondent to accomplish the project.
- **Responsible** – Refers to the respondent that can fully perform the requirements of the contract and has the integrity and reliability that will assure good faith performance.
- **Responsive** – Refers to the respondent that has submitted a bid/proposal that fully conforms to the information requested in the RFP.

The local governing body has the final authority to award contracts and is encouraged to follow the committee's recommendation, but may select another respondent if the minutes of the local governing body meeting include justification for the selection.

The Grant Recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### **Step 8.1. Selecting the Respondent – For Administration and Other Professional Services Contracts Other than Architectural/ Engineering/Surveyors Services**

Determine the most responsive and responsible respondent whose proposal is most advantageous to the program, with price and other factors considered.

The Grant Recipient may conduct negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the Grant Recipient's evaluation of bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a best and final offer.

#### **Step 8.2. Selecting the Respondent – For Architectural/ Engineering/Surveying Services**

Negotiation of price for architectural/engineering/surveyor services must take place after selection is completed; **proposed cost may not be a selection criteria or consideration**. Proposed costs should not be disclosed by Grant Recipient to such bidders until the most qualified bidder has been chosen.

Determine the most qualified provider of services on the basis of demonstrated competence and qualifications.

Once the most highly qualified respondent is identified, request a price proposal. As necessary, negotiate a fair and reasonable price with that provider. Grant Recipient can use negotiation as an opportunity for better pricing or added value.

If negotiations with the most highly qualified respondent are unsuccessful, formally end negotiations with that provider. Select the next most highly qualified provider and attempt to negotiate a fair and reasonable price. Repeat this process to select and negotiate with providers until a fair and reasonable priced contract can be awarded.

After completing the steps listed in this section, the Grant Recipient must complete the steps listed in *Section 5.5 Steps for Award and Contracting*.

### **5.2.4 Selection of Subrecipient Services Provider**

Grant Recipients may also select a non-profit or intergovernmental service provider for administration or other non-construction services through a subrecipient agreement.<sup>10</sup> Texas Councils of Government are eligible to serve in this capacity through an intergovernmental local agreement.

Intergovernmental agreements are not competitive procurements and are not subject to the competitive requirements of this section. However, intergovernmental agreements are subject to *Section 5.5 Awards and Contracting*, and all agreements must meet HUD requirements for subrecipient agreements.<sup>11</sup>

In addition, to ensure an open selection process, intergovernmental agreements for administration services must be selected by the local governing body prior to the subrecipient performing any work relative to the TxCDBG funded project, including work to prepare the application. Subrecipient agreements selected after beginning work on the project will be disallowed and not eligible for grant reimbursement or match credit.

## **5.3 Construction Services and Materials Contracts**

### **5.3.1 Applicability**

Construction services and materials contracts paid in whole or in part with TxCDBG funds must be procured using either the **Sealed Bids** procurement method or the **Small Purchase** procurement method. Grant Recipients must comply with TxCDBG program requirements in order to be considered eligible for grant funds or match injection.

**NOTE:** Pursuant to the Buy America Build America Act (BABA) Grant Recipients receiving grant funding beginning September 1, 2023, for infrastructure projects must ensure and document that all applicable products used in the project were manufactured in the United States. Grant Recipients should pay careful attention that the bidding process ensure full compliance with this regulation more specifically outlined in *Chapter 4 Grant Agreement Special Conditions. 4.1.7 Buy America Preference*.

**Environmental clearance must be completed before the Grant Recipient executes any construction or materials contract.**

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<sup>10</sup> Texas Government Code, Chapter 791

<sup>11</sup> 24 CFR §570.503.

## **5.3.2 Sealed Bid Procurement – Traditional Method**

Sealed bids are publicly solicited and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible respondent whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest and best in price. See **Appendix F and Appendix G** for sample bid and contract documents for construction and material contracts, respectively.

### **Step 1. Prepare Bid Package**

The Grant Recipient must prepare a bid package detailing the specific goods or services to be provided by the contractor. This package should provide sufficient technical information for potential bidders to submit a competitive bid.

- The use of additive alternatives is strongly recommended to give Grant Recipients maximum flexibility to award a contract that fits within the available budget and provides the maximum benefit to the community.
- If a construction contract includes both a TxCDBG project and a separate project not included in the Performance Statement of the Grant Agreement or claimed as match, to be paid by the Grant Recipient or another funding source, the construction contract should clearly indicate the work and the costs associated with each project.

Update the MSR regarding the bid package. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

### **Step 2. Comply with Davis-Bacon Act Requirements**

For bids that include construction work, the Grant Recipient must obtain prevailing wage rates for the local area as required by the Davis-Bacon Act and Related Acts (DBRA) and incorporate those wage rates into the procurement for construction, see *Chapter 7 Davis-Bacon Labor Standards* for specific information on the Davis-Bacon Act.

Update the MSR regarding the DBRA statistics. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

### **Step 3. Advertise for Bids**

The procedure for advertising for bids is as follows:

- Publish once a week for two consecutive weeks prior to bid opening;
- Ensure that the first publication date is at least fifteen (15) days prior to the bid opening date (applies to both municipalities and counties);
- Ensure that the two published notices are at least seven days apart;
- Describe work or item to be purchased or cite where specifications can be obtained;
- Include time and place for receiving and opening;
- Include name and position of local official or employee to whom bids are sent;
- Indicate whether bidder should use lump-sum or unit pricing;
- Indicate method of payment by Grant Recipient;
- Indicate type(s) of bond(s) required by the bidder;
- Indicate whether contract will be awarded within a specified timeframe (e.g., 30 or 60 days); and
- Identify TxCDBG grant agreement number.
- If there is no newspaper of general circulation in the city or the county, the notice must be posted at the city hall or in a prominent place in the courthouse for fifteen (15) days before the date of the bid opening. The postings must be documented by affidavit and photo evidence in accordance with public notice policy in *Chapter 1 Administration and Reporting*. If postings are

used, the Grant Recipient is encouraged to use web resources, such as the Dodge Report and Civicast, to further publicize bidding opportunities to qualified contractors.

If an addendum to the bid package is necessary, it must be distributed to each potential bidder. The distribution of an addendum shall be verified either by statements of receipt or registered/certified mail receipts, which shall be included in the public works construction file. The addendum shall allow adequate time for consideration in bid preparation, usually at least one week. If adequate time is not available, the bid opening date must be extended and the Grant Recipient must republish the invitation for bids containing the place, time, and date for the new bid opening.

**NOTE:** Any change to the original bid opening date will require republication of the invitation for bids at least once in a locally published newspaper. The republished notice will include the place, time and date for the new bid opening and must be published at least seven (7) days prior to the new bid opening date. If the revised bid opening date is more than fifteen (15) days after the originally published date, all required publications must be repeated.

Costs associated with advertising may be eligible TxCDBG costs. However, these costs can only be reimbursed (or claimed as matching funds) from the administration activity, regardless of purpose.

**EXAMPLE:** The cost of construction advertisements may be eligible as an administration expense only.

Retain a tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit for proof of advertising for monitoring purposes.

Update the MSR with proof of advertising. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

#### **Step 4. Promote Participation of Minority-Owned Businesses and Section 3 Business Concerns**

In addition to the required advertisements, the Grant Recipient must facilitate contracting opportunities for Section 3 businesses, as well as minority-owned businesses and women-owned businesses by reporting the contracting opportunity to the following resources no later than the date of the first advertisement:

- At least one organization providing access to and assistance with bid opportunities, particularly those that recognize small and disadvantaged businesses that are likely to include Section 3 Businesses. Retain screenshots or other confirmation to document compliance with this requirement. Examples of acceptable organizations include:
  - Public/non-profit organizations;
  - Private plan rooms; or
  - Local Workforce Solutions Offices (WIOA One Stop Shop), if applicable, see <https://www.twc.texas.gov/directory-workforce-solutions-offices-services>.
- TDA-GO Materials and Services Record Pre-Selection Clearance data including bid opening date – this data is made available to the public during the bid period.

The Grant Recipient should actively take steps to encourage proposals from SBEs, MBEs, and WBEs, as well as Section 3 business concerns, see *Chapter 10 Civil Rights*.

#### **Step 5. Hold the Bid Opening**

- Note the date and time of receipt of each bid on the bid envelope, which must be kept with the original bid even following the bid opening.
- Open and read aloud each bid.
- Record the base bid, along with any alternates, on a bid spreadsheet.
- Announce the apparent low bidder and all bidders with complete packets.

- **Electronic Bids** – The Texas Local Government Code permits counties and municipalities to accept bids through electronic transmission if the local governing body has adopted written rules and procedures to ensure the identification, security, and confidentiality of electronic bids.<sup>12</sup>

The procedures must ensure that the electronic bids remain effectively unopened until the proper time to unseal bids. The Grant Recipient must maintain in its project procurement records copies of the written rules/procedures, local governing body minutes verifying adoption of the rules/procedures, documentation of any application software used to accept and administer the electronic bids—and any other documentation deemed necessary to verify compliance with statutory or programmatic requirements.

## Step 6. Evaluate and Select the Low Bidder

Grant Recipients are responsible for ensuring that all applicable Federal and State procurement procedures, standards, and requirements are met. TDA recommends that the Grant Recipient's attorney review bid packets and contracts before execution in order to ensure that all federal and state TxCDBG requirements, local laws and requirements specific to that municipality or county are incorporated.

The Grant Recipient or its designee, usually the project engineer, should carefully review the bids submitted and the low bidder's statement of qualifications and references. Awarding the contract on the same date as the bid opening does not generally allow sufficient time to research and review the documents and ensure that the low bidder has provided all the required forms, bonds, certifications, as well as qualifications and references.<sup>13</sup>

- Municipalities are required by state law to award the contract to the lowest responsible bidder.
- A bid subject to either Texas Local Government Code §252.043(g) or §271.026 that has been opened, may NOT be changed for the purpose of correcting an error in the bid price.<sup>14</sup>
- A bidder may withdraw a bid due to a material mistake in the bid.<sup>15</sup>
- A governmental entity is entitled to reject any and all bids.<sup>16</sup>
- **Best value** criteria may only be considered if identified in the bid packet. The municipality may reject any and all bids.<sup>17</sup>
- Counties are required by state law to award the contract to the responsible bidder who submits the lowest and best bid or must reject all bids and publish a new notice.<sup>18</sup>

If the bids received exceed the designated budget, the Grant Recipient has the following options:

- Reject all bids and re-bid the project.
- Accept the deductive alternates in the bid packet, if applicable.
- Accept the low bid and provide additional local funds.
- Accept the low bid and execute the construction contract for the full amount; identify for the future any work that may be eliminated from the executed contract through change order, if the contractor agrees to the reduction.

If all bids received exceed the amount of the construction budget, **THE GRANT RECIPIENT MAY NOT NEGOTIATE THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER.** To allow one bidder to

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<sup>12</sup>Texas Local Government Code, §§252.0415 & 262.025

<sup>14</sup> See Texas Local Government Code, §§ 252.043(g) & 271.026(a).

<sup>15</sup> Texas Local Government Code, §§252.043(g) & 271.026(b).

<sup>16</sup> Texas Local Government Code, §§252.043(f) & 271.027(a).

<sup>17</sup> Texas Local Government Code, §252.043(f)

<sup>18</sup> Texas Local Government Code, §262.027(a)

negotiate the contract price is not fair to the other contractors who submit bids. **NEGOTIATION OF THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER WILL RESULT IN THE DISALLOWANCE OF TxCDBG FUNDS FOR CONSTRUCTION COSTS.**

The Grant Recipient must retain **all** supporting documentation for every action taken in the procurement process, including established procurement policies, publications, all bid documentation submitted, calculations and recommendations regarding technical and/or material deficiencies, and award documentation. In limited circumstances, TDA may also request an opinion from the local legal counsel to document how the procurement complies with all Texas Local Government Code provisions and other applicable, laws, rules, and regulations.

After completing the steps listed in this section, the Grant Recipient must complete the steps listed in *Section 5.5 Steps for Award and Contracting*.

### **5.3.3 Sealed Bid Procurement – Third Party Cooperative Purchase**

A Grant Recipient may choose to purchase certain goods and services through an interlocal agreement with an authorized purchasing cooperative, such as the Texas Association of School Boards, Buy Board, or the Houston-Galveston Area Council (HGACBuy). All state and federal competitive procurement requirements apply to purchases through these entities; however, many steps may be conducted by the third party rather than the Grant Recipient.

The Grant Recipient must retain copies of the cooperative's competitive procurement procedures. At a minimum, such records should include:

- Interlocal agreement between the cooperative and local government,
- Invitation for bids advertisements,
- Documentation of affirmative steps to include small, minority- and women-owned business enterprises in accordance with 2 CFR §200.321,
- Bid tabulation of bids received and opened, and
- Updating the MSR with third-party cooperative purchases.

### **5.3.4 Small Purchase Procurement**

The small purchase procurement method uses relatively simple and informal procurement methods to secure equipment, non-professional/non-administration services, supplies or other property that cost, in the aggregate, greater than \$2,000 and less than or equal to \$50,000 in accordance with state law.

Key concepts for small purchase procurement include the following:

- **Aggregate cost** – total cost of the project/job including TxCDBG funds and all other funding sources;
- **Job** – a project as defined by the engineering plans and specs, and by the project description of the relevant Environmental Review;
- **Separate purchases** – Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase;
- **Sequential purchases** – Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase; and
- **Component purchases** – Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

The Texas Local Government Code specifically prohibits the use of the small purchase procurement method to make separate, sequential, or component purchases of items or services, with the intent of avoiding the competitive bidding and competitive proposal requirements.<sup>19</sup> Separate small purchases for materials/equipment and installation are not considered appropriate if the initial estimate for both material/equipment and associated installation exceeds \$50,000.

**EXAMPLE:**

- A water line job is one project; all purchases of pipe, fire hydrants, valves, and fittings are reviewed collectively to determine compliance with the \$50,000 threshold.
- A water storage tank is considered one project; subject to the \$50,000 threshold; site preparation, foundation, piping, valves, welding, etc. are not separate projects.

Prior to beginning small purchase procedures, the Grant Recipient should get an estimate of the cost of construction or, for materials contracts, the cost of both equipment/materials and installation, from the engineer. If the estimated cost is greater than \$50,000, small purchase procurement would not be considered appropriate and is not an allowable cost.

**Step 1. Prepare Scope of Request**

The Grant Recipient must prepare a brief description of the scope of work being requested, detailing the specific goods or services to be provided by the contractor. This package should provide sufficient technical information for potential respondents to submit a competitive quote.

Update the MSR with the Scope of Request. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

**Step 2. Comply with Davis-Bacon Act Requirements**

The Grant Recipient must obtain prevailing wage rates for the local area as required by the Davis-Bacon and Related Acts and incorporate those wage rates into the procurement for construction, see *Chapter 7 Davis-Bacon Labor Standards*.

Update the MSR with DBRA statistics. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

**Step 3. Contact Three Vendors for Quotes or Estimates**

The Grant Recipient must contact a minimum of three firms or individuals by phone, in person, or in writing including email, to obtain cost estimates for the goods or services. The responses (including responses that indicate no interest) must be recorded with written quotes or written record of telephone quotes, including the date, price, specifications and other relevant terms, and the name and phone number of both the person providing the quote and the person requesting the quote. These quotes will be uploaded in TDA-GO. Retain all written communications from all three firms.

Update the MSR with vendors' names. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

**Step 4. Promote the Participation of SBEs, MBEs, WBEs, and Section 3 Businesses**

Grant Recipients should actively take steps to encourage proposals from SBEs, MBEs, and WBEs, as well as Section 3 business concerns.

The Grant Recipient must facilitate contracting opportunities for Section 3 businesses, as well as minority-owned businesses and women-owned businesses by reporting the contracting opportunity to the following resources no later than the date of the first request for quotes:

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<sup>19</sup> Texas Local Government Code §§262.023(c) and 252.021

- At least one organization providing access to and assistance with bid opportunities, particularly those that recognize small and disadvantaged businesses that are likely to include Section 3 Businesses. Retain screenshots or other confirmation to document compliance with this requirement. Examples of acceptable organizations include:
  - Public/non-profit organizations;
  - Private plan rooms; or
  - Local Workforce Solutions Offices (WIOA One Stop Shop), if applicable, see <https://www.twc.texas.gov/directory-workforce-solutions-offices-services>.
- TDA-GO Materials and Services Record Pre-Selection Clearance data including bid opening date – this data is made available to the public during the bid period.

Although Grant Recipients are not directly responsible for meeting a specific minority business participation goal, TDA reports to HUD on the levels of MBE and WBE hiring under all TxCDBG Grant Agreements. For this reason, retain all efforts demonstrating encouragement of SBE, MBE, WBE, and Section 3 businesses. TDA recommends requesting a quote from at least one firm or individual that meets the definition for SBE, MBE, WBE, or Section 3 businesses.

### **Step 5. Evaluate Responses and Select the Lowest Quote**

The Grant Recipient must determine the lowest responsible, responsive vendor, based on the responses to the request for quotes. The Grant Recipient must not select a respondent that did not submit the lowest quote that met all established criteria.

After completing the steps listed in this section, the Grant Recipient must complete the steps listed in *Section 5.5 Steps for Award and Contracting*.

**NOTE:** Unless otherwise approved in writing by TDA, all equipment purchased and/or included in the TxCDBG grant agreement must be newly manufactured. Purchase of used equipment will generally not be approved unless the Grant Recipient demonstrates:

- The useful life of the used equipment is substantially similar to the useful life of an equivalent new unit; and
- A newly manufactured unit meeting the grant requirements is not available under reasonable conditions.

## **5.3.5 Micro-Purchases**

For purchases of supplies or services that are less than or equal to \$2,000 in the aggregate, the Grant Recipient may use processes that expedite the transaction and minimize the associated administration burden.

### **Step 1. Identify Supplies or Services Needed**

The Grant Recipient should identify all supplies or materials that were not procured as part of the larger project. Local records must indicate the justification for not including these supplies or services with competitive procurement actions. All micro-purchases for the TxCDBG project must not exceed \$2,000 cumulatively.

### **Step 2. Identify a Vendor or Supplier to Meet the Need**

The micro-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; however, the use of purchase orders does not exempt the Grant Recipient from the requirements of *Section 5.5 Awards and Contracting*. The Grant Recipient is required to distribute micro-purchases equitably among qualified suppliers. TDA recommends including at least one firm or



individual that meets the definition for SBE, MBE, WBE, or Section 3 businesses in the micro-purchase process.

**EXAMPLE:** Purchase of signage in the amount of \$1,500 can be treated as a micro-purchase. No competitive quotations would be necessary for the purchase and a price analysis would not be required. However, the Grant Recipient must consider whether to make the purchase from any one of several sign stores. Grant Recipients may require that the purchase of signage rotate among qualified suppliers if they offer the same rates.

No MSR entry is required for Micro-purchases; record the amount and purpose of each micro-purchase on the TDA-GO *Grant Overview* page.

TDA will monitor the use of micro-purchases to ensure that they are not being used to circumvent competitive procurement. Materials and construction should be purchased through sealed bids or small purchase procurement whenever possible; micro-purchases are generally made for unanticipated costs.

- After completing the steps listed in this section, the Grant Recipient must complete the steps listed in *Section 5.5 Steps for Award and Contracting*.
- Exception: If local policy does not require action by the governing body to award a contract for a micro-purchase, Section 5.5.2 will not apply.

## **5.4 Non-Competitive Proposal Procurement**

Non-competitive procurement may be used when the award of a contract is not feasible under small purchase, sealed bid, or competitive proposal procedures. This may be due to single source availability or inadequate competition, determined after solicitation of a number of sources. Non-competitive procurement is most often used for emergency situations and disaster projects.

**Grant Recipients must receive prior approval from TDA before using non-competitive proposal procurement.** All requests for non-competitive procurement must be submitted in writing to the assigned TDA Grant Specialist, by the Grant Recipient.

TDA will consider the use of non-competitive proposal procurement under the following situations:<sup>20</sup>

- **Sole source** – This method allows procurement through solicitation of a proposal from only one source when the item or service is only available from a single source;
- **Public urgency/emergency situations** – State laws generally allow noncompetitive negotiations in such cases where the urgency for carrying out the project will not permit delays caused by competitive advertising/solicitation. Grant Recipients requesting such exemptions are those typically funded under the State Urgent Need (SUN) Fund;

The condition of bids being over budget alone does not create a qualifying condition of inadequate competition or justification for non-competitive procurement. Grant Recipients must demonstrate multiple attempts to competitively procure the goods or services, including changes to specifications, project scope, timeline, or other constraints to address any barriers to participation, before TDA will consider approving non-competitive procurement under this provision.

The Grant Recipient must complete the steps listed in *Section 5.5 Steps for Award and Contracting*.

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<sup>20</sup> 2 CFR § 200.320(c)

## **5.5 Steps for Award and Contracting**

Regardless of the method of procurement or selection for a contractor or service provider, the Grant Recipient must complete the following steps for each purchase.

**NOTE:** While the below requirements are applicable to all forms of procurement, please see the Micro-purchase specific requirements identified in *Section 5.3.5* of this Chapter.

### **5.5.1 SAM Clearance**

The Grant Recipient must verify the contractor/service provider's eligibility to participate in the federally-funded project through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). The Grant Recipient must verify that the contractor is neither debarred, suspended, or otherwise excluded. Record this verification with a dated screen shot for the Grant Recipient's records. Eligibility of all contractors/service providers must be verified through the SAM website prior to any formal action authorizing the award of the contract to the contractor/service provider. Examples of formal action include, but are not limited to, authorizing resolution, authorizing ordinance, council approval of award, contract execution, etc.

Update the MSR with SAM clearance information and screen shot. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

### **5.5.2 Award by Governing Body**

The Grant Recipient's governing body must award the contract(s) to the selected contractor/service provider.

- **Competitive Proposals Only** – The local governing body has the final authority to award contracts. The local governing body is encouraged to follow the committee's recommendation but may select another Respondent if the minutes of the local governing body meeting include justification for the selection.
- **Sealed Bids and Small Purchase Only** – The Grant Recipient must award the contract to the lowest appropriate bidder. The award amount must equal the amount of the bid, including any bid alternates awarded. If the contract is awarded to a bidder that does not propose the lowest price, the Grant Recipient must document the decision in compliance with Texas Local Government Code.<sup>21</sup>

Update the MSR with contract award information. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

### **5.5.3 Prepare and Execute Contract/Agreement**

Regardless of the type of procurement used, the Grant Recipient must execute a contract to document the goods and/or services to be purchased, the agreed upon price, and the contractor's or supplier's mandatory compliance with all applicable state and federal requirements. If the Grant Recipient uses a purchase order in lieu of a contract, it must similarly document goods, services, price, and all programmatically required provisions.

**NOTE:** The amount of the contract **must** exactly match the amount awarded by the local governing body.

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<sup>21</sup> Tex. Loc. Gov't Code, §252.043 (Municipalities), §262.027 (Counties)

In all contracts, Grant Recipients and contractors must specifically refer to the project or provide detailed information regarding the work being funded. The following appendices of the TxCDBG Implementation Manual include sample contracts that may be used for various purchases:

- **Appendix D** – Administration services
- **Appendix E** – Engineering services
- **Appendix F** – Construction services
- **Appendix G** – Materials

In addition to other federal and state provisions required, all contracts or purchase orders must address, if applicable, the following provisions. See also Appendix B for required contract provisions.

- **Debarment and suspension** – (Executive Orders Nos. 12549 and 12689): A contract award must not be made to parties listed on the government wide exclusions list in SAM.
- **Amendments** – Procedures for amending the contract, including the scope of work and/or compensation section, and the addition of details known only once the grant project is awarded by TDA.
- **Termination** – Explaining circumstances under which the Grant Recipient or other party can cancel the contract (e.g., unsatisfactory performance).
- **Access to Records** – Provides TDA or other government entity with access to any documents of the Grant Recipient pertinent to the TxCDBG award.
- **Retention of Records for Four Years** – Retain all required records for four years after the Grant Recipient makes its final payment and all pending matters are closed.  
**NOTE:** The Grant Recipient must retain files beyond this period as described in *Chapter 1 Administration and Reporting*.
- **Section 3 Provision** – For all contracts unless otherwise specified in the Grant Agreement.<sup>22</sup> The provision is not required for materials-only or equipment contracts and for non-construction services that require an advanced degree or professional licensing, including services identified in the Professional Services Procurement Act.
- **Equal Opportunity Clause** – For contracts over \$10,000.<sup>23</sup>
- **Anti-lobbying certification** – All contracts ≥\$100,000.

### Required Contract Provisions – Non-Construction Services

In addition to the above requirements, the service provider contract or agreement must include the following at a minimum:

- **Names of Both Parties** – Grant Recipient and service provider.
- **Effective Dates** – Starting and ending dates.  
**NOTE:** TxCDBG funds and matching funds may only be used to pay/reimburse for services dated after both the Grant Agreement start date (or approved pre-agreement date identified in the Grant Agreement or award notice) AND the services contract start date.
- **Scope of Services** – Either directly written into the contract or provided as an attachment that is incorporated into the contract.
- **Compensation** – Including the maximum amount of the contract as either a firm, fixed-price contract, or a not to exceed cost-reimbursable type contract.
- **Local Program Liaison** – Identification of a local public official as the consultant's primary contact.
- **Resolution of Program Non-compliance** – Procedures for determining the party responsible for any disallowed costs as a result of non-compliance with federal, state, or program requirements.
- **On-site Inspections** – Ensure that the complete work conforms with the approved plans and specifications (engineering contract only).

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<sup>22</sup> 24 CFR §75.27

<sup>23</sup> 41 CFR §60-1.4(b)

- **Optional** – If a service provider is preselected and a contract is entered into prior to grant award, the contract should include a statement which states that in the event TxCDBG funds are not awarded to an applicant, the contract shall be terminated by the applicant.

### **Required Contract Provisions – Construction Contracts**

In addition to the preceding, construction contracts must also address the following:

- For construction contracts greater than \$2,000, compliance with the Davis-Bacon Act, as supplemented by DOL regulations, is satisfied by inserting HUD 4010 in construction contract.<sup>2425</sup> See **Appendix B**.
- For construction contracts greater than \$2,000, compliance with the Copeland “Anti-Kickback” Act, as supplemented in DOL regulations, is satisfied by inserting HUD 4010 in construction contract.<sup>2627</sup> See **Appendix B**.
- For construction contracts greater than \$100,000, compliance with Contract Work Hours and Safety Standards Act, including work week requirements and safety conditions for workers—is satisfied by inserting HUD 4010 in construction contract.<sup>28</sup> See **Appendix B**.
- For contracts greater than \$150,000, include the Clean Air Act and the Clean Water Act, as amended.<sup>2930</sup>

Update the MSR with construction contract information. Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

**NOTE:** While federal and state requirements do not require the contract for materials or services to retain a percentage of funds based on progress milestones, disbursement of grant funding is dependent on both work performed and grant-based milestones. See Chapter 2 Financial Management.

## **5.5.4 Workers’ Compensation Requirements**

The Texas Labor Code requires a governmental entity that enters into a building or construction contract to obtain written certification that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.<sup>31</sup> Subcontractors must also provide the governmental entity with proof of coverage. Additionally, the governmental entity must include in bid specifications and contracts specific language and provisions found in 28 Texas Administrative Code (TAC) §110.110(c)(7). Grant Recipients are responsible for compliance with all applicable statutory policies. The Texas Department of Insurance, Division of Workers’ Compensation regulates and enforces workers’ compensation requirements and may be contacted at 800-372-7713 for more information.

## **5.5.5 Bonding Information**

Grant Recipients must ensure that they are meeting all applicable federal, state and local bonding and procurement requirements.

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<sup>24</sup> 40 U.S.C. 3141 *et seq.*

<sup>25</sup> 29 CFR Part 5

<sup>26</sup> 40 U.S.C. 3145

<sup>27</sup> 29 CFR Part 3

<sup>28</sup> 40 U.S.C. §§3701–3708

<sup>29</sup> 42 U.S.C. §§7401-7671q

<sup>30</sup> 33 U.S.C. §§1251-1387

<sup>31</sup> Texas Labor Code, §406.096

For construction or facility improvement contracts or subcontracts, the minimum bonding requirements for the Grant Recipient which includes a performance bond and a payment bond, if applicable, are as follows:

- A **performance bond** on the part of the contractor for 100 percent of the contract price for contracts that are greater than \$100,000. A **performance bond** is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.<sup>32</sup>
- A **payment bond** is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and/or material in the execution of the work provided for in the contract. Required payment bond(s) must be filed within 30 days from the date of the Notice of Award.<sup>33</sup>
  - **Municipalities:** If the contract is in excess of \$50,000, a payment bond is required.<sup>34</sup>
  - **Counties:** If the contract exceeds \$25,000, a payment bond is required.<sup>35</sup>
- A **bid bond** from each bidder equivalent to five percent of the bid price for contracts that are greater than \$100,000. The **bid guarantee** shall consist of a firm commitment issued by a surety company authorized by the Texas Department of Insurance accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.<sup>36</sup>
- Bonds are not required on contracts for non-construction services, vehicles, equipment, or materials.

## **5.6 Changes to an Executed Contract**

### **5.6.1 Change Orders**

When changes to an executed contract are necessary due to:

- A change in specifications;
- A decrease or increase in the quantity of work to be performed;
- A decrease or increase of materials, equipment or supplies to be furnished;
- A change in the contract duration; or
- A change to other terms of a vendor contract.

The change must be documented through a change order or addendum to the contract. In addition, the Grant Recipient must complete the MSR Change Request form in TDA-GO. **TDA must approve all change orders** to ensure costs are eligible and procured according to TxCDBG requirements.

#### **Minimum Requirements for Contract Changes**

- Grant Recipient must have sufficient grant or local funds available to meet any increased costs.
- Changes requested that are not directly related to the construction project and/or requesting additional supplies and or activities solely due to unused grant funds will not be approved.
- Changes must be appropriate and required for the specific TxCDBG project.
- Change orders that include new items must demonstrate competitive pricing. A statement from the project engineer providing justification for the proposed pricing may be acceptable. TDA may request more supporting documentation for new items that differ significantly from the original bid, e.g., additional work added to grant contract due to available funds.

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<sup>32</sup> Texas Government Code, Chapter 2253

<sup>33</sup> Ibid

<sup>34</sup> Texas Government Code, §§2253.021(a)(2)(B) and 252.044.

<sup>35</sup> Texas Government Code, §2253.021(a)(2)(A)

<sup>36</sup> Texas Local Government Code, §262.032

- Change orders replacing the originally described work with a different material or construction method must clearly identify the change in specifications. Best practice: eliminate the original line item and enter a new line item with the proposed changes.
- Change orders requesting revisions to a unit price determined through the competitive procurement process will not be approved. A Grant Recipient cannot negotiate a discounted cost for the same work. All costs for the revised line item will be disallowed if the unit price is changed.
- Change orders that request “remobilization” costs must demonstrate that:
  - Remobilization costs are necessary and reasonable,
  - The need for remobilization is beyond the Grant Recipient’s control, and
  - The Grant Recipient took proactive steps to resolve any outstanding issues, additional work, or other factors in order to avoid any remobilization.
  - Awaiting TDA approval for Grant Agreement amendments or MSR change orders is not justification for remobilization costs unless all documentation is submitted a minimum of 30 days prior to the contractor’s demobilization.
- Change orders for an increase of more than 25% will be rejected. The Grant Recipient must complete a separate procurement if the proposed additional work project exceeds 25% of the original contract. The State of Texas considers a change order increasing the original contract price of greater than 25% to be non-competitive, as other potential bidders did not have the opportunity to bid on the true scope of the project during the procurement process.
- If a change order involves a decrease or an increase of greater than \$50,000, the Grant Recipient must receive appropriate approval by the governing body.<sup>37</sup> In such cases, TDA will accept as confirmation that such approval has been obtained either the signature by the chief local official on the Construction Change Order or action by the Authorized Official to submit the change order request in TDA-GO.
- **TDA strongly recommends that Grant Recipients obtain TDA approval before fully executing a change order or addendum with the contractor/service provider.** Before approving a change order for a construction contract, TDA must have confirmation via the TDA-GO form that both the Grant Recipient and project engineer have determined the proposed change is appropriate.

### Examples of Cost Justification for New Items

- Minor change in material size, comparable change in price;
- Cost is comparable to recent bids for similar projects in this area; or
- Cost is reasonable, accounting for material pricing plus labor costs.

### Municipalities

- Change orders may not increase the original contract price by more than 25%.<sup>38</sup>
- Decreases in the original contract price of more than 25% require written contractor consent.<sup>39</sup>

### Counties

- The original contract may not be increased by more than 25% unless required by state or federal law, rule or regulation after the contract is made. Grant Recipient must provide written justification, including citation to the appropriate source, for review.<sup>40</sup>
- Decreases to the original contract of more than 18% must have the contractor’s written consent.<sup>41</sup>

<sup>37</sup> Texas Local Government Code, §252.048 (municipalities), §262.031 (counties)

<sup>38</sup> Texas Local Government Code, §252.048(d)

<sup>39</sup> Ibid.

<sup>40</sup> Texas Local Government Code, §262.031(b)

<sup>41</sup> Ibid.

TDA will not reimburse the Grant Recipient or credit the Grant Recipient's match commitment for work listed on a change order unless the **change order has been submitted and approved**. Requests for payment for unapproved change orders will be put on hold at TDA's discretion.

**If the change order is executed without TDA approval, the Grant Recipient is obligated to pay for any changes that TDA does not approve. For these reasons, TDA recommends that the Grant Recipient submit the change order to TDA prior to fully executing the change order.**

Grant Recipients must submit **all** change orders on a contract, whether or not the work will be paid with grant funds, matching funds or additional local costs so that TDA's TxCDBG staff has a complete record of the contract. Any additional work or activities reflected on a change order that are determined to be ineligible for grant or matching funds must be paid by the Grant Recipient. Any difference in price from the original contract to the Certificate of Construction Completion (COCC) must be accounted for by a change order.

Project changes reflected in a change order may also require an amendment to the TxCDBG Grant Agreement Performance Statement or Budget. These items must be submitted together as described in *Chapter 11 Grant Agreement Amendments*. Typically, change orders do not contain sufficient information for TDA to determine if a performance statement amendment is appropriate. Therefore, it is incumbent that the Grant Recipient determine if a change order requires an amendment to the performance statement or contact TDA for technical assistance. TDA's approval of a change order can in no way be construed as TDA's approval of a required grant agreement amendment. Prior to executing any change order that makes substantial changes to the project and is likely to change the activities, location, or beneficiaries as described in the Performance Statement, the Grant Recipient should contact TDA. **TDA will approve a change order only when the revised project is consistent with the TxCDBG Grant Agreement Performance Statement.**

## **5.6.2 Performance Bond Claims and Assignment to New Contractor**

State law requires performance and payment bonds for contracts at or above specific dollar thresholds. These bonds require the parties to a construction agreement to abide by provisions of the surety bond when processing a claim. When performance issues with the original contractor cannot be resolved, a bonding company will customarily appoint a different contractor to complete the work. This should only be done in accordance with the surety's terms. In addition, the original construction contract must contain a termination clause for contracts that are greater than \$10,000, and should contain an assignability and novation clause. These provisions would permit a Grant Recipient to terminate a contract for cause or convenience and to re-assign completion of the project to a different contractor under the terms of the performance bond.

The Grant Recipient must rely on their legal counsel to ensure that termination and assignability are performed in accordance with conditions of the contract, and in compliance with federal, state, and local codes and regulations. The Grant Recipient must maintain detailed records of communications and formal actions taken which resulted in the termination of the original prime contractor and which prompted the claim to be filed with the performance bond surety company.

Payment requests for costs associated with performance bond claims must clearly identify the costs for work performed only:

- Where the Grant Recipient disburses funds directly to the bond company, the bond company is responsible for issuing payments to material suppliers, subcontractors, and the prime – neither TDA nor the Grant Recipient will track these disbursements, as the bond company has

taken responsibility for the work and payment processes. The bond company or prime contractor must provide invoices detailing the work completed to date and associated pricing, as outlined in the contract. Any payments owed to the prime contractor are a matter between the contractor and the bond company.

- Eligible costs must not exceed the amount of the original construction contract, plus any change orders prior to the performance bond claim. **Any additional expenses required to complete the project that exceed this maximum amount will be the responsibility of the city or bond company.**
- Alternatively, the Grant Recipient and bond company may opt to fully document all disbursements of funds under the construction contract to the prime contractor and associated subcontractors or material suppliers. In this case, TDA may consider a change order for additional work required to be performed to resolve all performance issues.
- TDA may accept a COCC with written notice from the bond company that all work has been completed in lieu of the contractor's signature.

If a new contract is executed by the Grant Recipient for the replacement contractor selected by the bonding company, a new MSR must also be completed in TDA-GO. Select "Bond Claim Resolution / Assignment of Contract" as the Type of Procurement/Selection Process.

## **5.7 Recordkeeping Procedures**

### **5.7.1 Local Records**

The Grant Recipient must maintain records that are detailed enough to show the history of each procurement. At a minimum, records must demonstrate how the Grant Recipient

- Executed price sampling for small purchases, or established/published RFP solicitation;
- Selected the method of procurement and the type of contract to be used;
- Determined the bids or proposals to accept and the ones to reject; and
- Computed the basis for the contract cost or price.

The Grant Recipient must submit an MSR in TDA-GO for all businesses and other entities contracted to provide products or services in whole or in part for a TxCDBG project, including those that will be wholly or partially paid with other funding sources. This report:

- Describes the work to be performed by the business or other entity;
- Verifies that all required clearances have been completed prior to executing a contract with the business or other entity;
- Discloses the financial interest of the business or other entity;
- Provides minority business enterprise information for the business owner, however not required for councils of government and other non-business entities;
- Identifies Section 3 business concerns and anticipated Section 3 employment opportunities; and
- Provides Davis-Bacon wage decision numbers and other key contract dates.

### **5.7.2 Micro-purchases**

The Grant Recipient must maintain copies of all contracts and/or purchase orders and, if possible, show evidence of distributing purchases equitably among suppliers.



For micro-purchases, no Materials and Services Report is required. Instead, complete the *Eligible Costs not Reported on MSR* section of the TDA-GO *Grant Overview* page.

### **5.7.3 Competitive Proposal – Non-Construction Services**

The Grant Recipient must establish and maintain separate files for records relating to the procurement of a management consultant, engineer or other service provider to detail the procurement process undertaken. The files for professional services or administration services procurement should contain the following information:

- Proof of advertisement with a tear sheet/full-page advertisement/photocopy with publisher's identification and date/publisher's affidavit for proof of advertising for monitoring purposes.
- Proof that five or more firms/individuals were contacted for proposals.
- A complete RFP packet, including cover letter, request for proposal, rating sheet (if utilized), and a sample contract.
- Proof that all proposals were received by the Grant Recipient, with note or stamped date/time received.
- Verification that the firm and principals of firm are not on the SAM.gov debarred or suspended list; a printout of SAM.gov page with date is required.
- Meeting minutes documenting the award.
- An executed contract.
- If planning project, see *Chapter 3 Environmental Review* for environmental review documentation.

### **5.7.4 Construction and Material/Equipment Purchases**

The Grant Recipient must establish and maintain separate files for records relating to the procurement of a construction contractor or materials/equipment supplier to detail the procurement process undertaken. The files for construction and material/equipment purchases procurement should contain:

- Bid documents with labor standards provisions included, as applicable;
- Copies of all bid addenda, if any;
- Contract documents with Labor Standards Provisions included, as applicable;
- Actual advertisements for bids—either full page or with publisher's affidavits—or evidence of quotes/estimates received for small purchase procurement;
- Bids received or quotes received;
- Minutes of the bid opening;
- Verification that the firm and principals of the firm are **not** on the SAM.gov debarred or suspended list; provide a printout of SAM.gov page with date;
- A signed *Certificate Regarding Lobbying (Form 80-0013)* if contract is greater than \$100,000;
- Bid tabulation sheets, if applicable; and
- A copy of council/commissioner court action awarding the contract.

**NOTE:** After contract award, the opened bids must be kept on file and available for inspection by anyone desiring to see them. However, any trade secrets and/or confidential information in the proposals are subject to the restrictions of Section 252.049(b) of the Texas Local Government Code and Chapter 552 of the Texas Government Code.

### **5.7.5 Certificate of Construction Completion (COCC)**

Upon completion of the work included in the contract, all parties must agree that the work is acceptable.

- For non-construction services and materials/equipment contracts, the Work Completed page of the MSR must be completed and submitted through TDA-GO. The printed COCC is not required.
- For construction contracts, see *Chapter 7 Davis Bacon Labor Standards* for additional information.

## **5.8 Federal and State Laws Governing Procurement of Services, Supplies and Non-Real Property**

The laws and regulations described in this section apply to the procurement of services, supplies or non-real property in TxCDBG-funded projects.

### **5.8.1 State Laws & Regulations**

**NOTE:** The full text of state statutes may be found online at: <http://www.legis.state.tx.us/>.

**Texas Local Government Code** – Chapter 252, Municipalities, and Chapter 262, Counties

#### **Chapter 252 Municipal Grant Recipients Construction Bidding Procedures**

Municipal Grant Recipients are generally required to conduct competitive sealed bid procurement for all contracts over \$50,000.

Municipalities are required by state law to advertise their invitation for bids in a newspaper published in the municipality at least once a week for two consecutive weeks. The date of the first publication must be before the 14th day before the date set to publicly open the bids. If no newspaper is published in the municipality, the notice must be posted at city hall for fourteen days prior to the date of the bid opening.<sup>42</sup>

#### **Chapter 262 County Grant Recipients Construction Bidding Procedures**

County Grant Recipients are generally required to conduct competitive sealed bid procurement for all contracts over \$50,000.

Counties are required by state law to publish a notice in a newspaper of general circulation in the county at least once a week for two consecutive weeks, with the first day of publication occurring at least fourteen days before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for fourteen days prior to the date of the bid opening.<sup>43</sup>

**NOTE:** TDA program policy requires that the first publication date for both municipalities and counties is at least fifteen (15) days prior to the bid opening date.

**Texas Government Code** – **Chapter 2253, Public Work Performance and Payment Bonds** covers bonding requirements.

**Texas Government Code** – **Chapter 2254.** This chapter is also known as the Professional Services Procurement Act. Chapter 2254 governs the local government procurement of professional services. It prohibits the procurement of architects, engineers, or surveyors, based on bid price and requires

<sup>42</sup> Texas Local Government Code, §252.041(a)

<sup>43</sup> Texas Local Government Code, §262.025(a)

government entities to first select the most highly qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price.

**Texas Local Government Code – Chapter 171.** This chapter requires local government officials to disclose conflicts of interest and sets forth rules that require officials to abstain where they are in a position to vote or make a decision on any matter involving a business entity or real property for which they have an interest.

**Texas Engineering Practice Act – Chapter 1001, Texas Occupations Code.** This Act states that a registered professional engineer must be hired to prepare plans, specifications, and estimates for any public works activities in accordance with this Act. The engineer must directly supervise the project in order to ensure the public health, safety, and welfare; however, this Act does not apply to road maintenance or betterment work undertaken by counties.

**Procurement Standards** – Texas Grant Management Standards (TxGMS), Texas Comptroller of Public Accounts

**Conflict of Interest** – Nepotism and conflict of interest regulations can be found in the Texas Government Code, Chapter 573; Texas Local Government Code, Chapter 171; and TxGMS.

## **5.8.2 Federal Laws & Regulations**

### **24 CFR §570**

Portions of 24 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as further specified by program regulations in 24 CFR Part 570, HUD Conflict of Interest regulations at 24 CFR §570.489(g), (h).

## **Resources**

Resource Number	Description	URL
Appendix B	Required Contract Provisions	<a href="#">TxCDBG Implementation Manual</a>
Appendix C	Vehicle/Equipment General Conditions	<a href="#">TxCDBG Implementation Manual</a>
Appendix D	Sample Administration Services RFP Packet	<a href="#">TxCDBG Implementation Manual</a>
Appendix E	Sample Engineering Services RFQ Packet	<a href="#">TxCDBG Implementation Manual</a>
Appendix F	Sample Construction Bid Packet	<a href="#">TxCDBG Implementation Manual</a>
Appendix G	Sample Material Bid	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.

# CHAPTER 6

# ACQUISITION

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# CHAPTER 6

## ACQUISITION

### 6.0 Introduction

TxCDBG-funded projects are subject to both the acquisition and relocation requirements of the Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§4601 *et seq.*, and the federal regulations found in 49 CFR Part 24. See also Section 104(d) of the Housing and Community Development Act of 1974 and its implementing rules at 24 CFR Part 42 regarding relocation assistance policies for HUD-funded programs.

The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms as a result of rehabilitation, demolition, or private acquisition carried out under federally assisted programs. The URA also establishes equitable land acquisition policies.

Relocation requirements of the URA are discussed in the relocation guidelines available on the HUD website.

The Uniform Relocation Assistance Act:

- Ensures that owners of real property acquired for federal and federally assisted projects are treated fairly and consistently, to encourage and expedite acquisition through agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in federal and federally assisted land acquisition programs;
- Ensures that persons displaced as a direct result of federal or federally assisted projects are treated fairly, consistently and equitably and do not suffer disproportionate injuries as a result of projects that benefit the public as a whole; and
- Ensures that acquiring/condemning authorities implement these regulations in an efficient and cost-effective manner.

#### **General Requirements**

HUD's *Tenant Assistance Relocation and Real Property Acquisition Handbook*, otherwise known as Handbook 1378, provides thorough guidance on real property acquisition procedures required under the URA. If there are questions whether URA applies to a specific situation, please consult TDA staff.

Ultimately, the Grant Recipient is responsible for ensuring compliance with all URA requirements. However, this does not prevent another entity, such as a water supply corporation, from acquiring real property for the grant-funded project. The term **acquiring entity** refers to the entity performing the acquisition or under whose authority the acquisition is performed.

URA acquisition rules apply whenever an acquiring entity:

- Undertakes the purchase of property directly,
- Provides a nonprofit or for-profit entity with funds to purchase the property,
- Hires an agent or consultant to act on its behalf in acquisition,
- Undertakes acquisition on or after a TxCDBG application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity, or
- Undertakes an acquisition before the application submission date and the acquisition was intended to support a subsequent TxCDBG activity.

URA Acquisition rules apply to TxCDBG projects when acquiring:

- Fee simple title to the property,

- A permanent easement necessary for the project,
- Certain temporary easements necessary for the project,
- Properties subject to a life estate or a life use, and
- Property that is leased for a term of 15 years or more.

The URA does **not** apply to the following:

- Temporary easements needed solely to perform work intended exclusively for the benefit of the property owner;
- Private-to-private acquisition. The private development part of the project is considered separate, therefore, the acquisition of one private entity from another private entity which is entirely for private use is not considered to be subject to URA. However, if TxCDBG funds are invested in public infrastructure to support that private enterprise, any acquisition with respect to that public infrastructure is subject to URA; or
- Some TxCDBG projects that are also funded by either the Tennessee Valley Authority or the USDA Rural Utilities Service, with written mutual consent of both HUD and the other federal department or authority.<sup>1</sup> Relocation assistance procedures still apply for persons displaced due to the acquisition.

As required by law, each property owner must be properly informed of their rights, and the acquiring entity must document compliance with the laws and regulations. Each property owner is entitled to the payment of just compensation for their land, even if they are a direct beneficiary of the project.

Before requiring the property owner to surrender possession of the real property, the acquiring entity must make an offer of just compensation to the owner.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant of the property, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project.<sup>2</sup>

## **6.1 Key Policies**

### **6.1.1 Real Property**

All public improvements or activities related to an eligible TxCDBG project must be constructed on real property that is publicly owned, owned by the subrecipient/partnering entity to the grant, or recorded as a right-of-way or easement. Real property in the context of acquisition refers to permanent interest in real property as well as certain less-than-full-fee interests in real property.

**NOTE:** A lease term for less than 15 years does not satisfy HUD's standard for real property acquisition and would, therefore, not meet the TxCDBG program interest in property requirement.

Improvements constructed on property that is not publicly owned, owned by a partnering entity such as a water supply corporation, or recorded as a right-of-way or easements are not eligible TxCDBG projects.

In general, permits and licenses, such as railroad permits, do not constitute real property acquisitions and, therefore, are not subject to the URA requirements. In distinguishing whether a permit/license is an actual easement, the Grant Recipient should carefully consider such factors as the cost of the permit

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<sup>1</sup> 49 CFR §24.101(b)(5)

<sup>2</sup> 49 CFR §24.102(k)

or license, its term, whether the license/permit is revocable at will, and/or whether there is a transfer of interest in the property. If there is a question of whether the permit or license should be considered an easement, Grant Recipients should seek legal counsel.

A description of the real property acquisition required for the project is included in the TxCDBG Grant Agreement Performance Statement. Any changes to this description must be approved by TDA and may require an amendment.

### **6.1.2 Environmental Review and Acquisition**

**Do NOT acquire real property for a TxCDBG project prior to completion and clearance of the environmental review.**

A contract to purchase or lease property for a TxCDBG project before the environmental review is completed is considered a commitment of funds and a choice-limiting action and must be avoided until after the environmental review process is completed and TDA has issued a release of funds, see *Chapter 3 Environmental Review*.<sup>3</sup>

This restriction applies both to acquisition covered by the URA and to private-to-private acquisition if the transfer of property would not have occurred if not for the TxCDBG project.

Note that any executed instrument which conveys an interest in property, whether purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives. However, an option contract is one action that may be taken to obtain site control; this action may conclude in acquisition once the environmental review process is completed. A real estate option contract or agreement is a legal agreement between the potential buyer of real property and the owner of that property. The real estate option agreement gives the potential buyer the exclusive right to buy the property at a specific price within a specific period. The option agreement does not impose any obligation upon the potential buyer to purchase the property, but it does obligate the seller to sell at the specified price if the buyer exercises the option to buy.

HUD's regulations allow for an option agreement for any project prior to the completion of the environmental review when the following requirements are met:<sup>4</sup>

- The agreement must include the statement: "This option agreement is subject to a determination by the [Grant Recipient] on the desirability of the property for the project as a result of the completion of the environmental review in accordance with 24 CFR Part 58" or similar language approved by TDA; and
- The cost of the option is a nominal portion of the purchase price.

The provision allows flexibility regarding the term "nominal" and any reasonable interpretation is acceptable, e.g., it is reasonable to conclude that the nominal amount for option contracts will vary depending upon the local real estate market and the purchase price. However, similar contracts with contingencies language for property acquisition that do **not** meet the above requirements are **not** acceptable for environmental review purposes.

**NOTE:** For projects with acquisition documents that include contingencies other than the approved environmental option language, e.g., procurement contingencies, contact TDA staff.

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<sup>3</sup> 24 CFR §58.22(a)

<sup>4</sup> 24 CFR §58.22(d)

### **6.1.3 Procurement and Acquisition**

Surveyors, appraisers, title companies, and other professionals whose services are required for acquisition must be procured under TxCDBG rules for procurement of professional services. Procurement of an attorney for legal services is not subject to competitive procurement requirements, see *Chapter 5 Procurement Procedures*.

### **6.1.4 Condemnation**

Condemnation refers to the legal process used for taking property under the authority of eminent domain. The use of the term should not be confused with its use in declaring a property to be uninhabitable or unsafe.

Eminent domain refers to the power of the government to take private property and convert it to public use. The Fifth Amendment to the Constitution of the United States provides that government may only exercise this power if it provides just compensation to the property owner.

The statutory authority of the state of Texas grants eminent domain authority to state agencies, political subdivisions (such as cities, counties, and special districts), and some private entities. Governmental entities have eminent domain authority over properties that are located both inside and outside their taxing jurisdiction. All municipalities in Texas subject to home rule, general law, and special law are provided the authority of eminent domain.<sup>5</sup>

Texas Water Code confers water districts and water supply corporations with eminent domain authority to acquire land, easements, or other property necessary for water, sanitary sewer, storm drainage, or control purposes. However, the Water Code expressly restricts a district or water supply corporation from using the power of eminent domain authority for “the condemnation of land for the purpose of acquiring rights to underground water or of water or water rights.”<sup>6</sup> Therefore, when acquiring surface land and the associated water rights for a proposed well site, these types of entities may only use voluntary acquisition procedures.

**NOTE:** Water supply corporations are considered private entities. However, the Texas Government Code limits the eminent domain authority of governmental and private entities for acquisition that confers a private benefit on a private party or for economic development purposes unless the economic development is a secondary purpose resulting from a municipal community development or municipal urban renewal activities to eliminate slum or blight as provided in applicable provisions of the Texas Local Government Code.<sup>7</sup>

### **6.1.5 Documenting Compliance for Acquisition Activities**

#### **Recordkeeping**

The Grant Recipient is responsible for demonstrating compliance with URA requirements regardless of who actually performs the duties. All records and notices and their date of delivery must be maintained locally for TDA and HUD monitoring purposes.

All mailed communications should be USPS-Certified, Return Receipt Requested or similar, or hand-delivered with a notation on a copy by a witness to the delivery. The acquiring entity’s records must contain the complete record and demonstrate compliance.

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<sup>5</sup> Texas Local Government Code, §251.001 (Municipalities), §261.001 (Counties).

<sup>6</sup> Texas Water Code, §49.222.

<sup>7</sup> Texas Government Code, §2206.001.



All acquisition activities must be fully documented, completed, executed and recorded, prior to the execution of any related construction contracts.

### **TDA-GO! Reporting**

The grant application contains initial expectations for any property to be acquired for the TxCDBG project. Once funded, the Grant Recipient must complete the *Acquisition Performance Report* in TDA-GO. The *Acquisition Performance Report* is created by TDA as part of the award process and contains one page, with additional pages generated if required.

**NOTE:** Even if no acquisition is needed for the TxCDBG funded project, the *Acquisition Performance Report* must be completed for federal reporting purposes.

*Acquisition Plan page* – The Grant Recipient must identify all property anticipated to be acquired as part of the project and the type (voluntary or involuntary) of acquisition procedure to be used. Submit the Performance Report in TDA-GO once the *Plan page* is completed.

TDA staff will then review the document and provide technical assistance, as needed.

**NOTE:** The *Acquisition Plan* page must reflect actual plans for the project. **Do not** submit a plan with incomplete information or before the potential property acquisition needs are known. Such “placeholder” plans may result in compliance findings for poor record keeping.

*Revisions to Acquisition Plan page* – If during the project the Grant Recipient identifies additional property to be acquired, or determines that previously identified acquisition is not needed, the Acquisition Performance Report must be updated. Contact TDA staff to have the previously approved plan made available for editing.

*Acquired Parcels page* – Once the *Acquisition Performance Report* is approved by TDA staff, a second page will appear within the report if the *Acquisition Plan* page indicates that at least one parcel will be acquired. A separate *Acquired Parcels* page must be completed for each property that is acquired. Use the “Add” button in the top right corner of the *Acquired Parcels* page to create a new entry.

A third page labeled *Acquired Parcels Summary* will also appear in the menu to calculate total purchase information for all parcels reported.

### **Administrative Settlement**

Once both parties determine an acceptable final price, an Administrative Settlement with written justification may be prepared, which states pertinent information, including trial risk and other factors that support such a settlement, see *Administrative Settlement Guide (Form A610)*.<sup>8</sup> Relocation payments are not acquisition costs and cannot be used to support an administrative settlement.

TDA recommends use of the Administrative Settlement Guide format for all acquisitions where the price is negotiated. An Administrative Settlement is *required* when:

- TxCDBG grant funds are used for the transaction and
- The purchase price exceeds the just compensation amount.

### **Funding**

- No TxCDBG construction funds will be released for payment to the Grant Recipient until the *Acquisition Performance Report* is submitted and approved by TDA staff.

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<sup>8</sup> 49 CFR §24.102(i)

- If the *Acquisition Plan* page indicates that acquisition is required, no TxCDBG construction funds will be released until the *Acquired Parcel* page has been completed for each parcel related to that construction.
- When a project includes multiple activities and only some of the activities require acquisition, the Grant Recipient must consult with TDA to determine which activities may occur prior to completing the *Acquisition Performance Report*.

### Schedule

- Careful completion and submittal of the *Acquisition Performance Report* is an important early step to assure compliance. Failure to properly identify the type of acquisition (voluntary or involuntary), including providing required notices, may result in financial penalties and/or project delays for corrective actions. In certain cases where no corrective action or alternative locations are appropriate, failure to follow URA procedures may result in termination of the Grant Agreement.
- TDA recommends the acquiring entity begin title research early in the acquisition process to correct title issues that may cause delays.
- The process of obtaining an appraisal and review appraisal can be lengthy and must be accommodated in the project's schedule in order to complete the project within the contract period. If delays in these processes do not allow for timely completion of the project, the project as contracted will need to be re-evaluated to determine its feasibility. Contact TDA staff for technical assistance.

## 6.2 Methods of Acquisition

An acquiring entity may acquire real property after determining whether the acquisition is voluntary or involuntary (see the following descriptions to determine whether an acquisition is voluntary or involuntary) through one of the following methods:

- Donation
- Just compensation purchase
- Negotiated purchase
- Condemnation

### Donation

A transaction may be considered a donation if the owner agrees to give, rather than sell, property to the acquiring entity. Donations may be made in either voluntary or involuntary acquisitions.

### Just Compensation Purchase

The acquisition price is determined through a valuation process—such as an appraisal or valuation through property tax records or appraisal district records.

### Negotiated Purchase

Negotiated purchase is the acquisition of property at a price different from the value that was determined through just compensation. In cases of purchase through negotiation, the reasons for the purchase must be explained in a document called an administrative settlement, see sample *Administrative Settlement Guide Form (Form A610)*.

### Condemnation

An acquiring entity should use condemnation only as a last resort and must request and obtain written approval from TDA in advance before commencing condemnation procedures. **Given the short term of the TxCDBG contract periods, TDA does not typically approve the use of condemnation in the acquisition of property.** In addition, the use of TxCDBG funds to support

the use of eminent domain on an economic development project that primarily benefits a private entity is prohibited. See the current Consolidated Appropriations Act, as well as similar provisions in previous appropriations.

## **6.3 Step-by-Step Procedures**

### **6.3.1 Determining Voluntary or Involuntary Acquisitions**

Acquisitions of real property are either voluntary or involuntary. The terms relate to whether or not the acquiring entity possesses the authority of eminent domain (condemnation), and if the transaction occurs as a result of the use or potential use of that authority. URA provides different protections to property owners depending on whether acquisition is voluntary or involuntary.<sup>9</sup>

#### **Voluntary Acquisition**

Voluntary acquisitions are negotiated between the property owner and the acquiring entity without the threat of eminent domain or condemnation. There are several types of acquisition considered voluntary.

- Acquiring Entities without Eminent Domain Authority.
- Acquiring Entities *with* Eminent Domain Authority - For acquiring entities with the authority of eminent domain, acquisitions must meet the following conditions to be considered voluntary.<sup>10</sup>
  - The acquiring entity will not use the power of eminent domain to acquire the property. No later than the time of the just compensation offer, the acquiring entity must inform the owner of the property or the owner's designated representative in writing of the following:
    - The property will not be acquired through condemnation if negotiations do not reach an amicable agreement; and
    - The estimate of fair market value for the property to be acquired. Where an acquiring entity wishes to purchase more than one property within a general geographic area on this basis, all owners are to be treated similarly.
  - The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area must be acquired within specific time limits.
  - Note: as of 2024, an acquisition may be considered voluntary even if a specific site is needed and only one property is appropriate to be acquired for project purposes.
  - If the agency cannot ensure the applicable requirements are satisfied, then such acquisitions must be pursued as an involuntary acquisition under the full requirements of 49 CFR Part 24 Subpart B.
- Public Land Acquisition - Acquiring entities do not have the authority to obtain publicly owned land through condemnation. Therefore, acquisitions of government-owned property whether federal, state, local governments, or political subdivisions, such as school districts or river authorities, are considered voluntary acquisitions.
  - The acquiring entity must still provide notification to the governmental entity regarding interest in the property. The notice must inform the owner that eminent domain authority will not be used to acquire the property and must provide the estimated market value of the property to be acquired before negotiating the sale, lease, or donation of the public land.

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<sup>9</sup> 49 CFR 24, Subpart B (Real Property Acquisition)

<sup>10</sup> 49 CFR §24.101(b)(1)(i)-(iii)

- Economic Development - Acquisition of real property on an economic development project which benefits a private entity may only be conducted through voluntary procedures using non-federal funds.

**In no case is it permissible for an entity to subsequently undertake an acquisition under threat or use its eminent domain authority, when initial negotiations for a voluntary acquisition fail.**

### **Involuntary Acquisition**

If the acquisition does not qualify as voluntary under any of the exceptions listed above, the acquisition is considered involuntary. Involuntary acquisition procedures must be followed for any acquisition of real property for programs and projects where there is Federal financial assistance in any part of project costs.

Acquisitions that do not satisfy the requirements for voluntary acquisition described above are considered involuntary even if the property owner is a willing seller.

## **6.3.2 Step-by-Step Procedures – Voluntary Acquisitions**

### **Step 1. Determine the Property to be Acquired**

Prior to beginning an acquisition process, the Grant Recipient must have a clear understanding of the grant-funded project and the property that must be acquired for the project to be successful.

### **Step 2. Submit TDA-GO *Acquisition Performance Report* —Acquisition Plan page**

Confirm voluntary acquisition is appropriate and submit to TDA for review and approval.

### **Step 3. Determine Market Value of the Property**

The Grant Recipient may use a market estimate such as a tax valuation to determine value. An appraisal is not required for voluntary acquisitions.

### **Step 4. Notify Owner of Property Rights**

Voluntary acquisitions can occur only when an acquiring entity lacks the authority to condemn (eminent domain) or when it revokes its intent to use eminent domain with the provision of specific written notice to the property owner.

The Grant Recipient must notify the owner in writing, prior to making a purchase offer, of the following:<sup>11</sup>

- The property's market value; and
- The Grant Recipient or acquiring entity will not acquire the property if an amicable settlement cannot be reached, see sample *HUD Guide Forms* Appendices 31 and 32, (**Forms A603** and **A604** respectively), for appropriate language based on the Grant Recipient's eminent domain powers.

**OPTIONAL:** In addition, the owner can also be invited to donate the property. The acquiring entity may include the completed *Sample Notice of Agreement to Donate (Form A605)* which allows the owner to accept or decline the request to donate the land.

### **Step 5. Complete Environmental Review**

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations, a Grant Recipient may not execute an agreement for the sale, lease, or donation of real property before an

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<sup>11</sup> *Ibid.*

environmental review has been completed and a TDA-authorized release of funds, see *Chapter 3 Environmental Review*.<sup>12</sup> If a significant environmental impact will occur, consider alternative sites.

#### **Step 6. Determine Price or Donation**

The owner may choose to donate the property. However, after an acquiring entity has established the amount it believes to be the market value of the property and has notified the owner of this amount in writing, an acquiring entity may negotiate freely with the owner in order to reach an agreement. Since these transactions are voluntary, with a willing buyer and a willing seller, negotiations may result in an agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount.

**BEST PRACTICE:** Apply the administrative settlement concept and procedures in 49 CFR § 24.102(i) to document the rationale for determining the negotiated price.

#### **Step 7. Execute the Agreement**

The Grant Recipient and the property owner must execute a sale or donation agreement. TDA requires the deed to be recorded in order to consider the acquisition complete.

#### **Step 8. Report Acquisition Parcel Information**

The Grant Recipient must complete an *Acquired Parcel* page in the TDA-GO *Acquisition Performance Report* for each parcel.

### **6.3.3 Step-by-Step Procedures – Involuntary Acquisitions**

#### **Step 1. Determine the Property to be Acquired**

Prior to beginning an acquisition process, the Grant Recipient must have a clear understanding of the grant-funded project and the property needed for the project to be successful.

#### **Step 2. Submit TDA-GO Acquisition Performance Report - Acquisition Plan page**

Involuntary acquisition requires TDA authorization *prior* to pursuing the property, as documented on the *Acquisition Performance Report*. The *Acquisition Plan* is a page within this report.

#### **Step 3. Notify Owner of Property Rights**

As soon as feasible, the acquiring entity must notify the owner in writing of its interest in acquiring the property and the basic protections provided to the owner under URA, HUD policies, and state law.

The Grant Recipient must provide the owner with the following, prior to making a purchase offer:

- **Notice to Owner for Involuntary Acquisition** – See sample *HUD Guide Appendix 30 (Form A602)* for appropriate language.
- **When a Public Agency Acquires Your Property** – This HUD booklet describes important features of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, as amended.
- **The Texas Landowner's Bill of Rights** – This required informational booklet explains the rights and protections available to landowners.<sup>13</sup>

**OPTIONAL:** In addition, the owner can also be invited to donate the property. The acquiring entity may include a *Notice of Agreement to Donate* (Form A605) allows the owner to accept or decline the request to donate the land. This form also allows the owner to waive his/her right to an appraisal of the land.

#### **Step 4. Determine Just Compensation for the Property**

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<sup>12</sup> 24 CFR §58.22

<sup>13</sup> Texas Government Code, §402.031; Texas Property Code, §21.0112.

An appraisal is required for property acquired under involuntary procedures unless one of the following is applicable.<sup>14</sup>

The implementing regulations for the URA provide for three tiers of waiver valuation, whereby a formal appraisal would not be required. Tiers 2 and 3 require HUD approval and must be submitted to TDA for consideration in the TDA-GO Acquisition Performance Report. If TDA determines the Tier 2 or Tier 3 request meets eligible requirements it will be forwarded to HUD's Regional Relocation Specialist for consideration. In evaluating whether to submit a waiver valuation request to HUD, TDA will consider the administrative complexity of the request and any potential delay that could affect timely fulfillment of project milestones.

- If the owner is donating the property and releases the acquiring/condemning authority from its obligation to appraise the property, no formal appraisal is required.<sup>15</sup>
- Tier 1 - If the property valuation is uncomplicated and the anticipated value of the proposed acquisition is \$15,000 or less based on a review of available data, a waiver of appraisal requirements may be requested from TDA. The acquiring entity must prepare a waiver valuation and have a reasonable basis for the waiver valuation included in the local files.
- Tier 2 - HUD approval is required for a waiver valuation for property which exceeds \$15,000 and up to \$35,000 in estimated value. The acquiring entity must first offer the property owner the option to have the property appraised.
- Tier 3 - In addition, HUD approval is required for a waiver valuation for proposed acquisition which is uncomplicated and has estimated values of more than \$35,000 and up to \$50,000. The acquiring entity must first offer the property owner the option to have the property appraised. If HUD approves the waiver valuation, within 6 months of completion of acquisition activities the Grant Recipient must prepare a report measuring cost/time benefits, condemnation rate, settlement rate, and any other relevant metric to adequately document both the administrative savings and accuracy and efficacy of the waiver valuations, which must be submitted to HUD.

The process of estimating value when an appraisal is determined to be unnecessary is considered a **waiver valuation** and must be completed by a qualified person.<sup>16</sup>

The property owner, or the owner's designated representative, must be invited to accompany the appraiser and be given the opportunity to present facts and information which may affect the valuation.<sup>17</sup> The Grant Recipient should consult with their legal counsel for guidance with respect to the requirements and procedures of the URA in determining just compensation.

The Grant Recipient must select the appropriate option on the TDA-GO Start Up Report to request a waiver of appraisal requirements

### **Qualifications of Appraiser and Review Appraiser**

The appraisal procedures require that a qualified appraiser and a qualified review appraiser be retained.<sup>18</sup> Property appraisal services must be procured in compliance with TxCDBG professional services procurement procedures and applicable state procurement law. A contract (fee) appraiser hired to perform an appraisal or -to review an appraisal must be a state-licensed or certified real estate appraiser in good standing.

### **Appraiser**

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<sup>14</sup> 49 CFR §24.102(c)(2).

<sup>15</sup> *Ibid.*

<sup>16</sup> 49 CFR §24.103

<sup>17</sup> 49 CFR §24.102(c)(1)

<sup>18</sup> 49 CFR §§24.103 and 24.104

The appraiser must provide an independently and impartially prepared opinion of the value of an adequately defined property as of a specific date, as per the presentation and analysis of relevant market information.

- **Review Appraiser** – The review appraiser must examine the analysis of market information in appraisals to assure that they meet the definition of appraisal found in 49 CFR §24.2(a)(3), appraisal requirements found in 49 CFR §24.103, and all other applicable requirements.<sup>19</sup> The review appraiser may be a member of the staff of the acquiring entity but must have adequate experience, education, training, and current certification/licensing. If the review appraiser is unable to recommend or approve an appraisal as an adequate basis for the establishment of just compensation, the review appraiser may, as part of the review, present market information to support a recommended value. The review appraiser must identify an appraisal report as one of the following:
  - Recommended (as the basis for the establishment of the amount believed to be just compensation),
  - Accepted (meets all requirements, but not selected as recommended or approved), or
  - Not accepted.

### **Step 5. Notification—Establishment and Offer of Just Compensation**

Before the initiation of negotiations, the Grant Recipient must establish an amount believed to be just compensation. The Grant Recipient must provide the just compensation value of the property to the owner in writing. The amount shall not be less than the approved appraisal of the fair market value of the property, consider the value of allowable damages or benefits to any remaining property. The just compensation determination statement and notification to the owner must include:<sup>20</sup>

- The signature of an acquiring entity official;
- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated;
- A description and location identification of the real property and the interest in the real property to be acquired; and
- An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are included as part of the offer of just compensation.

### **Step 6. Complete Environmental Review**

In accordance with U.S. Department of Housing and Urban Development (HUD) regulations at 24 CFR §58.22, a Grant Recipient may not execute an agreement for the sale, lease, or donation of real property before an environmental review has been completed and release of funds authorized by TDA, see *Chapter 3 Environmental Review*.

### **Step 7. Determine Price**

The owner may choose to donate the property or may accept the just compensation amount, in which case the parties may proceed with the execution of appropriate donation or sales documents in Step 8.

The owner may also decline the offer of just compensation and negotiate a different price. The owner must be given reasonable opportunity to present material and information which the owner believes is relevant to determining the value of the property, and to suggest modifications in the proposed terms and conditions of the purchase.

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<sup>19</sup> *Ibid.*

<sup>20</sup> 49 CFR §24.102.

The purchase price may differ or exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement have failed and an acquiring entity official approves such settlement as reasonable, prudent, and in the public interest.

If negotiations are unsuccessful and TDA has approved the use of eminent domain, the acquiring entity must complete all required procedures. Please refer to your local attorney for specific guidance.

### **Step 8. Execute Agreement**

The Grant Recipient and the property owner must execute a sales or donation agreement. TDA requires the deed to be recorded in order to consider the acquisition complete.

### **Step 9. Report Acquisition Parcel Information**

The Grant Recipient must complete an Acquired Parcel page in the *TDA-GO Acquisition Performance Report* for each parcel.

## **6.4 References and Guidance**

Federal guidance for procuring appraisals may be found in HUD Handbook 1378 **Real Estate Acquisition and Relocation Policy and Guidance** on the HUD website, which includes guidance and sample language for required notices:

- *Chapter 6, Recordkeeping and Reports to Guide Localities in the Acquisition Process.*
- Appendix 19 Preparing an Appraisal Scope of Work.
- Appendix 20 Agreement for Appraisal Services.
- Appendix 31 Informational Notice VOLUNTARY ACQUISITION for Agencies WITHOUT Eminent Domain Authority.
- Appendix 32 Informational Notice VOLUNTARY ACQUISITION for Agencies WITH Eminent Domain Authority, where it will be REVOKED.
- Appendix 30 Notice of Interest INVOLUNTARY ACQUISITION for Acquisition where Eminent Domain Authority IS RETAINED.

Additional resources include:

- State of Texas publication, *The Texas Landowners Bill of Rights*.
- HUD publication, *When a Public Agency Acquires Your Property*.

## **Resources**

Resource Number	Description	URL
	The Texas Landowners Bill of Rights	<a href="#">Texas Attorney General's Office website</a>
	When a Public Agency Acquires Your Property	<a href="#">HUD website</a>
	HUD Handbook 1378 (including Appendices)	<a href="#">HUD website</a>
A605-A608	Sample Notices to Property Owners	<a href="#">TxCDBG Implementation Manual</a>
A609	Sample Written Purchase Offer	<a href="#">TxCDBG Implementation Manual</a>
A610	Administrative Settlement Guide	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.



# CHAPTER 7

## DAVIS-BACON LABOR STANDARDS

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# CHAPTER 7

## DAVIS-BACON LABOR STANDARDS

### 7.0 Introduction

This chapter offers a brief description of the laws and regulations associated with federal labor standards administration and enforcement, including TxCDBG contract requirements for Davis-Bacon compliance and responsibilities of the Grant Recipient.

This chapter refers to HUD's policy guide titled *Federal Labor Standards Requirements in Housing and Urban Development Programs*, but more commonly referred to as HUD Handbook 1344.1 Rev 3. The Handbook in its entirety and other technical information about federal labor standards requirements can be found on HUD's website.

Title I of the Housing and Community Development Act of 1974 requires the payment of Davis-Bacon Act prevailing wage rates, which are determined by the U.S. Department of Labor, to all workers on TxCDBG construction projects in excess of \$2,000.<sup>1</sup> For assistance in determining whether Davis-Bacon wage rates apply to a particular project, please see the *Davis-Bacon Coverage Chart (Form A711)* or contact TDA. **These requirements apply regardless of whether or not the contract was acquired through the sealed bid, small purchase, or non-competitive proposals (sole source) procurement process.**

Even if TxCDBG funds finance only a portion of a construction contract, Davis-Bacon requirements still apply to the **entire** construction contract.

**EXAMPLE:** If a construction contract includes \$1.00 of work funded through TxCDBG grant funds, and \$100,000 in similar work funded through local funds and not included in the grant description, Davis-Bacon requirements apply to the entire \$100,001 contract.

Activities financed by TxCDBG that are not construction work do not trigger Davis-Bacon requirements.

**EXAMPLE:**

- Real property acquisition;
- Architectural and engineering fees;
- Other professional services, such as legal, accounting, testing (see below **NOTE**); and
- Other non-construction items, such as furniture, business licenses, real estate taxes.

**NOTE:** Drilling a test well can be considered either a component of construction or a professional service. To determine if Davis-Bacon applies to a test well, please refer to DOL Field Operations handbook, 15d05, for additional guidance and contact TDA staff.

### 7.1 Objectives of Davis-Bacon

The following five key labor standard objectives must be accomplished by the Grant Recipient and/or TDA in order to administer and enforce Davis-Bacon requirements and protect workers' rights.

**Objectives for Davis-Bacon Labor Standards Compliance:**

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<sup>1</sup> 42 USC § 5310; 40 USC 3142(d))

- Apply Davis-Bacon requirements properly;
- Support Grant Recipient compliance with labor standards through education and technical assistance;
- Monitor Grant Recipient performance;
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators.

By executing the TxCDBG grant agreement, Grant Recipients have agreed to administer and enforce Davis-Bacon requirements and have accepted the responsibilities described in this chapter.

## **7.2 Procedures for Labor Standards Compliance**

A construction project covered by Federal labor standards requires a series of specific actions by labor standards personnel prior to the actual start of construction.

### **Step 1. Designate a Labor Standards Officer for the Project**

Identify the Labor Standards Officer (LSO) on the TDA-GO *Grant Overview* page. The LSO must have an account within the TDA-GO system and must be designated by the Authorized Official (AO) for the Grant Recipient as responsible for compliance with Davis-Bacon and related requirements.

The LSO is responsible for the proper administration and enforcement of the federal labor standards provisions on contracts covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction advice and support to the Grant Recipient and other project principals (for example the owner, sponsor, architect), including ensuring that no prime or sub-contract is awarded to a contractor that is ineligible (i.e., debarred) for federally assisted work;
- Providing the proper Davis-Bacon wage decision and ensuring that the wage decision and contract clauses are incorporated into the contract for construction and any sub-contracts;
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing payroll reports, and ensuring that the applicable Davis-Bacon wage decision and the Department of Labor's Notice to All Employees are posted at the job site; and
- Overseeing any enforcement actions that may be required.

The LSO may be an employee of a city or county or of a private consulting firm. An LSO is required for all grant contracts with construction activities, including those with force account approval.

The individual designated as LSO may change during the grant period; in this case the Grant Recipient must appoint a new LSO and update the TDA-GO *Grant Overview* page no later than 30 days after the change.

### **Step 2. Obtain an Applicable Wage Decision for the Project**

Wage decisions:

- Are established by the U.S. Department of Labor (DOL);
- List construction work classifications (such as carpenter, electrician, plumber, laborer, etc.) and the minimum wage rates, and fringe benefits where prevailing, that people performing work in those classifications must be paid;
- Are categorized into four groups: heavy, highway, building, and residential construction;
- Apply to specific geographic areas, usually a county or group of counties; and
- Are modified from time to time to keep them current.

The LSO must obtain the applicable wage decision from the Department of Labor's website at <https://sam.gov> for all construction contracts where Davis-Bacon and Related Acts (DBRA) are greater than \$2,000. Review the various wage decisions for each county and choose the one that is appropriate for the work to be done. The types of work and the locations where these decisions are applicable are listed in the first paragraphs of the decision.

### **Wage Rate Classifications**

The following descriptions and illustrations are provided as guidelines. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply.

- **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 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.
- **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 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.

### **Step 3. Complete the Material and Services Report Labor Standards page**

Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.

The LSO must document the wage decision on the *Labor Standards* page of a Materials and Services Report (MSR) in the TDA-GO system. TDA staff will review the project description entered on the MSR *Labor Standards* page and verify that the wage decision is appropriate. Approval of the wage decision must be received prior to the bid opening date.

### **Step 4. Include the Wage Decision in the Bid Documents**

If the construction work will be procured through competitive bidding (either sealed bids or small purchase procurement), the wage decision (and any modifications) must be included in the bid package. See *Chapter 5 Procurement Procedures* for more information on the bid process and documents.

### **Step 5. Ensure that the Wage Decision is Current Before Bid Opening**

The LSO must confirm that the wage decision in the bid specifications for construction contracts in excess of \$2,000 is still current for the bid opening date. No more than ten, but not less than five, days

prior to the bid opening, the LSO must confirm that the previously identified wage decision is still applicable.

- Save a copy of the wage decision with the current print date for the local file; and
- Provide the date in the 10 Day Verification field in the *Pre-Selection Clearance* section of the MSR Main page in TDA-GO, including a screenshot of the wage decision showing no change to the previously approved wage decision.
- If the construction contract is selected through small purchase or approved non-competitive procedures, then the **Confirmed Bid Opening Date** on the MSR page is the due date for Requests for Quotes on the work to be done.

**BEST PRACTICE: Once the project description is known, create the MSR for construction and input the project description and wage decision number. This will allow the Labor Specialist to review and confirm or recommend a more appropriate wage decision in a timely manner.**

Wage rates may be modified until bids are open. The Ten Day Confirmation does **not** lock in wage rates; however, TDA considers five or more days prior to bid opening to be a reasonable amount of time to notify prospective bidders of any changes to the wage decision.<sup>2</sup>

**If the wage decision is modified prior to bid opening, and:**

- **Confirmed six to ten days prior to bid opening** – Incorporate the revised wage decision into the bid documents as an addendum and notify all potential bidders.
- **Confirmed zero to five days prior to bid opening** – Cancel the bid opening - incorporate the revised wage decision into the bid documents and set a new bid opening date that allows sufficient time for all required bid notices.
- **Discovered after bid opening** – Notify TDA staff immediately. In addition to a corrective action plan, consequences for the Grant Recipient may range from instructions to reject all bids to disallowed costs. The construction contractor is responsible for meeting the requirements of the modified wage decision and any compensation demanded by the contractor in order to meet these requirements are not eligible costs for grant or match funding.
- **For small purchase and approved non-competitive procurement procedures** – If less than five days are allotted to obtain quotes, the Grant Recipient must at a minimum confirm the wage decision prior to the due date for the quotes.
- **The Grant Recipient or TDA is notified of changes to a properly confirmed wage rate prior to the bid opening** – Notify TDA immediately. TDA staff will determine whether there is sufficient time to notify bidders of the change, and, therefore, whether the original or modified wage decision must be included in the bid and contract documents.

If the Grant Recipient does not formally award the construction contract within 90 days of the bid opening, the wage decision is no longer “locked in” and must be confirmed once again. If the original decision has been modified, the construction contractor is responsible for meeting the requirements of the modified wage decision.

## **Step 6. Award the Construction Contract**

Each contract subject to Davis-Bacon labor standards requirements must include contract provisions containing labor standards clauses and a Davis-Bacon wage decision. A sample construction contract that may be used for TxCDBG projects can be found in *Appendix F*. These are the labor standards clauses to include:

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<sup>2</sup> HUD handbook 1344.1 3-10(A)

- Describe the responsibilities of the construction contractor concerning Davis-Bacon wages;
- Obligate the construction contractor to comply with the labor requirements;
- Provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages; and
- Enable the LSO to enforce the Federal labor standards applicable to the project.

**BEST PRACTICE:** Incorporate *HUD Labor Standards (Form 4010)* in the construction contract and provide to contractor with preconstruction information. See *Appendix A* for a link to form.

### Step 7. Identify Additional Classifications and Wage Rates Needed

If the wage decision does not include a particular classification that is necessary for the project, the LSO must request an additional classification in writing. Submit to TDA a *Request for Additional Classification and Rate (Form A705)*, along with a copy of the applicable wage decision for that specific construction contract. The request will represent what the employer (prime contractor or subcontractor) wants to pay workers performing a particular set of duties and must meet the following U.S. Department of Labor (DOL) regulations:

- The work to be performed by the additional classification is not performed by a classification already on the applicable wage decision;
- The classification is used by the construction industry in the area of the project; and
- The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.

**NOTE:** As a general guide, the wage rate proposed for a trade classification such as Electrician must be at least as much as the lowest wage rate for other trade classifications already contained in the wage decision. Trade classifications are generally all work classifications, excluding laborers, truck drivers, and power equipment operators. Additional classifications proposed for power equipment operators must specify the type(s) of power equipment involved and the proposed wage rate(s) must be at least as much as the lowest wage rate for any power equipment operator that appears on the wage decision.

Do not include apprentices or trainee classifications in an additional wage rate request. The information on wage rates paid to apprentices and trainees is not solicited by DOL nor do the wage determinations issued include apprentice classifications.

TDA's DBRA Subject Matter Expert (SME) will review the requested classification and wage rate to ensure that all required information is submitted.

- TDA's DBRA SME will refer it to the DOL for final approval. The LSO will receive a copy of the final determination letter once the DOL has reviewed the request.
- If the DOL *does not* approve the request, the LSO will be notified about what classification and wage rate should be used for the work in question. The LSO will also receive instructions about how to ask for DOL reconsideration if the Grant Recipient would like to pursue the issue further.

**NOTE:** If DOL has not responded before the completion of the TxCDBG contract, the Project Completion Report may still be submitted. The LSO will be informed of how to certify the Labor Standards compliance if this does occur.

### Step 8. Contractor Posts Wage Decision at the Job Site

The prime contractor must post a copy of the wage decision and a copy of the DOL Davis-Bacon poster entitled Employee Rights under the Davis-Bacon Act at the job site in a place that is easily accessible to all of the construction workers employed at the project. See *Appendix A* for link to *Davis-Bacon Poster (Form WH-1321)*. If the contractor requests additional classification(s) as described above, the contractor must also post the notice of the request and the associated wage decision on the job site.

### Step 9. Hold a Preconstruction Conference to Explain Labor Standards

The LSO must hold a preconstruction conference by phone, video call, or in person meeting with the prime contractor, and should include the engineer/architect, subcontractor(s), inspector(s), and all applicable utility companies prior to the start of construction. The Grant Recipient must document and retain preconstruction conference minutes, including a list of attendees and an outline of the required federal/state labor requirements. A sample checklist is included as *Pre-construction Conference and Report (Form A704)*.

The preconstruction conference should include:

- Advice to all parties regarding their responsibilities and obligations on a federally funded or federally assisted project;
- Discussion of applicable federal, state, local, and program guidelines;
- Discussion of all construction details, time frame of project, payment requirements, and labor standards;
- Delivery of all bonds and certificates of insurance to the Grant Recipient; and
- Delivery of all necessary general wage decisions, labor posters, and any additional classifications to the contractor along with instructions that will assist in completing the project.

### Step 10. Review Project Payrolls During Construction

The LSO or other designated inspector must conduct an on-site visit to the project site and interview some of the workers concerning their employment on the project. In addition, the LSO must periodically review payrolls and related submissions to ensure that the labor standards requirements have been met. The LSO will notify the Grant Recipient if these reviews find any discrepancies or errors and will provide instructions about what steps must be taken to correct any problems.

#### On-site Interviews

The LSO **must** conduct employee interviews to verify that contractors are complying with labor standards requirements. Every employer (contractor, subcontractor, etc.) **must** make their employees available for interviews at the job site with the LSO, TDA's TxCDBG representative, HUD representative or DOL representative.

- Employee Interviews should be representative of all classifications of employees on the project. The number and quality of interviews documented should reflect that the LSO is diligently ensuring that workers are paid at least minimum prevailing wage rates.
- For every prime contractor and every subcontractor, a minimum of one employee in each classification must be interviewed, with at least 25% of the total number of the employees interviewed.
- The interviews are confidential, and the employee will be asked about the kind of work they perform and their rate of pay.
- Every effort will be made to ensure that these interviews cause as little disruption as possible to the on-going work.
- Interview information must be recorded on the *Record of Employee Interview (Form A707)*
- If employees are not available for interview during the LSO's on-site visit, the LSO must document the date of the on-site visit, the reason employees were not available, and the attempt to obtain the required information through other means, such as mailed questionnaires.
- Failure to conduct employee interviews will result in a finding of non-compliance, and potentially disallowed costs. Contractors that refuse to make employees available may be reported to DOL, and LSOs that do not ensure interviews are conducted may receive an administrative penalty. Communication between the Grant Recipient, LSO, and prime contractor is critical to ensure that all required interviews are completed, especially when crews are only onsite for a short period of time.

## Project Payroll Reviews

A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local contract files, beginning with the first week in which construction begins on the project and for every week after until the work is complete, unless construction is suspended with documentation. The LSO must review the payroll submissions to ensure that:

- Workers are properly listed on the payrolls for the days, work classification, and rate of pay (compare to interview forms);
- The payrolls are complete and signed;
- Employees are paid no less than the wage rate for the work classification shown;
- Apprentice and trainee certifications are submitted (where needed); and
- Employee authorizations for other deductions are submitted (where needed).

## Apprentices and Trainees

Employees who meet the following definition may be employed as apprentices on Davis-Bacon project:

- A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with the State of Texas Apprenticeship Agency.
- A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been properly certified to be eligible for probationary employment as an apprentice.

Employed trainees must be persons registered in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which have been certified by that administration.

The proper wage rates to be paid to apprentices and trainees are those specified by the particular programs in which they are enrolled, expressed as a percentage of the journeyman rate on the wage determination. In the event employees reported as apprentices or trainees on a covered project have not been properly registered within the meaning of the regulations and the contract stipulations, or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for laborers and mechanics employed on the project performing in the classification of work they actually performed.<sup>3</sup> This applies regardless of work classifications, which may be listed on the submitted payrolls and regardless of their skill level.

If a copy of the employee's registration or the approved program ratio and wage schedule are not submitted with the first payroll on which the apprentice or trainee appears, the LSO must request from the employer to submit a copy of the apprentice's or trainee's registration and/or approved program ratio and wage schedule. If the ratio of apprentices or trainees to journeymen on the payroll is greater than the ratio in the approved program, the employer must pay wage restitution to any affected apprentices and/or trainees. If the apprentices and/or trainees are not registered in an approved program, they must receive the journeyman's wage rate for the classification of work they performed.

*Sample DOL Payroll Form (Form A708)* is the suggested payroll format for TxCDBG projects. Employers may use any other type of payroll, such as computerized formats, as long as it contains all required information from **Form A708** and includes the Statement of Compliance and required contractor certifications.<sup>4</sup> See *Appendix A* for a link to DOL's fillable WH-FORM 347.

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<sup>3</sup> 29 CFR Parts 5 and 29

<sup>4</sup> 29 CFR 5.5(a)(3)(ii)(B)



## Step 11. Submit Construction Completion Reports

Upon completion of the construction contract, after all work has been completed including punch list items, a final inspection must be conducted and all parties must agree that the work is acceptable. Complete the *Final Wage Compliance* page of TDA-GO Materials and Services Report page for the contractor.

The LSO must certify the page for each construction contract. If the LSO identified labor standards violations, these must be reported on this page. In addition, complete the *Work Completed* page of the MSR.

Generate and print the Certificate of Construction Completion (COCC). Obtain the signatures of all parties accepting the work as completed and attach the signed document to the page before submitting for TDA approval.

The Materials and Services Report including *Final Wage Compliance* and *Work Completed* pages must be received and approved prior to the final reimbursement for each prime construction contract and the final engineering payment request. Failure to submit a fully executed COCC may result in the deobligation of any remaining construction funds, at TDA's discretion.

## **7.2.1 Restitution for Underpayment of Wages**

Where underpayments of wages have occurred, the employer must pay wage restitution to the affected employee(s). Wage restitution must be paid promptly in the full amounts due, less any permissible and authorized deductions.

### **Notification to the Prime Contractor**

The LSO must notify the prime contractor in writing of any underpayments found during payroll or other reviews, see *Notice of Payroll Violation (Form A712)*.

- The notice must describe the underpayments and provide instructions for computing and documenting the restitution to be paid.
- The prime contractor is allowed 30 days to correct the underpayments.
- The prime contractor is responsible to the LSO for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

### **Computing Wage Restitution**

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage decision for all hours worked where underpayments occurred. The difference in the wage rates is called the *adjustment rate*. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

### **Overtime and Underpayment**

Overtime hours are defined as all hours worked on the work site in excess of 40 hours in any work week. Overtime hours must be paid at no less than one and one-half times the regular rate of basic pay plus the straight-time rate of any required fringe benefits. If the employees did not receive at least time and one-half for any overtime hours worked on the project, the following will occur:

- If the project is greater than \$100,000 and is therefore subject to Contract Work Hours and Safety Standards Act (CWHSSA) *overtime* requirements, the employer will be asked to pay wage restitution for all overtime hours worked on the project.
- The employer will also be liable to the Department of Labor (DOL) for liquidated damages (overtime violation dollar penalty) computed at the current monetary penalty established by DOL for each calendar day on which an overtime violation occurred. DOL publishes adjustments to penalties not later than January 15 of every year in accordance with the

Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. A table of DOL's current monetary penalties may be found in the Resources section at the end of this Chapter. Contact the Labor Specialist at TDA for further information.

- Once liquidated damages are computed, the Grant Recipient must notify the prime contractor in writing of the fine and wage restitution owed. See the sample letter called *Notice of Determination to Assess Liquidated Damages (Form A713)*. A check (payable to TDA) in the amount of the liquidated damages should be forwarded to TDA to be processed for HUD.
- The employer may request a reduction or waiver of liquidated damages under one or both of the following reasons:
  1. The computation of liquidated damages is incorrect; and/or
  2. The violation(s) occurred inadvertently notwithstanding the exercise of due care on the part of the employer. The employer's request must be made in writing within 60 days after the date of the notice and must explain the reason(s) why a reduction or waiver is warranted. See *Waiver Request (Form A714)* for a sample of a waiver request, see HUD Handbook 1344.1 (5-12 B).

If liquidated damages are equal to or less than \$100.00, the employer is encouraged to seek a reduction or waiver of liquidated damages.

Employers are not required to submit copies or checks (certified or otherwise) to TDA as proof of corrected underpayments. The employer reports and certifies restitution payments on a correction payroll, which is kept in local files.

### **Corrected Payrolls**

The employer will be required to report the restitution paid on a corrected certified payroll. The corrected payroll will reflect the period of time for which restitution is due.

**EXAMPLE:** Payrolls #1 through #6; or a beginning date and ending date. The corrected payroll will list each employee to whom restitution is due and their work classification; the total number of work hours involved (daily hours are usually not applicable for restitution); the adjustment wage rate (the difference between the required wage rate and the wage rate paid); the gross amount of restitution due; deductions and the net amount to be paid. A verified signed *Sample DOL Payroll Form (Form A708)* must be sent to the LSO.

### **Review of Corrected Payroll**

The LSO will review the corrected payroll to ensure that full restitution was paid. The prime contractor must be notified in writing of any discrepancies and will be required to make additional payments, if needed, and documented on a supplemental correction payroll, within 30 days.

### **Inability to Locate Worker**

Sometimes wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The LSO will continue to attempt to locate workers entitled to restitution for three years after the completion of the project. After three years, any amount remaining in the account for workers restitution will be credited and/or forwarded by the LSO to TDA.

**NOTE:** The prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors.

## **7.2.2 Labor Disputes**

### **Administrative Review on Labor Standards Disputes**

The labor standards clauses in the TxCDBG contract and DOL regulations provide for administrative review of issues by TDA where there is a difference of views between the LSO and any employer. The most common situations include:

**Findings of Underpayment** – Compliance reviews and other investigations may result in findings of underpayment. The employer will have an opportunity to provide additional information to the LSO that may explain apparent inconsistencies and/or resolve the discrepancies.

**Withholding** – The LSO may cause withholding of payments owed to the prime contractor to ensure the payment of wages which are believed to be due and unpaid.

**EXAMPLE:** If wage underpayments or other violations are not corrected within 30 days after notification to the prime contractor.

### **Deposits and Escrows**

If corrective actions or disputes continue after the project is completed, provisions must be made to ensure that funds are available to pay any wage restitution that is found due. In these cases, TDA allows the project to proceed to final closings and payments *provided* the prime contractor deposits an amount equal to the potential liability for wage restitution and liquidated damages, if necessary, in a special account. The deposit or escrow account is controlled by the LSO. When a final decision is rendered, the LSO makes disbursements from the account in accordance with the decision. Deposit/escrow accounts are established for one or more of the following reasons:

- Where the parties have agreed to amounts of wage restitution that are due, *but* the employer has not yet furnished evidence that all of the underpaid workers have received their back wages. The deposit is equal to the amount of restitution due to workers not supported by adequate documentation of payment. As proper documentation is received, amounts corresponding to the documentation are returned to the prime contractor. Amounts for any workers who cannot be located are held in the escrow account for three years and disbursed as described above, see Section 7.2.1 *Restitution on Underpayment of Wages*.
- Where underpayments are suspected or alleged, and an investigation has not yet been completed. The deposit is equal to the amount of wage restitution and any liquidated damages, if applicable, that is estimated to be due. If the final determination of wages due is less than the amount estimated and placed in the escrow account, the escrow will be reduced to the final amount and the difference will be returned to the prime contractor. If the parties agree to the investigative findings, the amounts due to the workers will be disbursed from the escrow account in accordance with the schedule of wages due. Amounts for unfound workers will be retained as described above. If the parties *do not* agree and an administrative hearing is requested, the escrow will be maintained as explained earlier.
- Where the parties are waiting for the outcome of an administrative hearing that has been or will be filed contesting a final determination of wages due. The deposit must be equal to the amount of wage restitution and liquidated damages, if applicable, that have been determined due. Once a final decision is rendered, disbursements from the escrow account are made in accordance with the decision.

### **Debarment**

Contractors and/or subcontractors that are found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of the DBRA will be ineligible (debarred) to participate in any DBRA contracts for up to 3 years. Debarment includes the contractor or subcontractor and any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial

interest. Debarment proceedings can be recommended by the LSO or can be initiated by the DOL on its motion. Debarment proceedings are described at 29 CFR 5.12.

## **7.3 Exemptions**

The following contracts and activities are **exempt** from Davis-Bacon requirements except where indicated:

- Construction contracts of \$2,000 or less;
- Construction contracts of \$100,000 or less are exempt from the Contract Work Hours and Safety Standards Act (CWHSSA) only;
- Single-family homeowner residences;<sup>5</sup>
- Rehabilitation of residential property designed for fewer than eight families;<sup>6</sup>
- 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 13% of the total cost of the item(s) purchased;
- Force Account construction work performed by the employees of the Grant Recipient that are engaged on an otherwise covered project; and
- Construction work performed by a public utility extending its own utility system.

The Grant Recipient must notify TDA if pursuing this method. TDA may request documentation prior to authorizing payment that the price charged by the public utility is less than the price that would be anticipated if the construction had been procured by sealed bids. With the exception of the situations listed in this section, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under the TxCDBG program must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

**NOTE:** The Fair Labor Standards Act (FLSA) is usually applicable, whether or not the DBRA or CWHSSA apply.

## **7.4 Recordkeeping Requirements**

To show compliance with Davis-Bacon regulations, the Grant Recipient must maintain a file with the following documentation for each construction contract:

<b>Labor Standards Documentation</b>	<b>TDA-GO Reporting, if required</b>
Appointment of Labor Standards Officer	<i>Grant Overview page</i>
Copy of Wage Rate Issuance(s)	<i>MSR – Labor Standards page</i>
Ten Day Confirmation Date	<i>MSR – Main page</i>
Documentation of Ten Day Confirmation	n/a
Additional Classification request(s)	Email to <a href="mailto:Labors@TexasAgriculture.gov">Labors@TexasAgriculture.gov</a> – once approved, TDA staff will record on <i>MSR – Labor Standards page</i>

<sup>5</sup> *Making Davis-Bacon Work—A Practical Guide for States, Indian Tribes and Local Agencies*, September 2011

<sup>6</sup> *Ibid*

Contractor Eligibility Verification printouts from SAM for each prime and/or subcontractor	n/a
Pre-construction conference minutes and sign-in sheet(s)	n/a
Payrolls, with evidence of compliance review	n/a
Employee interviews	n/a
Wage violations (amount of restitution, number of hours and days)	<i>MSR – Final Wage Compliance Report page</i>
Interim inspection reports	n/a
Certificate(s) of Construction Completion (COCC)	<i>MSR – Work Completed page</i>

## **7.5 Laws and Regulations**

### **7.5.1 Laws Regarding Labor Standards**

Davis-Bacon Act (40 USC *Chapter 31*, Subchapter IV)  
Contract Work Hours and Safety Standards Act (CWHSSA)  
Copeland (Anti-Kickback) Act (18 USC 874; 40 USC 3145)  
Fair Labor Standards Act  
Housing and Community Development Act (Section 110)

### **7.5.2 Davis-Bacon Regulations**

The Department of Labor has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations 29 CFR Parts 1, 3, 5, 6 and 7.

### **Resources**

Resource Number	Description	URL
Form A707	HUD Form 11	<a href="http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf</a>
	DOL's current monetary penalties	<a href="https://www.dol.gov/whd/resources/cmp.htm">https://www.dol.gov/whd/resources/cmp.htm</a>
	How to Complete the Grant Overview Page	<a href="#">TxCDBG Implementation Manual</a>
	How to Initiate, Complete and Submit an MSR	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.

# 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 project work under what is generally known as force account. This means the Grant Recipient performs the project related work – including construction, administrative services, and/or engineering services – using its own employee workforce rather than contracting out for this work. The use of force account must be approved by TDA, even if the Grant Recipient will not claim the costs as grant 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, if any part of the project is not done under force account but contracted out, that portion of work 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*.

### 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 benefiting utility.

#### **Definition of Employee**

Determining whether a worker is an employee versus 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<sup>1</sup>; or
- Employees of a public utility district or utility company on a case-by-case basis.

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<sup>1</sup> Texas Government Code, Chapter 791 (Interlocal Cooperation Contract)

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.<sup>2</sup>

### **Request to Use Force Account**

A Grant Recipients that intends to utilize Force Account, whether or not intending to seek grant funding or match credit, must request TDA approval and demonstrate the local capacity to perform the work. Force Account costs will NOT be reimbursed without prior approval from TDA. Force Account may be requested at either the application stage or during the course of the grant agreement. Force account work is requested and documented through a Materials and Services Report (MSR) in one of two ways:

- Certification of Local Administrative Capacity, required for administration services.
- *Request to Use Force Account Labor (Form A808)*, required for construction work as well as engineering, planning, or other services to complete the grant-funded project.

**Form A808** requires 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 project schedule;
- A complete estimate for the following expenses:
- The number of personnel work hours and cost per hour for each category of labor, and
- A 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.

**NOTE:** Sample payroll records or other personnel cost records may be used if the required information above is included.

### **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 time frame;
- Extensive record keeping is required;
- Skilled local workers and appropriate equipment may be insufficient;
- Additional documentation is required for each Payment Request;

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<sup>2</sup> HUD Handbook 1344.1.



- Delayed payments due to required documentation review;
- 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.<sup>3</sup> Only actual expenditures incurred by the Grant Recipient as a result of the TxCDBG project are considered allowable costs. 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*.

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<sup>3</sup> 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.

#### **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.<sup>4</sup> ; Fuel and maintenance costs are not eligible for separate reimbursement;
- 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.

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

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<sup>4</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121

### 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 grant 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.

If force account will use grant or match funds the Grant Recipient must upload the *Force Account Time Sheet (A800)* to the Material and Services Report in the TDA-GO system to document the eligible hourly costs for employees and equipment that are assigned to the project. This form may be updated and re-

uploaded if additional personnel or equipment is added to the project. Costs for employees and equipment not listed on this document will not be reimbursed.

TDA recommends using the *Force Account Timesheet (Form A800)* to document the monthly time sheets for all personnel and equipment labor hours claimed when submitting a Payment Request for reimbursement of grant or match funds.

- Save a copy of *Force Account Timesheet (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 *Force Account Timesheet (Form A800)*, 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** include the time spent doing 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 claimed to have worked on 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 Payment Requests for 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.

### **Closeout**

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
A800	Force Account Times Sheet	<a href="#">TxCDBG Implementation Manual</a>
A807	Certificate of Construction Completion for Force Account	<a href="#">TxCDBG Implementation Manual</a>
A808	Request to Use Force Account Labor	<a href="#">TxCDBG Implementation Manual</a>
Appendix A	Links to Resources including State and Federal Regulations	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.

# CHAPTER 10

## CIVIL RIGHTS AND RELATED REQUIREMENTS

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# **CHAPTER 10**

## **CIVIL RIGHTS AND RELATED REQUIREMENTS**

### **10.0 Introduction**

All grantees of Texas Community Development Block Grant (TxCDBG) funds are required to demonstrate compliance with all state and federal requirements to ensure equal opportunity and access to all benefits derived from the TxCDBG Program.

These state and federal requirements include:

- Taking steps to ensure that equal opportunities are afforded to all persons and that no person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age, and/or disability;
- Taking steps to provide opportunities, to the greatest extent feasible, to low- and very low-income (Section 3) residents and businesses in employment, training, and contracting for construction contracts;
- Taking affirmative steps to assure minority, small business, and women-owned businesses are informed of grant funded contracts;
- Prohibiting the use of excessive force against individuals engaged in non-violent civil rights demonstrations;
- Taking steps to Affirmatively Further Fair Housing (AFFH); and
- Taking steps to assure meaningful access for persons with Limited English Proficiency (LEP).

Be diligent and consistent in implementing the project's civil rights responsibilities and be ready to explain to local citizens the purpose and importance of the civil rights laws and requirements. Collect all handbooks, policies and procedures manuals, and resolutions or ordinances regarding equal opportunity, as well as a review of any past cases alleging discrimination against the Grant Recipient, in order to develop clear policies and procedures that effectively provide civil rights.

### **10.1 Required Policies and Actions**

#### **10.1.1 Citizen Participation**

A critical element of the TxCDBG program is the involvement of the community in selecting grant projects and understanding its impact on the community. Grant Recipients must provide for and encourage citizen participation—especially by low- and moderately low-income persons who live in blighted or slum areas or areas served by the TxCDBG grant.<sup>1</sup>

- Grant Recipients must publish a Citizen Participation Plan, including methods for encouraging citizen participation as well as complaint procedures.
- Public hearings are a required method of citizen participation for any substantial change requested to a CDBG-funded project, and after the project is complete. Reasonable advance

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<sup>1</sup> Section 104(a)(2) of the Housing and Community Development Act and 24 CFR §570.486

notice of and opportunity to comment on the proposed change must be provided, see *Chapter 1 Administration and Reporting* for details.

- Grant Recipients must develop complaint procedures for citizens to submit complaints and grievances that include a timely written response to complaints—within fifteen (15) days where practicable. Provide citizens with the address, phone number and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances.<sup>2</sup>

For a detailed discussion of citizen participation requirements, see TxCDBG Application Guide, *Sample Citizen Participation Plan (Form A1013)*, and *Sample Resolution Regarding Civil Rights (Form A1014)*.

### **10.1.2 Non-Discrimination – Equal Opportunity (EO) Policy**

Grant Recipients must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the local CDBG activity on the basis of race, color, religion, sex, national origin, age, or disability.<sup>345</sup> For federally-assisted construction projects greater than \$10,000, contractors may not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin.<sup>6</sup>

Required actions include:

- Review existing local employment policies and include the EO policy in your local government policy manual/handbook.
- Include Equal Opportunity Employer notification in employment advertisements.
- Include applicable equal opportunity provisions and certifications in the bid packets, contracts, and subcontracts. These are included in the sample bid package found in *Chapter 5 Procurement*. Include the EO clause required by 2 CFR 200 Appendix II in all contracts and for construction contracts > \$10,000.<sup>7</sup>

### **10.1.3 Affirmatively Furthering Fair Housing**

Section 808(e)(5) of the Fair Housing Act, 42 USC §3608(e)(5), requires that HUD programs and activities be administered in an affirmative manner to further the policies of the Fair Housing Act. The Fair Housing Act provides for the protection of the following federally protected classes:

- Race
- Color
- Religion
- Sex
- Disability
- Familial status
- National origin

#### **Adopt and Publicize a Fair Housing Policy**

Grant Recipients must adopt (or affirm) a Fair Housing Policy by ordinance or resolution based on the requirements of the Fair Housing Act to affirmatively further fair housing choices for all seven protected classes.

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<sup>2</sup> 24 CFR §570.486

<sup>3</sup> Section 109 of Title I of the Housing and Community Development Act (24 CFR Part 6)

<sup>4</sup> Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);

<sup>5</sup> Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794)

<sup>6</sup> 41 CFR §60-1.4(b) and Executive Order No. 13672

<sup>7</sup> 41 §CFR 60-1.4(b)



- Include in the policy a plan for activities that will affirmatively further fair housing in the community.
- If the Grant Recipient is a city, pass a fair housing ordinance. If possible, include a penalty clause in the ordinance.
- If the Grant Recipient is a county, adopt written fair housing policies and procedures that are equivalent to a fair housing ordinance.
- Grant Recipients should consult with their county/city attorney or contact the applicable trade association ([Texas Municipal League](#) or [Texas Association of Counties](#)) for a sample fair housing ordinance or policy.
- See also *Sample Resolution Regarding Civil Rights (Form A1014)*, *Sample Fair Housing Policy Form (A1015)*; and *Sample Fair Housing Month Proclamation (Form A1007)*.

Grant Recipients must take at least one more action during the agreement term which publicizes the effort to affirmatively further fair housing.

- Publicize the fair housing policy through newspaper publication, fliers enclosed in utility bills, or public service announcement, see *Sample Fair Housing Public Service Announcement (Form A1009)*.
- Host a fair housing booth for a local event.
- Designate April or any other month as Fair Housing Month by Proclamation or Resolution along with another sponsoring activity. Another fair housing activity must take place if this activity is chosen. See **NOTE** below and *Sample Fair Housing Month Proclamation (Form A1007)*.
- Have a written local complaint and monitoring process for the fair housing policy and notify the public of its existence through newspaper advertisements, or through notices in utility statements.

### Enhanced Ideas for Meeting the Fair Housing Activities Requirement

If a Fair Housing Policy has previously been adopted by the jurisdiction, Grant Recipients may request to meet the agreement's fair housing requirement using one of the following activities instead.

**NOTE:** If a grant application assigns additional points for fair housing activities, the Grant Recipient must select an activity from this list OR receive prior approval from TDA staff in order to receive those points.

- Conduct a community-wide housing analysis to determine impediments to fair housing and implement actions to eliminate these impediments.
- Sponsor or fund fair housing counseling/referral services for owners and renters.
- Promote housing opportunities outside historically minority and/or low- and moderate-income neighborhoods.
- Utilize local businesses and banking institutions (minimum of 15 organizations) to promote fair housing by displaying fair housing posters.
- Conduct free training workshops on fair housing laws to homebuyers, rental property owners, and tenant organizations.
- Sponsor a poster contest or essay writing contest at local schools to educate and promote fair housing.
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, fair housing choice. Conduct a public meeting to discuss the analysis and conclusions.
- Find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Fair Housing Act.

### Fair Housing Activities Resource

HUD's fair housing website contains a wealth of information and tools for Grant Recipients to use in conducting fair housing activities. Resources on the website include:

- A fair housing planning guide
- Fair housing brochures and logos
- Fair housing best practices
- Contact information for fair housing advocacy organizations
- Accessibility guidelines for housing units

TDA recognizes that in order to conduct a fair housing activity the Grant Recipient will incur costs. The Grant Recipient may elect to pay for fair housing activities and count the expenses toward the local match requirement or submit a reimbursement request for eligible and reasonable costs to be paid by the TxCDBG grant under the General Administration line item.

### **Filing a Complaint Regarding Fair Housing in the State of Texas**

The Texas Workforce Commission (TWC) is the entity responsible for enforcing the Fair Housing Act in the State of Texas. Complaints can also be made directly to HUD. Citizens have one year after an alleged violation to file a complaint. Complaints can be filed by email, fax, phone call, hand-delivery, or mail to:

#### **Texas Workforce Commission**

Civil Rights Division

1117 Trinity Street, Room 144-T

Austin, Texas 78701

(888) 452-4778 or (512) 463-2642

TTY: 512-371-7473

Fax: 512-463-2643

[Texas Workforce Commission | Help Desk](#)

## **10.1.4 Section 504 Accessibility Policy**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs on the basis of disability. Section 504 imposes requirements to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds. Grant Recipients must adhere to the following procedures.<sup>8</sup>

### **Adoption of Grievance Procedures**

Any Grant Recipient that employs 15 or more employees must adopt grievance procedures that incorporate **due process standards** and allow for quick and prompt resolution of complaints alleging any action prohibited by Section 504.<sup>9</sup> Grievance procedures are not required to cover applicants for employment or applicants for housing, see *Section 504 Policy Against Discrimination based on Disability and Grievance Procedure (Form A1004)*.

### **Notices**

Any Grant Recipient that employs 15 or more employees must notify all participants, applicants, and employees, including those with impaired vision or hearing, and unions, or professional organizations holding collective bargaining or professional agreements with the Grant Recipient that it does not discriminate on the basis of handicap in violation of Section 504. The notice must identify the individual designated to coordinate its Section 504 compliance (the Civil Rights Officer) and must

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<sup>8</sup> 24 CFR §8.4(a) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794)

<sup>9</sup> 24 CFR §8.53

state, where appropriate, that the Grant Recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs.

The notification process must ensure that all individuals, including those with visual and hearing impairments, are aware of the non-discrimination pledge.

Any recruitment or informational material published by the Grant Recipient must contain a statement regarding the Grant Recipient's pledge not to discriminate based on disability in violation of 24 CFR Part 8.

### **Self-Evaluation**

During the contract period, all Grant Recipients are required to comply with Section 504 and must complete a self-evaluation of their Section 504 compliance and keep it on file for monitoring purposes. Grant Recipients that have completed a self-evaluation for a previous TxCDBG contract may use their previous self-evaluation forms on file to meet this requirement if all information remains accurate. During the self-evaluation process, the **Grant Recipient must consult with individuals with disabilities or organizations representing them**. The self-evaluation includes an examination of policies and practices relative to the Section 504 regulations. Any policies and practices that do not meet the Section 504 requirements must be modified, and corrective action taken to remedy any discrimination found, see *Section 504 Self-Evaluation Form (Form A1006)*.<sup>10</sup>

### **Communication**

Grant Recipients should furnish appropriate auxiliary aids where necessary to allow an individual with disabilities an equal opportunity to participate in all CDBG program activities. Grant Recipients should implement procedures that allow individuals with disabilities to obtain information concerning the existence and location of accessible services, activities, and facilities. Such procedures must ensure, to the maximum extent possible, that individuals with disabilities receive the benefits and services of the program or activity receiving CDBG assistance.

Examples of auxiliary aids include telecommunication devices for the deaf (TDD), Text Telephone (TTY), the Texas Relay System (where a TDD is not feasible), audio visual presentations, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials, interpreters, large-lettered notices, and posting notices at a level readable by individuals in wheelchairs.

### **Accessible Facilities**

For all publicly-funded construction, renovation, or modification to buildings or facilities in which construction is expected to cost \$50,000 or more, Grant Recipients are required to submit plans and specifications to the Texas Department of Licensing and Regulation (TDLR) for review and approval.<sup>1112</sup> TDLR is responsible for ensuring that all plans and specifications meet accessibility requirements in accordance with the elimination of architectural barriers provisions of Chapter 469 of the Texas Government Code. TDLR regulations further require inspection of completed construction of applicable buildings or facilities to ensure compliance with Texas Accessibility Standards. The TDLR clearance requirements are included in the special conditions of all TxCDBG contracts that include public facilities.

### **Employment**

Grant Recipients should not use any practices that unreasonably limit employment opportunities for individuals with disabilities. Grant Recipients must also reasonably accommodate the known needs of employees and applicants with special needs. Examples include retrofitting workstations to

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<sup>10</sup> 24 CFR §8.51

<sup>11</sup> 16 TAC Part 4, §68.10

<sup>12</sup> Texas Government Code, §469.101

accommodate wheelchairs and providing special computers for hearing and sight challenged workers.

### **10.1.5 Limited English Proficiency Plan**

Each Grant Recipient must take reasonable steps to provide meaningful access to federally funded programs (grants) for all persons with Limited English Proficiency (LEP). Grant Recipients must establish and adopt a plan for each grant project, determining if there is a need for LEP services within the community and, if applicable, how appropriate language assistance will be given.

LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. Grant Recipients are encouraged to review HUD's Frequently Asked Questions (FAQ) website to understand the expectations and purpose of LEP when evaluating the appropriate provisions for a TxCDBG project.

Identifying requirements for providing LEP services requires a **four-factor analysis**:

1. The number or proportion of LEP persons served or encountered in the eligible service population. **Served** or **encountered** includes those persons who would be served or encountered by the recipient if the persons received adequate education and outreach and the recipient provided sufficient language services;
2. The frequency with which LEP persons come into contact with the program;
3. The nature and importance of the program, activity, or service provided by the program; and
4. The resources available and costs to the recipient.

Safe harbor guidance—which identifies actions that will be considered strong evidence of compliance—for the first factor is published by the U.S. Department of Justice and uses the Census Bureau data found at <https://data.census.gov/>.

- To determine the local need for LEP services, subrecipient may use the American FactFinder (<https://data.census.gov/cedsci/>).
- Type in the federally funded project's location (e.g. city or county name) and select 'go'; then, on left side of screen, choose 'Origins and Language'; then 'Selected Social Characteristics' (DP02). Next, scroll to 'Language Spoken at Home' and review the number or percent of 'Speaks English less than very well' under the subcategories of Spanish, Other Indo-European languages, and Other languages.
- Other American FactFinder data tables that provide similar information are S1601, B16001, B16002, and C16001 - if one of these sources is used, please note the table number on the Group A Performance Report. As a general rule, if the size of the language group is more than 5% of the eligible population or beneficiaries and has more than 50 in number, or if the language group has more than 1,000 individuals in the eligible population in the market area or among current beneficiaries, then vital documents must be translated.
- Language groups should not be aggregated together. If <https://data.census.gov/> indicates that less than 5% of the community population speaks English less than very well, the Grant Recipient must use its knowledge of the project beneficiaries to determine whether language assistance may still be needed.
- In addition, consider whether the project is located in an area of the community that is more likely to include LEP residents than the jurisdiction overall – if so, services must be provided.

Limited English Proficiency Safe Harbor Guide			
Community Characteristic per Census Table		Minimum EP Assistance Required*	
Number of Persons in the Language Group that speak English “less than very well”	Percent of Total community population that are also persons in the Language Group that speak English “less than very well”	Published Notice regarding Vital Document	Vital Document
≥ 1000	10% or more	Fully translated notice	Fully translated document
≥ 1000	0% - 9.99%	Summary and reference to availability of full translation	Fully translated document
51-999	10% or more	Fully translated notice	Fully translated document
51-999	5.01% - 9.99%	Summary and reference to availability of full translation	Fully translated document
51-999	0% - 5%	Safe harbor - Evaluate LEP need using HUD’s four factor analysis.*	Safe harbor - Evaluate LEP need using HUD’s four factor analysis.*
≤ 50	Any percentage	Safe harbor - Evaluate LEP need using HUD’s four factor analysis.*	Safe harbor - Evaluate LEP need using HUD’s four factor analysis.*

Once the required services are identified, the Grant Recipient must identify the vital documents covered by the LEP plan. Vital documents are those documents that ensure that an eligible LEP person can meaningfully have access to the CDBG project. Thus, vital documents include Citizen Participation notices (complaint procedures, hearings notices, civil rights notices), environmental notices, outreach notices and application materials for housing rehabilitation or on-site sewer facility assistance, and any other published notice that may allow an eligible person with limited English proficiency to participate in discussing proposed CDBG activities.

- If a document is required by the LEP policy to be translated, the full text translation must be made available.
  - **BEST PRACTICE:** Publish or post the full text of the translated document alongside the English language version.
- In certain cases, the Grant Recipient may publish the full text of the English language document along with a translated summary of the document’s contents and contact information for obtaining the full text. This option is available ONLY if Table DP02 (or alternate table noted above) identifies less than 10% of residents as “speaks English less than very well” AND the LEP plan does not identify additional LEP needs based on the project’s location.
  - **EXAMPLE:** La ciudad de [Sample] ha realizado una revisión ambiental para el proyecto de construcción de la línea de agua en Main Street, financiado por el Programa de Subvenciones en Bloque para el Desarrollo Comunitario de Texas. Para revisar una traducción completa de este aviso en español, comuníquese con [Nombre] al [teléfono] o [correo electrónico].
- A reference to translation availability without also summarizing the content of the document is not sufficient for effective communication with LEP persons.

**Limited English Proficiency (LEP) Plans are grant/project specific and therefore apply only to the particular grant and period.**

The LEP plan is documented as part of the *Group A Performance Report* in TDA-GO

### **10.1.6 Excessive Force Policy**

In accordance with Section 104(l) of the Housing and Community Development Act, as amended, Grant Recipients receiving TxCDBG funding must adopt an Excessive Force Policy that prohibits the use of excessive force against non-violent civil rights demonstrations.<sup>13</sup>

When Grant Recipients execute their agreement(s) they certify that they will pass and enforce the following policies:

- A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; **and/or**
- A policy of enforcing applicable state and local laws against physically barring the entrance to, or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

See *Sample Excessive Force Policy (Form A1003)*.

### **10.1.7 Disadvantaged Businesses**

Grant Recipients must affirmatively take necessary steps to utilize small (SBE), minority-owned (MBE) and women-owned businesses (WBE). Although Grant Recipients are not directly responsible for meeting a specific minority business participation goal, TDA reports to HUD on the levels of MBE and WBE hiring under all TxCDBG contracts.<sup>14</sup>

The following suggestions can be used to increase participation of small, minority- and women-owned businesses.

- Place qualified small, minority, and women-owned firms on solicitation lists. The Texas Comptroller of Public Accounts provides the Historically Underutilized Business (HUB) Directory that includes small businesses that are minority and women-owned. The directory and other information on HUB certification is available on the Texas Comptroller's website.
- Utilize the Minority Business Development Centers (MBDCs) located throughout Texas. The Minority Business Development Agency of the U.S. Department of Commerce funds MBDCs. This network can assist in achieving local and state minority business goals by providing relevant information, management assistance, technical assistance, program outreach, and brokerage services to minority firms. A listing of MBDCs can be found on the internet at <http://www.mbda.gov>.
- Solicit bids/services from small, minority, and women-owned businesses when issuing requests for proposals (RFPs), requests for qualifications (RFQs), and soliciting construction bids.
- Divide project activities into smaller tasks or services to allow participation by these types of businesses, if economically feasible. Discuss with TxCDBG staff to avoid violation of program rules with respect to small purchase procurement and awards to best, most responsible bid.
- Provide direct bonding assistance to minority business enterprises in order to promote their participation in the CDBG funded projects.  
**NOTE:** Payment of bond premiums on behalf of such firms is an allowable expenditure that can be paid for with CDBG funds only out of the general administration budget category.
- Provide small, minority and women-owned businesses with information regarding the Small Business Administration (SBA) Surety Bond Guarantee Program. This program opens the bonding system to new, small, or financially marginal disadvantaged construction contractors who are not able to obtain bonding through their own efforts or find it too costly in the standard

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<sup>13</sup> State's certification requirements at 24 CFR §91.325(b)(6)

<sup>14</sup> 2 CFR §200.321

market. Information on the program and local contact information can be found on the SBA website.

In order to meet federal reporting requirements, the Grant Recipient must provide data regarding the ownership of each vendor/service provider on the TDA-GO Materials and Services Report, see *Chapter 5 Procurement Procedures*.

### **10.1.8 Section 3 Economic Opportunities**

Section 3 of the Housing and Urban Development Act of 1968 requires that, to the greatest extent feasible, economic opportunity generated by CDBG funds and other HUD assistance, most importantly employment, is directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, as well as residents of the community in which the federal funds are spent.

HUD established benchmarks for Section 3 goals and expects the TxCDBG program to cumulatively report 25% of the total labor hours for grant-assisted projects each year as performed by Section 3 Workers; the HUD benchmark for Targeted Section 3 Workers is 5% of total labor hours worked. Failure to achieve these benchmarks requires additional justification by the state, which may necessitate additional information from Grant Recipients.

HUD's administrative rules establish the requirements to be followed to ensure the objectives of Section 3 are met.<sup>15</sup> Federal rules do not require Grant Recipients to contract or subcontract with a Section 3 business, nor do the rules require hiring of Section 3 workers. However, Grant Recipients must be able to demonstrate that, where possible, contracting, employment, and training opportunities were made available to workers and businesses meeting Section 3 designation criteria.

#### **Applicability**

Section 3 requirements apply to all TxCDBG grants unless otherwise identified by this Implementation Manual or the Grant Agreement.

- The requirements apply to the entire project that is funded with Section 3 covered financial assistance, regardless of whether the Section 3 project is fully- or partially-funded with CDBG assistance.
- All construction and administrative services contracts must comply with the programmatic requirements below.
- All work performed by employees of the Grant Recipient and its partners, regardless of whether force account cost reimbursement is requested, must comply with the programmatic requirements below.
- Section 3 goals and data reporting requirements generally do not apply to contracts for materials, planning, and professional services. Professional services include non-construction services that require an advanced degree or professional licensing (e.g., engineering, architecture, land surveying, accounting).

#### **Section 3 Compliance**

Grant Recipients must complete each of the following steps in order to be considered compliant with Section 3 programmatic requirements. Key terms for these steps are described in the following sections:

##### **Identify the Section 3 Service Area**

A Section 3 Service Area for a TxCDBG project is determined as follows:

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<sup>15</sup> 24 CFR Part 75

- Identify the project site. For infrastructure projects, the project site is the area included in the Environmental Review project description. The address of the center point of this project site is the basis for the Section 3 Service Area.
- Use HUD's Neighborhood Service Area Definition Tool<sup>16</sup> to identify an area in which a minimum of 5,000 persons reside.

#### Facilitate Contracting Opportunities for Section 3 Businesses

Prior to procuring or selecting any contract for construction services, the contracting opportunity must be reported to relevant resources in addition to any public advertisements required for competitive procurement. See *Chapter 5 Procurement Procedures* for details.

#### Facilitate General Employment Opportunity Information for Section 3 Workers

In an open meeting of the local governing body, the Grant Recipient must present the Section 3 goals of the CDBG program. This item must be reflected in the agenda and/or minutes of the meeting. TDA recommends completing this step at the meeting prior to the first publication for a construction bid process; however, in all cases it must be completed prior to requesting grant funds to reimburse construction costs, see *Chapter 1 Administration and Reporting*.

The presentation must include:

- Texas Workforce Solutions – [WorkInTexas.com](http://WorkInTexas.com) and
- Other Section 3 information as described in the *Section 3 Sample Presentation to Local Community (Form A1024)*.

#### Facilitate Specific Employment Opportunities for Section 3 Workers

If new employees are needed OR if vacancies exist for work on the TxCDBG-assisted project, the Grant Recipient and/or contractor must access the following resources to identify potential Section 3 employees—a printout of the results of the portal search in the local files is acceptable documentation of this effort. Grant Recipients and contractors are not required to employ Section 3 workers, nor to modify the qualifications or requirements of the position but must demonstrate an effort to identify potential employees as appropriate, including documentation for any applicants that are Section 3 Workers.

- Texas Workforce Solutions – [WorkInTexas.com](http://WorkInTexas.com); and
- Local Workforce Solutions Office (WIOA One Stop Shop), if applicable – <https://www.twc.texas.gov/directory-workforce-solutions-offices-services>.

#### Ensure Contractor Compliance

- Include the required contract provision in all applicable contracting opportunities. See Appendices D and F.
- Collect records for all construction and administration service providers, including subcontractors, documenting the labor hours performed by each employee and the Section 3 status of each employee. Generally, this consists of payroll records and certification of status for each employee. A summary of this information must be reported to TDA as part of the Project Completion Report and each Materials and Services Report Contract Completion, and support documentation must be maintained in the local files.

#### Additional Efforts

Record all additional efforts to ensure Section 3 Businesses have the opportunity to compete for contracting opportunities, and that Section 3 Workers and Targeted Section 3 Workers have the opportunity to benefit from the TxCDBG assistance. These efforts support the state's explanation,

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<sup>16</sup> HUD's Neighborhood Service Area Definition Tool can be found at <https://hud.maps.arcgis.com/apps/webappviewer/index.html?id=1d27b42dd64e4684ba74fe5bd00f9755>



should the program not meet the established benchmarks, and identify areas where the TxCDBG program could support Section 3 Business and Workers in the future. Examples include:

- Outreach efforts
- Training or apprenticeship opportunities
- Technical assistance to Section 3 workers (multiple types)
- Technical assistance to Section 3 business concerns
- Job fairs
- Divide contracts into smaller jobs
- Bonding assistance
- Other business registries

## Key Definitions

In order to meet the Section 3 reporting requirements, all workers for the project must be classified as one of three worker categories. Report the most restrictive category that is appropriate for an individual worker:

Criteria for All Worker Designation. All individuals performing applicable work (labor hours) for the TxCDBG-funded project that do not meet one of the Section 3 designations are reported only under the All Workers category

Criteria for Section 3 Worker Designation. To comply with Section 3 Reporting requirements, the Grant Recipient must determine whether each individual performing construction or administrative work on the project meets the criteria for a Section 3 Worker. A Section 3 Worker is any worker who currently, or when hired by the current employer within the past five years, fits at least one of the following categories:



- The worker's individual income for the previous or annualized calendar year is below the income limit for a family size of **one** published on TDA's website for use in income surveys<sup>17</sup>. Income limits are based on the county in which the employee resides. NOTE: information regarding family size or income from other family members is not required.
- The worker is employed by a Section 3 business.
- The worker is a YouthBuild participant.

Each Section 3 worker's status must be documented with one of the following:

- A worker's self-certification that their income should be less than or equal to the HUD limit using the TxCDBG Income Survey Questionnaire, clearly marked in the **place field** as "Section 3 Income Only";
- A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

<sup>17</sup> <https://texasagriculture.gov/Grants-Services/Grants-and-Services/-TxCDBG-Rural-Community-Development-Block-Grant/Fund-Categories-and-Applications/Beneficiary-Documentation>

- Certification from a public housing authority (PHA), or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
- *Employer Certification Form (Form A1022)*, certifying that each listed worker's income from that employer is at or below the income limit. This certification is based on a calculation of what the worker's wage rate would be if annualized on a full-time basis;
- *Certification as Section 3 Business (Form A1023)*, if the employer is a Section 3 business, identifying all workers for the project; or
- An employer-generated document that includes the worker name and assignment of Section 3 status based on the employer's review of the annualized income of the worker, and is signed by the employer.

Criteria for Targeted Section 3 Worker Designation. The targeted Section 3 worker designation reflects both statutory and policy priorities to direct employment and economic opportunities to low- and very low-income individuals.

For CDBG, the definition of a Targeted Section 3 Worker is a Section 3 worker that is

- Employed by a Section 3 business (see Section 3 Business definition above); or
- A worker who currently fits or when hired will fit at least one of the following categories, as documented within the past five years:
  - Living within the service area of the project; or
  - A YouthBuild participant.

If reporting Targeted Section 3 workers, mark the location of each targeted Section 3 worker's residence on the Service Area map. Employers must maintain the current address for each employee and must provide this information upon request by TDA or other authorized agencies, while safeguarding as sensitive information.

#### Criteria for Section 3 Business Designation

One way to target grant funding to the workers that are described in HUD's Section 3 goals is to identify Section 3 businesses. Section 3 businesses must meet at least one of the following regulatory criteria, documented within the last six-month period:

- It is at least 51% owned and controlled by low- or very low-income persons;
- Over 75% of the labor hours performed for the business over the previous three-month period are performed by Section 3 workers; or
- It is a business at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Section 3 Business status will be reported once for each contract for services. Once a business is determined to be a Section 3 Business, the designation will remain in effect for the life of the contract for services. Records supporting this status must be made available upon request to TDA, HUD, or other state or federal authorized officials. Please redact Personally Identifiable Information (PII) from payroll records prior to releasing any documentation under this requirement. For construction contractor certified payroll reports, HUD requires first payroll on which each employee appears to include the employee's name and an individually identifying number. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees.

**NOTE:** Section 3 Businesses may only be selected in accordance with the procurement standards of *Chapter 5 Procurement Procedures*, including price, ability, and willingness to comply with program requirements, to be considered lowest responsible bidders on contracting opportunities being sought.

However, Grant Recipients should make every effort to ensure that Section 3 Businesses are able to effectively participate in the opportunity. In turn, contractors and others should direct their efforts to award subcontracting opportunities generated from the expenditure of housing and community development financial assistance to Section 3 Businesses.

### **10.1.9 VAWA Certification**

The Violence Against Women Act (VAWA) Reauthorization Act of 2022, which became effective October 1, 2022, includes a new requirement Grant Recipients to support an individual's, including survivor's, right to seek law enforcement or emergency assistance. TxCDBG grants awarded on or after the effective date will be required to:

1. "Report any of their laws or policies, or, as applicable, the laws or policies adopted by subgrantees, that impose penalties on landlords, homeowners, tenants, residents, occupants, guests, or housing applicants based on requests for law enforcement or emergency assistance or based on criminal activity that occurred at a property; and
2. Certify that they are in compliance..." with the VAWA requirements.

As of the publication of this Manual, HUD has not provided guidance for this review and certification. Once issued, TDA will provide a Policy Issuance and sample certification. Currently, Grant Recipients utilize the *Violence Against Women Act (VAWA) Certification (Form A1025)* to certify compliance with the Violence Against Women Act (VAWA) Reauthorization Act of 2022. This certification form is then uploaded on the Organization Compliance – Reference Attachments (OC-RA) document of the TDA-GO.

## **10.2 Recordkeeping**

### **10.2.1 Civil Rights Officer**

The Grant Recipient must designate a Civil Rights Officer (CRO). The CRO will be responsible for ensuring all requirements in this chapter are met and all documentation related to compliance with this chapter's requirements is submitted to TDA.

- The CRO serves as the Grant Recipient's Section 504 Coordinator, Equal Opportunity Officer, and Fair Housing Officer.
- Grant Recipients are the ultimate responsible entity for the enforcement of the Civil Rights Requirements. Therefore, the CRO must be a local staff member or official.
- Prior to submitting the first payment request, the authorized official must provide the name of the designated CRO. This information is entered on the *Grant Overview* page of the TDA-GO application/grant document and requires the authorized official's certification.  
**BEST PRACTICES:** Upon the award of any TxCDBG grant, discuss all required civil rights, equal opportunity, and citizen participation policies and plans during a city council or commissioner's court meeting to ensure that both local leadership and residents understand the policies and plans.
- The *Civil Rights Responsibilities Checklist (Form A1016)* provides a guide for civil rights requirements.

## **10.2.2 Local Resolution**

To demonstrate compliance with the requirements of this chapter, Grant Recipients must adopt a resolution through the local governing body (city council/commissioners court) to adopt and/or reaffirm the following required community policies. These policies may have already been adopted previously.

- *Sample Citizen Participation Plan (Form A1013)*;
- *Section 504 Policy and Grievance Procedures* [If Grant Recipient employs 15 or more employees], **(Form A1004)**;
- *Sample Fair Housing Policy (Form A1015)*;
- *Sample Excessive Force Policy (Form A1003)*; and
- *Sample Code of Conduct (Form A1002)*.

For grants awarded on or after October 1, 2022, the Grant Recipient will complete the *Violence Against Women Act (VAWA) Certification (Form A1025)*.

In addition, the resolution identifies the Grant Recipient's commitment to the following requirements:

- Section 3 economic opportunity,
- Limited English proficiency, and
- Affirmatively furthering fair housing activity.

The local resolution submitted for each TxCDBG grant must:

- Contain language to adopt any civil rights requirements not currently in effect;
- Contain language re-affirming each required civil rights policy previously adopted remains in effect; and
- Be approved by the local governing body on or after the date the Request for Applications was released, and prior to submittal of the TDA-GO Group A Performance Report.
- See *Sample Resolution Regarding Civil Rights (Form A1014)* - please revise the sample language to either "adopt" or "reaffirm" policies as appropriate.

Copies of the policies addressed by the resolution must be provided. Upload the documents to the Grant Recipient's Organization Compliance – Reference Attachments (OC-RA) Report to avoid the need to resubmit these policies with each grant received.

## **10.2.3 Public Notices**

The notices required by this chapter must be published and/or posted as required by *Chapter 1 Administrative Requirements*.

**BEST PRACTICE:** Post the required notice to the Grant Recipient's website, including full text (or links to full text) located on a page accessed regularly by local residents. Posted notices should remain available to the public throughout the life of the Grant Agreement, and at a minimum must be posted for 60 days. Screenshots of the webpage posting that clearly display the date and time of the image, along with a signed *Affidavit of Posting - Citizen Participation Public Hearing (Form A101)*, may be accepted as documentation of compliance.

Newspaper notices must be published no more than two years prior to the Grant Agreement start date, and no later than the Grant Agreement end date. This means that published notices could be used for multiple TxCDBG projects with grant periods that occur consecutively.

## **10.3 Monitoring of Discrimination**

If there has been a determination of discrimination against a Grant Recipient, the Grant Recipient must develop a plan that identifies the effects of past discrimination and specifies actions to overcome the identified effects. A determination of discrimination can be a result of:

- A compliance review conducted by HUD or by TDA.
- A discrimination complaint investigation carried out by the HUD Regional Fair Housing and Equal Opportunity Office (FHEO); or
- An employment discrimination complaint investigation conducted by the Equal Employment Opportunity Commission.

TDA encourages the Grant Recipient to take affirmative action to address self-identified instances of possible discrimination that is indicative of past discrimination.

**EXAMPLE:** If Grant Recipient employment is not representative of the general population of the jurisdiction, Grant Recipients are encouraged to design a program to affirmatively increase employment, training, and promotion opportunities for members of the affected groups.

**NOTE:** Complaints of employment discrimination should be referred to the Texas Workforce Commission, Civil Rights Division. See Appendix A for link to Equal Employment Opportunity Commission.

### **Resources**

Resource Number	Description	URL
	HUD Fair Housing website	<a href="https://www.hud.gov/program_offices/fair_housing_equal_opp">https://www.hud.gov/program_offices/fair_housing_equal_opp</a>
A101	Affidavit of Posting – Citizen Participation Public Hearing	<a href="#">TxCDBG Implementation Manual</a>
A1002	Sample Code of Conduct	<a href="#">TxCDBG Implementation Manual</a>
A1003	Sample Excessive Force Policy	<a href="#">TxCDBG Implementation Manual</a>
A1004	Sample Section 504 Policy Against Discrimination	<a href="#">TxCDBG Implementation Manual</a>
A1006	Section 504 Self-Evaluation Form	<a href="#">TxCDBG Implementation Manual</a>
A1007	Sample Fair Housing Month Proclamation	<a href="#">TxCDBG Implementation Manual</a>
A1009	Sample Fair Housing Public Service Announcement	<a href="#">TxCDBG Implementation Manual</a>
A1013	Sample Citizens Participation Plan	<a href="#">TxCDBG Implementation Manual</a>
A1014	Sample Resolution Regarding Civil Rights	<a href="#">TxCDBG Implementation Manual</a>
A1015	Sample Fair Housing Policy	<a href="#">TxCDBG Implementation Manual</a>
A1016	Civil Right Responsibilities Checklist	<a href="#">TxCDBG Implementation Manual</a>

A1021	Sample Section 3 Service Area	<a href="#">TxCDBG Implementation Manual</a>
A1022	Employer Certification Form	<a href="#">TxCDBG Implementation Manual</a>
A1023	Certification as Section 3 Business	<a href="#">TxCDBG Implementation Manual</a>
A1024	Sample Section 3 Presentation to Local Community	<a href="#">TxCDBG Implementation Manual</a>
A1025	Violence Against Women Act (VAWA) Certification	<a href="#">TxCDBG Implementation Manual</a>

\*Note: these items will be updated as needed.

# CHAPTER 11

# GRANT AGREEMENT AMENDMENTS

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# CHAPTER 11

## GRANT AGREEMENT AMENDMENTS

### 11.0 Introduction

During the course of administering a TxCDBG Grant Agreement, situations may occur that require a change in the original terms of the agreement. These changes are referred to as Grant Agreement amendments. The type and scope of change as it relates to the scope of work, location, or beneficiaries of the project determine whether a minor amendment is acceptable or whether a full amendment is necessary. All changes must be related to the project.

Request any changes to the agreement using the *Amendment* page in the TDA-GO system.

**NOTE:** While an amendment is pending in TDA-GO, no Payment Requests, Performance Reports, or other related documents may be created. For complex or significant project changes, please discuss with TDA staff prior to beginning an amendment in the system.

Detailed step-by-step instructions for completing and submitting an amendment request in TDA-GO may be found on the TDA website.

### 11.1 Performance Statement Changes

Grant Agreements are awarded based on the information presented in the original application. TDA will review any change to the Performance Statement to ensure that federal, state, and programmatic requirements continue to be satisfied.

The Grant Recipient should evaluate the Performance Statement **once a bid has been accepted and submit an amendment as appropriate to accurately reflect the project that will be awarded**. A copy of the bid tabulation or project plan sheets should be submitted with this request.

**NOTE:** Generally, construction quantity changes of 15% or less will not require an amendment, see *Chapter 12 Grant Agreement Closeout*.

#### **Requests to Revise the Original Project**

Grant Recipients were selected for funding based on their proposed project and are expected to carry it out as proposed. Any requested changes in the scope of work will be reviewed to determine if the revised project is supported by the original application.

- A change in the construction work required to complete a project may be approved if the resulting benefit to the community is the same need identified in the application.  
**EXAMPLE:** The city needs to increase storage capacity but has determined that a ground storage tank is more cost-effective than the new standpipe originally proposed.
- The revised project will be re-evaluated according to the scoring criteria used at the time the original application was submitted. If the proposed amendment alters the original application score to the degree that the project would not have been recommended for funding, the amendment request will not be approved. Major reductions in the scope of the proposed work can result in grant reduction or termination.



- The revised project must meet all environmental review requirements. The Grant Recipient must re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether any previous clearance still applies to the revised project. It is critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary for the revised project to be an eligible TxCDBG project.

#### **Requests for Additional Work Requests to be Added to the Performance Statement**

- Once construction has begun for the original project, and remaining funds are identified that will be available for additional work, the Grant Recipient may request to expand the scale of the current project.
- The Grant Recipient may also request to add a separate project listed in the original application as a community need. The application must describe a project and not simply name the activity in order to be considered.  
**EXAMPLE:** “Replace water lines in the NE area of town to improve water pressure” vs. “Water activity”.
- Re-evaluated application scoring is not required for additional work added when the original project is substantially complete.

#### **Requests for Substitute Project**

TDA will not approve requests to add a different or new project or activity that was not identified in the application, unless the new project is proposed because the original project has been determined unsuccessful or not feasible as a direct result of either:

- A natural disaster event, documented by presidential or governor’s declaration, or
- A decision by a federal or state agency which prevents the contractor from completing the original project.
- Failure of the Grant Recipient to do due diligence in identifying the need for the proposed project is not grounds for an alternative project or location, and at TDA’s discretion, may result in grant reduction or termination.  
**EXAMPLE:** “Upon inspection, it was determined that the line on Main Street had recently been replaced and still has useful life remaining”; “The city has reevaluated the proposed street reconstruction and determined that the street is in fair condition”; or similar conditions that a reasonable person should have identified prior to proposing the project.
- Changes in local priorities or staff are not grounds for approval of an alternative project or location.

### **11.1.1 Performance Statement Amendment Support Documentation**

#### **Performance Statement Track Changes**

All Performance Statement Amendments for TxCDBG grants require upload of a document identifying the specific language to be revised.

1. Generate a copy of the current Performance Statement in Word Format by clicking the link below the summary text box of the *Amendments Request Form*.
2. Enable the track changes feature. Manual tracking of edits, such as text manually formatted with strike through and underline font, is not acceptable.
3. Edit the document and the track changes feature will show all text proposed to be added, deleted, or revised.
4. Upload the Track Changes document in the field provided in TDA-GO.

Performance Statement Amendments also require completion of the second page in the *Amendments* section, called *Proposed CDBG Performance Statement Revisions*. Responses to the questions on this page may require additional documentation to be uploaded.

## Public Participation

Performance Statement Amendments require public participation unless the proposed changes meet the requirements as a Minor Amendment. A public hearing allows the residents of the Grant Recipient's jurisdiction to have an opportunity to comment on the proposed changes.

Is This a Minor Amendment?	
1. Will the project as requested serve substantially the same beneficiaries as the current Performance Statement? <input type="checkbox"/> no change in beneficiaries, regardless of quantities; <input type="checkbox"/> increase in beneficiaries, but no new Benefit Area; or <input type="checkbox"/> decrease in beneficiaries of less than or equal to 25%—based on number of persons or households. AND <input type="checkbox"/> does not remove a section of the project to create two or more non-contiguous Benefit Areas.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Are the activities' categories the same as the current Performance Statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Does the project still solve the same problem identified in the current Performance Statement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If the answer to ALL three questions is <b>Yes</b> , respond "No" to Question 1 on the <i>Proposed CDBG Performance Statement Revisions</i> page If the answer to ANY question is <b>No</b> , public participation is required.	

### Public participation for an Amendment includes:

- A resolution from the city council or commissioner's court that indicates support for the proposed changes; and
- Notice of the public hearing held regarding the amendment, including a brief description of the proposed project changes. See *Chapter 1 Administration and Reporting* for detailed instructions regarding public hearings, notices, and documentation. TDA reserves the right to require Public Participation in its sole discretion.

## Beneficiaries

Any change to project beneficiaries requires a Grant Agreement amendment. As a general principle, a decrease in a project's scope will have a correlative decrease in project beneficiaries, just as an increase would have a correlative increase in project beneficiaries. Beneficiaries must be reevaluated using the same criteria applied at the time of application and adhere to the principles and definitions found in the TxCDBG Guide to Meeting a National Program Objective.

Amendments requesting to add an entire Benefit Area cannot be submitted without first contacting TDA. After an initial discussion, TDA staff will check the box beneath Question 2 on the *Proposed CDBG Performance Statement Revisions* page to acknowledge this significant change.

Upload appropriate beneficiary documentation in the field provided.

## Locations

Amendments proposing to change the locations of the work to be performed must provide Census Information and two maps.

- Census Table – Identify the County, Census Tract, and Block Group information for the proposed locations. Click the "+" to create a new row for each census tract.
- Upload color-coded revised project maps showing the locations of the original and amended project activities in the fields provided. The map(s) must use separate colors/markings to identify on the same map:

- Original/previously approved project locations;  
**BEST PRACTICES:** For expedited TDA review, mark these locations in purple and/or single solid lines;
- Locations proposed to be deleted from project;  
Mark deleted locations in orange and/or dashed lines;
- Locations proposed to be added to the project;  
Mark added locations in yellow and/or double solid lines; and
- Service area for the project;  
Mark service area with black delineating lines.
- Or the maps should include a detailed map legend identifying map changes.
- Project map showing the locations **of all work as proposed**. This “clean” map will become a Figure in the Grant Agreement if the Amendment is approved.  
**NOTE:** The Grant Agreement Details map is a material part of the Grant Agreement and controls in the event that there is a conflict between the project description in the Performance Statement and the information on the map itself. Therefore, care should be taken that quantities, locations, or other items on the map that do not accord with the information in the Performance Statement are not included.

If locations are changing and the Grant agreement Details map requires revision, it must be uploaded in the appropriate fields on the *Proposed CDBG Performance Statement Revisions* page. Posting a map in any other upload field will be returned to the Grant Recipient for revision.

### Environmental Review Re-evaluation

The revised project must meet all environmental review requirements. If an Authority to Use Grant Funds has previously been issued for the grant, the Grant Recipient must re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether the previous clearance still applies to the revised project. It is critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary for the revised project to be an eligible TxCDBG project.

- Navigate to the existing *Environmental Review Performance Report, Environmental Review Re-evaluation* page. Complete the form and save the page.
- Return to the *Proposed CDBG Performance Statement Revisions* page. The Environmental Authorized Official must check the box to acknowledge the re-evaluation of the environmental review.

### Additional Documentation

- Engineer’s Explanation - Upload an engineer’s explanation if technical justifications are necessary, or if requested by TDA in order to certify that the benefit area is appropriate. TDA may require a signed and sealed letter, or may accept a copy of an email, depending on the circumstances and information provided.
- Upload other documentation as appropriate.

## 11.2 Budget Changes

A Grant Recipient may request to transfer TxCDBG funds between budget categories in order to reflect the actual costs of the project.

### Budget Amendment Requests for Administration and Professional Services

- TDA will not approve a budget change to allow the general administration activity grant funds to exceed the maximum amount identified in the relevant application guide.

- If a proposed budget change causes the engineering activity grant funds to exceed the maximum amount identified in the relevant application guide, additional justification must be submitted for approval by the TDA Deputy Commissioner.
- Any administration or engineering costs greater than the amount available through the activity budget line items are the responsibility of the Grant Recipient but may be included as matching funds unless otherwise disallowed.
- Requests to move TxCDBG funds from construction and/or acquisition activities to engineering or general administration activities must be submitted in TDA-GO prior to the date work is completed on the Certificate of Construction Completion. The request must include a description of the additional tasks required by these services providers for the project and be supported by the terms of the engineering or general administration contract.

### **11.2.1 Budget Amendment Documentation**

When the Exhibit B box is checked on the *Amendment Request Form page*, a table becomes available to document the requested change.

- Enter positive numbers in the row for budget item requested to be increased; enter negative numbers for the budget item proposed to be decreased.
- If a new activity is proposed to be added to the grant funding, enter the appropriate information in the blank row.
- Enter \$0.00 for activities where no budget change is requested.
- Additional rows may be added by clicking the “+” button.
- The last row in the table calculates the total request. Ensure that the column for Requested Change reflects the amount of \$0.00 in the last row.

A Grant Recipient may request to transfer funds between budget categories identified in the budget as a minor amendment to the original Grant Agreement if:

- The cumulative dollar amount of transfers among budget categories is less than or equal to 20% of the total amount of the agreement as specified in Exhibit B of the TxCDBG Grant Agreement;
- The transfer of budgeted funds will not change the scope or objective of the project(s) funded through the TxCDBG agreement; and
- If funds are to be transferred into professional or administrative services, the total dollar amount in the line item does not exceed the maximum amount identified in the Application Guide.

## **11.3 Agreement Period Extensions**

TxCDBG agreements allow a specific time period to complete the activities identified in the Performance Statement. This timeline can be found in *Exhibit A, Section C* of the TxCDBG Grant Agreement.

#### **EXAMPLE:**

##### **C. Timeline**

Grant Recipient will comply with the following Project Schedule. Failure to meet any of the below milestones may result in sanctions as outlined in the TxCDBG Project Implementation Manual, Requests for Applications, other published guidance, and conditions of this agreement.

Pre-Agreement Cost Begins:

XXX/XX/20XX

Grant Contract Period Begins:	XXX/XX/20XX
Environmental Review/Plans & Specifications	XXX/XX/20XX
Recommended to be Complete	
Group B Forms Required to be Complete:	XXX/XX/20XX
Project Recommended to be Complete, including inspections:	XXX/XX/20XX
Grant Contract Period Ends:	XXX/XX/20XX
Final Payment and Closeout Documentation Required to be Submitted:	XXX/XX/20XX

Rarely, extenuating circumstances beyond the control of the Grant Recipient may prevent the completion of agreement activities within the prescribed agreement period. If a Grant Recipient is reasonably assured that project costs will be incurred beyond the agreement end date and that incurring these costs is beyond the control of the Grant Recipient, an amendment for an agreement extension must be requested from TDA to extend the original agreement end date. In addition, the Grant Recipient may request a short extension to complete additional work if the original project has been completed.

Agreement extensions are appropriate only when construction cannot be completed and/or the beneficiaries will not receive the service or benefit from the use of the new or improved facilities within the agreement period. If construction is completed and beneficiaries are receiving service, but additional reporting is required, see *Chapter 12 Grant Agreement Closeout*, or contact TDA staff.

Agreement extensions granted by TDA shall not be construed as a waiver of the Administrative Threshold Requirements, see *Chapter 1 Administration and Reporting*. The Progress Threshold #2 will still be applied to open contracts/agreements that have extended the contract/agreement period.

### Deadline for Agreement Period Extension Requests

To avoid interruptions to the agreement or possible exclusion of reimbursement for project costs, Grant Recipients should notify TDA staff to discuss an agreement extension as soon as a delay is foreseen and an appropriate timeline can be proposed.

- Because certain other actions cannot be taken in TDA-GO while an amendment is pending, TDA does NOT recommend beginning the amendment request greater than ninety (90) days prior to the agreement end date unless directed to do so by TDA staff.
- Agreement extension requests must be submitted **no later than thirty (30) days** prior to the expiration date of the agreement.
- A request for agreement extension received **less than thirty (30) calendar days** prior to the expiration date will only be considered under the following circumstance:
  1. Disruption at the end of the project.
    - The project was reasonably expected to be completed within the agreement 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 agreement expiration date which prevented the chief elected official from certifying the project's completion. Normal weather conditions are not considered extenuating circumstances.
  2. Financial penalty for noncompliance with Amendment Timeline requirements.

If a Grant Recipient's agreement extension request does not comply with both of the above requirements, the Grant Recipient must accept a financial penalty in order for TDA to consider the extension request. See section *11.4.1 Amendment Timeline* of this chapter.

### Progress Required for Extension Requests

Requests for extensions to agreements that have not made sufficient progress during the existing agreement period will not be approved.

- Extensions requests for agreements that have not submitted a Request for Release of Funds for Environmental Review will not be considered, as the project is not ready to proceed.
- Extension requests for agreements that have not submitted Materials and Services Record(s) demonstrating the obligation of 50% of all grant funds may be considered, but TDA will include

additional Special Conditions for the agreement that may include financial or program eligibility penalties if future milestones established by the extension amendment are not satisfied.

- When considering an agreement extension amendment that is not for additional work, TDA will only consider circumstances clearly beyond the control of the Grant Recipient.
- While extenuating circumstances may exist, TDA will also consider the milestones not related to those circumstances in evaluating the Grant Recipient's capacity to effectively complete the project.

**EXAMPLE:** Failure to complete the required environmental review within twelve (12) months of the Grant Agreement start date indicates serious capacity concerns and may result in additional milestones and or Special Conditions to facilitate progress.

### **11.3.1 Extension Amendment Support Documentation**

When the **C. Request to Change Timeline** box is checked on the *Amendment Request Form*, a table will show the current end date of the Grant Agreement and allow for a new proposed end date.

In addition, provide response to each narrative question. Failure to provide detailed responses that justify the extension request will delay the amendment review process.

Grant Recipients should expect to provide periodic updates for the intermediate steps identified. Examples include, but are not limited to:

- Change order for additional work, estimated to be complete February 20XX.
- Regulatory approval for second phase, estimated May 20XX.
- Purchase and delivery of electrical equipment, estimated to be complete July 20XX.
- Construction completion – 70% complete to date, estimated to be complete July 20XX.

## **11.4 Amendment Submittal Process**

Complete the required fields and save the form:

- Purpose of Amendment – Provide a brief summary of the request that can be used to distinguish between Amendments.  
**EXAMPLE:** Remove Main Street water line; adjust final quantities; extension for acquisition delays, etc.  
Justification – Explain why the Amendment is necessary, including technical recommendations, description of any extenuating circumstances, and alternatives that have been considered.
- Exhibits – Check the box for each section of the Grant Agreement in which a change is being requested. If a proposed project change will impact more than one section of the contract, check all appropriate boxes in a single Amendment as TDA must consider all related changes at once.  
**EXAMPLE:** If a grant period extension will be needed to complete additional work proposed in a Performance Statement Amendment, the extension should be included in the same amendment.
- If the requested Grant Agreement amendment is related to a construction contract change order, a request to approve the change order must be submitted at the same time as the amendment request.

Once all supporting information for the request has been entered and saved, submit the request to TDA. TDA staff will review the request. If recommended for approval, TDA will assign an amendment number.

- All amendments are numbered sequentially, including minor amendments and full amendments, and regardless of the Grant Agreement sections to be revised.
- Only one amendment request may be active at any given time.
- Grants with multiple amendments can be reviewed by selecting the relevant amendment from the submenu for each *Amendment* page in the navigation menu. Until a number is assigned, the current amendment will have a blank space, while prior amendments will be identified by number.

**NOTE:** Detailed submission instructions may be found on the TDA website.

Each amendment must be approved by TDA staff and the TxCDBG Director(s).

- During the review process, TDA staff may request clarification, revisions, or additional justification.
- Minor amendments, if approved, require no additional action by the Grant Recipient to become effective. The persons assigned as Authorized Official, Project Director, and Consultant will receive an email notification of the approval, and the status of the Grant Agreement will be returned to Grant Executed status.
- Full amendments, if approved, require the amendment document to be executed by both the Grant Recipient and TDA authorized staff.
  - Once notified by email that the amendment is ready to execute, the Authorized Official must navigate to the *Amendment Certification Form*.
  - Click the link to generate the Grant Amendment for review. Check the signature box and save the form to execute the amendment.
  - Status change the Grant Agreement to *Send Agreement to TDA for Signature*.
  - A second email will be sent to the project team when the grant amendment is fully executed.

### **11.4.1 Amendment Timeline**

All Grant Agreement amendment requests **must** be submitted in a timely manner:

- Extension amendments - minimum of 30 days prior to the current Grant Agreement end date, except as described in Section 11.3 of this chapter.
- Substantial amendments requiring citizen participation - minimum of 30 days prior to the Grant Agreement end date.
- Any amendment that revises the number of beneficiaries served by the project - minimum of 30 days prior to the Grant Agreement end date.
- Minor amendments that do not revise beneficiaries served by the project - minimum of 30 days prior to the *Project Completion Report* due date.

A penalty of \$3,000 will be applied for **each** amendment request that the Grant Recipient fails to submit within TDA-GO by the above deadlines. These penalties are cumulative and separate from the financial penalty for failure to submit the *Project Completion Report* timely. Generally, these penalties are applied first to the administrative line item; however, if no administrative line item is available, the penalties may be applied to any other Grant Agreement budget line item.

If the Grant Recipient fails to submit an amendment request and certifies on the *Project Completion Report* that work was completed that was not in fact performed, the Grant Recipient will be found to be substantially out of compliance with the terms of the Grant Agreement. TDA may resolve this non-compliance through a financial penalty and corrective action plan, without approval of an amendment to the Grant Agreement.

## **Resources**

Resource Number	Description	URL
Step-by-step guidance	How to Initiate and Complete an Amendment Request	<a href="#">TxCDBG Current Training Materials</a>
Step-by-step guidance	How to Cancel an Amendment Request	<a href="#">TxCDBG Current Training Materials</a>
	TxCDBG Guide to Meeting a National Program Objective	<a href="#">TxCDBG Fund Categories and Applications</a>

\*Note: these items will be updated as needed.



# CHAPTER 12

## GRANT AGREEMENT CLOSEOUT

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# CHAPTER 12

## GRANT AGREEMENT CLOSEOUT

### 12.0 Introduction

The TxCDBG grant closeout process is designed to ensure that all CDBG activities are completed and funds are expended in accordance with the Grant Agreement, program rules, and state and federal requirements. This means that any financial, administrative, and performance issues related to the activities undertaken by the Grant Recipient have been resolved to the satisfaction of TDA and the Grant Recipient. The closeout process also certifies that the persons to benefit from the activities described in the Grant Agreement Performance Statement are receiving service or a benefit from the use of the new or improved facilities and activities.

The closeout process should begin when

- All Performance Reports are in *Performance Report Approved* or *Performance Report Submitted* status;
- All Materials and Services Reports are in *MSR Contract Complete* or *MSR Contract Completion Submitted* status;
- All Grant Agreement special condition documents have been uploaded to the *Grant Overview* page;
- All costs to be paid with TxCDBG funds have been expended and payment requests submitted, with the most recent Payment Request marked as “Final”;
- The activities described in the most recently approved Grant Agreement Performance Statement has been completed; and
- The Grant Recipient’s other responsibilities under its agreement with TDA have been met.

### 12.1 Final Public Hearing

Grant Recipients shall hold a public hearing for residents of the areas in which TxCDBG funds were used and encourage citizen participation. The TxCDBG Grant Agreement and 24 CFR §570.486 require a final public hearing regarding the activities completed under the TxCDBG grant.

See *Chapter 1 Administration and Reporting* for detailed instructions regarding public hearings, notices, and documentation.

In addition to the general public hearing requirements

- The hearing must be scheduled after the project is completed but prior to submitting the Project Completion Report in TDA-GO; and
- The Grant Recipient must confirm during the hearing that beneficiaries are being served by the project, except as provided in *Section 12.2.5* of this chapter.

### 12.2 Project Completion Report (PCR)

After all grant activities are complete, but no later than sixty (60) calendar days after the Grant Agreement end date, begin the closeout process by changing the status of the grant in TDA-GO to

*Closeout In Process* status. The CDBG *Project Completion Report (PCR)* page will become available to be completed.

Detailed step-by-step instructions for completing and submitting the PCR in TDA-GO may be found on the TDA website.

### **12.2.1 Confirmation of Final Project Details**

The Confirmation of Final Project Details section of the PCR page contains several reports summarizing information provided by the Grant Recipient over the course of the grant.

- Generate each report by clicking the link on each row. Review the report and check the box on the same row to confirm that the report is accurate and complete. Upload the copy initialed by the AO in the provided box.
- If the summary reports are not complete and accurate, navigate to the appropriate forms or related documents to update the information. **In most cases, the closeout process must be cancelled in order to complete the updates.** If the closeout process is cancelled due to inaccuracies discovered after the closeout is submitted for TDA review, the Grant Recipient will not be credited for the original submittal date and the delinquent PCR penalty outlines in *Section 12.4* of this chapter will apply.

#### **Financial Report/Certificate of Expenditure**

- Review the expenditure and grant balance information carefully. Check the box to confirm all information is accurate. Upload the copy initialed by the AO in the provided box.
- Indicate the status of the final Payment Request.
  - At a minimum, the final Payment Request must be submitted prior to beginning the Project Completion Report. Once the closeout process is started in TDA-GO, no further Payment Requests can be submitted within the system.
  - Marking “final” on a Payment Request indicates that no further grant or match funds will be expended in any budget category, and all remaining funds may be deobligated. Each grant should only ever have one Payment Request marked “final”.
  - Final administration costs not claimed on the final Payment Request will not be eligible for reimbursement.
  - With prior approval, the Grant Recipient may request to reserve funds for certain outstanding costs by submitting a Payment Request for estimated costs that does not yet include the required invoice documenting actual costs. Approval for use of this option must include a statement by the TxCDBG Director in the *Notes* page of the Payment Request. The limited circumstances for reserved funds include:
    - Costs of producing a single audit for the fiscal year in which the closeout is due;
    - Costs associated with litigation;
    - Other costs approved in advance by TDA staff and documented on the *Grant Overview* page in TDA-GO.
- All match funds or in-kind contributions must be identified on a Payment Request. The ratio of actual match funds to grant funds requested for payment must meet or exceed the percentage match commitment in the Grant Agreement.
- No more than 16% of the combined TxCDBG grant funds expended for construction and acquisition/relocation activities may be expended for administrative costs. No more than 25% of the combined TxCDBG grant funds expended for construction and acquisition/relocation activities may be expended for engineering costs apart from exceptional cases. If the Grant Recipient deobligates funds from the grant during the closeout process, the administrative costs and the engineering costs charged to the grant will be reevaluated to ensure that final costs are within 16% administrative costs or 25% engineering costs of the actual construction and acquisition/relocation grant funds utilized. For more information, include circumstances where an exception to this policy may be considered, see *Chapter 2 Financial Management*.

- **All funds not included in a Payment Request submitted prior to the closeout process will be deobligated from the Grant Agreement and will not be available for reimbursement.** The Grant Recipient must acknowledge the total amount of deobligated funds by entering this amount in the appropriate field.  
**NOTE:** If additional deobligated funds are identified as a result of disallowed costs or ineligible requests, TDA staff will revise this field and include documentation of the amount and justification.

## Grant Performance

- The Grant Recipient must confirm that the current Grant Agreement Performance Statement is accurate by checking the box in the *Grant Performance* section of the PCR and uploading the copy initialed by the AO in the provided box.
- **Direct Household Beneficiaries** - If the grant includes work on private property funded through grant or match funds, including water and sewer service connections, the Grant Recipient must mark the relevant question in the affirmative and attach evidence that the households occupying those properties are in fact receiving a benefit:
  - List the name, address, number of beneficiaries, and income level of each household;
  - Documentation that beneficiaries are receiving services for such projects, such as:
    - Copies of utility bills for all beneficiary households;
    - Printout of accounts from utility billing system;
    - Letter from the utility provider signed by the managing authority certifying an attached list of account holders and households are receiving services; or
    - Other reasonable documentation approved by TDA.
- **Direct Job Creation Beneficiaries** – if the grant includes job creation activities, mark direct beneficiaries as “yes” and upload as Evidence of Benefit a list of all employees identified on the final payroll and claimed as jobs created or retained as a result of the grant. This list must include for each employee:
  - Name;
  - Full time or part time status as described in Section D; and
  - LMI status.
- **Final Project Map** – Upload a map clearly documenting the work performed under the grant. This map must identify the *exact* locations of all project improvements and *must* be consistent with the Grant Agreement Performance Statement. Do not include work planned or designed but not actually constructed or performed. Maps from the application or the design phase of the project will not be accepted. Complete record drawings are not required.  
**NOTE:** For planning grants, upload the cover page of the final planning document in the field. For FAST Fund purchases, upload a photo(s) of the purchased vehicle or equipment.
- **Final Project Invoice(s)** – Upload the final invoice for each construction (or other primary activity) contract. The invoice(s) must demonstrate the actual work performed and quantities completed and must be consistent with the work and quantities identified in the Grant Agreement Performance Statement (generally within 15% variance or less).
- **Calculation of Unit Conversion** – If construction contract units of measure differ from the units used in the Grant Agreement, provide the method used to convert constructed quantities to the units required by the Performance Statement. For example, provide a formula or narrative explanation to demonstrate that the square yards documented in the construction contract are equivalent to the linear feet of improvements required by the Performance Statement. An engineer’s statement may also be uploaded to the PCR to provide relevant information, as needed.
- **Publication and Evidence of Final Public Hearing** – See *Chapter 1 Administration and Reporting* for detailed explanation of documentation required for public hearings.
- **Additional Documentation** – This field is optional and may be used for any additional information required to document closeout of the grant.

- TDA recommends attaching **before and after** photos for each project.
- Additional rows may be added by clicking the “+” button.

### **12.2.2 Conditional Project Completion**

The closeout process confirms that the beneficiaries of the project are actually receiving the service or a benefit from the improvements required by the Grant Agreement to satisfy the National Program Objective. There are some circumstances where TDA may allow the closeout process to begin prior to the Grant Recipient’s final certification that this benefit has been received. In such a case, the Grant Recipient must contact the TxCDBG Director(s) to request approval prior to submitting the *Project Completion Report*.

#### **Conditional Completion of Projects that Require Regulatory Approval**

Regulatory approval required by other state and federal agencies prior to placing the improvements into service should be obtained prior to considering the project complete. For example, a Texas Commission on Environmental Quality (TCEQ) interim approval for a new well must be issued before the well can be placed into service and the beneficiaries are able to benefit from the project. Reverse osmosis systems, arsenic removal improvements, and other innovative technology have similar requirements for TCEQ approval.

Grant Recipients are strongly encouraged to ensure that all project approvals are received prior to certifying the project completion. However, TDA will accept closeout documentation prior to receipt of such an approval under certain conditions:

- Complete documentation required to request approval for the project must be submitted to the regulatory agency **prior to** the submission of the PCR, including all required testing or supporting data; and
- The public hearing notice must disclose that the project has not been approved for use by the regulatory agency.

Once the agency responds to the project approval information, TDA will proceed as follows:

- **If the Project Approval is Granted by the Regulatory Agency** – TDA will proceed with the closeout process; no costs will be disallowed based on the additional time for approval and no additional public hearing will be required.
- **If the Project is Not Approved for Use** – TDA will decline the PCR if the regulatory agency does not approve the project based on the information submitted prior to the PCR due date. This means that if any substantial revision or re-testing is required after the closeout documents are submitted to TDA, the PCR will be considered delinquent, generally resulting in the loss of final administrative funds. The closeout process must be restarted in TDA-GO, including a new public hearing once the project received the required regulatory approval.

#### **Other Conditional Completion of Projects**

TDA may accept closeout documentation prior to final certification of the National Program Objective under limited circumstances other than regulatory approval. The Grant Recipient may submit a written request to [CDBGReporting@TexasAgriculture.gov](mailto:CDBGReporting@TexasAgriculture.gov) for TxCDBG Director approval under the following conditions:

- The TxCDBG grant is part of a project funded through multiple funding agencies, and the TxCDBG-funded activities are complete while related activities are not yet complete;
- The TxCDBG grant is involved in litigation or other disputes regarding workmanship; or
- Other circumstances approved in writing by TxCDBG staff.

#### **To Request Conditional Completion**

- On the Grant Overview page of TDA-GO, Special Requests section, enter the Request for Conditional Completion and upload documentation of the pending issue.

- Notify the assigned Grant Specialist of the pending request.
- Once the Conditional Closeout is approved, proceed with closeout procedures as described in this chapter. The PCR cannot be submitted within TDA-GO while Conditional Completion has been requested but not approved.
- TDA staff will review the closeout documentation and change the status of the conditionally complete grant to *Closeout Revisions Required* while the documented issue is pending.

### **Final Acceptance of National Program Objective**

Once the pending issues are resolved, the Grant Recipient must immediately complete the remaining fields in this section of the PCR:

- Upload documentation of the resolution, including regulatory agency approval received, litigation settlement, etc.; and
- Enter the date the resolution was effective.
- Change the status of the grant to *Closeout Submitted* to resume the closeout process.

The grant will not be changed to *Grant Closed* status until the pending issues are resolved with documentation submitted to TDA, and the benefit is confirmed.

The Grant Recipient may be permitted to submit a new application for funding that is subject to the Progress Threshold #2 while the grant is conditionally complete; however, a Grant Agreement for new TxCDBG funding will not be issued until the benefit is confirmed through the above documentation. Refer to the applicable Request for Applications/Application Guide for information regarding Progress Threshold #2.

### **12.2.3 Section 3**

The closeout process includes a final section on Section 3 opportunities, see *Chapter 10 Civil Rights* for details on this program reporting requirement.

- Reportable labor hours entered on each Materials and Services Report, *Work Completed* page, are summarized in the Materials and Services Summary Report and must be confirmed in the *Confirmation of Final Project Details* section of the PCR.
- Separately, confirm whether the grant created one or more new employment opportunities. These opportunities may be new jobs created by the Grant Recipient or its contractor to complete the project or may be vacancies in existing jobs that were filled in order to complete the project. If yes, select the corresponding radio button and include the number of new opportunities and success in recruiting Section 3 workers in the explanation field below.
- Document the Grant Recipient's efforts to promote Section 3 opportunities. Choose the most significant effort from the dropdown menu and document other efforts in the text field below.

### **12.2.4 Direct Beneficiaries**

If the Grant Recipient indicated on the PCR that the project included direct benefit, the *Direct Beneficiaries Form* will become available as a separate page. Provide demographic information for the total number of persons receiving direct household or job creation benefit from the project. This information must be reported to HUD.

- Report the total number of individual beneficiaries, and the total number of households identified for direct benefit activities (14A and 014 Housing Rehabilitation Benefit Areas, 18A job creation Benefit Areas).

- Beneficiaries of area wide activities, such as 03J Water/Sewer Improvements or 03K Street Improvements, are not considered direct household beneficiaries and should not be included on the *Direct Beneficiaries* page.
- Count each individual direct beneficiary only once, even if the grant includes several Benefit Areas for the household. For example, if a household benefits from both utility connections (14A) and substantial housing rehabilitation (014), count the individuals in that household only once.
- Ensure that the same total number of persons are reported for income level, gender, ethnicity, and race demographics.

For projects providing housing rehabilitation/reconstruction, an additional section will become available based on an affirmative response, see *Section C Housing Rehabilitation* for detailed instructions.

For projects creating or retaining jobs, an additional section will become available based on an affirmative response, see *Section D Texas Capital Fund* for detailed instructions.

## **12.3 Submitting the Report**

When all closeout information and documentation has been completed on the PCR, the Authorized Official must certify that the PCR is accurate and complete.

- The Authorized Official must check the certification box on the *Project Completion Report* page and click Save.

By certifying the Project Completion Report, the Authorized Official is certifying that

- All activities undertaken with funds provided under the grant identified in this report, have, to the best of their knowledge, been carried out in accordance with the Grant Agreement;
- The information contained in the PCR is accurate to the best of their knowledge;
- All records related to Grant Recipient activities are available for review;
- TxCDBG funds were not used to reduce the level of local financial support for housing and community development activities;
- 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 related to the capital costs of such public improvements that are financed from revenue sources other than such funds; or (b) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, Grant Recipient certifies that it lacks sufficient funds under this grant to comply with the requirements of clause (a);
- The persons benefitting from the activities described in Grant Agreement Details – Performance Statement, of this Grant Agreement are receiving service or a benefit from the use of the new or improved facilities and activities;
- 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 Grant Agreement in excess of the amount identified in the Certificate of Expenditures table as TxCDBG Reserved Funds; and
- The expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the federal award. They are aware that any false, fictitious, or

fraudulent information, or the omission of any material fact, may subject them to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.<sup>1</sup>

After the Authorized Official certifies the PCR, navigate to the Status Options section on the left navigation menu and select *Submit Closeout*. Once grant status is changed to *Closeout Submitted*, TxCDBG staff will review the report for accuracy and completeness.

- Incomplete reports will not be accepted and TDA staff will return the status of the grant to *Closeout In Process*. **This means that the PCR will not be submitted and will be considered delinquent if the closeout due date has passed.** The PCR must be corrected and submitted in TDA-GO.
- PCRs that include serious deficiencies or information that does not reflect the Performance Statement and/or Budget will not be accepted and will be returned to *Closeout In Process* status.
- For minor deficiencies and corrections, TDA staff will change the status of the grant to *Closeout Revisions Required*, which will allow the Grant Recipient to correct the deficiencies. Required revisions will be identified in the Grant Specialist Notes field at the bottom of the PCR page; if more detailed instruction is required, TDA staff will create an entry in the *Notes* page of the grant document. Once corrected, within fifteen (15) days of the deficiency notice, change the status of the grant to *Closeouts Submitted* to continue the closeout review process.

### Closeouts Due Date

The grant status must be changed to *Closeout Submitted* status no later than **sixty (60) days after the Grant Agreement end date** in order to comply with the terms of the Grant Agreement. The closeout due date is identified in the Grant Agreement and in the *Basic Grant Information* section of the PCR.

Late submittal of a PCR may affect a Grant Recipient's current or future TxCDBG funding.

- Failure to submit the closeout by that date will result in a financial penalty of \$3,000. The penalty will generally be assessed to the administrative line item, regardless of the reason for the late submission. Financial penalties are reductions in the total grant funds available under the agreement; the funds will be deobligated and may not be transferred to other budget line items by minor or full budget amendment.
- Requests for payment on all open grants for the Grant Recipient may be held until an acceptable PCR is received.
- New awards may be placed on hold until an acceptable PCR is received, and the award may be withdrawn if the delinquencies are not resolved within ninety (90) days of the award announcement.
- Future requests for funding will be subject to scoring penalties for failure to timely submit closeout documents. Refer to the applicable Request for Applications/Application Guide for information regarding past performance scoring criteria.
- Continual unsatisfactory performance and delays in submitting closeout documents may be considered evidence of a lack of administrative capacity for future TxCDBG funding.

## 12.4 Grant Closeout

The grant is not considered **closed** until the following steps have been completed:

1. The Grant Recipient submits the PCR, certifying that the project is complete, and all requirements have been met.
2. TDA's TxCDBG monitoring staff completes all required monitoring reviews and changes the status to Monitoring Complete.

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<sup>1</sup> U.S. Code Title 18, §1001 and Title 31, §§3729-3730 and 3801-3812



3. TDA staff reviews all grant closeout documentation, approves all payments, and update the grant status to **Grant Closed** (formerly referred to as “Administratively Complete”).
4. The Grant Recipient must also complete an Organizational Compliance – Single Audit Report for each fiscal year from the date of award to the date the PCR was submitted, see *Chapter 14 Audit Requirements* for additional information.

**NOTE:** Grant closeout does **not** begin the record retention period for the grant. The beginning of the record retention period will be indicated by a change in status of the grant to Funding Year Closed. Please see *Chapter 1 Administration and Reporting* for further information on record retention requirements.

## **Resources**

Resource Number	Description	URL
	How to Complete the Closeout Process	<a href="#">TxCDBG Current Training Materials</a>

# CHAPTER 13

## MONITOR REVIEW

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# CHAPTER 13

## MONITOR REVIEW

### 13.0 Introduction

The Texas Community Development Block Grant (TxCDBG) Program of the Texas Department of Agriculture (TDA), Office of Rural Affairs is responsible for ensuring that CDBG activities are completed, and funds expended in accordance with agreement provisions and applicable state and federal rules, regulations, policies, and related statutes. In accordance with this responsibility, TDA has established the agreement compliance process.

TDA has established risk-based procedures to determine compliance with agreement provisions and applicable state and federal rules, regulations, policies, and related statutes that include Grant Recipient self-administered monitoring reviews, TDA desk reviews, or on-site reviews and visits of project sites as part of the monitoring process. The monitor review includes an analysis of Grant Recipient records and may require completion of questionnaires, interviews with local government staff and program participants, and other information gathering procedures. TDA views this process as an important part of agreement compliance, and it is important that responses to requests for documents at various stages of a monitoring review and responses to monitoring reports be submitted in a timely manner.

Program compliance is conducted to meet the following objectives:

- Review Grant Recipient performance. A Grant Recipient's performance will be monitored to ensure that activities have been completed and beneficiaries served in accordance with a Grant Agreement's Performance Statement and that funds have been expended for eligible costs as identified in the budget;
- Review agreement records for compliance. A Grant Recipient's performance will be monitored to ensure compliance with TDA requirements, as outlined in the TxCDBG Grant Agreement and other applicable state and federal rules, regulations, policies, and related statutes;
- Prevent fraud and abuse. A Grant Recipient's systems and other policies and procedures used to administer TxCDBG funds will be monitored to ensure that adequate protections against fraud and misuse of funds are in place;
- Identify any necessary corrective actions. Compliance monitoring performed through a self-monitoring review or through a TDA desk review or on-site review could result in prescribed corrective measures to be carried out by the Grant Recipient in order to remediate non-compliance or to address performance deficiencies; and
- Identify technical assistance needs. A monitoring review may reveal a need for additional technical assistance for specific area of project implementation such as environmental review, labor standards administration, or recordkeeping.

Recurrent unsatisfactory performance and delays in submitting responses to documents requests, Monitor Review Reports and delays in timely submitting close-out documents may result in a reduction in funding or it may affect a Grant Recipient's eligibility for future TxCDBG funding.

### 13.1 Monitor Review Methods

TDA utilizes several methods for conducting comprehensive monitoring reviews of Grant Recipient compliance with TxCDBG programmatic rules and requirements pursuant to the Grant Agreement. The methods are self-monitoring, desk review, and on-site review. TDA uses a risk assessment tool to objectively evaluate the programmatic compliance risk of TxCDBG-funded projects, which is then used to determine the method of compliance monitoring. Each method of review requires an examination of the Grant Recipient's project records to assess compliance with a specified scope of program requirements in the standard categories listed below. The scope of compliance duties is the same for all methods of review. However, non-standard checklist categories may be included in the review for special types of projects such as housing rehabilitation or projects requiring relocation of displaced persons.

- Procurement of professional services/administration services
- Environmental review (unless previously selected for review by TDA staff)
- Construction/materials agreement procurement review
- Special conditions review
- Labor standards review
- Fair housing and equal opportunity review
- Acquisition of real property review
- Force account review

A Monitoring Review for all methods will generally be conducted when:

- The Grant Agreement has not been previously monitored, at least seventy-five (75%) percent of the TxCDBG funds are drawn, and the construction or project activities are substantially completed; or
- TDA has received a *Project Completion Report*, regardless of the percentage of funds drawn.

### **13.1.1 Self-Monitoring Review**

A TxCDBG agreement rated as low risk generally qualifies as a compliance review to be conducted through Self-Monitoring. At least ten percent (10%) of low-risk agreements will be randomly selected for a desk review. This method allows the Grant Recipient and a TxCDBG certified administrator to review the source documentation used to determine compliance with federal, state, and program requirements and certify the results. The TDA Program Monitor will then review the certified results which the Authorized Official has submitted in TDA-GO, including any self-reported findings and corrective actions taken. TDA Program Monitoring staff will conduct a concurrent desk review of the Grant Recipient's financial management records to assess performance for adequate controls, recordkeeping, cost eligibility, and appropriate receipt and disbursement of project funds.

The self-monitoring review includes the following steps by TDA staff:

- Notify the Grant Recipient of the TxCDBG Grant Agreement(s) selected for self-monitoring review and explain the purpose of the review.
- Request the necessary documentation:
  - All financial management records to be uploaded in digital format to the TDA-GO grant management system, and
  - Completed self-monitoring checklist, certified by the chief local official (certification occurs when the authorized official changes the status of the Monitoring Form to transmit the checklists to TDA in TDA-GO); For detailed instructions on completing the self-monitoring checklists, see *Self-Monitoring Reviewer Instructions (Form 1303)*.
- Review the applicable financial documents and evaluate compliance, which includes notifying the Grant Recipient of required corrective action and requesting additional documents and information as needed; and
- Follow up after receiving the certified results of the self-monitoring review with an acceptance of the completed checklists or with instructions for additional corrective action required by the Grant

Recipient to address any outstanding compliance issues in the scope of the review. The acceptance letter will also note satisfactory completion of the financial management desk-review.

### **13.1.2 Desk Review**

TDA program monitors generally conduct a desk review for medium-risk agreements. A desk review may also be conducted for the following situations:

- A low-risk agreement that has been randomly selected for a full desk review;
- An interim review for an alleged program policy violation which has been referred to the program monitoring section for compliance review; and/or
- TDA reserves the right to conduct a desk review at its discretion.

At least two (2) weeks prior, TDA staff notifies the Grant Recipient in writing of a scheduled desk review.

The monitoring desk review includes the following steps by TDA staff:

- Notify the Grant Recipient of the TxCDBG agreement(s) selected for desk review, explain the purpose of the review, and request agreement and project related documents to be uploaded in digital format to the Monitoring Form in TDA-GO;
- Review the applicable agreement documents and evaluate compliance; and
- Follow up within thirty (30) days of the desk review with a formal written report of the Grant Recipient's overall performance.

**NOTE:** The scope of review, complexity of issues, or number of findings on a review may require additional time to provide a formal report.

### **13.1.3 On-Site Review**

The on-site review may be conducted in the following situations:

- TDA policy requires on-site review of the agreement records and project site for specially funded grants;
- Risk assessment of the agreement results in a high-risk rating and at least fifty percent (50%) of the TxCDBG funds are drawn;
- A complaint is received or TDA becomes aware of a serious matter of alleged non-compliance which warrants an on-site monitoring visit; and/or
- TDA reserves the right to conduct an on-site review at its discretion.

At least two (2) weeks prior, TDA staff will contact the Grant Recipient to schedule and to explain the purpose of the on-site review.

The following steps by TDA staff are an integral part of the on-site monitor review:

- Conduct an entrance conference with appropriate local officials and their representatives to explain the purpose of the visit and schedule an exit conference;
- Review the applicable agreement files;
- Interview members of the Grant Recipient's staff, engineers, consultants and/or project beneficiaries, as appropriate, to discuss project-related issues;
- Tour project site(s); a local official and/or other local staff who are knowledgeable about the project activities should accompany the monitor on the project site tour to answer questions about quantitative accomplishments, projected construction completion, and whether beneficiaries are being served, etc.;
- Conduct an exit conference to present the preliminary conclusions that may be a result of the review; and
- Follow up within thirty (30) days after with a formal written report of the on-site review.

## **13.2 Monitoring Procedures**

The monitoring review process takes place in TDA-GO, using the Monitoring Form. Detailed step-by-step instructions for completing and submitting a response to a monitoring notice in TDA-GO may be found on the TDA website.

### **13.2.1 Documentation Request**

The Monitoring Form is initiated by TDA staff. The Grant Compliance Monitor will select the areas for review and method of review, as indicated on the Monitoring Documentation Request form. An automated email notice will be delivered to certified administrators (Project Director and Consultant roles) assigned to the grant document when the Grant Recipient at least two weeks prior to the date the requested documents are due.

- Compliance areas selected for Self-Monitoring review are indicated on the *Monitoring Documentation* page.
  - A separate tab is available for each self-monitoring checklist.
  - A response is required for every question on the checklist; if the checklist indicates clarifying information is necessary, provide the requested information.
  - During the self-review process, if it is discovered that the Grant Recipient failed to follow TDA procedures or violated a federal law or regulation, the Grant Recipient must self-report the violation and submit a Corrective Action Plan (CAP).
- Compliance areas selected for Desk Review monitoring are also indicated on the *Monitoring Documentation* page.
  - No checklist tab is available for these areas.
  - TDA staff must review certain TxCDBG agreement file support documents at the time of their review. Provide all documents listed on the *Support Documentation for Monitoring Review (Form A1302)*.
  - Depending on the type of project, other specialized agreement support documents may be requested by the respective TxCDBG monitor at the time of the review.
  - Upload documents related to the compliance area to the *Monitoring Documentation* page.
- Compliance areas selected for On-Site Monitoring are noted in the same manner as a Desk Review.
  - TDA staff will confirm the date for the on-site review and will record the date in the *General Comments* section of the *Monitoring Documentation* page.
  - Grant Recipients should review **Form A1302** and confirm that all required documents are available in the local files.
  - On the date of the scheduled review, TDA staff will conduct a review as outlined in section 13.1.3 On-Site Review

When the steps for Self-Monitoring and Desk Review above are complete, the Authorized Official must change the status of the Monitoring Form by selecting *Submit Monitoring Documentation* in the Status Options section of the navigation menu.

### **13.2.2 TDA Staff Review**

The TDA Grant Compliance Monitor will review the applicable documents and evaluate compliance.

- If the submitted documentation is acceptable, TDA staff will update the status of the document to Monitoring Report Complete.

- If non-compliance is identified which requires corrective action, or if additional information is needed in order to determine compliance, TDA staff will update the status of the document to *Corrective Action Required*, generating an automated notice to the Grant Recipient's certified administrators.
  - Once requested corrective action and/or additional documentation has been uploaded to TDA GO, the Authorized Official must update the status to Submit the Corrective Documentation.
- In most cases, the Grant Compliance Monitor will attempt to informally resolve preliminary findings by allowing the Grant Recipient to provide additional documentation, clarifying information, or by remediating a violation, if possible.

A formal written report of the Grant Recipient's performance, along with associated correspondence, will be uploaded to the *Monitoring Documentation Request* page by TDA staff.

## **13.3 Results of the Monitor Review**

### **13.3.1 Decision Categories**

As a result of the review, the monitor may reach one or more conclusions that indicate the following:

- The Grant Recipient's performance was in compliance with the requirements of the TxCDBG program;
- Project achievements were substantially the same as outlined in the agreement performance statement;
- Concerns about the project's performance must be brought to the attention of the Grant Recipient;
- Technical assistance was provided and/or is necessary; and/or
- Findings are revealed that require corrective actions.

The Monitor Review Report conclusion(s), positive or negative, are supportable, defensible, and adequately documented. The Monitor Review Report fully identifies every finding and concern.

According to HUD standards:

- A **finding** is a violation of law, regulation, or program policy that can result in a sanction.
- A **concern** is a matter that, if not properly addressed, can become a finding and can result in a sanction.

### **13.3.2. Non-Compliance Procedures**

If the monitor review reveals findings and/or concerns, the monitor will prepare a report that outlines the non-compliance findings and/or concerns, and identify resolutions and/or recommendations for each agreement that is reviewed. The Monitor Review Report is generally sent to the Grant Recipient within thirty (30) days of the on-site monitor review. If a response to the Monitor Review Report is required, the Grant Recipient must respond to TDA within thirty (30) days from the date of the Monitor Review Report or by the specified due date contained in the report. Failure to resolve non-compliance findings may result in the following actions:

- The remaining balance of the TxCDBG funds is placed on hold, or deobligated;
- Unresolved findings of questioned costs for use of funds may result in the disallowance of the related expenditures and require repayment of funds to TDA;
- Violations regarding the following categories may cause a reduction in the reimbursement of administrative fees in accordance with the table below. Note that if a financial penalty is

assessed and the TxCDBG budget does not contain an administration category, TDA will reduce funds from another budget line item.

Violation	Amount of Reduction
• Acquisition	10%
• Environmental clearance	15%
• Equal opportunity/fair housing	10%
• Labor standards	15%
• Financial management	10%
• Procurement	15%
• Inaccurate, incomplete, or delinquent reporting	10%
○ Progress Reports	
○ Project Completion Report	
○ Section 3 Report	
○ Required written response failing to meet an established due date	

In addition, violations can result in the Grant Recipient being penalized by other sanctions deemed allowable by program rules, regulations, policies, agreement provisions and law including, but not limited to:

- The Grant Recipient is penalized in the scoring process for future funding;
- The Grant Recipient is prohibited from applying for future funds in a certain TxCDBG grant fund category or all fund categories for a period of time based on the level of the noncompliant issues and required resolutions.

### **13.3.3 Corrective Action Plan**

TDA may require the Grant Recipient to develop a written corrective action plan (CAP) in response to compliance findings and/or performance deficiencies. The CAP is subject to TDA's review prior to acceptance. The CAP must specifically address the known cause(s) of the violation or performance issue and provide a substantive and practicable proposition for improving future performance. CAPs must be on the Grant Recipient's letterhead, must be signed by the certifying officer, and, *at minimum*, must include the following six parts.

1. A statement acknowledging the violation determined in TDA's monitoring finding.
2. Identify the cause of the violation and specify the process to be implemented for improving performance and complying with program requirements.
3. Identify who will be involved in the process.
4. Name a certifying officer responsible for implementing the plan.
5. Provide the date on which the corrective measures will be implemented, which includes a statement affirming that the CAP will remain in effect for any future TxCDBG awards.
6. A statement acknowledging that failure to effectively improve performance may result in a reduction of funding or other sanctions as determined by TDA.

### **13.3.4 Post Monitoring Report**

Following the conclusion of a comprehensive monitoring review, a Grant Recipient's project records for all areas of compliance remain subject to further examination where warranted. Findings of policy violations will result in appropriate enforcement action in accordance with 24 CFR §570.492 and 2 CFR §200.338. In addition, prior to close-out of a Grant Agreement the Grant Recipient may be required to provide supplemental financial documentation verifying any additional grant and local match transactions which were not previously included in the financial management desk review. The Grant



Recipient may also be required to produce additional documents, such as labor standards records, in order to confirm programmatic compliance with project activities that occur after issuance of the original monitoring report.

## Resources

Resource Number	Description	URL
A1302	Support Documentation for Monitoring Review	<a href="#">TxCDBG Implementation Manual</a>
A1303	Self-Monitoring Reviewer Instructions	<a href="#">TxCDBG Implementation Manual</a>

# CHAPTER 14

## AUDIT REQUIREMENTS

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# CHAPTER 14

## SINGLE AUDIT REQUIREMENTS

### 14.0 Introduction

This chapter presents federal audit requirements set forth by Title 31, Chapter 75 of the United States Code. The Grant Recipient is responsible for all funds expended and may be required to undergo a Single Audit or Program Specific Audit under federal guidelines.<sup>1</sup>

TxCDBG funds are reported under Assistance Listing Number (ALN) 14.228 – this identifier was formerly known as the Catalog of Federal Domestic Assistance (CFDA) number.

### 14.1 Types of Audits

The type of audit required is based on the total federal financial assistance expended by the Grant Recipient in any given fiscal year and/or number of federal programs involved. Currently, any government or nonprofit entity that expends \$750,000 or more in total federal awards within the Grant Recipient's fiscal year must have a Single Audit (SA) or a Program Specific Audit conducted for that year.<sup>2</sup> Note that similar single audit requirements apply to the expenditure of state awards, which are governed by the State of Texas Single Audit Circular contained in the Texas Grant Management Standards (TGMS) maintained by the Texas Comptroller of Public Accounts. The TxCDBG program's single audit reporting requirements in this chapter apply only to federal grant expenditures which are subject to federal policies.

**NOTE:** For fiscal years prior to 2015, request technical assistance to determine the single audit threshold.

#### 14.1.1 Program-Specific Audit

A program-specific audit is an audit of one federal program, such as CDBG. A program-specific audit is allowed when the recipient or sub-recipient expends \$750,000 or more in total federal assistance under only one federal program and the federal program laws, regulations or Grant Agreements do not require a Single Audit of the Grant Recipient.

#### 14.1.2 Single Audit

A single audit (SA) is an audit of:

- The Grant Recipient's entire financial statements referred to as a financial statement audit or Comprehensive Annual Financial Report (CAFR); and
- Federal awards from all applicable federal programs, referred to as the Single Audit Supplemental Reports (SAS). These reports include the Schedule of Expenditures of Federal Awards (SEFA).

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<sup>1</sup> 2 CFR §200.501-520

<sup>2</sup> Ibid.

A single audit is required when a Grant Recipient expends \$750,000 or more in federal awards during the local government's fiscal year.

### **14.1.3 Annual Financial Statement Audit**

In comparison, an Annual Financial Statement audit is required for all municipalities and counties by the Local Government Code. All Grant Recipients should be in compliance with these requirements; TDA requires that the Grant Recipient submit the most recent fiscal year audit report at the time of application (see application guide for audit report requirements), or at any time that TDA deems it necessary to review the Grant Recipient's financial capacity. This state audit requirement is separate from the federal SA requirements.

## **14.2 Conducting a Single Audit and Preparing the Report**

### **Step 1. Consider the Audit Threshold in TDA-GO**

Grant Recipients with any TxCDBG grant that was open at any point during the fiscal year must submit an Organizational Compliance - Single Audit Report (OCSAR) in TDA-GO. For this purpose, "open" means that at least one day in the fiscal year is *after* the Grant Agreement start date, and *before* the Project Completion Report is submitted. The OCSAR can be prepared as soon as the day after the fiscal year end of the Grant Recipient's organization.

The OCSAR must be completed by the Grant Recipient's certifying officer, designee, or certified public accountant firm and officially affirmed as to its accuracy and completeness. In TDA-GO, the OCSAR is a document associated with the Grant Recipient organization, rather than a grant specific document for which a third-party administrator has been procured or selected; administrative service providers do not have access to complete or certify the OCSAR form on the Grant Recipient's behalf.

Detailed step-by-step instructions for completing and submitting an OCSAR in TDA-GO may be found on the TDA website.

**NOTE:** If the OCSAR indicates that a Single Audit is *not* required, skip to **Step 6**. Even if a Grant Recipient is exempt from single audit submission requirements for a particular fiscal year, records must be available for review or audit by appropriate officials of the federal agency, TDA, and the General Accounting Office (GAO).

### **Step 2. Procure an Auditor**

If a single audit is required, the audit must be conducted by a Certified Public Accountant (CPA) who has a current license issued by the Texas State Board of Public Accountancy.

- The CPA must meet all general standards concerning qualifications, independence, due professional care and quality control as required by the current **Generally Accepted Government Auditing Standards**, including the requirements for continuing professional education and external peer reviews.
- Soliciting and contracting for professional auditing services are subject to all federal/state procurement requirements as discussed in *Chapter 5 Procurement Procedures*, see also *Sample Request for Proposals for Audit Services (Form A1402)*.

### **Step 3. Review Financial Documents**

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The auditor must review the Grant Recipient's local financial records.

The primary objectives of the audit are:

Financial and Administrative Compliance

- To determine that the Grant Recipient has implemented and utilized appropriate financial and administrative systems and controls to effectively discharge management responsibilities and to accomplish program objectives;
- To determine that the Grant Recipient is in compliance with applicable uniform administrative requirements;
- To determine if the financial statements are fairly presented in accordance with generally accepted accounting principles; and
- To determine that the Grant Recipient is in compliance with cost principles.

Grant Agreement Compliance

- To determine that the Grant Recipient has complied with Grant Agreement requirements and with applicable state and federal laws, rules and regulations; and
- To determine whether the financial information and/or reports submitted to TDA—including annual Single Audit Compliance forms, financial status reports (i.e., the Certificate of Completion, Project Completion Reports, etc.), and claims for reimbursements—contain accurate, reliable, and complete financial data, and are presented in accordance with the terms of the TxCDBG Grant Agreement.

General Compliance

General compliance requirements include where the auditee has complied with federal statutes, regulations, and the terms and conditions of the federal award.

Internal Accounting Controls Compliance

Reports on the study and evaluation of internal accounting controls should contain a review of those controls designed to provide reasonable assurance that federal or state programs are being managed in compliance with applicable laws and regulations. Control deficiencies, significant deficiencies, and/or material weaknesses identified as a result of the evaluation should include recommendations to correct noted deficiencies in financial management and/or administrative controls. Management letters referenced and Grant Recipient's responses and planned corrective action to resolve the findings noted must also be submitted.

Statement of Assurance

The auditor's reports on compliance should contain statements of assurance with respect to compliance with contracts, laws, and regulations pertaining to financial reports and claims for advances and reimbursements and a summary of all instances of noncompliance or a statement if there are no findings.

**Step 4. Prepare Opinion and Findings**

The CPA must provide an opinion on the audit. TDA will not accept the submission of any audits containing a disclaimer of opinion from the auditor for the overall financial statement audit. If separate opinions are issued for various subsets of financial records, any subset that includes TxCDBG funds and the general financial statement audit must include an auditor's opinion. TDA may request additional information or place programmatic restrictions on current or future grant funds based on the type of opinion issued.

### Findings and Recommendations

All audit findings and recommendations, in either the financial or compliance areas, should be fully addressed by the CPA firm with the Grant Recipient at the exit conference. This provides

- The Grant Recipient with advance information to initiate corrective action prior to receipt of the final audit report; and
- The auditor an opportunity to obtain additional information, explanations, or comments from the Grant Recipient which may have a bearing on the auditor's conclusions and should be incorporated in the audit report, if applicable.

### **Step 5. Submit Single Audit to the Federal Audit Clearinghouse**

If the \$750,000 expenditure threshold is met or exceeded, an SA report **must** be submitted to the Federal Audit Clearinghouse (FAC), not to TDA, within **nine (9) months** after the Grant Recipient's fiscal year end (FYE).

#### **The SA report must contain the following sections:**

- General purpose financial statements including applicable schedules, notes and opinion;
- Management's Discussion and Analysis of financial activities including financial highlights, overview of the financial statements and government-wide financial analysis as recommended by Governmental Accounting Standards Board (GASB) Summary of Statements No. 34;
- Single Audit Supplemental Reports based on revisions to 2 CFR §§200.501-.520, including:
  - The Schedule of Expenditures of Federal Awards (with the appropriate opinion, and notes to this schedule) which must
    - Include the appropriate federal and pass-through grantor,
    - Identify each program under which the Grant Recipient had expended federal funds either directly or passed through a state agency, and
    - Include the Grant Agreement or grant number, award amount, Assistance Listing Number, total amount expended per program, and total amount expended per federal funding source.

**NOTE:** Expenditures, while similar, are not the same as draws/grant payments. In general, expenditures are the actual money spent by the Grant Recipient during the fiscal year, whereas grant payments represent the amounts that have been disbursed to the Grant Recipient for eligible expenditures. For the SA report, only include recognized expenditures for that fiscal year based on the Grant Recipient's financial accounting system.

The Schedule of Findings and Questioned Costs including Corrective Action Plan (CAP) which states timeline and person responsible for corrective action; and:

- The reports on internal controls and compliance;
- The management letter issued by the CPA firm, if applicable; and
- The Grant Recipient's response to each finding listed in the management letter issued by the CPA firm.

**NOTE:** If the Control Deficiency Management letter and the Grant Recipient's response are not included with the SA report submitted to the Federal Audit Clearinghouse (FAC), TDA will require a copy of each document.

The SA reporting package **must** be electronically submitted to the FAC within thirty days of final presentation of the report by the CPA firm to the Grant Recipient, but no later than **nine (9) months** after the end of the Grant Recipient's fiscal year<sup>3</sup>. A copy of the SA report must also be available for public inspection within thirty (30) days of its completion.

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<sup>3</sup> 2 CFR §200.512

### Accepted Practices Statement

Each audit must indicate that the audit was done in accordance with generally accepted government auditing standards. It must express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles and state the nature of any qualifications.

Once the audit is submitted, upload to the OCSAR a copy of the emailed confirmation or screen shot from the FAC website verifying acceptance from the Federal Audit Clearinghouse.

### Step 6. Submit OCSAR in TDA-GO

The OCSAR **must** be submitted in TDA-GO within nine (9) months of the fiscal year end date.

**Failure to submit the OCSAR within nine (9) months constitutes non-compliance with grant requirements and all grant funds pending or awarded to the Grant Recipient will be suspended until an acceptable OCSAR is submitted.**

TDA strongly encourages Grant Recipients that have not met or exceeded the single audit reporting threshold to submit the OCSAR as soon as possible after the fiscal year ends.

### Step 7. Retain Audit Work Papers

Audit work papers must be retained for a period of **three (3) years** from the date of submission of Form SF-SAC to the FAC. Audit work papers are subject to review by the U.S. Departments of Labor and Housing and Urban Development, GAO, TDA, and the State Auditor's Office.

**NOTE:** This requirement to retain documentation applies to the work papers of the auditor only. TxCDBG grant records, including any audit reports documenting TxCDBG expenditures, must be retained as described in the TxCDBG Grant Agreement and *Chapter 1 Administration and Reporting*.

## 14.3 Audit Tracking and Resolution

Audit resolution is the process by which the state:

- Resolves questioned costs by either allowing or disallowing such costs; and
- Reviews and approves action proposed by the Grant Recipient to correct administrative findings and/or deficiencies.

### 14.3.1 Single Audit Review

Once the Organizational Compliance form is submitted in TDA-GO, TDA staff will review and either accept the report as submitted or return the document for additional information. TDA may also obtain a copy of the SA report directly from the FAC's online database as necessary and will ensure the Grant Recipient has satisfactorily addressed all questioned costs or findings cited in the report.

- Reports that have been accepted, shown in TDA in the status *Organizational Compliance Accepted*, remain subject to review by HUD and/or TDA.
- Reports that require correction or additional information will be returned to *Organizational Compliance In Process* status, and details of the requested updates will be saved in the Notes tab of the document.

### Audit Resolution

Single Audit review findings will address four specific areas:

1. Financial deficiencies that identify weaknesses in accounting systems or internal controls;

2. Program deficiencies which identify weaknesses in program operations or controls;
3. Cited instances of noncompliance with applicable laws and regulations; and
4. Cited instances of concern within the Management Letter involving either TxCDBG Grant Agreement(s) directly, or as Grant Recipient cross-cutting concerns that could have an ultimate impact on the TxCDBG agreement(s).

The Grant Recipient must resubmit the OCSAR including the Grant Recipient's response within thirty (30) days of TDA's notification that the original submission was not accepted. If the response is acceptable, the Grant Recipient will be notified through TDA-GO that the OCSAR is accepted.

- If a partial or incomplete response is received, TDA will request additional documentation for further review, or will request repayment of grant funds, based on a determination to
  - Allow or disallow the questioned costs; and
  - Accept or reject responses to administrative findings.
- If a written response is not submitted within thirty (30) days of the deficiency notification, the Grant Recipient is considered in non-compliance, and all current TxCDBG agreements and pending awards are suspended. Continued failure to respond and submit an acceptable OCSAR may result in escalating sanctions as determined by program management.

### **Findings and Determinations**

Determinations, sent to the Grant Recipient after receipt of response to resolution correspondence, will include:

- Based on the resolution response, TDA may determine that:
  - Additional documentation is required;
  - Questioned costs pertaining to CDBG funds that are identified in the single audit report, if any, are allowed or disallowed based on requirements of federal law, regulations, and terms of the Grant Agreement. Corrective action is required for the Grant Recipient to resolve all weaknesses noted in administrative findings, including repeat findings, and ensure reporting compliance; and/or
  - Sanctions are necessary when corrective actions are not performed and/or documentation is not provided.

**A Grant Recipient will not be considered in compliance with the TxCDBG program until all issues are adequately addressed and considered acceptable by TDA.**

### **14.3.2 Sanctions for Delinquent Single Audit Requirements**

Grant Recipients are required to comply with all SA reporting requirements, including timely submission of the OCSAR. Failure to meet SA reporting requirements will result in the following sanctions until the Grant Recipient meets all audit requirements:

- All existing TxCDBG grant amendment and payment requests will be placed on hold/suspended;
- Any TxCDBG grants awarded but not yet executed will be placed on hold/suspended, and new awards may be withheld;
- Eligibility to submit an application for future funding will be restricted in accordance with the current action plan; and
- Unresolved delinquencies may ultimately be reviewed by the Attorney General's Office.

Suspension of funding due to non-compliance is not grounds for a grant period extension. The Grant Recipient is expected to continue work on the project in order to not fall behind schedule while ensuring compliance with Single Audit requirements.

### **Regaining Program Eligibility When an Audit Cannot be Completed**



A Grant Recipient that has been delinquent in meeting SA reporting requirements by failing to submit an acceptable OCSAR is ineligible to receive any TxCDBG funds until the requirements are met, or for a period of five (5) years beginning on the date the audit was due. If more than one audit is delinquent, the five-year ineligibility period begins on the due date of the most recent delinquent audit.

After the five-year ineligibility period expires, TDA may, in its sole discretion, determine that the Grant Recipient is eligible to apply for and receive TxCDBG funding, provided the Grant Recipient submits the following:

- A certified, written explanation from the chief elected official that outlines the events that led to the Grant Recipient's inability to meet audit requirements, including any extenuating circumstances or force majeure that contributed to the failure. Inability to pay for a single audit will not constitute an extenuating circumstance.
- Documentation of the Grant Recipient's ability to meet future audit requirements, including the submission of annual audits conducted by a certified public accounting (CPA) firm or CPA for the most recent, consecutive three years prior to requesting eligibility for TxCDBG funding.
- Documentation that the Grant Recipient has retained a CPA firm or CPA with the expertise to assist the Grant Recipient with meeting single audit and OCSAR requirements.

**The SA report submission requirement is not waived.** If the Grant Recipient is able to submit the SA report (s) at a later time after becoming re-eligible to receive TxCDBG funding, it must immediately provide TDA with documentation confirming that the reports have been accepted by the FAC.

### **14.3.3 Audit Costs**

A Grant Recipient may request reimbursement of audit costs from grant administrative funds if:

- The threshold for requiring a Single Audit has been triggered through expenditures of federal funds (the costs of audits triggered by state funds are not eligible for audit cost reimbursement nor eligible as matching funds); and
- The audit is submitted in compliance with this chapter. Audit fees for delinquent audits are not eligible for reimbursement.

The percentage of costs charged to TDA for a Single Audit shall not exceed the percentage of TxCDBG expended funds to total expended grant funds from any agency during the fiscal year. This percentage is applied to the Single Audit portion of the Total Audit Cost.

$\begin{aligned}\text{Total audit costs} &= \text{Basic audit cost} + \text{Single audit cost} \\ \text{CDBG \% share} &= \text{CDBG expended dollars} \div \text{Total federal expended dollars} \\ \text{CDBG allowable costs} &= \text{Single audit cost} \times \text{CDBG \% share}\end{aligned}$
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When submitting a request for audit fees, the Grant Recipient shall submit an invoice that clearly shows the total cost of the single audit portion and the corresponding prorated charge per funding source. However, the Grant Recipient may request reimbursement for a higher percentage of the audit fees if appropriate documentation demonstrates a higher actual cost due to compliance testing or other factors.

If a Grant Agreement has expired, a request for reimbursement of audit costs must be made in accordance with all provisions of *Chapter 12 Grant Agreement Closeout* and the reserved funds for audit costs must be noted on the PCR, in order to be eligible for reimbursement under any TxCDBG Grant Agreement.

## **14.4 Laws & Regulations**

### **The Single Audit Act of 1984 and Single Audit Amendments Act of 1996**

The Act generally requires an annual, organization-wide audit of all state and local governments receiving federal or state funds. It requires that the audit be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. These standards relate to the scope and quality of audit effort and to the characteristics of professional and meaningful audit reports.

### **2 CFR Part 200, Subpart F**

Uniform Audit Requirements issued by OMB for federal awards, formerly found in OMB Circular A-133 were revised and codified in Title 2, Part 200, Subpart F, of the Code of Federal Regulations. The regulation requires that each local government expending \$750,000 or more of federal assistance for fiscal years starting on December 26, 2014, or later (or for FYE ending on or after December 25, 2015) conduct a single audit. The regulation defines requirements pursuant to the Single Audit Act.

### **Additional Relevant Documents**

- Generally Accepted Government Auditing Standards;
- Audits of State and Local Governmental Units, American Institute of CPAs (AICPA) Audit and Accounting Guide; and
- The TxCDBG Grant Agreement.

## **Resources**

Resource Number	Description	URL
	U.S. Comptroller General	<a href="https://www.gao.gov/">https://www.gao.gov/</a>
	Office of Management and Budget	<a href="https://www.whitehouse.gov/omb/">https://www.whitehouse.gov/omb/</a>
	Federal Audit Clearinghouse	<a href="https://facweb.census.gov/uploadpdf.aspx">https://facweb.census.gov/uploadpdf.aspx</a>
	AICPA Guide	<a href="https://www.aicpa.org/">https://www.aicpa.org/</a>
	Superintendent of Documents	<a href="https://www.gpo.gov/">https://www.gpo.gov/</a>
	How to OCSAR	<a href="#">TxCDBG Implementation Manual</a>
A1402	Sample Request for Proposals for Audit Services	<a href="#">TxCDBG Implementation Manual</a>

# **APPENDIX B**

## **REQUIRED CONTRACT PROVISIONS**

### **REQUIRED CONTRACT PROVISIONS**

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# REQUIRED CONTRACT PROVISIONS

*Italics – Explanatory; not contract language*

## All Contracts

THRESHOLD	PROVISION	CITATION
None	(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.	2 CFR 200 APPENDIX II (H)
None	The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, and the Texas Department of Agriculture (TDA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts and to closeout the City's/County's TxCDBG contract with TDA.	2 CFR 200.337
None	Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.	2 CFR 200.334
None	Sec. 176.003. CONFLICTS DISCLOSURE STATEMENT REQUIRED.  (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:  (1) the vendor enters into a contract with the local governmental entity or the local governmental entity is considering entering into a contract with the vendor; and  (2) the vendor:  (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that:  (i) a contract between the local governmental entity and vendor has been executed; or	<u>Chapter 176</u> of the Local Government Code

	<p>(ii) the local governmental entity is considering entering into a contract with the vendor;</p> <p>(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:</p> <p>(i) a contract between the local governmental entity and vendor has been executed; or</p> <p>(ii) the local governmental entity is considering entering into a contract with the vendor; or</p> <p>(C) has a family relationship with the local government officer.</p> <p>(a-1) A local government officer is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is:</p> <p>(1) a political contribution as defined by Title 15, Election Code; or</p> <p>(2) food accepted as a guest.</p> <p>(a-2) A local government officer is not required to file a conflicts disclosure statement under Subsection (a) if the local governmental entity or vendor described by that subsection is an administrative agency created under Section 791.013, Government Code.</p> <p>(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).</p>	
>\$10,000	<p><i>(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.</i></p> <p><b><i>Use the following language for contracts &gt; \$ 10,000:</i></b></p> <p><u>Termination for Cause</u></p> <p>If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City/County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying</p>	<p>2 CFR 200 APPENDIX II(B)</p>

	<p>the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City/County, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.</p> <p>Notwithstanding the above, the Contractor shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of contract by the Contractor, and the City/County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.</p> <p><u>Termination for Convenience of the City/County</u></p> <p>City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.</p> <p>[Parties should include the manner by which such termination will be effected and the basis for settlement or any other terms and conditions concerning payment upon such termination.]</p>	
>\$50,000	<p><i>(A) Contracts for more than \$50,000 must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.</i></p> <p><b><i>Use the following language for contracts &gt; \$50,000:</i></b></p> <p><u>Resolution of Program Non-compliance and Disallowed Costs</u></p> <p>In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good</p>	<p>2 CFR 200 APPENDIX II (A)</p>

	<p>faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. <i>[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]</i> If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.</p>	
≥\$100,000	<p>(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.</p>	<p>2 CFR 200 APPENDIX II (I) and 24 CFR §570.303</p>
Optional Contract Language for Procurement before Grant Funds Awarded	<p>Payment of the fees [described in ____ section] shall be contingent on 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.</p>	

## **Additional provisions for administration & engineering contracts associated with construction contracts**

*Italics – Explanatory; not contract language*

THRESHOLD	PROVISION	CITATION
>\$10,000	<p><i>2 CFR 200 Appendix II (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “<u>federally assisted construction contract</u>” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”</i></p> <p><i>Therefore, include the following EO clause (not in italics) in construction contracts including construction associated administration and engineering contracts &gt; \$10,000:</i></p> <p><b>\$60-1.4(b) Equal opportunity clause.</b></p> <p>(b) <i>Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:</i></p> <p><i>The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:</i></p> <p>During the performance of this contract, the contractor agrees as follows:</p> <p>(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action</p>	<p>41 CFR §60-1.4(b) And 2 CFR 200 APPENDIX II (C)</p>



	<p>to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.</p> <p>(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.</p> <p>(3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.</p> <p>(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.</p> <p>(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.</p> <p>(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit</p>	
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	<p>access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.</p> <p>(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.</p> <p>(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.</p> <p>The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.</p> <p>The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge</p>	
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	<p>of the agency's primary responsibility for securing compliance.</p> <p>The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.</p> <p>(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.</p> <p>(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.</p> <p>(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.</p> <p>(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.</p>	
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	[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997; 79 FR 72993, Dec. 9, 2014; 80 FR 54934, September 11, 2015]	
None	<p><i>§75.27 Section 3 contract provision</i>  <i>Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.:</i></p> <p>Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.</p> <p>(a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.</p> <p>(b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.</p> <p>(c) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.</p> <p>(d) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.</p> <p>(e) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.</p>	24 CFR §75.27

## Construction Contracts

*Italics – Explanatory; not contract language*

THRESHOLD	PROVISION	CITATION
<p>&gt;\$2,000 for Davis Bacon and Copeland “Anti-Kickback” Act;</p> <p>&gt;\$100,000 for Contract Work Hours and Safety Standards Act</p>	<p><i>HUD 4010 Federal labor standards provisions include:</i></p> <ol style="list-style-type: none"> <li><i>1. Davis Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by DOL regulations (29 CFR part 5);</i></li> <li><i>2. Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3); and</i></li> <li><i>3. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.)</i></li> </ol> <p><i>See HUD 4010 contract language in Appendix F. Inclusion of this language into the construction contract satisfies contract requirements of the separate acts noted.</i></p>	
<p>&gt;\$2,000</p> <p>(Satisfied with inclusion of HUD 4010)</p>	<p><i>Compliance with the Davis-Bacon Act (40 U.S.C. 3141 et seq.) as supplemented by Department of Labor regulations (29 CFR part 5) and with the Copeland “Anti-Kickback” Act (18 U.S.C. 874; 40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR part 3):</i></p> <p>(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give</p>	<p>2 CFR 200 APPENDIX II (D)</p>

	up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.	
>\$10,000	<p><i>2 CFR 200 Appendix II (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “<u>federally assisted construction contract</u>” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”</i></p> <p><i>Therefore, include the following EO clause (not in italics) in construction contracts including construction associated administration and engineering contracts &gt; \$10,000:</i></p> <p><b>§60-1.4(b) Equal opportunity clause.</b></p> <p><i>(b) Federally assisted construction contracts. Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:</i></p> <p><i>The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:</i></p> <p>During the performance of this contract, the contractor agrees as follows:</p> <p>(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard</p>	<p>41 CFR §60-1.4(b) And 2 CFR 200 APPENDIX II (C)</p>

	<p>to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.</p> <p>(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.</p> <p>(3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.</p> <p>(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.</p> <p>(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.</p> <p>(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for</p>	
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	<p>purposes of investigation to ascertain compliance with such rules, regulations, and orders.</p> <p>(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.</p> <p>(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.</p> <p>The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.</p> <p>The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge</p>	
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	<p>of the agency's primary responsibility for securing compliance.</p> <p>The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.</p> <p>(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.</p> <p>(d) Incorporation by reference. The equal opportunity clause may be incorporated by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Deputy Assistant Secretary may designate.</p> <p>(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.</p> <p>(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.</p>	
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	[43 FR 49240, Oct. 20, 1978, as amended at 62 FR 66971, Dec. 22, 1997; 79 FR 72993, Dec. 9, 2014; 80 FR 54934, September 11, 2015]	
<p>&gt;\$100,000</p> <p>(Satisfied with inclusion of HUD 4010)</p>	<p>(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.</p>	<p>2 CFR 200 APPENDIX II (E)</p>
<p>None</p>	<p>Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.</p> <p>(a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.</p> <p>(b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.</p> <p>(c) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.</p> <p>(d) The Contractor will certify that any vacant employment positions, including training positions, that are filled</p>	<p>24 CFR §75.27</p>

	<p>(1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.</p> <p>(e) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.</p>	
>\$150,000	<p>(G) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).</p>	2 CFR 200 APPENDIX II (G)
No Threshold	<p>§ 200.322 Domestic preferences for procurements.</p> <p>(a) As appropriate and to the extent consistent with law and to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.</p> <p>(b) For purposes of this section:</p> <p>(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.</p> <p>(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.</p> <p>(3) [Iron and steel products, Manufactured Products, and Construction Materials] used in this project comply with the Build America, Buy America Act (BABA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act (“IIJA”), Pub. L. 177-58.</p>	2 CFR §200.322

# **APPENDIX E**

## **Bid and Contract Documents for Engineering/Architectural/Surveying Services Contracts**

- Step by Step – Solicitation and Selection Process
- RFQ Samples - Cover Letter
- Samples - Newspaper Advertisement
- Sample RFQ for Engineering
- Sample Engineering/Architectural/Surveying Services Contract
- Monthly Status Report (Exhibit 1.)
- Conflict of Interest Questionnaire – Form CIQ (Texas Ethics Commission)
- Sample Engineering/Architectural/Surveying Rating Sheet

*All contractors, service providers, including Councils of Government (COGs) and subcontractors, must have their eligibility status verified (not suspended or debarred) in the System for Award Management ([www.SAM.gov](http://www.SAM.gov)) prior to any formal action authorizing the award of a contract to the contractor (examples of formal action include but are not limited to, authorizing resolution, authorizing ordinance, Council/Commissioners Court approval of award, contract execution, etc.). See Chapter 5 for more information.*

## **Step-by-Step**

### **Selection of Engineering/Architectural/Land Surveying Services**

For administration and other professional services, see Appendix D.

***Note: A contractor that intends to respond to the Request for Qualifications may NOT participate in the development or drafting of specifications, requirements, statements of work, or invitations for bids or requests for proposals/qualifications, including, but not limited to, the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals. (See 2 CFR 200.319(a))***

#### **Step 1. Establish or appoint a local Selection Review Committee**

The City/County should establish a Selection Review Committee to determine the criteria to select and rate competing Respondents. The committee must include at least one local elected official (such as the mayor or county judge), a member of the elected governing body, or a city/county employee with authority to act on behalf of the local elected official in this capacity. The committee must include at least one local official, such as a member of the elected governing body. The committee may consist of the entire local governing body; a subset of the governing body; other officers or employees of the locality; employees or officers of third-party public utilities served through the project; or other relevant persons.

Committee members may not have any real or potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings), and no person who might potentially receive benefits from CDBG-assisted activities may participate in the selection, award, or administration of a contract supported by CDBG funding if he or she has a real or apparent conflict of interest.

#### **Step 2. Determine the Scope of Services**

Determine the scope of services required. The scope of work should itemize the tasks needed, with timeframes and achievable goals.

[Sample scopes of work can be found in the sample Request for Qualifications (RFQ) in this Appendix.]

#### **Step 3. Determine the Written Selection Criteria to Evaluate Respondents**

Develop written weighted criteria that will be used to evaluate proposals and determine the contract selection award based on the proposed CDBG project. Cost or price is NOT used as a selection factor.

The local governing body, which has final authority to approve all professional services contracts, should be closely involved in the establishment of these written selection criteria.

#### **Step 4. Develop the Request for Qualifications (RFQ) Package**

Develop a RFQ package to issue to potential respondents. The RFQ package must contain the following three parts. See Sample RFQ in this Appendix.

- Cover Letter
- Request for Qualifications (RFQ)
  - The invitation, including specifications and attachments, must clearly describe the scope of services required and identify the factors that will be used to evaluate proposals.
  - It is possible to solicit and procure for preliminary engineering services and design engineering services in one step. A preliminary engineering report ( i.e. Table 2 of the TxCDBG application **which consists of a budget justification identifying project activities/materials with cost estimates**) must be prepared by a registered professional. The RFQ must clearly indicate that bids are being solicited for both preliminary engineering and design engineering services, and must clearly separate the scope of the services associated with preparing the preliminary engineering report for the TxCDBG application and the scope associated with designing the plans and specifications for the project.
  - The RFQ should request that the proposal include/address the following factors:
    - Statement of qualifications;
    - Work experience;
    - Capacity to perform the specific proposed task;
    - Technical expertise;
    - Ability to meet schedules;
    - Proximity to the area of the proposed work;
    - Familiarity with the area of the proposed work;
    - References – list of past/current clients; etc.
- **Conflict of Interest Questionnaire – Form CIQ (Texas Ethics Commission)**
- Sample Contract

### **Step 5. Advertise the RFQ**

Advertise RFQ in a locally distributed newspaper. This may be a paper published in the community, or a regional paper that is available locally.

The proposal deadline must be no less than 10 (ten) days after the publication of the advertisement and contact date of the RFQ.

The City/County may send a copy of its bid advertisement of the request for qualifications to [MWBE@texasagriculture.gov](mailto:MWBE@texasagriculture.gov) to help satisfy the MBE/SBE/WBE requirement of promoting small, minority and female owned businesses.

See Sample of the bid advertisement in this Appendix.

### **Step 6. Send RFQ to at least Five (5) Individuals / Firms**

Prepare a list of potential firms/individuals

- Use TDA's website or the Texas Comptroller of Public Accounts Historically Underutilized Business (HUB) Directory.
- Include MBE/SBE/WBE and/or Section 3 individuals/firms in the listing.

Send RFQ package to a minimum of five individuals/firms by email, fax, and/or return receipt mail.

- Document reasons for selecting such individuals/firms for local files.
- Document evidence of contacting five (5) individuals/ firms.
  - If email/fax, print verifiable evidence that email/fax sent.
  - If mail, send return receipt.

The proposal submission deadline must allow at least ten (10) days after the RFQ was sent to these individuals/firms.

### **Step 7. Evaluate and Rate Proposals**

After the proposal submission deadline, review each proposal received by the deadline and evaluate the Respondent's experience, work performance, and capacity to perform either:

- By using prior experience with Respondent(s); and/or
- By contacting all references for the Respondent.

Apply the established evaluation criteria to score each Respondent. Document ratings.

### **Step 8. Select Respondent**

Determine the most qualified provider of services on the basis of demonstrated competence and qualifications.

Once the most highly qualified respondent is identified, request a price proposal. As necessary, negotiate with that provider a fair and reasonable price.

If negotiations with the most highly qualified respondent are unsuccessful, formally end negotiations with that provider. Select the next most highly qualified provider and attempt to negotiate a fair and reasonable price. Repeat this process to select and negotiate with providers until a fair and reasonable priced contract can be awarded.

### **Step 9. Clear Respondent for Federal Requirements**

#### **SAM Clearance**

- Prior to awarding the contract, check the Respondent's status in the System for Award Management (SAM) to verify the Respondent is eligible to participate in the contract if awarded (is not suspended or debarred). ([www.SAM.gov](http://www.SAM.gov))

#### **Environmental Exemption Determination**

For planning services and environmental exemption guidance, please refer to Chapter 3 of this Manual.

### **Step 10. Approve the Selected Respondent and Award Contract**

Prepare contract for execution by all parties. (See Sample Contract in this Appendix.)

Present selection to the City Council/Commissioner's Court.

City Council/County Commissioner's Court approves selection of firm/individual.

- The local governing body has the final authority to award contracts but may select another Respondent if the minutes of the local governing body meeting include justification for the selection.

City council/county commissioner's court approves and executes contract.

- The award and the execution of the contract may/may not occur at the same meeting.

If the engineer is procured for both application assistance (pre-application) and implementation services (post award), the contract should clearly separate costs associated with preparation of the application and those actual engineering associated with the implementation of the TxCDBG project.

**NOTE: TxCDBG funds and matching funds may not be used to pay/reimburse for services dated prior to the date of the TxCDBG grant agreement with the exception of eligible pre-award costs/activities approved by TDA through the pre-agreement stratagem. See Chapter 1, Section 1.1.1 Pre-Agreement, regarding the timeframe in which costs are eligible under the pre-agreement stratagem. If a professional services contract is preselected and a contract is entered into prior to grant award, it should include a statement which states that in the event TxCDBG funds are not awarded to [City/County], the contract shall be terminated by [City/County].**

### **Step 11. Submit the Material and Service Record (MSR)**

Submit the MSR to TDA within 30 days of executing the contract. This requirement applies to all administrative and professional services subcontractors as well.

#### **Note - For Monitoring purposes:**

The City/County must maintain and make available all documentation utilized during the RFQ process, including but not limited to:

- Proof of advertisement(tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit)
- Proof that 5 or more Firms/Individuals were contacted for proposals
- A complete RFQ packet: Cover letter, request for qualifications, rating sheet (if utilized) and a sample contract
- Proof that all proposals were received by the City/County, with note or stamped date/time received
- Verification that the Firm and Principals of Firm are not on the SAM.gov debarred list (printout of SAM.gov page with date)
- Meeting Minutes documenting the award
- An Executed Contract



**SAMPLE 1- Request for Qualifications (RFQ) Cover Letter**  
***For Grant Implementation Only***

Date \_\_\_\_\_

Addressee \_\_\_\_\_

(To be sent to 5 or more local/regional firms)

Re: TxCDBG Contract No. \_\_\_\_\_

Dear \_\_\_\_\_ :

Attached is a copy of the City's/County's Request for Qualifications for \_\_\_\_\_ (name type of work e.g. Engineering/Architectural/Surveying Services) under its Texas Community Development Block Grant agreement with the Texas Department of Agriculture (TDA) to carry out \_\_\_\_\_ (e.g. water system improvements) in the City/County of \_\_\_\_\_. The submission requirements for this proposal are also included on the attached Request for Qualifications (RFQ) form. Firms and/or individuals should have past experience with federally funded programs. Please submit a proposal of services and statement of qualifications to:

Insert City/County Contact Person

Insert City/County Mailing Address

The deadline for submission of proposals is \_\_\_\_\_ (Date & Time - at least ten days from mailing/emailing). The City/County of \_\_\_\_\_ reserves the right to negotiate with any and all persons or firms submitting proposals, per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards.

The City/County of \_\_\_\_\_ is an Affirmative Action/Equal Opportunity Employer.

Sincerely,

\_\_\_\_\_  
Mayor/County Judge

**SAMPLE 2 - Request for Qualifications (RFQ) for  
Engineering/Architecture/Surveying Services - Cover Letter  
For Application Preparation and Grant Implementation Services**

Date \_\_\_\_\_

Addressee \_\_\_\_\_

(to be sent to 5 or more firms)

Re: Proposed Contract Funding for the \_\_\_\_\_ (specify year(s) and program fund(s) e.g. 2017-2018 Texas Community Development Fund)

Dear \_\_\_\_\_:

Attached is a copy of the City/County of \_\_\_\_\_'s Request for Qualifications for \_\_\_\_\_ (name type of work e.g. preliminary engineering services and design engineering services). These services are being solicited to assist the City/County of \_\_\_\_\_ in its application and project implementation of a contract, if awarded, from the \_\_\_\_\_ (specify year(s) and program fund(s) e.g. 2017-2018 Texas Community Development Fund) of the Texas Community Development Block Grant Program of the Texas Department of Agriculture (TDA). The City/County of \_\_\_\_\_ will be applying for such funding to support the following \_\_\_\_\_ (eligible activities e.g. water system improvements - if known) in the City/County of \_\_\_\_\_.

The submission requirements for this proposal are also included on the attached Request for Qualifications (RFQ) form. Firms and/or individuals should have past experience with federally funded programs. Please submit a proposal of services and statement of qualifications to:

Insert City/County Contact Person

Insert City/County Mailing Address

The deadline for submission of proposals is \_\_\_\_\_ (Date & Time - at least ten days from mailing/emailing). The City/County of \_\_\_\_\_ reserves the right to negotiate with any and all persons or firms submitting proposals, per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards.

The City/County of \_\_\_\_\_ is an Affirmative Action/Equal Opportunity Employer.

Sincerely,

\_\_\_\_\_  
Mayor/County Judge

Sample 1 - Newspaper Advertisement  
***For Grant Implementation Only***

(DATE)

(ENGINEERING/ARCHITECTURAL/SURVEYING SERVICES)

PUBLIC NOTICE

The City/County of \_\_\_\_\_ has recently received a Texas Community Development Block Grant award from the Texas Department of Agriculture (TDA) for \_\_\_\_\_ (e.g. *water system improvements*). Accordingly, the City/County is seeking to contract with a qualified Engineering/Architectural/Surveying Firm (individual/firm) to prepare all preliminary and final design plans and specifications, and to conduct all necessary interim and final inspections.

Please submit your proposal of services and a statement of qualifications for the proposed services to the address below:

*Insert City/County contact person*

*Insert City/County full address*

Proposals shall be received by the City/County no later than \_\_\_\_\_ am/pm on the \_\_\_\_\_ (*Date*) - which must be at least ten (10) days after this publication and contact dates of the RFQ). The City/County reserves the right to negotiate with any and all individuals or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

The City/County of \_\_\_\_\_ is an Affirmative Action/Equal Opportunity Employer.

***[NOTE TO GRANT RECIPIENT: The proposal deadline must be no less than 10 (ten) days after the publication of this advertisement and the contact dates of the RFQ.]***

Sample 2 - Newspaper Advertisement  
***For Application Preparation and Grant Implementation Services***

(DATE)

ENGINEERING/ARCHITECTURE/SURVEYING SERVICES

PUBLIC NOTICE

The City/County of \_\_\_\_\_ plans to apply for the upcoming \_\_\_\_\_ (e.g. *specify years and program fund(s) e.g. 2017-2018 Texas Community Development Fund*) from the Texas Community Development Block Grant (TxCDBG) Program of the Texas Department of Agriculture (TDA). Accordingly, the City/County is seeking to contract with a qualified Engineering/Architectural/Surveying Firm (individual/firm) to prepare all preliminary and final design plans and specifications, and to conduct all necessary interim and final inspections. These services are being solicited to assist the City/County in its application preparation and project implementation of a TxCDBG contract, if awarded, to support the following \_\_\_\_\_ (*include eligible activities e.g. water system improvements - if known*) in the City/County of \_\_\_\_\_.

Please submit your proposal of services and a statement of qualifications for the proposed services to the address below:

*Insert City/County contact person*

*Insert City/County full address*

Proposals shall be received by the City/County no later than \_\_\_\_\_ am/pm on the \_\_\_\_\_ (*Date*) - which must be at least ten (10) days after this publication and contact dates of the RFP). The City/County reserves the right to negotiate with any and all individuals or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

The City/County of \_\_\_\_\_ is an Affirmative Action/Equal Opportunity Employer.

***[NOTE TO GRANT RECIPIENT: The proposal deadline must be no less than 10 (ten) days after the publication of this advertisement and the contact dates of the RFQ.]***

**SAMPLE 3 - NEWSPAPER ADVERTISEMENT**  
**COMBINED ENGINEERING &**  
**ADMINISTRATION/PROFESSIONAL SERVICES**  
***For Application Preparation and Grant Implementation Services***

PUBLIC NOTICE

The City/County of \_\_\_\_\_ seeks to develop an application to the Texas Department of Agriculture for the 2017/2018 Community Development Fund for eligible activities associated to the Texas Community Development Block Grant Program. Accordingly, the City/County is separately soliciting (A) proposals from Administrative Consultants for Application Preparation and Project Administration and (B) qualifications from Texas-Registered Engineers to provide engineering services associated to Application Preparation and Project Implementation. Firms and/or individuals should have past experience with federally funded programs. Please submit a proposal of services and/or a statement of qualifications to:

*Insert City/County contact person*

*Insert City/County full address*

Submittals for these services shall be the City/County no later than \_\_\_\_\_ am/pm on \_\_\_\_\_ (Date), which is at least ten (10) days after this publication and contact dates of RFP/Q. The same firm will not be awarded contracts to provide both services. The City/County reserves the right to negotiate with any and all individuals or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

The City/County of \_\_\_\_\_ is an Affirmative Action/Equal Opportunity Employer

***[NOTE TO GRANT RECIPIENT: The proposal deadline must be no less than 10 (ten) days after the publication of this advertisement and the contact dates of the RFP/Q.]***

# Sample Request for Qualifications (RFQ) for Engineering/Architectural/Surveying Services *For Grant Implementation Only*

The City/County of \_\_\_\_\_ is seeking to enter into an [engineering/architectural/surveying] services contract with a state-registered [engineer/architect/surveyor]. The following outlines this request for qualifications.

I. Scope of Work - The [engineering/architectural/surveying] contract will encompass all project-related [engineering/architectural/surveying] services to the City/County of \_\_\_\_\_, including but not limited to the following:

- Preliminary and final design plans and specifications;
- Preparation of the bid packet;
- Conduct all field testing and inspections (interim and final); and
- Other special services.

Please specify actual tasks to be performed under each of these categories. A copy of the project description for these \_\_\_\_\_ (describe project) improvements is attached.

II. Statement of Qualifications - The City/County of \_\_\_\_\_ is seeking to contract with a competent [engineering/architectural/surveying] firm, registered to practice in the State of Texas, that has had experience in the following areas:

- Municipal construction including but not limited to waterworks, projects;
- Registered and in good standing as a professional engineer per the Texas Engineering Practice Act
- Federally-funded construction projects; and
- Projects located in this general region of the state
- Engineer/Firm is not debarred or suspended from the Excluded Parties List System (EPLS) of the System for Award Management (SAM) [www.SAM.gov](http://www.SAM.gov).

As such, please provide within your proposal a list of past local government clients, as well as resumes of all [engineers/architects/surveyors] that will or may be assigned to this project if you receive the [engineering/architectural/surveying] services contract award.

Also, please provide a copy of your current certificate of insurance for professional liability.

III. Evaluation Criteria - The proposals received will be evaluated and ranked according to the following criteria:

<u>Criteria</u>	<u>Maximum Points</u>
Experience	60
Work Performance	25
Capacity to Perform	<u>15</u>
<b>Total</b>	100

- IV. For this RFQ, Respondent's qualifications will be evaluated and the most qualified Respondent will be selected, subject to negotiation of fair and reasonable compensation.
- For costs of architectural/engineering (A/E) professional services, negotiations must occur after the initial selection of the engineer or architect as price cannot be used as a selection factor. (See 2 CFR 200.320(d)(5) and Texas Government Code § 2254.004)
- V. Deadline for Submission - The proposals received will be received no later than (Date) at the following address: \_\_\_\_\_.

**DISCLAIMER: This sample draft document was developed for TxCDBG grant projects and does not include all applicable provisions. This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification to insure that it is in compliance with any appropriate local, state and federal laws applicable.**

## Sample Contract

### ENGINEERING/ARCHITECTURAL/SURVEYOR SERVICES

#### PART I AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the CITY/COUNTY OF \_\_\_\_\_, hereinafter called the "City"/"County", acting herein by \_\_\_\_\_ hereunto duly authorized, and \_\_\_\_\_ hereinafter called "Firm," acting herein by \_\_\_\_\_.

#### WITNESSETH THAT:

WHEREAS, the City/County of \_\_\_\_\_ desires to [implement/construct/etc.] the following: \_\_\_\_\_ *[describe project]* under the general direction of the Texas Community Development Block Grant (hereinafter called "TxCDBG") Program administered by the Texas Department of Agriculture (TDA); and Whereas the City/County desires to engage \_\_\_\_\_ to render certain engineering/surveyor/architectural services in connection with the TxCDBG Project, Contract Number \_\_\_\_\_.

NOW THEREFORE, the parties do mutually agree as follows:

1. Scope of Services

The Firm will perform the services set out in Part II, Scope of Services.

2. Time of Performance - The services of the Firm shall commence on \_\_\_\_\_. In any event, all of the services required and performed hereunder shall be completed no later than \_\_\_\_\_.

3. Local Program Liaison - For purposes of this Agreement, the *[e.g. City Manager/County \_\_\_\_\_]* or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Firm. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

4. Access to Records - The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Firm which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City/County's TxCDBG contract with TDA.



5. Retention of Records - The Firm shall retain all required records for three years after the City/County makes its final payment and all pending matters are closed.
6. Compensation and Method of Payment - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed \$\_\_\_\_\_. Payment to the Firm shall be based on satisfactory completion of identified milestones in Part III - Payment Schedule of this Agreement.
7. Indemnification – The Firm shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the City/County and its agency members from and against any and all claims, costs, suits, and damages, including attorney’s fees, arising out of the Firm’s performance or nonperformance of the activities, services or subject matter called for in this Agreement, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.
9. Miscellaneous Provisions
  - a. This Agreement shall be construed under and accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in \_\_\_\_\_ County, Texas.
  - b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
  - c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
  - d. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.
  - e. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to an incorporated into this Agreement.
10. Extent of Agreement

This Agreement, which includes Parts I-V, [*and if applicable*, including the following exhibits/attachments: ☐] represents the entire and integrated agreement between the City/County and the Firm and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both City/County and the Firm.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: \_\_\_\_\_  
                    (Local City/County Official)  
\_\_\_\_\_  
                    (Printed Name)  
\_\_\_\_\_  
                    (Title)

BY: \_\_\_\_\_  
                    (Firm/Contractor’s Authorized Representative)  
\_\_\_\_\_  
                    (Printed Name)  
\_\_\_\_\_  
                    (Title)

## PART II

### SCOPE OF SERVICES

The Firm shall render the following professional services necessary for the development of the project:  
(Choose appropriate contracted services)

#### SCOPE OF SERVICES

1. Attend preliminary conferences with the City/County regarding the requirements of the project.
2. Determine necessity for acquisition of any additional real property/easements/right-of-ways (ROWS) for the TxCDBG project and, if applicable, furnish to the City/County:
  - a. Name and address of property owners;
  - b. Legal description of parcels to be acquired; and
  - c. Map showing entire tract with designation of part to be acquired.
3. Make any necessary surveys of existing rights-of-way, topography, utilities, or other field data required for proper design of the project. Provide consultation and advice as to the necessity of the City/County providing or obtaining other services such as auger borings, core borings, soil tests, or other subsurface explorations; laboratory testing and inspecting of samples or materials; other special consultations. The Firm will review any tests required and act as the City/County's representative in connection with any such services.
4. Prepare railroad/highway permits.
5. Prepare a preliminary engineering/architectural study and report on the project in sufficient detail to indicate clearly the problems involved and the alternate solutions available to the City/County, to include preliminary layouts, sketches and cost estimates for the project, and to set forth clearly the Firm's recommendations; to be completed within \_\_\_\_\_ days of execution of this Agreement.
6. Furnish the City/County copies of the preliminary report, if applicable (additional copies will be furnished to the City/County at direct cost of reproduction).
7. Make periodic visits, no less than every 30 days during the construction period, to the construction site to observe the progress and quality of the work, to ensure that the work conforms with the approved plans and specifications, and to determine if the work is proceeding in accordance with the Agreement.
8. Furnish the City/County a written monthly status report at least seven (7) days prior to the regularly scheduled council/commissioner's court meeting until the project is closed by TDA. The format for this report is attached to this Agreement as Exhibit 1.
9. Submit detailed drawings and plans/specifications to appropriate regulatory agency(ies) and obtain clearance.
10. Prepare bid packet/contract documents/advertisement for bids. At the time the bid packet is completed, the Firm shall also furnish to the City/County an updated written Estimate of Probable Costs for the Project.
11. Make 10-day call to confirm prevailing wage decision.
12. Incorporate any and all wage rate modifications or supersedes via bid addendum (if applicable).
13. Conduct bid opening and prepare minutes.
14. Tabulate, analyze, and review bids for completeness and accuracy.
15. Accomplish construction contractor's eligibility verification through [www.SAM.gov](http://www.SAM.gov).
16. Conduct pre-construction conference and prepare copy of report/minutes.
17. Issue Notice to Proceed to construction contractor.
18. Provide in all proposed construction contracts deductive alternatives where feasible, so that should the lowest responsive base bid for construction exceed the funds available, deductive alternatives can be taken to reduce the bid price.

19. Design for access by persons with disabilities for those facilities to be used by the public in accordance with Public Law 504.
20. Use TDA-approved forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond.
21. Consult with and advise the City/County during construction; issue to contractors all instructions requested by the City/County; and prepare routine change orders if required, at no charge for engineering services to the City/County when the change order is required to correct errors or omissions by the Firm; provide price analysis for change orders; process change orders approved by City/County and the Firm and submit to TDA for approval prior to execution with the construction contractor.
22. Review shop and working drawings furnished by contractors for compliance with design concept and with information given in contract documents (contractors will be responsible for dimensions to be confirmed and correlated at job site).
23. Resolve all payment requests within 14 days of receipt of signed pay request from the construction contractor.
24. Based on the Firm's on-site observations and review of the contractor's applications for payment, determine the amount owed to the contractor in such amounts; such approvals of payment to constitute a representation to the City/County, based on such observations and review, that the work has progressed to the point indicated and that the quality of work is in accordance with the plans, specifications and contract documents.
25. Recommend that a 10% retainage is withheld from all payments on construction contracts until final acceptance by the City/County and approval by TDA, unless State or local law provides otherwise.
26. Prepare Certificate of Construction Completion and Clean Lien Certificate. A Clean Lien Certificate may be prepared for each of the Prime Contractor(s) and each of the subcontractor(s).
27. Conduct interim/final inspections.
28. Revise contract drawings to show the work as actually constructed, and furnish the City/County with a set of "record drawings" plans.
29. The Firm will provide a copy of the final project record drawing(s) engineering schematic(s), as constructed using funds under this contract. These maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc (CD), which are compatible with computer systems owned or readily available to the owner. The digital copy provided shall not include a digital representation of the engineer's seal but the accompanying documentation from the Firm shall include a signed statement of when the map was authorized, that the digital map is a true representation of the original sealed document, and that a printed version with the seal has been provided to the City/County. In addition, complete documentation as to the content and layout of the data files and the name of the software package(s) used to generate the data and maps shall be provided to the owner in written form.

## SUBCONTRACTS

1. No work under this Agreement shall be subcontracted by the Firm without prior approval, in writing, from the City/County.
2. The Firm shall, prior to proceeding with the work, notify the City/County in writing of the name of any subcontractors proposed for the work, including the extent and character of the work to be done by each.
3. If any time during progress of the work, the City/County determines that any subcontractor is incompetent or undesirable, the City/County will notify the Firm who shall take reasonable and immediate steps to satisfactorily cure the problem, substitute performance, or cancel such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing

contained in this Agreement shall create any contractual relation between any subcontractor and the City/County.

4. The Firm will include in all contracts and subcontracts in excess of \$150,000 a provision which requires compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). The provisions shall require reporting of violations to TDA and to the Regional Office of the Environmental Protection Agency (EPA).
5. The Firm will include in all contracts and subcontracts in excess of \$150,000 provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
6. The Firm will include in all contracts and subcontracts in excess of \$10,000 provisions addressing termination for cause and for convenience by the City/County including the manner by which it will be effected and the basis for settlement..
7. The Firm will include in all contracts and subcontracts provisions requiring compliance with the following, if applicable:
  - a. Prime construction contracts in excess of \$2,000, compliance with the Davis-Bacon Act, as amended (40 U.S.C.3141-3144, 3146-3148) as supplemented by Department of Labor regulations (29 CFR part 5);
  - b. Prime construction contracts in excess of \$2,000, compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR part 3)
  - c. Contracts greater than \$10,000, the inclusion of the Equal Opportunity clause provided under 41 CFR 60-1.4(b) (Executive Order 11246);
  - d. Section 3 of the Housing and Urban Development Act of 1968;
  - e. Contracts exceeding \$100,000, compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352);
  - f. For contracts in excess of \$100,000 that involve the employment of mechanics or laborers, compliance with the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), including work week requirements and safety conditions for workers, as supplemented by Department of Labor regulations (29 CFR Part 5); and
8. The Firm will include in all negotiated contracts and subcontracts a provision which indicates that funds will not be awarded under this contract to any party which is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 2 CFR Part 2424. A certification shall be provided and received from each proposed subcontractor under this contract and its principals.
9. The Firm will include in all negotiated contracts and subcontracts a provision to the effect that the City/County, TDA, the Texas Comptroller of Public Accounts, the Comptroller General of the United States, the U.S. Department of Housing and Urban Development (HUD), or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.
10. The Firm will include in all contracts and subcontracts a requirement that the contractor maintain all relevant project records for three (3) years after the City/County has made final payment to the contractor and all other pending matters are closed.

## STANDARD OF PERFORMANCE AND DEFICIENCIES

1. All services of the Firm and its independent professional associates, consultants and subcontractors will be performed in a professional, reasonable and prudent manner in

accordance with generally accepted professional practice. The Firm represents that it has the required skills and capacity to perform work and services to be provided under this Agreement.

2. The Firm represents that services provided under this Agreement shall be performed within the limits prescribed by the City/County in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants under similar circumstances.
  3. Any deficiency in Firm's work and services performed under this contract shall be subject to the provisions of applicable state and federal law. Any deficiency discovered shall be corrected upon notice from City/County and at the Firm's expense if the deficiency is due to Firm's negligence. The City/County shall notify the Firm in writing of any such deficiency and provide an opportunity for mutual investigation and resolution of the problem prior to pursuit of any judicial remedy. In any case, this provision shall in no way limit the judicial remedies available to the City/County under applicable state or federal law.
  4. The Firm agrees to and shall hold harmless the City/County, its officers, employees, and agents from all claims and liability of whatsoever kind or character due to or arising solely out of the negligent acts or omissions of the Firm, its officers, agents, employees, subcontractors, and others acting for or under the direction of the Firm doing the work herein contracted for or by or in consequence of any negligence in the performance of this Agreement, or by or on account of any omission in the performance of this Agreement.
-

## PART III – PAYMENT SCHEDULE

City/County shall reimburse the Firm for professional services provided upon completion of the following project milestones per the following percentages of the maximum contract amount:

Milestone	% of Contract Fee
• Approval of Preliminary Engineering Plans and Specifications by City/County.	20%
• Approval of Plans and Specifications by Regulatory Agency(ies).	30%
• Completion of bid advertisement and contract award.	20%
• Completion of construction staking.	10%
• Completion of Final Closeout Assessment and submittal of “As Builts” to City/County.	10%
• Completion of final inspection and acceptance by the City/County.	10%
<b>Total</b>	100%

**NOTE:** Percentages of payment listed here are general guidelines based on engineering services typically provided. These are negotiable, and should serve only as a guide. Payment schedule should be tied directly to the actual Scope of Work identified in Part II - Scope of Services.

### SPECIAL SERVICES

Special Services shall be reimbursed under the following hourly rate schedule: (List all applicable services to include overhead charge).

Registered Surveyor	\$ _____
Survey Crew (3 members)	\$ _____
Project Engineer	\$ _____
Engineering Technician	\$ _____
Project Representative	\$ _____
Draftsman	\$ _____

The fee for all other Special Services shall not exceed a total of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_). The payment for these Special Services shall be paid as a lump sum, per the following schedule:

1. The Firm shall be paid upon completion of surveying, necessary field data, and acquisition data, if applicable, the sum of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).
2. The Firm shall be reimbursed the actual costs of necessary testing based on itemized billing statements from the independent testing laboratory, plus a \_\_\_\_\_ percent (\_\_\_\_%) overhead charge. All fees for testing shall not exceed a total of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_).
3. The payment requests shall be prepared by the Firm and be accompanied by such supporting data to substantiate the amounts requested.
4. Any work performed by the Firm prior to the execution of this Agreement is at the Firm's sole risk and expense.

## PART IV

### TERMS AND CONDITIONS

1. Termination of Agreement for Cause. If the Firm fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Firm violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City/County shall have the right to terminate this Agreement by giving written notice to the Firm of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Firm pursuant to this Agreement shall, at the option of the City/County, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Firm shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Firm shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of the Agreement by the Firm, and the City/County may set-off the damages it incurred as a result of the Firm's breach of the contract from any amounts it might otherwise owe the Firm.

2. Termination for Convenience of the City/County.

City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

[Parties should include the manner by which such termination will be effected and the basis for settlement or any other terms and conditions concerning payment upon such termination.]

3. Changes. The City/County may, from time to time, request changes in the services the Firm will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Firm's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. Resolution of Program Non-Compliance and Disallowed Costs. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Amendment and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.



5. Personnel.

- a. The Firm represents that he/she/it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City/County.
- b. All of the services required hereunder will be performed by the Firm or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
- c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City/County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.

6. Assignability. The Firm shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City/County thereto; Provided, however, that claims for money by the Firm from the City/County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the City/County.

7. Reports and Information. The Firm, at such times and in such forms as the City/County may require, shall furnish the City/County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. Records and Audits. The Firm shall insure that the City/County maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. The Firm and the City/County shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.

9. Findings Confidential. All of the reports, information, data, etc., prepared or assembled by the Firm under this contract are confidential and the Firm agrees that they shall not be made available to any individual or organization without the prior written approval of the City/County.

10. Copyright. No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Firm.

11. Compliance with Local Laws. The Firm shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Firm shall save the City/County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.

12. Conflicts of interest.

- a. Governing Body. No member of the governing body of the City/County and no other officer, employee, or agent of the City/County, who exercises any functions or responsibilities in

connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the City / County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.

- b. Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and the City/County, shall have any personal financial interest, direct or indirect, in the Firm or this Agreement; and the Firm shall take appropriate steps to assure compliance.
- a. The Firm and Employees. The Firm warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the City/County or this Agreement. The Firm further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and the City/County or in any business, entity, organization or person that may benefit from the award. The Firm further agrees that it will not employ an individual with a conflict of interest as described herein.

13. Debarment and Suspension (Executive Orders 12549 and 12689)

The Firm certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term “principal” for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Firm. The Firm understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

## **Federal Civil Rights Compliance.**

14. Equal Opportunity Clause (applicable to federally assisted construction contracts and subcontracts over \$10,000).

During the performance of this contract, the Firm agrees as follows:

- a. The Firm will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Firm will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Firm agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- b. The Firm will, in all solicitations or advertisements for employees placed by or on behalf of the Firm, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- c. The Firm will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
  - d. The Firm will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Firm's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - e. The Firm will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
  - f. The Firm will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
  - g. In the event of the Firm's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Firm may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - h. The Firm will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Firm will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Firm becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Firm may request the United States to enter into such litigation to protect the interests of the United States.
15. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

16. Section 109 of the Housing and Community Development Act of 1974. The Firm shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.
17. Section 504 of the Rehabilitation Act of 1973, as amended. The Firm agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.
18. Age Discrimination Act of 1975. The Firm shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
19. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) (if contract greater than or equal to \$100,000) The Firm certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract. The Firm shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
20. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.
  - (a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
  - (b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
  - (c) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
  - (d) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.

(e) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

**PART V**  
**PROJECT TIME SCHEDULE**  
**ENGINEERING/ARCHITECTURAL/SURVEYOR**  
**PROFESSIONAL SERVICES**

***INSERT YOUR OWN TIME SCHEDULE***

Exhibit 1.

## MONTHLY STATUS REPORT

Grant Recipient: \_\_\_\_\_ Date Submitted: \_\_\_\_\_

Grant No.: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

Project Status:

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Date of Last Inspection: \_\_\_\_\_

Name of Inspector: \_\_\_\_\_

Inspection Description:

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Projected Date of Construction Completion: \_\_\_\_\_

Amount of Last Pay Request: \_\_\_\_\_

Date of Last Pay Request: \_\_\_\_\_

Status of Last Pay Request: \_\_\_\_\_

List of Subcontractors Onsite

Name	Date Cleared by Grant Administrator
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_____	_____
_____	_____
_____	_____

*\*This report may be e-mailed or faxed to the Grant Recipient*

# CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

## For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## Engineer/Architect/Surveyor Rating Sheet

Grant Recipient \_\_\_\_\_  
 Name of Respondent \_\_\_\_\_  
 Evaluator's Name \_\_\_\_\_

TxCDBG Contract No. \_\_\_\_\_  
 Date of Rating \_\_\_\_\_

**Experience** -- Rate the respondent for experience in the following areas:

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>	<u>Comments</u>
1. Has previously designed _____ type of projects	20	_____	
2. Has worked on federally funded construction projects	10	_____	
3. Has worked on projects that were located in this general region.	10	_____	
Note: Location for A/E (Architect/Engineer) may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract. 2 CFR 200.319(b)			
4. Extent of experience in project construction management	15	_____	
5. Current Certification of TxCDBG Project Implementation Training	5	_____	
<b>Subtotal, Experience</b>	<b>60</b>	=====	

**Work Performance**

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Past projects completed on schedule	10	_____
2. Manages projects within budgetary constraints	5	_____
3. Work product is of high quality	10	_____
<b>Subtotal, Performance</b>	<b>25</b>	=====

**NOTE:** Information necessary to assess the respondent on these criteria should be gathered by contacting past/current clients.

**Capacity to Perform**

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Staff Level / Experience of Staff	5	_____
2. Adequacy of Resources	5	_____
3. Professional liability insurance is in force	5	_____
<b>Subtotal, Capacity to Perform</b>	<b>15</b>	=====

**TOTAL SCORE**

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
<input type="checkbox"/> Experience	60	_____
<input type="checkbox"/> Work Performance	25	_____
<input type="checkbox"/> Capacity to Perform	15	_____
<b>Total Score</b>	<b>100</b>	=====

# **APPENDIX F**

## **Bid and Contract Documents for Construction Contracts**

- Advertisement & Invitation to Bid
- Instruction to Bidders
- Sample Construction Contract
  - [Insert: HUD 4010 PDF into Construction Contract]
- Statement of Bidder's Qualifications
- Contractor's Certification Regarding Civil Rights
- Contractor's Certification Concerning Labor Standards and Prevailing Wage Requirements
- Non-Collusion Affidavit of Prime Bidder
- Bonds
- Attorney Review Certification (recommended)
- Certification Regarding Lobbying

*All contractors, service providers, including Council of Governments (COGs) and subcontractors, must have an active registration with System for Award Management ([www.SAM.gov](http://www.SAM.gov)) AND cleared (not suspended or debarred) prior to any formal action authorizing the award of a contract to the contractor (examples of formal action include but are not limited to, authorizing resolution, authorizing ordinance, Council/Commissioners Court approval of award, contract execution, etc.). See Chapter 5 for more information on SAM registration.*

# Construction

## Sample Advertisement and Invitation for Bids

The (name of Grant Recipient) will receive bids for (brief description of type and location of project) until (time) on (day and date) at (address of where bids are to be delivered). The bids will be publicly opened and read aloud at (time) on (day and date) at (address of bid opening location).

Bids are invited for several items and quantities of work as follows:

1. (List a brief description of the items of work and the quantities here.)
- 2.
- 3.

Bid/Contract Documents, including Drawings and Technical Specifications are on file at (address(s) at which specifications can be obtained).

Copies of the Bid/Contract Documents may be obtained by depositing \$ \_\_\_\_\_ with the (Grant Recipient or engineer) for each set of documents obtained. The deposit will be refunded if the documents and drawings are returned in good condition within 10 days following the bid opening.

A bid bond in the amount of 5 percent of the bid issued by an acceptable surety shall be submitted with each bid [for those contracts that exceed \$100,000]. A certified check or bank draft payable to the (Grant Recipient's name) or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Bid Bond.

Attention is called to the fact that not less than, the federally determined prevailing (Davis-Bacon and Related Acts) wage rate, as issued by the Texas Department of Agriculture Office of Rural Affairs and contained in the contract documents, must be paid on this project. In addition, the successful bidder must ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, sexual identity, gender identity, or national origin.

The (name of Grant Recipient) reserves the right to reject any or all bids or to waive any informalities in the bidding.

Bids may be held by (name of Grant Recipient) for a period not to exceed 30 / 60 days from the date of the bid opening for the purpose of reviewing the bids and investigating the bidder's qualifications prior to the contract award.

(Name of Grant Recipient) \_\_\_\_\_ (Contracting officer), (title) \_\_\_\_\_ (date) \_\_\_\_\_

All contractors/subcontractors that are debarred, suspended or otherwise excluded from or ineligible for participation on federal assistance programs may not undertake any activity in part or in full under this project.

## **SAMPLE INSTRUCTION TO BIDDERS FOR CONSTRUCTION**

### **1.     Use of Separate Bid Forms**

These contract documents include a complete set of bid and contract forms which are for the convenience of the bidders and are not to be detached from the contract document, completed or executed. Separate bid forms are provided for your use.

### **2.     Interpretations or Addenda**

No oral interpretations will be made to any bidder. Each request for clarification shall be made in writing to the Grant Recipient or engineer no less than seven (7) days prior to the bid opening. Each interpretation made will be in the form of an Addendum to the contract documents and will be distributed to all parties holding contract documents no less than seven (7) days prior to the bid opening. It is, however, the bidder's responsibility to make inquiry as to any addenda issued. All such addenda shall become part of the contract documents and all bidders shall be bound by such addenda, whether or not received by the bidders.

If an addendum to the bid package is necessary, it must be distributed to each potential bidder. The distribution of an addendum shall be verified either by statements of receipt or registered/certified mail receipts, which shall be included in the public works construction file. The addendum shall allow adequate time for consideration in bid preparation (usually at least one week). If adequate time is not available, the bid opening date must be extended and the Grant Recipient must republish the invitation for bids containing the place, time, and date for the new bid opening. Note that any change to the original bid opening date will require republication of the invitation for bids at least once in a locally published newspaper. The republished notice will include the place, time and date for the new bid opening and must be published at least seven days prior to the new bid opening date.

### **3.     Inspection of Site**

Each bidder should visit the site of the proposed work and should become acquainted with the existing conditions and facilities, the difficulties and restrictions pertaining to the performance of the contract. The bidder should thoroughly examine and become familiar with the drawings, technical specifications and all other contract documents. The contractor by the execution of the contract shall in no way be relieved of any obligation under it due to failure to receive or examine any form or legal document or to visit the site or the conditions existing at the site. The City/ County will be justified in rejecting any claim based on lack of inspection of the site prior to the bid.

### **4.     Alternate bid items**

No alternate bids or bid items will be considered unless they are specifically requested by the technical specifications.

### **5.     Bids**

- a. All bids must be submitted on the forms provided and are subject to all requirements of the Contract Documents, including the Drawings.
- b. All bids must be regular in every respect and no interlineation, excisions or special conditions may be made or included by the bidder.
- c. Bid documents, including but not limited to the bid, the bid bond(s), the contractor's certifications, local opportunity plan, and the statement of the bidder's qualifications, shall be sealed in an envelope and clearly labeled with the words "Bid Documents", the project number, name of bidder and the date and time of bid opening.

- d. The City / County may consider as irregular any bid on which there is an alteration of or departure from the bid form and, at its option, may reject any irregular bid.
- e. If a contract is awarded, it will be awarded to a responsible bidder on the basis of the lowest/best bid and the selected alternate bid items, if any. The contract will require the completion of the work in accordance with the contract documents.

6. Bid Modifications Prior to Bid Opening

- a. Any bidder may modify its bid by submitting a modification or supplemental bid at any time prior to the scheduled closing time for receipt of bids, provided such modification or supplemental bid is received by the locality prior to the closing time. The modification or supplemental bid should not reveal the original bid price but should provide only the addition, subtractions or other modifications to the original bid so that the final prices or terms will not be known by the locality until the sealed bid is open.

7. Bid Bond

- a. A bid bond in the amount of 5% of the bid issued by an acceptable surety shall be submitted with each bid [for contracts greater than \$100, 000,]. A certified check or bank draft payable to the locality or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Bid Bond.
- b. The bid bond or its comparable will be returned to the bidder as soon as practical after the opening of the bids.

8. Statement of Bidders Qualifications

Each bidder shall submit on the form furnished for that purpose a statement of the bidder's qualifications. The Grant Recipient shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform its obligations under the contract, and the bidder shall furnish the Grant Recipient all such information and data for this purpose as it may request. The right is reserved to reject any bid where an investigation of the available data does not satisfy the Grant Recipient that the bidder is qualified to carry out properly the terms of the contract.

9. Unit Price

The unit price for each of the several items in the bid shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents the total bid. Any bid not conforming to this requirement may be rejected as informal. Special attention is drawn to this condition, as the unit prices will be used to determine the total bid price and the amount of any change orders resulting from an increase or decrease in quantities.

10. Corrections

Erasures or other corrections in the bid must be noted over the signature of the bidder.

11. Time for Receiving Bids

Bids received prior to the advertised hour of opening shall be kept securely sealed. The officer appointed to open the bids shall decide when the specified time has arrived and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before the reading of all other bids is completed, and it is shown to the satisfaction of the Grant Recipient that the late arrival of the bid was solely due to delay in the mail for which the bidder was not responsible, such bid will be received and considered.

## 12. Opening of Bids

The City/County shall, at the time and place fixed for the opening of bids, open each bid and publicly read it aloud, irrespective of any irregularities therein. Bidders and other interested individuals may be present.

## 13. Withdrawal of Bids

Bidder may withdraw the bid before the time fixed for the opening of bids, by communicating its purpose in writing to the Grant Recipient. Upon receipt of such notice, the unopened bid will be returned to the bidder. The bid guaranty of any bidder withdrawing his bid will be returned promptly.

## 14. Award of Contract/Rejection of Bids

- a. The contract will be awarded to the responsive, responsible Bidder submitting the lowest/best bid. The bidder selected will be notified at the earliest possible date. The locality reserves the right to reject any or all bids and to waive any informality in bids received where such rejection or waiver is in its interest.
- b. The Grant Recipient reserves the right to consider as unqualified to do the work any bidder who does not habitually perform with his own forces the major portions of the work involved in construction of the improvements embraced in this contract.

## 15. Execution of Agreement/Performance and Payment Bonds

- a. Performance Bonds - Requires all prime contractors which enter into a formal contract in excess of \$100,000 with the State, a county, or a municipality; a department, board, or agency of the state, a county, or a municipality; and a school district or a subdivision thereof, to obtain a Performance Bond in the amount of the contract before commencing with work
- b. Payment Bonds- Requires all prime contractors which enter into a formal contract with the State, a county, or a municipality; a department, board, or agency of the state, a county, or a municipality; and a school district or a subdivision thereof, to furnish to the governmental entity a payment bond in the amount of the contract. The payment bond must be filed within 30 days from the date of the Notice of Award:
  - o Municipalities: If the contract is in excess of \$50,000, a payment bond is required.
  - o Counties: If the contract is in excess of \$25,000, a payment bond is required.
- c. The failure of the successful bidder to execute the agreement and supply the required bonds within thirty (30) days from the date of the notice of award-or within such extended period as the locality may grant, shall constitute a default and the locality may, at its option, either award the contract to the next lowest responsible bidder, or re-advertise for bids. In either case, the locality may charge against the bidder the difference between the amount of the bid, and the amount for which a contract is subsequently executed irrespective of whether this difference exceeds the amount of the bid bond. If a more favorable bid is received through re-advertisement, the defaulting bidder shall have no claim against the locality for a refund.

## 16. Wages and Salaries

Attention is particularly called to the requirement of paying not less than the prevailing Davis Bacon Related Acts (DBRA) wage rates specified in the Contract Documents. These rates are minimums to be paid during the life of the contract. It is therefore the responsibility of the Bidder to inform themselves as to local labor conditions.

17. Equal Employment Opportunity

Attention is called to the requirements for ensuring that employees and applicants for employment are not discriminated against because of race, color, religion, sex, sexual identity, gender identity, or national origin, and other civil rights requirements.

18. Certification Regarding Lobbying –

Contractors who apply or bid for an award of \$100,000 or more shall provide the required certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC § 1352.



**DISCLAIMER:** This sample draft document was developed by TDA’s Office of Rural Affairs and does not include all applicable provisions. This document has important legal consequences. Please consult with your legal counsel with respect to its completion or modification to insure that it is in compliance with any appropriate local, state and federal laws applicable.

## **SAMPLE CONSTRUCTION CONTRACT**

**THIS AGREEMENT** made this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (a corporation organized and existing under the laws of the State of \_\_\_\_\_) (a partnership consisting of \_\_\_\_\_) (an individual trading as \_\_\_\_\_) [Note 1] hereinafter called the “Contractor”, and \_\_\_\_\_ hereinafter called the “City/County.”

**WITNESSETH**, that the Contractor and the City/County for the considerations stated herein mutually agree as follows:

**ARTICLE 1. Statement of Work.** The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services, and perform and complete all work required for the construction of the Improvements embraced in the Project; namely, \_\_\_\_\_ [Note 2] for the \_\_\_\_\_ Texas Community Development Block Grant (TxCDBG) project, all in strict accordance with the contract documents including all addenda thereto, numbered \_\_\_\_\_, dated \_\_\_\_\_ and \_\_\_\_\_, all as prepared by \_\_\_\_\_ acting and in these contract documents preparation, referred to as the “Engineer”.

***Special Notes:***

*Note 1. Strike out the terms not applicable.*

*Note 2. Identify the principal items of Contract such as grading, paving, water mains, sewer lines, treatment facilities, etc.*

**ARTICLE 2. The Contract Price.** The City/County will pay the Contractor for the performance of the Contract in current funds, for the total quantities of work performed at the *unit prices* stipulated in the Bid for the several respective items of work completed subject to additions and deductions as provided in \_\_\_\_\_ hereof.

-----  
**Alternate Pricing Techniques:** In the event the statutory provisions require the contract price to be a fixed sum, in the absence of an approved form, the following should be substituted for Article 2 above.  
-----

“**ARTICLE 2. The Contract Price.** The City/County will pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in Section 109 hereof, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).”

**ARTICLE 3. The Contract.** The executed contract documents shall consist of the following components:

- |                              |  |
|------------------------------|--|
| a. This Agreement (pgs. 1-3) | f. General Conditions, Part I                                |
| b. Addenda                   | g. Special Conditions  |
| c. Invitation for Bids       | h. Technical Specifications                                  |
| d. Instructions to Bidders   | i. Drawings ( <i>as listed in the Schedule of Drawings</i> ) |
| e. Signed Copy of Bid        | j. [Add any applicable documents]                            |

**ARTICLE 4. Performance.** Work, in accordance with the Contract dated \_\_\_\_\_, \_\_\_\_\_, shall commence on or before \_\_\_\_\_, \_\_\_\_\_, and Contractor shall complete the WORK within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all WORK is therefore \_\_\_\_\_, \_\_\_\_\_.

This Agreement, together with other documents enumerated in this ARTICLE 3, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this ARTICLE 3 shall govern, except as otherwise specifically stated.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in triplicate (Note 3) original copies on the day and year first above written. (Note 3)

\_\_\_\_\_  
(The Contractor)

By \_\_\_\_\_ [Note 4]

Title \_\_\_\_\_

\_\_\_\_\_  
(City/County)

By \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

***Special Notes:***

*Note 3. The number of copies to be executed by the parties should be stated in the agreement in the space provided. Such additional signed copies shall be prepared as may be required by the surety companies and others.*

*Note 4. Supply a description of the Contractor (e.g., proprietorship, partnership, and corporation).*

**Corporate Certifications**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor herein; that \_\_\_\_\_, who signed this Agreement on behalf of the Contractor, was then \_\_\_\_\_ of said corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate  
Seal

\_\_\_\_\_  
(Corporate Secretary)

## GENERAL CONDITIONS - PART I FOR CONSTRUCTION

### 1. Contract and Contract Documents

- (a) The project to be constructed pursuant to this contract will be financed with assistance from the Texas Department of Agriculture - Office of Rural Affairs through a Community Development Block Grant (TxCDBG) and is subject to all applicable Federal and State laws and regulations.
- (b) The Plans, Specifications and Addenda shall form part of this contract and the provisions thereof shall be binding upon the parties as if they were herein fully set forth.

### 2. Definitions

Whenever used in any of the Contract Documents, the following meanings shall be given to the terms here in defined:

- (a) The term "Contract" means the Contract executed between the (Name of City/County), hereinafter called the "City/County" and (Name of Construction Co.), hereinafter called "Contractor", of which these GENERAL CONDITIONS, form a part.
- (b) The term "Project Area" means the area within the specified Contract limits of the Improvements contemplated to be constructed in whole or in part under this contract.
- (c) The term "Engineer" means (name of engineering firm), Engineer in charge, serving the City/County with architectural or engineering services, his successor, or any other person or persons, employed by the City/County for the purpose of directing or having in charge the work embraced in this Contract.
- (d) The term "Contract Documents" means and shall include the following: Executed Contract, Addenda (if any), Invitation for Bids, Instructions to Bidders, Signed Copy of Bid, General Conditions, Special Conditions, Technical Specifications, and Drawings (as listed in the Schedule of Drawings).

### 3. Supervision by Contractor

- (a) Except where the Contractor is an individual and personally supervises the work, the Contractor shall provide a competent superintendent, satisfactory to the Engineer, on the work at all times during working hours with full authority to act as Contractor's agent. The Contractor shall also provide adequate staff for the proper coordination and expediting of his work.
- (b) The Contractor shall be responsible for all work executed under the Contract. Contractor shall verify all figures and elevations before proceeding with the work and will be held responsible for any error resulting from his failure to do so.

### 4. Subcontracts

- (a) The Contractor shall not execute an agreement with any subcontractor or permit any subcontractor to perform any work included in this contract until Contractor has verified the subcontractor is eligible to participate in federally funded contracts.
- (b) No proposed subcontractor shall be disapproved by the City/County except for cause.
- (c) The Contractor shall be as fully responsible to the City/County for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them.

(d) Nothing contained in the Contract shall create any contractual relation between any subcontractor and the City/County.

5. Fitting and Coordination of Work

The Contractor shall be responsible for the proper fitting of all work and for the coordination of the operations of all trades, subcontractors, or material suppliers engaged upon this Contract.

6. Payments to Contractor

(a) Partial Payments

- 1) The Contractor shall prepare the requisition for partial payment as of the last day of the month and submit it, with the required number of copies, to the Engineer for approval. The amount of the payment due the Contractor shall be determined by adding to the total value of work completed to date, the value of materials properly stored on the site and deducting (1) ten percent (10%) of the total amount, to be retained until final payment, and (2) the amount of all previous payments. The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The value of materials properly stored on the site shall be based upon the estimated quantities of such materials and the invoice prices. Copies of all invoices shall be available for inspection of the Engineer.
- 2) Monthly or partial payments made by the City/County to the Contractor are advanced for the purpose of assisting the contractor to expedite the work of construction. The Contractor shall be responsible for the care and protection of all materials and work upon which payments have been made until final acceptance of such work and materials by the City/County. Such payments shall not constitute a waiver of the right of the City/County to require the fulfillment of all terms of the Contract and the delivery of all improvements embraced in this Contract complete and satisfactory to the City/County in all details.

(b) Final Payment

- 1) After final inspection and the acceptance by the City/County of all work under the Contract, the Contractor shall prepare the requisition for final payment which shall be based upon the careful inspection of each item of work at the applicable unit prices stipulated in the Contract. The total amount of the final payment due the Contractor under this Contract shall be the amount computed as described above less all previous payments.
- 2) Before paying the final estimate, City/County shall require the Contractor to furnish releases or receipts from all subcontractors having performed any work and all persons having supplied materials, equipment (installed on the Project) and services to the Contractor. The City/County may make payment in part or in full to the Contractor without requiring the furnishing of such releases or receipts and any payments made shall in no way impair the obligations of any surety or sureties furnished under this Contract.
- 3) Any amount due the City/County under Liquidated Damages shall be deducted from the final payment due the contractor.

(c) Payments Subject to Submission of Certificates

Each payment to the Contractor by the City/County shall be made subject to submission by the Contractor of all written certifications required of it and its subcontractors.

(d) Withholding Payments

The City/County may withhold any payment due the Contractor as deemed necessary to protect the City/County, and if so elects, may also withhold any amounts due from the Contractor to any subcontractors or material dealers, for work performed or material furnished by them. The foregoing provisions shall be construed solely for the benefit of the City/County and will not require the City/County to determine or adjust any claims or disputes between the Contractor and its subcontractors or material dealers, or to withhold any moneys for their protection unless the City/County elects

to do so. The failure or refusal of the City/County to withhold any moneys from the Contractor shall in no way impair the obligations of any surety or sureties under any bond or bonds furnished under this Contract.

7. Changes in the Work

- (a) The City/County may make changes in the scope of work required to be performed by the Contractor under the Contract without relieving or releasing the Contractor from any obligations under the Contract or any guarantee given pursuant to the Contract provisions, and without affecting the validity of the guaranty bonds, and without relieving or releasing the surety or sureties of said bonds. All such work shall be executed under the terms of the original Contract unless it is expressly provided otherwise. Additionally, all such change orders must be approved by TxCDBG prior to execution of same.
- (b) Except for the purpose of affording protection against any emergency endangering health, life, limb or property, the Contractor shall make no change in the materials used or in the specified manner of constructing and/or installing the improvements or supply additional labor, services or materials beyond that actually required for the execution of the Contract, unless in pursuance of a written order from the City/County authorizing the Contractor to proceed with the change. No claim for an adjustment of the Contract Price will be valid unless so ordered.
- (c) If applicable unit prices are contained in the Contract, the City/County may order the Contractor to proceed with desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original the total amount by eighteen percent (18%).
- (d) Each change order shall include in its final form:
  - 1) A detailed description of the change in the work.
  - 2) The Contractor's proposal (if any) or a confirmed copy thereof.
  - 3) A definite statement as to the resulting change in the contract price and/or time.
  - 4) The statement that all work involved in the change shall be performed in accordance with contract requirements except as modified by the change order.
  - 5) The procedures as outlined in this Section for a unit price contract also apply in any lump sum contract.

8. Claims for Extra Cost

- (a) If the Contractor claims that any instructions by Drawings or otherwise involve extra cost or extension of time, he shall, within ten days after the receipt of such instructions, and in any event before proceeding to execute the work, submit his protest thereto in writing to the City/County, stating clearly and in detail the basis of his objections. No such claim will be considered unless so made.
- (b) Claims for additional compensation for extra work, due to alleged errors in ground elevations, contour lines, or bench marks, will not be recognized unless accompanied by certified survey data, made prior to the time the original ground was disturbed, clearly showing that errors exist which resulted, or would result, in handling more material, or performing more work, than would be reasonably estimated from the Drawings and maps issued.
- (c) Any discrepancies which may be discovered between actual conditions and those represented by the Drawings and maps shall be reported at once to the City/County and work shall not proceed except at the Contractor's risk, until written instructions have been received from the City/County.
- (d) If, on the basis of the available evidence, the City/County determines that an adjustment of the Contract Price and/or time is justifiable, a change order shall be executed.

9. Termination, Delays, and Liquidated Damages

(a) Right of the City/County to Terminate Contract for Convenience

City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by City/County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against City/County for any additional compensation or damages in the event of such termination and payment.

(b) Right of the City/County to Terminate Contract for Cause

In the event that any of the provisions of this contract are violated by the Contractor, or by any subcontractors, the City/County may serve written notice upon the Contractor and the Surety of its intention to terminate the contract. The notices shall contain the reasons for such intention to terminate the contract, and unless such violation or delay shall cease and satisfactory arrangement of correction be made within ten days, the contract shall, upon the expiration of said ten (10) days, cease and terminate. In the event of any such termination, the City/County shall immediately serve notice thereof upon the Surety and the Contractor. The Surety shall have the right to take over and perform the contract. Provided, however, that if the Surety does not commence performance thereof within ten (10) days from the date of the mailing to such Surety of notice of termination, the City/County may take over the work and complete the project by bid/contract or by force account at the expense of the Contractor and his Surety shall be liable to the City/County for any excess cost incurred. In such event the City/County may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefore.

(c) Liquidated Damages for Delays.

If the work is not completed within the time stipulated in the applicable bid for Lump Sum or Unit Price Contract provided, the Contractor shall pay to the City/County as fixed, agreed, and liquidated damages (it being impossible to determine the actual damages occasioned by the delay) the amount of \_\_\_\_\_ for each calendar day of delay, until the work is completed. The Contractor and Contractor's sureties shall be liable to the City/County for the amount thereof.

(d) Excusable Delays.

- 1) The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due to:
- 2) Any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, national defense, or any other national emergency;
- 3) Any acts of the City/County;
- 4) Causes not reasonably foreseeable by the parties to this Contract at the time of execution which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, terrorism, war, acts of another Contractor in the performance of some other contract with the City/County, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, cyclones and other extreme weather conditions.
- 5) Provided, however, that the Contractor promptly notifies the City/County within ten (10) days in writing of the cause of the delay. Upon receipt of such notification, the City/County shall ascertain the facts and the cause and

extent of delay. If, upon the basis of the facts and the terms of this contract, the delay is properly excusable, the City/County shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

10. Assignment or Novation

The Contractor shall not assign nor transfer, whether by assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the City/County. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, Contractors, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

11. Technical Specifications and Drawings

Anything mentioned in the Technical Specifications and not shown on the Drawings or vice versa shall be of like effect as if shown on or mentioned in both. In case of difference between Drawings and Technical Specifications, the Technical Specifications shall govern. In case of any discrepancy in Drawings, or Technical Specifications, the matter shall be immediately submitted to the City/County for review. Contractor shall be liable for any issues or expenses in the event the discrepancy is not submitted to the City/County.

12. Shop Drawings

- (a) All required shop drawings, machinery details, layout drawings, etc. shall be submitted to the Engineer in \_\_\_\_\_ copies for approval sufficiently in advance of requirements to afford ample time for checking, including time for correcting, resubmitting and rechecking if necessary. The Contractor may proceed, only at Contractor's own risk, with manufacture or installation of any equipment or work covered by said shop drawings, etc. until they are approved and no claim, by the Contractor, for extension of the contract time shall be granted by reason of his failure in this respect.
- (b) Any drawings submitted without the Contractor's stamp of approval will not be considered and will be returned to him for proper resubmission. If any drawings show variations from the requirements of the Contract because of standard shop practice or other reason, the Contractor shall make specific mention of such variation in his letter of transmittal in order that, if acceptable, suitable action may be taken for proper adjustment of contract price and/or time, otherwise the Contractor will not be relieved of the responsibility for executing the work in accordance with the Contract even though the drawings have been approved.
- (c) If a shop drawing is in accordance with the contract or involves only minor adjustment in the interest of the City/County not involving a change in contract price or time, the engineer may approve the drawing. The approval shall not relieve the Contractor from responsibility to adhere to the contract or for any error in the drawing.

13. Requests for Supplementary Information

It shall be the responsibility of the Contractor to make timely requests of the City/County for any additional information which should be furnished by the City/County under the terms of this Contract, and which is required in the planning and execution of the work. Such requests may be submitted from time to time as the need approaches, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing, and list the various items and the latest date by which each will be required by the Contractor. The first list shall be submitted within two weeks after Contract award and shall be as complete as possible at that time. The Contractor shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Contractor. The Contractor shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provision of this section.

14. Materials and Workmanship

- (a) Unless otherwise specifically provided for in the technical specifications, all workmanship, equipment, materials and articles incorporated in the work shall be new and the best grade of the respective kinds for the purpose. Where equipment, materials, articles or workmanship are referred to in the technical specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- (b) The Contractor shall furnish to the City/County for approval the manufacturer's detailed specifications for all machinery, mechanical and other special equipment, which he contemplates installing together with full information as to type, performance characteristics, and all other pertinent information as required, and shall likewise submit for approval full information concerning all other materials or articles which he proposes to incorporate.
- (c) Machinery, mechanical and other equipment, materials or articles installed or used without such prior approval shall be at the risk of subsequent rejection.
- (d) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the technical specifications shall have full force and effect as though printed therein.
- (e) The City/County may require the Contractor to dismiss from the work such employee or employees as the City/County or the Engineer may deem unqualified.
- (f) Domestic Preferences - As appropriate and to the extent consistent with law and to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(3) [Iron and steel products, Manufactured Products, and Construction Materials] used in this project comply with the Build America, Buy America Act (BABA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58.

## 15. Samples, Certificates and Tests

- (a) The Contractor shall submit all material or equipment samples, certificates, affidavits, etc., as called for in the contract documents or required by the Engineer, promptly after award of the contract and acceptance of the Contractor's bond. No such material or equipment shall be manufactured or delivered to the site, except at the Contractor's own risk, until the required samples or certificates have been approved in writing by the Engineer. Any delay in the work caused by late or improper submission of samples or certificates for approval shall not be considered just cause for an extension of the contract time.
- (b) Each sample submitted by the Contractor shall carry a label giving the name of the Contractor, the project for which it is intended, and the name of the producer. The accompanying certificate or letter from the Contractor shall state that the sample complies with contract requirements, shall give the name and brand of the product, its place of origin, the name and address of the producer and all specifications or other detailed information which will assist the Engineer in making a prompt decision regarding the acceptability of the sample. It shall also include the statement that all materials or equipment furnished for use in the project will comply with the samples and/or certified statements.



- (c) Approval of any materials shall be general only and shall not constitute a waiver of the City/County's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval. If materials, equipment or accessories which fail to meet check tests have been incorporated in the work, the Engineer will have the right to cause their removal and replacement by proper materials or to demand and secure such reparation by the Contractor as is equitable.
- (d) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
  - 1) The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
  - 2) The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
  - 3) The Contractor shall assume all costs of testing materials offered in substitution for those found deficient;
  - 4) The City/County will pay all other expenses.

16. Permits and Codes

- (a) The Contractor shall give all notices required by and comply with all applicable federal and state laws, ordinances, and codes of the Local Government. All construction work and/or utility installations shall comply with all applicable ordinances, and codes including all written waivers. Before installing any work, the Contractor shall examine the drawings and technical specifications for compliance with applicable ordinances and codes and shall immediately report any discrepancy to the City/County. Where the requirements of the drawings and technical specifications fail to comply with such applicable ordinances or codes, the City/County will adjust the Contract by Change Order to conform to such ordinances or codes (unless waivers in writing covering the difference have been granted by the governing body or department) and make appropriate adjustment in the Contract Price or stipulated unit prices.
- (b) Should the Contractor fail to observe the foregoing provisions and proceed with the construction and/or install any utility at variance with any applicable ordinance or code, including any written waivers (notwithstanding the fact that such installation is in compliance with the drawings and technical specifications), the Contractor shall remove such work without cost to the City/County.
- (c) The Contractor shall at his own expense, secure and pay for all permits for street pavement, sidewalks, shed, removal of abandoned water taps, sealing of house connection drains, pavement cuts, buildings, electrical, plumbing, water, gas and sewer permits required by the local regulatory body or any of its agencies.
- (d) The Contractor shall comply with applicable local laws and ordinances governing the disposal of surplus excavation, materials, debris and rubbish on or off the Project Area and commit no trespass on any public or private property in any operation due to or connected with the Improvements contained in this Contract.
- (e) The Contractor will be required to make arrangements for and pay the water, electrical power, or any other utilities required during construction.
- (f) During construction of this project, the Contractor shall use every means possible to control the amount of dust created by construction. Prior to the close of a day's work, the Contractor, if directed by the City/County, shall moisten the surrounding area to prevent a dusty condition.

17. Care of Work

- (a) The Contractor shall be responsible for all damages to person or property that occur as a result of its fault or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance.

- (b) In an emergency affecting the safety of life, limb or property, including adjoining property, the Contractor, without special instructions or authorization from the City/County is authorized to act to prevent such threatened loss or injury. Contractor shall follow all instructions of City/County.
- (c) The Contractor shall avoid damage as a result of his operations to existing sidewalks, streets, curbs, pavements, utilities (except those which are to be replaced or removed), adjoining property, etc., and shall be responsible for completely repairing any damage thereto caused by the operations.
- (d) The Contractor shall shore up, brace, underpin, secure, and protect as maybe necessary, all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be in any way affected by the excavations or other operations connected with the construction of the improvements included in this Contract. The Contractor shall be responsible for the giving of any and all required notices to any adjoining or adjacent property owner or other party before the commencement of any work. The Contractor shall indemnify and save harmless the City/County from any damages on account of settlements or the loss of lateral support of adjoining property and from all loss or expense and all damages for which the City/County may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

18. Accident Prevention

- (a) No laborer or mechanic employed in the performance of this Contract shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Department of Labor.
- (b) The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the site, which occur as a result of his prosecution of the work.
- (c) The Contractor shall maintain an accurate record of all cases of death, occupational disease, or injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the Contract. The Contractor shall promptly furnish the City/County with reports concerning these matters.
- (d) The Contractor shall indemnify and hold harmless the City/County from any claims for damages resulting from property damage, personal injury and/or death suffered or alleged to have been suffered by any person as a result of any work conducted under this contract.
- (e) The Contractor shall provide trench safety for all excavations more than five feet deep prior to excavation. All OSHA Standards for trench safety must be adhered to by the Contractor.
- (f) The contractor shall at all time conduct work in such a manner as to ensure the least possible inconvenience to vehicular and pedestrian traffic. At the close of the work each day, all streets where possible in the opinion of the City/County, shall be opened to the public in order that persons living in the area may have access to their homes or businesses by the use of the streets. Barricades, warning signs, and necessary lighting shall be provided to the satisfaction of the City/County at the expense of the Contractor.

19. Sanitary Facilities

The Contractor shall furnish, install and maintain ample sanitary facilities for laborers. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

20. Use of Premises

- (a) The Contractor shall confine equipment, storage of materials, and construction operations to the contract limits as shown on the drawings and as prescribed by ordinances or permits, or as may be desired by the City/County, and shall not unreasonably encumber the site or public rights of way with materials and construction equipment.
- (b) The Contractor shall comply with all reasonable instructions of the City/County and all existing federal, state and local regulations regarding signs, advertising, traffic, fires, explosives, danger signals, and barricades.

21. Removal of Debris, Cleaning, Etc.

The Contractor shall, periodically or as directed during the progress of the work, remove and legally dispose of all surplus excavated material and debris, and keep the Project Area and public rights of way reasonably clear. Upon completion of the work, he shall remove all temporary construction facilities, debris and unused materials provided for work, and put the whole site of the work and public rights of way in a neat and clean condition.

22. Inspection

- (a) All materials and workmanship shall be subject to inspection, examination, or test by the City/County and Engineer at any and all times during manufacture or construction and at any and all places where such manufacture or construction occurs. The City/County shall have the right to reject defective material and workmanship or require its correction. Unacceptable workmanship shall be satisfactorily corrected. Rejected material shall be promptly segregated and removed from the Project Area and replaced with material of specified quality without charge. If the Contractor fails to proceed at once with the correction of rejected workmanship or defective material, the City/County may by contract or otherwise have the defects remedied or rejected materials removed from the Project Area and charge the cost of the same against any Monies which may be due the Contractor, without prejudice to any other rights or remedies of the City/County.
- (b) The Contractor shall furnish promptly all materials reasonably necessary for any tests which may be required. All tests by the City/County will be performed in such manner as not to delay the work unnecessarily and will be made in accordance with the provisions of the technical specifications.
- (c) The Contractor shall notify the City/County sufficiently in advance of back filling or concealing any facilities to permit proper inspection. If any facilities are concealed without approval or consent of the City/County, the Contractor shall uncover for inspection and recover such facilities at Contractor's expense, when so requested by the City/County.
- (d) Should it be considered necessary or advisable by the City/County at any time before final acceptance of the entire work to make an examination of work already completed, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. If such work is found to be defective in any important or essential respect, due to fault of the Contractor or subcontractors, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement, shall be reimbursable and if completion of the work of the entire Contract has been delayed, a suitable extension of time will be approved.
- (e) Inspection of materials and appurtenances to be incorporated in the improvements included in this Contract may be made at the place of production, manufacture or shipment, whenever the quantity justifies it, and such inspection and acceptance, unless otherwise stated in the technical specifications, shall be final, except as regards to: (1) latent defects, (2) departures from specific requirements of the Contract, (3) damage or loss in transit, or (4) fraud or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of materials as a whole or in part will be made at the Project Site.
- (f) Neither inspection, testing, approval nor acceptance of the work in whole or in part, by the City/County or its agents shall relieve the Contractor or its sureties of full responsibility for materials furnished or work performed not in strict accordance with the Contract.

23. Review by City/County

The City/County and its authorized representatives and agents shall have access to and be permitted to observe and review all work, materials, equipment, payrolls, personnel records, employment conditions, material invoices, and other relevant data and records pertaining to this Contract, provided, however that all instructions and approval with respect to the work will be given to the Contractor only by the City/County through its authorized representatives or agents.

24. Final Inspection

When the Improvements included in this Contract are substantially completed, the Contractor shall notify the City/County in writing that the work will be ready for final inspection on a definite date which shall be stated in the notice. The City/County will make the arrangements necessary to have final inspection commenced on the date stated in the notice, or as soon thereafter as is practicable.

25. Deduction for Uncorrected Work

If the City/County deems it not expedient to require the Contractor to correct work not done in accordance with the Contract Documents, an equitable deduction from the Contract Price will be made by agreement between the Contractor and the City/County and subject to settlement, in case of dispute, as herein provided.

26. Insurance

The Contractor shall not commence work under this contract until all required insurance under this paragraph has been secured and approved by the City/County.

- (a) Worker's Compensation Insurance: The Contractor shall procure and shall maintain during the life of this contract Worker's Compensation Insurance as required by the State of Texas for all of his employees to be engaged in work at the site of the project under this contract and, in case of any such work sublet, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Worker's Compensation Insurance.
- (b) Contractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance. The Contractor shall procure and shall maintain during the life of this contract Contractor's Public Liability Insurance, Contractor's Property Damage Insurance and Vehicle Liability Insurance in the following amounts: (\_\_\_\_\_).
- (c) Proof of Insurance: The Contractor shall furnish the City/County with certificates showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates shall also contain substantially the following statement: "The insurance covered by this certificate will not be canceled or materially altered, except after ten (10) days written notice has been received by the City/County."

27. Warranty of Title

No material, supplies, or equipment to be installed or furnished under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale, lease-purchase or other agreement by which an interest is retained by the seller or supplier. The Contractor shall warrant good title to all materials, supplies, and equipment installed or incorporated in the work and upon completion of all work, shall deliver the same, together with all improvements and appurtenances constructed or placed by Contractor, to the City/County free from any claims, liens, or charges. Neither the Contractor nor any person, firm, or corporation furnishing any material or labor for any work covered by this Contract shall have any right to a lien upon any improvement or appurtenance. Nothing contained in this paragraph, however, shall defeat or impair the right of persons furnishing materials or labor to recover under any law permitting such persons to look to funds due the Contractor. The provisions of this paragraph shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing materials for the work when no formal contract is entered into for such materials.

28. Warranty of Workmanship and Materials

Neither the final certificate of payment nor any provision in the Contract nor partial or entire use of the improvements included in this Contract by the City/County or the public shall constitute an acceptance of work not done in accordance with the Contract or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall promptly remedy any defects in the work and pay for any damage to other work resulting therefrom which shall appear within a period of \_\_\_\_\_ months from the date of final acceptance of the work.

29. Job Offices

- (a) The Contractor and its subcontractors may maintain such office and storage facilities on the site as are necessary for the proper conduct of the work. These shall be located so as to cause no interference to any work to be performed on the site. The City/County shall be consulted with regard to locations.
- (b) Upon completion of the improvements, or as directed by the City/County, the Contractor shall remove all such temporary structures and facilities from the site, and leave the site of the work in the condition required by the Contract.

30. Partial Use of Site Improvements

The City/County may give notice to the Contractor and place in use those sections of the improvements which have been completed, inspected and can be accepted as complying with the technical specifications and if in its opinion, each such section is reasonably safe, fit, and convenient for the use and accommodation for which it was intended, provided:

- (a) The use of such sections of the Improvements shall in no way impede the completion of the remainder of the work by the Contractor.
- (b) The Contractor shall not be responsible for any damages or maintenance costs due directly to the use of such sections.

31. Local Program Liaison

For purposes of this Agreement, the [e.g. City Manager/County \_\_\_\_\_] or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.

32. Access to Information

(a) The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, the Texas Department of Agriculture (TDA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts, and to closeout the City's/County's TxCDBG contract with TDA.

- (b) Contractor shall include the substance of this clause in all subcontracts it awards.

33. Records Retention

- (a) The Contractor shall retain all required records for three years after the City/County makes its final payment and all pending matters are closed.
- (b) Contractor shall include the substance of this clause in all subcontracts it awards.

34. Resolution of Program Non-Compliance and Disallowed Costs

In the event of any dispute, claim, question, or disagreement arising from or relating to this Contract, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TxCDBG program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate, and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate,

the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Contract and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. *[This section may also provide for the qualifications of the mediator(s), the locale of meetings, time limits, or any other item of concern to the parties.]* If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

### 35. Compliance with Davis-Bacon Act

All laborers and mechanics employed upon the work covered by this Contract shall be paid unconditionally and not less often than once each week, and without subsequent deduction or rebate on any account (except such payroll deductions as are made mandatory by law and such other payroll deductions as are permitted by the applicable regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to the Anti-Kickback Act hereinafter identified), the full amount due at time of payment computed at wage rates not less than those contained in the wage determination decision of said Secretary of Labor (a copy of which is attached as Attachment \_\_ and herein incorporated by reference), regardless of any contractual relationship which may be alleged to exist between the Contractor or any subcontractor and such laborers and mechanics. All laborers and mechanics employed upon such work shall be paid in cash, except that payment may be by check if the employer provides or secures satisfactory facilities approved by the City/County for the cashing of the same without cost or expense to the employee. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1 (b) (2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section 5.5 (a) (1) (iv) of Title 29, Code of Federal Regulations. Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Contractor and its subcontractors shall not, by any means, induce any person employed in the construction, completion, or repair of public work, give up any part of the compensation to which he or she is otherwise entitled. The City/County must report all suspected or reported violations to TDA.

### 36. Conflicts of interest.

- (a) Governing Body. No member of the governing body of the City/County and no other officer, employee, or agent of the City/County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of TxCDBG award between TDA and the City / County, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Firm shall take appropriate steps to assure compliance.
- (b) Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the TxCDBG award between TDA and the City/County, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance.
- (c) The Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the TxCDBG award between TDA and the City/County or this Contract. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the TxCDBG award between TDA and the City/County or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

### 37. Debarment and Suspension (Executive Orders 12549 and 12689)

The Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549

(1986) and 12689 (1989). The term “principal” for purposes of this Contract is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, “Debarment and Suspension.”

38. [For Contracts that exceed \$100,000] Anti-Lobbying

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

39. [For Contracts > \$100K] Overtime Requirements

No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 40 hours in such work week, as the case may be.

40. [For Contracts > \$150K] Clean Air Act and the Federal Water Pollution Control Act

The Contractor or subcontractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

41. Equal Opportunity Clause [applicable to contracts and subcontracts over \$10,000].

During the performance of this contract, the Contractor agrees as follows:

- (a.) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post

in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (b.) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c.) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (d.) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e.) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, "Equal Employment Opportunity," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f.) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g.) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (h.) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (h) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 42. Section 109 of the Housing and Community Development Act of 1974.

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

#### 43. Section 504 Rehabilitation Act of 1973, as amended.



The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his/her disability, be denied the benefits of, or be subjected to discrimination, including discrimination in employment, under any program or activity receiving federal financial assistance.

44. Age Discrimination Act of 1975.

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

45. Economic Opportunities for Section 3 Residents and Section 3 Business Concerns.

- (a) The work to be performed under this Contract is subject to the requirements of section 3 of the Housing and Urban Development (HUD) Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- (b) The parties to this Contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this Contract, the parties to this Contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- (c) The Contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- (d) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 75. Minimum expectations of effort to direct employment opportunities to such workers are identified in the TxCDBG Project Implementation Manual.
- (e) Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this Contract for default, and debarment or suspension from future HUD assisted contracts.

46. Contract Documents and Drawings

The City/County will furnish the Contractor without charge \_\_\_\_ copies of the Contract Documents, including Technical Specifications and Drawings. Additional copies requested by the Contractor will be furnished at cost.

47. Contract Period

The work to be performed under this contract shall commence within the time stipulated by the City/County in the Notice to Proceed, and shall be fully completed within \_\_\_\_\_ calendar days thereafter.

48. Liquidated Damages

Since the actual damages for any delay in completion of the work under this contract are impossible to determine, the Contractor and his Sureties shall be liable for and shall pay to the City/County the sum of \_\_\_\_\_ Dollars (\$) \_\_\_\_\_) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for completion.

49. Gender Neutral - Gender References

When necessary, unless the context clearly requires otherwise, any gender-specific or gender-neutral term in this Contract (for example, he, she, it, etc.) is to be read as referring to any other gender or to no gender.

**[Include HUD 4010 Language into Contract - See PDF in Appendix F]**

## **STATEMENT OF BIDDER'S QUALIFICATIONS**

All questions must be answered and the data given must be clear and comprehensive. **This statement must be notarized.** If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information it desires.

Date: \_\_\_\_\_

Bidder (Legal Name of Firm): \_\_\_\_\_

Date Organized: \_\_\_\_\_

Address : \_\_\_\_\_

\_\_\_\_\_ :

Date Incorporated \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

Number of Years in contracting business under present name \_\_\_\_\_

List all other names under which your business has operated in the last 10 years:

\_\_\_\_\_  
\_\_\_\_\_

### **Work Presently Under Contract:**

Contract	Amount \$	Completion Date
----------	-----------	-----------------

_____		
_____		
_____		

Type of work performed by your company: \_\_\_\_\_

Total Staff employed by Firm (Break down by Managers and Trades on separate sheet):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Have you ever failed to complete any work awarded to you? ☐ Yes ☐ No

(If yes, please attach summary of details on a separate sheet. Include brief explanation of cause and resolution)

Have you ever defaulted on a contract? ☐ Yes ☐ No

(If yes, please attach summary of details on a separate sheet.)

Has your organization had any disbarments or suspensions that have been imposed in the past five years or that was still in effect during the five year period or is still in effect? ☐ Yes ☐ No

(If yes, list and explain; such list must include disbarments and suspensions of officers, principals, partners, members, and employees of your organization.)

List the projects most recently completed by your firm (include project of similar importance):

Project	Amount \$	Mo/Yr Completed

Major equipment available for this contract: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Are you in compliance with all applicable EEO requirements? ☐ Yes ☐ No  
(If no, please attach summary of details on a separate sheet.)

#### Bank References

Address: \_\_\_\_\_ Contact Name: \_\_\_\_\_

City & State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Credit available: \$ \_\_\_\_\_

Has the firm or predecessor firm been involved in a bankruptcy or reorganization? ☐ Yes ☐ No  
(If yes, please attach summary of details on a separate sheet.)

List on a sheet attached hereto all judgements, claims, arbitration proceedings, or suits pending or outstanding against bidder over the last five (5) years with amount of claim and brief description.

List on a sheet attached hereto all lawsuits or requested arbitration with regard to construction contracts which bidder has initiated within the last five (5) years and brief explanation of claim and outcome.

Attach resume(s) for the principal member(s) of your organization, including the officers as well as the proposed superintendent for the project.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Company Name

**Notary Statement:**

\_\_\_\_\_, being duly sworn, says that he/she is the \_\_\_\_\_ Position/Title \_\_\_\_\_ of \_\_\_\_\_ (Firm Name), and hereby swears that the answers to the foregoing questions and all statements therein contained are true and correct. He/she hereby authorizes and requests any person, firm, or corporation to furnish any information requested City/County of \_\_\_\_\_ in verification of the recitals comprising this Statement of Bidder's Qualifications.

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_,

The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

## CONTRACTOR CERTIFICATIONS

U.S. Department of Housing and Urban Development	
<b>CERTIFICATION OF BIDDER REGARDING CIVIL RIGHTS LAWS AND REGULATIONS</b>	
INSTRUCTIONS	
CERTIFICATION OF BIDDER REGARDING Executive Order 11246 and Federal Laws Requiring Federal Contractor to adopt and abide by equal employment opportunity and affirmative action in their hiring, firing, and promotion practices. This includes practices related to race, color, gender, religion, national origin, disability, and veterans' rights.	
NAME AND ADDRESS OF BIDDER (include ZIP Code)	
CERTIFICATION BY BIDDER	
Bidder has participated in a previous contract or subcontract subject to Civil Rights Laws and Regulations. <input type="checkbox"/> Yes <input type="checkbox"/> No	
The undersigned hereby certifies that: <input type="checkbox"/> The <u>Provision of Local Training, Employment, and Business Opportunities</u> clause (Section 3 provision) is included in the Contract. <input type="checkbox"/> The <u>Equal Opportunity</u> clause is included in the Contract (if bid equals or exceeds \$10,000).	
Have you ever been or are you being considered for sanction due to violation of Executive Order 11246, as amended? <input type="checkbox"/> Yes <input type="checkbox"/> No	
NAME AND TITLE OF SIGNER (Please type)	
SIGNATURE	DATE

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
CONTRACTOR'S CERTIFICATION

**CONCERNING LABOR STANDARDS AND PREVAILING WAGE REQUIREMENTS**

TO (appropriate recipient)	DATE
C/O	PROJECT NUMBER (if any)
	PROJECT NAME

1. The undersigned, having executed a contract with \_\_\_\_\_  
\_\_\_\_\_ for the construction of the above-identified project, acknowledges that:

- (a) The Labor Standards provisions are included in the aforesaid contract,
- (b) Correction of any infractions of the aforesaid conditions, including infractions by any subcontractors and any lower tier subcontractors, is Contractor's responsibility.

2. Certifies that:

- (a) Neither Contractor nor any firm, partnership or association in which it has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended.
- (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. Contractor agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. Certifies that:

- (a) The legal name and the business address of the undersigned are:

(b) The undersigned is (choose one):

(1) A SINGLE PROPRIETORSHIP	(3) A CORPORATION ORGANIZED IN THE STATE OF _____
(2) A PARTNERSHIP	(4) OTHER ORGANIZATION (Describe) _____

(c) The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

(d) The names and addresses of all other persons having a substantial interest in the undersigned, and the nature of the interest are:

NAME	ADDRESS	NATURE OF INTEREST


(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are:

NAME	ADDRESS	TRADE CLASSIFICATION

\_\_\_\_\_  
(Contractor)

Date \_\_\_\_\_

By \_\_\_\_\_



## NONCOLLUSION AFFIDAVIT OF PRIME BIDDER

State of Texas )

County of \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He/She is \_\_\_\_\_ of \_\_\_\_\_, the Bidder that has submitted the attached Bid;

(2) He/She is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with another Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix an overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the \_\_\_\_\_ (Local Public Agency) or any person interested in the proposed Contract; and

(5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) \_\_\_\_\_

\_\_\_\_\_  
Title

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_.

By: \_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

## BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, \_\_\_\_\_  
as PRINCIPAL, and \_\_\_\_\_, as SURETY are held and firmly bound  
unto (City/County) hereinafter called the "Local Public Agency", in the penal sum of \_\_\_\_\_  
\_\_\_\_\_ Dollars, (\$ \_\_\_\_\_), lawful money of the United States, for the payment of which  
sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns,  
jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the  
Accompanying Bid, dated \_\_\_\_\_, for \_\_\_\_\_

NOW, THEREFORE, the Principal shall not withdraw said Bid within the period specified therein after the  
opening of the same, or, if no period be specified, within thirty (30) days after the said opening, and shall within  
the period specified therefor, or if no period be specified, within ten (10) days after the prescribed forms are  
presented to him for signature, enter into a written contract with the Local Public Agency in accordance with the  
Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for the faithful  
performance and proper fulfillment of such contract; or in the event of the withdrawal of said Bid within the  
period specified, or the failure to enter into such Contract and give such bond within the time specified, if the  
Principal shall pay the Local Public Agency the difference between the amount specified in said Bid and the  
amount for which the local Public Agency may procure the required work or supplies or both, if the latter be in  
excess of the former, then the above obligation shall be void and of no effect, otherwise to remain in full force  
and virtue.

IN WITNESS THEREOF, the above parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these present  
signed by its undersigned representative, pursuant to authority of its governing body.

(SEAL)

\_\_\_\_\_

(SEAL)

Attest:

By: \_\_\_\_\_

Affix  
Corporate  
Seal

Attest:

By: \_\_\_\_\_

Affix  
Corporate

Attest:

By: \_\_\_\_\_

Countersigned

By \_\_\_\_\_

\* Attorney-in-Fact, State of Texas

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the Secretary of the Corporation named as Principal in the bid bond; that \_\_\_\_\_, who signed the said bond on behalf of the Principal was then \_\_\_\_\_ of said corporation; that I know his/her signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed, and attested to, on behalf of said corporation by authority of its governing body.

Corporate  
Seal

Title: \_\_\_\_\_

\* Power-of-attorney for person signing for Surety Company must be attached to bond.

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that:

\_\_\_\_\_  
(Name of Contractor or Company)

\_\_\_\_\_  
(Address)

a \_\_\_\_\_, hereinafter called Principal,  
(Corporation / Partnership)

and \_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
(Address)

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Recipient)

\_\_\_\_\_  
(Recipient's Address)

hereinafter called OWNER, in the penal sum of \$ \_\_\_\_\_

Dollars, \$ \_\_\_\_\_ in lawful money of the United States, for this payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONFIDENTIALITY OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
(Project Name)

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUB-CONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUB-CONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counter-parts, each on of \_\_\_\_\_ (Number)  
which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal Secretary) By \_\_\_\_\_ (s)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Witness as to Surety)

By \_\_\_\_\_  
(Attorney in Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

## PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that:

\_\_\_\_\_  
(Name of Contractor or Company)

\_\_\_\_\_  
(Address)

a \_\_\_\_\_ hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety Company)

\_\_\_\_\_  
(Address)

hereinafter called Surety, are held and firmly bound unto

\_\_\_\_\_  
(Name of Grant Recipient)

\_\_\_\_\_  
(Grant Recipient's Address)

hereinafter called OWNER, in the penal sum of \$ \_\_\_\_\_

Dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, successors, and assigns, jointly and severally, firmly in these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER dated the \_\_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties in all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the Principal shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_.

ATTEST: \_\_\_\_\_  
(Principal)  
\_\_\_\_\_  
(Principal Secretary) By \_\_\_\_\_(s)

(SEAL)  
\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Address)

ATTEST: \_\_\_\_\_  
(Surety)  
\_\_\_\_\_  
(Witness as to Surety) By \_\_\_\_\_  
(Attorney in Fact)  
\_\_\_\_\_  
(Address) \_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If PRINCIPAL/CONTRACTOR is Partnership, all partners should execute BOND.

## ATTORNEY'S REVIEW CERTIFICATION

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of the \_\_\_\_\_, do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and am of the opinion that each of the agreements may be duly executed by the proper parties, acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties; and that the agreements shall constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Attorney's signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Attorney's Name: \_\_\_\_\_

Texas State Bar Number: \_\_\_\_\_



## Certification Regarding Lobbying

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995).

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Printed Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

# **APPENDIX G**

## **Bid and Contract Documents for Material / Supplier Contracts**

- Advertisement
- Instruction to Bidders
- General Contract Conditions
- Certification Regarding Lobbying
- Conflict of Interest Questionnaire – Form CIQ (Texas Ethics Commission)

*All contractors, service providers, including Council of Governments (COGs) and subcontractors, must have their eligibility status verified (not suspended or debarred) in the System for Award Management ([www.SAM.gov](http://www.SAM.gov)) prior to any formal action authorizing the award of a contract to the contractor (examples of formal action include but are not limited to, authorizing resolution, authorizing ordinance, Council /Commissioners Court approval of award, contract execution, etc.). See Chapter 5 for more information.*

# Materials/Equipment

## Advertisement and Invitation for Bids

The (name of Grant Recipient) will receive bids for (brief description of materials and or equipment) until (time) on (day and date) at (address of where bids are to be delivered). The bids will be publicly opened and read aloud at (time) on (day and date) at (address of bid opening location).

Bids are invited for the several items and quantities as follows:

1. (List a brief description of the required items and quantities here.)
- 2.
- 3.

Bid/Contract Documents, including Technical Specifications are on file at (address(s) at which specifications can be obtained).

A bid bond in the amount of 5 percent of the bid issued by an acceptable surety is required with each bid for those contracts that exceed \$100,000. A certified check or bank draft payable to the (Grant Recipient's name) or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Bid Bond.

The (name of Grant Recipient) reserves the right to reject any or all bids or to waive any informalities in the bidding.

Bids may be held by (name of Grant Recipient) for a period not to exceed 30 days from the date of the bid opening for the purpose of reviewing the bids and investigating the bidders' qualifications prior to the contract award.

(name of Grant Recipient) (contracting officer), (title) (date)

**All contractors and/or subcontractors who are debarred, suspended or otherwise excluded from or ineligible for participation on federal assistance programs may not undertake any activity in part or in full under this project.**

# Materials/Equipment

## Instructions to Bidders

### 1. Interpretations or Addenda

No oral interpretations will be made to any bidder. Each request for an interpretation shall be made in writing to (Grant Recipient or engineer) no less than seven (7) days prior to the bid opening. Each interpretation made will be in the form of an Addendum to the contract documents and will be distributed to all parties holding contract documents no less than seven (7) days prior to the bid opening. It is, however, the bidder's responsibility to make inquiry as to any addenda issued. All such addenda shall become part of the contract documents and all bidders shall be bound by such addenda.

### 2. Alternate bid items

No alternate bids or bid items will be considered unless they are specifically requested by the technical specifications.

### 3. Bids

- a) All bids must be submitted on the forms provided and are subject to all requirements of the Contract Documents, including the Drawings.
- b) All bids must be regular in every respect and no interlineation, excisions or special conditions may be made or included by the bidder.
- c) Bid documents, including the bid, and the bid bond shall be sealed in an envelope and clearly labeled with the words "Bid Documents," the project number, name of bidder and the date and time of bid opening.
- d) The Grant Recipient may consider as irregular any bid on which there is an alteration of or departure from the bid form and, at its option, may reject any irregular bid.
- e) If a contract is awarded, it will be awarded to a responsible bidder on the basis of the lowest/best bid and the selected alternate bid items, if any.

### 4. Bid Modifications Prior to Bid Opening

Any Bidder may modify its bid in writing at any time prior to the scheduled closing time for receipt of bids, provided such modification is received by the Grant Recipient prior to the bid closing time. The modification should not reveal the bid price but should provide the addition, subtractions or other modifications so that the final prices or terms will not be known by the Grant Recipient until the sealed bid is open. Likewise, any Bidder may modify a bid by submitting a supplemental bid in person prior to the scheduled closing time for receipt of bids. Such supplemental bid should mention only additions or subtractions to the original bid so as to not reveal the final prices or terms to the Grant Recipient until the sealed bid is open.

### 5. Bid Bond

A bid bond in the amount of 5% of the bid issued by an acceptable surety is required with each bid for contracts that exceed \$100,000. A certified check or bank draft payable to the Grant Recipient or negotiable U.S. Government Bonds (as par value) may be submitted in lieu of the Bid Bond.

### 6. Corrections

Erasures or other corrections in the bid must be noted over the signature of the bidder.

### 7. Time for Receiving Bids

Bids received prior to the advertised hour of opening shall be kept securely sealed. The officer appointed to open the bids shall decide when the specified time has arrived and no bid received thereafter will be considered.

8. Opening of Bids

The Grant Recipient shall, at the time and place fixed for the opening of bids, publicly open and read aloud each bid, irrespective of any irregularities therein.

9. Withdrawal of Bids

Bidder may withdraw the Bid before the time fixed for the opening of Bids by communicating its purpose in writing to the Grant Recipient. Upon receipt of such notice, the unopened Bid will be returned to the Bidder. The bid guaranty of any bidder withdrawing his bid in accordance with the above will be returned promptly.

10. Award of Contract/Rejection of Bids

The contract will be awarded to the responsive, responsible Bidder submitting the lowest/best bid. The bidder selected will be notified at the earliest possible date. The Grant Recipient reserves the right to reject any or all bids where such rejection is in its interest.

11. Execution of Agreement

The failure of the successful bidder to execute the agreement and supply the required bonds thirty (30) days from the date of the notice of award, or within such extended period as the Grant Recipient may grant shall constitute a default and the Grant Recipient may, at its option either award the contract to the next lowest responsible bidder, or re-advertise for bids. In either case, the Grant Recipient may charge against the bidder the difference between the amount of the bid, and the amount for which a contract is subsequently executed irrespective of whether this difference exceeds the amount of the bid bond. If a more favorable bid is received through re-advertisement, the defaulting bidder shall have no claim against the Grant Recipient for a refund.

12. Equal Employment Opportunity

Bidder is required to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, sexual identity, gender identity, or national origin, and must comply with other civil rights requirements.

13. Certification Regarding Lobbying –

Contractors who apply or bid for an award of \$100,000 or more shall provide the required certification that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining an Federal contract, grant or any other award covered by 31 USC § 1352.

# Materials/Equipment

## General Contract Conditions

### 1. Materials and Workmanship

- a) Unless otherwise specifically provided for in the Technical Specifications, all materials and articles utilized in the work shall be new and the best grade available. Where equipment, materials, or articles are referred to in the Technical Specifications as "equal to" any particular standard, the Engineer shall decide the question of equality.
- b) The successful bidder shall furnish to the Grant Recipient for approval the manufacturer's detailed specifications for all mechanical, other special equipment and all materials or articles, together with full information as to type, performance characteristics, and all other pertinent information as required.
- c) Materials specified by reference to the number or symbol of a specific standard, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Invitation for Bids, except as limited to type, class or grade, or modified in the Technical specifications shall have full force and effect as though printed therein.
- d) Domestic Preferences - As appropriate and to the extent consistent with law and to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (3) [Iron and steel products, Manufactured Products, and Construction Materials] used in this project comply with the Build America, Buy America Act (BABA) requirements mandated by Title IX of the Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. 177-58.

### 2. Samples and Tests

- a) Approval of any materials shall be general only and shall not constitute a waiver of the Grant Recipient's right to demand full compliance with Contract requirements. After actual deliveries, the Engineer will have such check tests made as he deems necessary in each instance and may reject materials and equipment and accessories for cause, even though such materials and articles have been given general approval.
- b) Except as otherwise specifically stated in the Contract, the costs of sampling and testing will be divided as follows:
  - The Contractor shall furnish without extra cost, including packing and delivery charges, all samples required for testing purposes, except those samples taken on the project by the Engineer;
  - The Contractor shall assume all costs of re-testing materials which fail to meet contract requirements;
  - The Contractor shall assume all costs of testing materials offered in substitution for those found deficient; and
  - The Grant Recipient will pay all other expenses.

3. Compliance with Clean Air and Federal Water Pollution Control Acts [for contracts > \$150K]
- a) Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et. seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251-1387. Violations must be reported to the awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  - b) Materials shall be free of any hazardous materials, except as may be specifically provided for in the specifications.

4. Equal Opportunity Clause

- a) The Contractor hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR chapter 60, which is paid for in whole or in part with Community Development Block Grant funds the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discourage or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- b) The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

6. Age Discrimination Act of 1975. The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

7. Debarment and Suspension (Executive Orders 12549 and 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

8. Access to Records



The U.S. Department of Housing and Urban Development (HUD), Inspectors General, the Comptroller General of the United States, and the Texas Department of Agriculture (TDA), and the City/County, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the TxCDBG award, in order to make audits, examinations, excerpts, and transcripts and to closeout the City's/County's TxCDBG contract with TDA.

9. Retainage of Records *[if materials are paid with CDBG funds]*

Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

10. Termination for Cause *[for Contracts > \$10K]*

If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City/County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City/County, be turned over to the City / County and become the property of the City / County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City/County for damages sustained by the City/County by virtue of any breach of contract by the Contractor, and the City/County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

11. Termination for Convenience of the City/County *[for Contracts > \$10K]*

City/County may at any time and for any reason terminate Contractor's services and work at City/County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

[Parties should include the manner by which such termination will be effected and the basis for settlement or any other terms and conditions concerning payment upon such termination.]

12. Liquidated Damages

Since the actual damages for any delay under this contract are impossible to determine, the Contractor shall be liable for and shall pay to the Grant Recipient the sum of ( \_\_\_\_\_ ) Dollars (\$ \_\_\_\_\_ ) as fixed, agreed and liquidated damages for each calendar day of delay from the above stipulated time for delivery.

13. [For Contracts that exceed \$100,000] Anti-Lobbying

Contractor shall file the required certification: The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

## Certification Regarding Lobbying

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995).

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Printed Name and Title of Contractor's Authorized Official

# CONFLICT OF INTEREST QUESTIONNAIRE

**FORM CIQ****For vendor doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

**2** ☐ **Check this box if you are filing an update to a previously filed questionnaire.** (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;  
or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

# SECTION B PLANNING

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# SECTION B PLANNING

## B.0 Introduction

This section addresses the steps necessary to successfully implement planning grants awarded through the Planning and Capacity Building Fund or the Colonia Fund of the Texas Community Development Block Grant Program (TxCDBG). This section is not intended to replace the other sections of the TxCDBG Project Implementation Manual; rather, it is to serve as a guide in accomplishing the administrative requirements specific to planning Grant Recipients.

Planning is an organized way of preparing for the future. It helps accommodate and integrate competing interests to meet expected change, produce desired change and prevent undesirable change. It provides a guide and alternative solutions to problems. It is a process and technique for setting policies and enforcing them in a coordinated fashion. A community with a plan is likely to appear generally more attractive, particularly considering that a good part of the economic development process is marketing.

Grant Recipients that have executed Grant Agreement for planning activities must follow the administrative procedures outlined in the following chapters of Section A:

- *Chapter 1 Administration and Reporting;*
- *Chapter 2 Financial Management;*
- *Chapter 3 Environmental Review;*
- *Chapter 5 Procurement Procedures;*
- *Chapter 10 Civil Rights;*
- *Chapter 11 Grant Agreement Amendments;*
- *Chapter 13 Monitor Review; and*
- *Chapter 14 Audit Requirements.*

**In addition to the procedures and requirements outlined in these chapters, Section B includes specific requirements for planning activities.**

Please refer to the TDA website for sample documents provided as guidance in meeting program requirements.

## B.1 Planning Procedures

### **Step 1. Submit Environmental Documentation**

The Grant Recipient may not incur costs or expend any grant funds for project activities before meeting all environmental review and special condition requirements in the TxCDBG Grant Agreement.

**The environmental documentation must be completed before planning activities begin.** See *Chapter 3 Environmental Review* for further information on fulfilling environmental clearance requirements of the planning grant.

### **Step 2. Procure a Planner or Designate Staff**

The Grant Recipient must competitively procure a planner or designate qualified local staff to complete the planning activities, prior to beginning work on the planning activities.

## Competitive Proposal Procurement

The Competitive Proposal/Request for Proposal (RFP) process must ensure a competitive process, adequate scope of work, and compliance with all applicable federal and state procurement laws and regulations.

The Grant Recipient must verify the contractor/service provider's eligibility to participate in the federally-funded project through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). The Grant Recipient must verify that the contractor is neither debarred, suspended, or otherwise excluded. Record this verification with a dated screen shot for the Grant Recipient's records. Eligibility of all contractors/service providers must be verified through the SAM website prior to any formal action authorizing the award of the contract to the contractor/service provider. Examples of formal action include, but are not limited to, authorizing resolution, authorizing ordinance, council approval of award, contract execution, etc.

Procurement procedures for further information on fulfilling competitive proposal procurement requirements, see *Chapter 5 Procurement Procedures*. Sample RFP documents may be found in Appendix D.

- The RFP must be published in a local newspaper and sent to at least five firms.
- Either a fixed price or cost reimbursable type contract must be awarded.
- Retainer contracts or any semblance of a retainer contract are not allowed.

**BEST PRACTICE:** If negotiations are necessary for the successful procurement of a planning consultant, the negotiations should focus on the specific scope of services to be provided, terms and conditions of the contract, time frames for accomplishment of activities, and the amount of compensation for each activity.

In order to be eligible for TxCDBG grant funding or match funding, or both, costs incurred during the pre-agreement phase must be incurred:

- After the TDA pre-agreement date (application due date);
- After the planning services contract award date (formal approval by elected body); and
- During the contract period identified in the planning services contract (Time of Performance in Appendices D and E, sample contract)—the services contract period may begin prior to the date that the services contract was executed.

The cost of procuring the professional planning services is an administrative cost and is **not** an eligible cost for TxCDBG grant or local matching funds.

## Force Account

If the Grant Recipient has a planning department that will perform the planning activities, thorough records are required. The recordkeeping requirements as well as what costs are allowable are discussed in *Chapter 8 Force Account*.

**NOTE:** Administration activities are not eligible for reimbursement planning activities.

## Step 3. Set up Administrative Procedures and Submit Initial Documentation

**BEST PRACTICE:** A recommended filing system to meet TxCDBG monitoring requirements for planning grants can be found in *Sample Filing System Guide for Planning Projects (Form B2)*.

See *Chapter 1 Administration and Reporting* for additional information on administrative procedures and reporting.

The following documentation must be submitted within six (6) months of the TxCDBG Grant Agreement start date:

- Environmental Performance Report;
- Materials and Services Report (MSR) for planning services;



- All Group A documentation identified in *Chapter 1 Administration and Reporting*. Grant Recipients must conduct an acceptable activity to affirmatively further fair housing during the grant period.

At least once per calendar quarter, the Grant Recipient must initiate a new Performance Report. Select the Current Status reporting option and complete each response. Select Submit Performance Report in the Status Options section of the navigation menu.

Quarter	Report Due
January – March	April 20
April – June	July 20
July – September	October 20
October – December	January 20

#### Step 4. Perform Planning Activities

The specific planning activities required by the grant are stated in the TxCDBG Grant Agreement Performance Statement.

A completed planning document must include:

- A cover letter from the chief local official, which specifically states:
  - The locality finds all planning reports and maps acceptable for its needs; and
  - The locality has in its possession all products, including reproducible maps, and computer compact discs (CDs) containing Adobe Acrobat and original vector map data, if applicable, with instructions for retrieval.
- Itemization and/or description of the location of each requirement of this performance statement within each report to include chapter, page and paragraph;
- Inventory and plan maps for each element requiring mapping;
- High quality planning document, exported in Adobe Acrobat portable document format (PDF), that contains the narrative and mapping prepared under the grant, as well as source map data (original vector data) and graphic data, labeled with the locality name, grant number, planning period covered by the report, topics included within the CD report (on the CD), and preparer's name and date of preparation; and
- Itemization and/or description of the content and layout of the data files and the name of the software package(s) used to generate the maps. One type of mapping software shall be used for all maps required under this grant. Data files must be compatible with computer systems owned or readily available to the local government.

**All reports, maps, and other products completed as a part of this grant, other than documents prepared exclusively for internal use within the TDA, shall carry the following notation on the front cover, CD label, or a title page and on the face of maps:**

*FINANCED THROUGH TxCDBG – OFFICE OF RURAL AFFAIRS OF THE TEXAS DEPARTMENT OF AGRICULTURE. The preparation of this document was financed through provisions of a Texas Community Development Block Grant Program (TxCDBG) Grant from the U.S. Department of Housing and Urban Development.*

The planning document must include the following disclaimer:

*Texas Department of Agriculture (TDA) in conjunction with the United States Department of Housing and Urban Development furnished financial support to the activity described in this publication which does not necessarily indicate the agreement of TDA or of the United States Department of Housing and Urban Development with the statements or conclusions contained in this publication.*

### Step 5. Amend the TxCDBG Grant Agreement (optional)

During the course of the TxCDBG grant, situations may occur that require a change to the original terms of the Grant Agreement. See *Chapter 11 Grant Agreement Amendments* for general procedures for amending TxCDBG Grant Agreements.

All costs are paid on a reimbursement for services basis.

### Step 6. Accept the Planning Documents

Once all planning activities are completed, the Grant Recipient must formally review and accept the planning documents:

- **Final Public Hearing:** Local officials must review the final planning documents during a public meeting. Over the course of the grant, including the final public hearing, local officials must spend a minimum of one (1) hour reviewing the planning documents and must certify the completion of this requirement by resolution (see below).
- **Final Public Hearing Notice:** In addition to the information required for all public hearing notices, the notice of final public hearing for planning activities must state that the planning documents prepared under the TxCDBG grant are available for review at least twelve (12) days prior to the final public hearing.
- **Resolution:** The Grant Recipient must pass a local resolution after the final planning product is presented to the governing body, which states:
  - Local officials' participation in preparing and reviewing planning documents for local needs, grant compliance, and the final presentation of the plan at the final hearing and/or meeting met or exceeded a one-hour minimum requirement set forth by this grant;
  - Goals and objectives developed for each Grant Agreement planning element were presented, discussed, reviewed and established by local officials;
  - Inventory, analyses, plans and maps associated with them required under the grant were presented, discussed and reviewed by local officials;
  - Capital needs listed and ranked within the reports were presented, discussed, and reviewed by local officials;
  - Opportunities were provided for citizen participation in the planning process;
  - Local review established that the planning documents are suitable as policy guides for the Grant Recipient;
  - Local efforts in plan(s) preparation were intended to eliminate impediments to fair housing and support equitable distribution of the plans' benefits;
  - Grant Agreement planning documents are accepted by the Grant Recipient as substantiation for payment requisition to TDA, and for the Grant Recipient's payment to its consultant(s); and
  - A statement of how the Grant Recipient intends to use its planning documents prepared under the grant.

See *Chapter 1 Administration and Reporting* for detailed instructions regarding public notices and documentation, including those for public hearings.

### Step 7. Request Payment for Completed Planning Activities

See *Chapter 2 Financial Management* for general procedures for submitting payment requests.

For payments on planning activities, the following additional requirements apply:

- Funds are released only for completed planning documents. Backup documentation for all payment requests must include a copy, both printed and electronic, of the completed planning element(s) being claimed and written confirmation from the chief local official that the completed element has been reviewed and accepted by the Grant Recipient.
- Upload the following support documentation:
  - Complete final planning document. See Step 4.
  - Local resolution accepting planning documents. See Step 6.

- Invoice for planning services.
- Engineering and/or architectural services, administrative services, and audit services are not eligible costs.
- Unless otherwise approved by TDA staff, a single payment request is expected for each planning grant.

### **Step 8. Submit Closeout Documentation**

Once all planning activities are completed and accepted, the Grant Recipient must change the status of the grant in TDA-GO by selecting the *Begin Closeout* option. Detailed step-by-step instructions for completing and submitting a closeout in TDA-GO may be found on the TDA website.

### **Step 9. TDA Compliance Monitoring**

TxCDBG grants for planning activities will be monitored for compliance with federal, state, and program requirements through a desk review. This includes review of all written project data, including, but not limited to:

- Evidence of timely disbursement of grant and match funds in the form of bank statements showing when the grant funds were deposited, when the checks were written, and copies of cancelled checks;
- The Grant Recipient's application;
- Progress reports;
- Payment requests;
- Written correspondence;
- Copies of audits; and
- Documentation of previous monitoring.

A copy of the monitoring checklist and review criteria *Planning Monitoring Checklist (Form B13)* is provided to be used as a guide to monitor grant performance. TDA retains the right to modify monitoring procedures and tools as deemed necessary.

See *Chapter 13 Monitoring* for additional information on monitoring procedures and administrative completion of the grant.

## **B.2 Planning Elements**

The following sections describe expectations for various planning activities. Prior to 2021, these expectations were found in the grant agreement Exhibit A.

### **B.2.1 BASIC PLANNING ACTIVITIES**

#### **BASE MAPPING**

Grant Recipient shall prepare a corporate area base map, which should coordinate with the State Plane Coordinate System, in digitized format and hardcopy for use in reports and wall-mounting, preferably laminated for the city, at a scale of **1" = 600'** or better, (no smaller than 22 x 36 inches), which shall show at least the features (1) through (11) below:

- (1) Highway and street rights-of-way;
- (2) Highway designations and street names;
- (3) All major drainage ways;

- (4) Major bodies of water;
- (5) Block and lot lines for all platted subdivisions as available;
- (6) Property lines within unplatted subdivisions as available;
- (7) The width of all major utility easements;
- (8) Railroad rights-of-way;
- (9) All subdivisions and their names;
- (10) Corporate limits;
- (11) Other major facilities or features to include but not necessarily limited to:
  - (a) Major park and recreation areas and facilities;
  - (b) Water Treatment plants;
  - (c) Sewage Treatment plants;
  - (d) Extraterritorial jurisdiction line, as appropriate; and
  - (e) Other significant features.

## **FINANCIAL ANALYSIS**

Grant Recipient shall make a financial analysis of the locality to the extent possible to determine its ability to finance present and future capital improvements. The study should include, but not be limited to the following:

- (1) Past, present, and anticipated sources and amounts of income;
- (2) Annual budgets;
- (3) Operating costs;
- (4) Direct and overlapping public debt;
- (5) Outstanding municipal bonds and their schedule of retirement;
- (6) Public improvements financing practices; and
- (7) Recommended standards concerning debt limitations.

## **HOUSING INVENTORY, ANALYSIS AND PLAN**

- A. Grant Recipient shall prepare a housing conditions inventory, analysis and plan which shall, to the fullest extent possible, be based on the participation of a diverse and representative group of housing interests. (A “diverse and representative group of housing interests” includes owners and renters, realtors, developers, builders, single persons, families, minorities, disabled persons, etc. Generally, all persons must be encouraged to participate in plan preparation, particularly those considered within the protected classes of the Fair Housing Act. No person shall be excluded or denied program benefits on the basis race, color, religion, sex, handicap (disability), national origin, and familial status).
- B. Grant Recipient shall develop criteria to be used in the classification of building conditions and formulate definitions for each classification. As a minimum, the three following classifications shall be utilized within the study: 1) Standard, 2) Deteriorating, and 3) Dilapidated.
- C. Grant Recipient shall perform an assessment of the exterior of all residential buildings within the city to determine the physical condition of each building or structure. Grant Recipient shall record vacant and abandoned residential units as the assessment is being made.
- D. To the extent possible, Grant Recipient shall determine whether housing is owner or renter occupied.

- E. Grant Recipient shall use the base map at its contracted scale to create a Housing Conditions Map depicting all housing conditions as inventoried and showing all housing and its classification as defined by the developed criteria.
- (1) Included on the map shall be the delineation of low and moderate income areas, as can be determined from the most recent available Census and/or TxCDBG demographic survey, with a brief narrative for the basis of their delineation.
  - (2) Included on the map shall be clearly marked units and/or areas of affordable housing that are properly represented on the map legend.
  - (3) Included on the map shall be census geographic boundary delineations as available from the most recent Census. The map shall show any identified areas that contain a concentration of aforementioned protected classes within the community
- F. Grant Recipient shall conduct an analysis of housing data to determine problems and housing needs of the current and prospective population and identifiable segments of the population, including the need for fair housing.
- G. Grant Recipient shall identify previous implementation actions, both public and private, taken during the past two years to implement or improve housing programs, including fair housing.
- H. Grant Recipient shall determine what local administrative and legal capacity is available or in effect to overcome housing-related problems which could be utilized more fully, (such as, the use of non-profit organizations), to improve housing, provide remedies to housing needs, including the need for fair housing.
- I. Grant Recipient shall prepare a goal(s) statement and annual housing related objectives. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement.
- J. Grant Recipient shall identify future implementation actions and probable costs, both public and private, to be taken annually over the next three to five years. These activities shall result in the preparation of an overall program design for housing related activities, including fair housing and improved housing stock resiliency during and after disaster situations.

## **POPULATION**

- A. Grant Recipient shall compare census data of the locality from 1990, 2000, and 2010 to present. Grant Recipient must provide total number of project beneficiaries. From the total project beneficiaries, Grant Recipient must provide number of persons in each of the sex, race and Hispanic origin categories; and by number of persons benefiting from activity by income status (Form B11).
- B. Grant Recipient shall determine existing population estimates of the locality by occupied dwelling units. A realistic assessment of the locality's existing population shall be made by reliable methods.
- C. Grant Recipient shall:
- (1) Estimate the locality's future population by five-year increments for the next fifteen to twenty years based on existing trends.
  - (2) Analyze the distribution of classes protected by federal fair housing laws on the basis of race, color, religion, sex, handicap (disability), national origin, and familial status within the community, where such information is available from the most recent Census or other official publications at the block or block group level.

- (3) Use the base map at its contracted scale for illustrative purposes and create a Population Distribution Map showing the existing and projected population distribution for the planning period. The map shall show any identified areas that contain a concentration of aforementioned protected classes within the community. Included on the map shall be census geographic boundary delineations as available from the most recent Census.

## **LAND USE INVENTORY, ANALYSIS AND PLAN**

- A. Grant Recipient shall assess and inspect each plot, tract and parcel of land within the project area to determine its use. The project area should include the city's extraterritorial jurisdiction (ETJ) if significant development has occurred there.
- B. Categories in classifying land uses shall include, as a minimum, the following:
  - (1) Vacant (vacant developed or vacant undeveloped);
  - (2) Agriculture (cultivated and range land – five or more acres);
  - (3) Residential (single family, two family, multi-family, manufactured and mobile homes);
  - (4) Commercial; (retail and services); (retail uses, office uses, wholesale uses)
  - (5) Industrial; (light and heavy); (Light, heavy, railroad right-of-way);
  - (6) Public and Semi-Public (schools, parks, public buildings); (Light, heavy, railroad right-of-way);
- C. Grant Recipient shall prepare a color-coded Existing Land Use Map of the corporate area using the base map at its contracted scale. Grant Recipient shall prepare a color-coded map of existing land uses within the planning area at appropriate scale if the development within the ETJ or portion of the ETJ was determined to be significant in its potential impact on the city. Colors should conform to standard code.
- D. Grant Recipient shall make a tabulation of the existing land uses to show:
  - (1) Total acreage by use;
  - (2) Percentage of acreage in each land use;
  - (3) Acres per 100 persons, or other standard for comparison purposes; and
  - (4) Developed and undeveloped land as a percent of the total land.
- E. Grant Recipient should make an analysis of the community regarding past and potential developments and should report on factors affecting the development of land, such as those below:
  - (1) Occupied dwelling units;
  - (2) Existing land use;
  - (3) Thoroughfares
  - (4) Existing and anticipated population;
  - (5) Soil characteristics as related to developments;
  - (6) Adequacy of public utilities;
  - (7) Adequacy of public facilities;
  - (8) Storm drainage problem areas; and
  - (9) Natural and man-made constraints.
- F. Grant Recipient shall prepare a goal(s) statement and annual land use related objectives and, using the base map at its contracted scale, Grant Recipient shall prepare a color-coded Future Land Use Map to illustrate the future physical development of the locality during the planning period.

## **5.2.2. CENTRAL BUSINESS DISTRICT**

### **COMMERCIAL AREA INVENTORY**

- A. Grant Recipient shall make an assessment of the Central Business District (CBD) that should include its area of immediately adjacent influence to include but not necessarily limited to the following:
- (1) The existing land use of the Central Business District;
  - (2) Street rights-of-way and pavement widths, where applicable;
  - (3) Locations and condition of sidewalks, curbs and gutters;
  - (4) On and off-street parking;
  - (5) Condition of buildings;
  - (6) Location of traffic controls by types; and
  - (7) Traffic volumes and turning movements for major streets, where available;
  - (8) Physical geographic features of the community that could have a positive or negative effect on the integrity of the CBD.
- B. Grant Recipient shall show the above inventory on a symbol-coded map at a 1" = 200' scale.
- C. Grant Recipient should prepare a sketch drawing to show the relationship of the CBD to other supportive and competitive development within the community.

### **ANALYSIS**

Grant Recipient shall analyze the findings above and should determine:

- A. The Central Business District and its relationship to community development to determine if improvements or rearrangement of commercial facilities are needed;
- B. A ratio of existing and projected commercial acreage;
- C. A ratio of used and vacant commercial floor area in the central business district; and
- D. Other significant details and their impact on the vitality of the central business district as they become evident during the course of the study.

### **CENTRAL BUSINESS DISTRICT PLAN**

- A. Grant Recipient shall prepare a goal(s) statement and annual Central Business District related objectives. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement.
- B. In relation to recognized problems, goals and objectives, Grant Recipient shall prepare recommendations that could improve the aesthetic values and physical integrity of the Central Business District considering possible:
- (1) Improvement to facades and alleyways;
  - (2) Pedestrian walkways;
  - (3) Landscape treatment of street medians, pedestrian ways and rest areas; and/or

(4) Removal of obsolete buildings and overhead utility lines.

C. Grant Recipient shall prepare a Central Business District Plan at a scale of 1" = 200' to graphically illustrate the redevelopment of the area in relation to the formulated goals and objectives. The Central Business District Plan map(s) shall, as a minimum include but not necessarily be limited to:

- (1) Any necessary rearrangement of land uses to improve compatibility;
- (2) Any necessary building relocation or reorientation in order to improve their usefulness; and
- (3) On and off-street parking areas.

D. Grant Recipient shall present phased improvements, estimated costs and sources of funding.

### **5.2.3. STREET SYSTEM**

#### **STREET STUDY**

A. Grant Recipient shall determine if any prior studies have been made of part or all of the street system. Studies prepared on the system should be listed with the name of the firm that prepared the study, the date of the study, and brief description of relevant information.

B. Grant Recipient shall make an inventory of the physical characteristics of the street system to record, but not necessarily be limited to the following:

- (1) Rights-of-way widths, as available;
- (2) Paving widths, types and condition of pavement;
- (3) Curb and gutter and/or borrow (roadside) ditches;
- (4) Other information concerning configuration, traffic flow, and street conditions, including possible impediments to traffic flow, particularly in an emergency situation, as appropriate and/or available.

C. Data and information from the Texas Department of Transportation shall be used to the maximum extent feasible.

D. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Street Conditions Map showing the existing street system inventory.

#### **STREET SYSTEM ANALYSIS**

A. Grant Recipient shall make an analysis of the street system including listed and ranked problems and possible alternative actions and costs in providing solutions.

B. Grant Recipient shall determine the adequacy of the system to meet existing and forecasted needs, including during emergency situations, and make recommendations for any needed improvements concerning configuration, traffic flow, and street conditions. Recommendation should prepare for contingencies, including planning evacuation routes. (See the "thoroughfares" component of this performance statement, if applicable.)



## **STREET PLAN**

- A. Grant Recipient shall prepare a goal(s) statement and street-related objectives for the planning period and should include construction-related and policy-related recommendations regarding streets' improvements. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement. General improvements to meet standards and disaster resiliency needs for at least the first five to ten years shall be stated and include: (1) priorities; (2) estimated costs; and (3) sources of possible funding.
- B. Using the base map at its contracted scale, Grant Recipient shall prepare a Future Street Conditions Map. The plan shall provide for the elimination of deficiencies and recommended improvements to meet forecasted needs. Improvements shall be in accordance with accepted municipal standards and shall be shown by phases.

## **5.2.4 THOROUGHFARE SYSTEM**

### **INVENTORY OF MAJOR AND COLLECTOR STREETS**

- A. Grant Recipient shall prepare standards or criteria to determine the definition for major and collector streets and shall include the information in the narrative section of the study.
- B. Grant Recipient shall conduct a study of major and collector streets to determine the present condition of these streets within the planning area. The study should include but not necessarily be limited to:
  - (1) Peak hour and average daily traffic counts, where available;
  - (2) Right-of-way widths;
  - (3) Paving widths, types and condition of pavement;
  - (4) Traffic control data;
  - (5) Parking restrictions;
  - (6) Curb and gutter;
  - (7) Origin and destination information, where available;
  - (8) Land use and traffic generator information;
  - (9) Truck routes; and
  - (10) Emergency routes.
- C. Information from prior studies, the county, Texas Department of Transportation and other available sources shall be used to the maximum extent feasible.
- D. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Thoroughfare Conditions Map to show b. (1) through (9), above, as applicable.

### **THOROUGHFARE ANALYSIS**

- A. Grant Recipient shall list and rank problems related to the thoroughfares system.
- B. To determine the size and quality of streets needed in the project area, an analysis shall be made for all major and collector streets, their locations, adequacy or inadequacy for existing and

forecasted population, land uses, etc. At a minimum, the following should be considered, where appropriate:

- (1) Texas Department of Transportation traffic counts, local traffic habits, and other factors;
- (2) Circulation studies prepared previously; and
- (3) Street standards approved by the locality and State.

## **THOROUGHFARE PLAN**

- A. Grant Recipient shall prepare a goal(s) statement and thoroughfare system-related objectives for the planning period and should include construction-related and policy-related recommendations regarding thoroughfare system improvements. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement. General improvements to meet standards and disaster resiliency needs for at least the first five to ten years shall be stated and include: (1) priorities; (2) estimated costs; and (3) sources of possible funding.
- B. In relation to the analysis of existing and anticipated land use, school and park locations, travel habits, employment centers, traffic generators, traffic volumes; and in coordination with plans of the Texas Department of Transportation, and other available studies, Grant Recipient shall prepare a plan for a system of thoroughfares, major and collector streets to meet the future circulation needs of the planning area. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall show phased improvements on a Future Improved Thoroughfares Map.
- C. Grant Recipient should prepare sketch plans for improved channeling of traffic at intersections where problems exist or are anticipated during the planning period.

## **5.2.5. WATER SYSTEM**

### **WATER SYSTEM INVENTORY**

- A. Grant Recipient shall make a review of all prior studies and other available data on the existing water system. Previous engineering and planning studies prepared on the system should be listed with the date and name of the firm that prepared the study.
- B. Grant Recipient shall make an inventory of the physical characteristics of the system to include, but not necessarily be limited to the following:
  - (1) Location of lines, valves, fire hydrants, and line sizes;
  - (2) Location and capacity of ground and elevated storage facilities;
  - (3) Location and capacity of wells and pumps;
  - (4) Location and capacity of water treatment facilities, as appropriate;
  - (5) Location and capacity of generators;
  - (6) Condition of system elements and other system data, as available.
- C. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Water System Map showing existing facilities as specified in the inventory required above. Mapping shall show all facilities and illustrate the entire area that the facilities serve.

- D. Grant Recipient shall report appropriate standards and criteria used to determine the water system needs and include them in the narrative section of the report, including the name of publications where standards can be found. Reference shall be made to the existing and required Drought Contingency and Water Conservation Plan.

## **WATER SYSTEM ANALYSIS**

- A. Grant Recipient shall make an analysis of the water system and list and rank problems and should present possible alternative actions and costs in providing solutions, while particularly considering the water system's ability to provide reliable service, including fire protection within state standards during drought conditions. As a minimum, the following should be considered in determining problems connected with the water system:
- (1) Water quality;
  - (2) Storage facilities;
  - (3) Availability of water;
  - (4) Water pressure;
  - (5) Distribution lines;
  - (6) Water costs to city;
  - (7) Water cost to customers and review of current and future needs;
  - (8) Operation procedures; and
  - (9) Ability to function under disaster situations, such as, flood, fire, tornado, power outages, etc.
- B. Grant Recipient shall determine the adequacy of the system to meet existing and forecasted needs.
- C. Grant Recipient shall evaluate the local system's capability to provide water under drought and other disaster-related conditions and in regard to its drought contingency and water conservation plan and accepted conservation practices.
- D. Grant Recipient shall evaluate the local system's capability to provide water, including during drought and other disaster-related conditions, and coordinate with the Regional Water Plan and the State Water Plan, where applicable.

## **WATER SYSTEM PLAN**

- A. Grant Recipient shall prepare a goal(s) statement and water system-related objectives for the planning period and should include construction-related and policy-related recommendations regarding water system improvements. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement. General improvements to meet standards and disaster resiliency needs for at least the first five to ten years shall be stated and include: (1) priorities; (2) estimated costs; and (3) sources of possible funding.
- B. The studies and plans developed shall be in strict accord with criteria established by the Texas Commission on Environmental Quality (TCEQ), Texas Water Development Board (TWDB), and the Texas Department of Insurance.
- C. As much as is applicable, appropriate and possible during the contract period and in coordination with TCEQ, which requires drought management plans, Grant Recipient shall include drought and conservation plans in its overall water system plan. The plans should also include consideration of water provision during other disaster situations, such as flood, fire, tornado, power outages, etc.

- D. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall illustrate the existing and proposed water system and findings on a Future Water System Map. Recommended improvements shall be shown by phases.

## **5.2.6. WASTEWATER SYSTEM**

### **WASTEWATER SYSTEM INVENTORY**

- A. Grant Recipient shall make a review of all information regarding the existing wastewater system. Engineering and planning studies prepared previously should be listed with the date and name of the firm that prepared the study.
- B. Grant Recipient shall make an inventory of the physical characteristics of the system to include, but not necessarily limited to the following:
- (1) Location, condition, and size of lines as available;
  - (2) Location of manholes and cleanouts;
  - (3) Location and capacities of lift stations;
  - (4) Location and capacity of generators;
  - (5) Treatment facility and operation arrangement.
- C. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Wastewater System Map showing the existing facilities in relation to topographic features.
- D. Grant Recipient shall report standards or criteria used to determine wastewater system needs and include the criteria in the narrative section of the report with the name of the publication(s) where standards can be found.

### **WASTEWATER SYSTEM ANALYSIS**

Grant Recipient shall list and rank problems related to the wastewater system and should present possible alternative actions and costs in providing solutions. At a minimum, the following should be considered in determining problems of the wastewater system:

- (1) Infiltration;
- (2) Industrial waste and special treatment facilities;
- (3) Operational procedures;
- (4) Unserved areas;
- (5) Characteristics of the soil and terrain affecting collection treatment;
- (6) Ability to function under disaster situations, (flood, fire, tornado, power outages, etc.).

### **WASTEWATER SYSTEM PLAN**

- A. Grant Recipient shall prepare a goal(s) statement and wastewater system-related objectives for the planning period and should include construction-related and policy-related recommendations regarding wastewater system improvements. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement. General improvements to meet standards and disaster resiliency needs for at least the first five to ten years shall be stated and include: (1) priorities; (2) estimated costs; and (3) sources of possible funding.

- B. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Future Wastewater System Map illustrating phased improvements to the wastewater system in relation to the existing system and topographic features.
- C. Such prepared plan shall be done in accordance with criteria and standards established by the Texas Commission on Environmental Quality (TCEQ).

### **5.2.7. STORM DRAINAGE SYSTEM**

#### **STORM DRAINAGE INVENTORY**

- A. Grant Recipient shall make a review of all available information on storm drainage within the city. If any engineering and planning studies have been prepared on drainage, they should be listed with the firm name and date.
- B. Grant Recipient shall conduct an assessment of the project area for any existing storm drainage facilities and all natural drainage courses to include as a minimum:
  - (1) Location and condition of drainage ways;
  - (2) Location and condition of curb and gutter, borrow (roadside) ditches, culverts, and storm sewers;
  - (3) Location of 100 years flood hazard areas; and
  - (4) Identification of areas within the community where local flooding has occurred.
- C. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Storm Drainage Map showing the existing facilities in relation to topographic features.

#### **STORM DRAINAGE ANALYSIS**

- A. Grant Recipient shall list and rank problems related to storm drainage and should present possible alternative actions and costs in providing solutions.
- B. Grant Recipient shall prepare an analysis of the existing drainage system for both natural and man-made facilities. Major and minor drainage areas and areas that have experienced flooding shall be delineated. Drainage characteristics of the areas shall be briefly described and analysis shall be made to determine methods of eliminating local flooding and eroding of local streets. Data, as available through the National Flood Insurance Program of the Federal Emergency Management Agency, shall be utilized to the fullest extent possible.

#### **STORM DRAINAGE PLAN**

- A. Grant Recipient shall prepare a goal(s) statement and storm drainage-related objectives for the planning period and should include construction-related and policy-related recommendations regarding storm drainage improvements. To the extent possible, objectives shall be stated in quantifiable terms and target dates set for their achievement. General improvements to meet standards and disaster resiliency needs for at least the first five to ten years shall be stated and include: (1) priorities; (2) estimated costs; and (3) sources of possible funding.
- B. Using the base map at its contracted scale for illustrative purposes, Grant Recipient shall prepare a Future Storm Drainage Map illustrating phased improvements related to storm drainage in relation to the existing conditions and topographic features.

## **5.2.8. CAPITAL IMPROVEMENTS PROGRAM**

### **FINANCIAL ANALYSIS**

Grant Recipient shall consider the financial analysis accomplished as part of **A. BASIC PLANNING ACTIVITIES** to determine its approximate ability to finance present and future capital improvements.

### **CAPITAL NEEDS LIST**

A. Based on the previous studies, and all capital needs, Grant Recipient shall prepare a capital needs list of projects by category with general priorities for improvements to be accomplished during the planning period through workshop meetings with local officials. Grant Recipient shall classify the type of capital improvements according to guidelines, such as:

- (1) Mandatory: Those which protect life or health.
- (2) Necessary: Those which are important public services.
- (3) Desirable: Those which replace obsolete facilities.
- (4) Acceptable: Those which reduce operating costs.

B. Grant Recipient shall report possible effects of each identified capital improvement need and/or recommended capital improvements on members of classes protected under federal Fair Housing law(s), taking into consideration geographic concentration and other analysis required in Section A.3.c. of this Performance Statement. Grant Recipient shall analyze and report the effects each improvement may have on the following:

- (1) Affordable housing opportunities outside of areas of geographic concentration of protected classes;
- (2) Residents of areas with concentrations of protected classes whether the proposed project provides city-wide or target area benefit;
- (3) Equal treatment and access for disabled persons to public facilities throughout the community;
- (4) Other Fair Housing goal(s), as appropriate.

### **CAPITAL IMPROVEMENTS PROGRAM**

(A) In coordination with both the capital needs list and the city's budget, Grant Recipient shall prepare a schedule of projects recommended for the municipality for the first five (5) to six (6) years of the planning period. The schedule shall list projects by category together with estimated cost, sources of funds and year of construction.

(B) A map shall be prepared to show the projects by type and year of construction. The map shall show any identified areas that contain a concentration of aforementioned protected classes within the community. (See Basic Planning Activities component of this Exhibit A, Performance Statement). Included on the map shall be census geographic boundary delineations as available from the most recent Census.

## **5.2.9 SUBDIVISION ORDINANCE**

### **ORDINANCE DEVELOPMENT**

- A. Grant Recipient shall prepare technical material necessary for the drafting and/or updating of a subdivision ordinance that will best be adapted to direct the platting of land consistent with proposals of the previously prepared Land Use Plan.
- B. The technical material prepared shall be based on sound platting and planning principles and not be inconsistent with all applicable laws.

#### **ORDINANCE REVIEW**

- A. Following development of the technical material and prior to adoption, Grant Recipient shall seek counsel and advice from the city's attorney regarding the legal aspects and implications of subdivision controls.
- B. Grant Recipient shall prepare the technical material for the subdivision ordinance in a form suitable for its adoption and submit it in report form to the Department as provided herein.

### **5.2.10 ZONING**

#### **ORDINANCE DEVELOPMENT**

- A. Grant Recipient shall prepare technical material necessary for the drafting of zoning ordinance that will direct the use of land in a manner consistent with the city's previously prepared Land Use Plan. Technical material on zoning shall be based on sound zoning principles and be consistent with all applicable laws, including affirmatively furthering fair housing and reducing or eliminating disparate treatment of classes protected under federal Fair Housing law(s),
- B. Based on the Land Use Plan and other plans related to physical development of the municipality, Grant Recipient shall have prepared a Zoning District Map using the base map at its contracted scale.

#### **ORDINANCE REVIEW**

- A. Following development of the technical material and prior to adoption, Grant Recipient shall seek counsel and advice from the city's attorney regarding the legal aspects and implications of zoning, particularly that it has a positive influence on the effort to promote fair and affordable housing.
- B. The technical material on zoning and the recommended zoning district map shall be prepared in report form suitable for adoption and be submitted to the Department as provided herein.

# SECTION C

# HOUSING REHABILITATION

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# SECTION C

## HOUSING REHABILITATION

### C.0 Introduction

The Texas Department of Agriculture (TDA) funds eligible housing activities through the Texas Community Development Block Grant Program (TxCDBG). The program is intended to solve certain local housing problems.

#### **Types of Housing Rehabilitation:**

**Housing Unit Rehabilitation** generally refers to the improvement of a property to a decent, safe and sanitary condition. Rehabilitation may include repairs/replacement of interior items such as plumbing, electrical, cabinets, framing, drywall, insulation, HVAC, flooring, subfloor, lighting fixtures, ceiling fans, bathroom shower, toilets, and kitchen appliances. In addition, it also refers to the exterior repairs/replacement of a housing unit structure such as siding, soffit, trim, doors, windows, and roofing.

**On-Site Sewer Facilities (OSSF)** refers to first-time on-site sewage facilities or replacement of on-site sewage facilities.

**First-Time Yard lines** refers to scattered yard line connections not associated with the installation of a main trunk line.

The process for selecting households to benefit from housing rehabilitation assistance, and then carrying out the project, must be clear and available to potential applicants. The Grant Recipient must develop Housing Rehabilitation Guidelines and have them approved by TDA during the application process and prior to receiving a TxCDBG grant under this program. The Grant Recipient must ensure that original objectives are met, that each eligible beneficiary has received quality rehabilitation work, and that the community has benefited from the program.

### C.1 Housing Unit Rehabilitation

For purposes of this chapter, the term homeowner includes both individual owners for owner-occupied units and community-based development organizations (CBDO) that own units to be rehabilitated through TxCDBG funding.

Grant Recipients administering housing activities on private property must maintain a Homeowner Case file for each property to be rehabilitated through TxCDBG grant funding, see *Housing Rehabilitation Case File Review (Form C6)*.

#### C.1.1 Property Eligibility

Single-family, owner-occupied units will be eligible for housing assistance. A family is defined as a homeowner and one or more other persons living in the same household who are members of his/her immediate family. Immediate family is considered to be spouses, parents, children, and grandchildren. An individual living alone and joint tenants who both occupy the unit are also eligible.

- Ownership is documented by a deed; a leasehold agreement with a ninety-nine (99) year leasehold term; or a statement of ownership and location for manufactured housing units.
- Common types include a warranty deed; a warranty deed with vendor's Lien; a special warranty deed; a gift deed; a quit claim deed; and a sheriff's deed.

- A contract for deed is not a deed and does not convey ownership or title to the property. Therefore, TxCDBG assistance for homes that were financed through a contract for deed financing mechanism will not be allowed.
  - For certain homes that were financed through a contract for deed, assistance converting a contract for deed to a traditional warranty deed is available. Contact the Texas Department of Housing and Community Affairs (TDHCA) HOME Program.

Single-family unit(s) owned by a community-based development organization (CBDO) and occupied by primarily low- or moderate-income persons will be eligible for assistance.

- A single-family structure is defined as one to four units; only the units occupied by LMI persons are eligible for assistance.
- The CBDO must sign a letter of commitment to maintain the housing units for residents that meet eligibility criteria of both CDBG and the CBDO for a minimum of five years.
- A CBDO must meet the definition found in the Housing and Community Development Act of 1974, as amended,<sup>1</sup> which include:
  - Neighborhood-based nonprofit organizations;
  - Local development corporations;
  - Nonprofit organizations serving the development needs of the communities in non-entitlement areas;
  - Entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization, community economic development, or energy conservation project in furtherance of the objectives of section 101(c) of this title; and
  - Nonprofit organizations assisting the development of shared housing opportunities (other than by construction of new facilities) for elderly families.

Manufactured homes will only be considered as eligible units if they are anchored in accordance with the manufacturer's installation instructions or the generic standards approved and announced by the TDHCA Manufactured Housing Division. Substantial reconstruction of such a home will consist of a replacement manufactured home.

## **C.1.2 Eligible Activities**

**Rehabilitation** – Materials, labor, and other construction costs for the rehabilitation of housing units that are inhabited by low- or moderate-income persons. Housing rehabilitation activities must bring each rehabilitated unit up to HUD Section 8 existing Housing Quality Standards (HQS) and to the Texas Minimum Construction Standards (TMCS). Rehabilitation to assist persons with disabilities includes any improvements necessary to make the housing unit accessible to the residents. Rehabilitation activities shall be subject to the lead-based paint regulations which may require the Grant Recipient to incur additional costs associated with lead abatement. In addition to federal lead-based paint disclosure and safety policies addressed here, the Grant Recipient is responsible for ensuring compliance with any state or local requirements that may apply.

**Reconstruction** – Materials, labor, and other construction costs for the substantial reconstruction of housing units. Substantial reconstruction may be necessary if the housing unit is dilapidated beyond rehabilitation, or the cost of the rehabilitation is greater than the cost to reconstruct. The existing structure must be demolished, and the new unit must be constructed on the same site in essentially the same manner, e.g., site-built housing replaced by new site-built housing.

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<sup>1</sup> Section 105(a)(15),

**Administration Costs** – Administrative costs associated with the housing assistance program, in amounts designated by the TxCDBG Grant Agreement, see *Chapter 2 Financial Management* for Payment Request Procedures.

**Inspections** – Inspection costs conducted by a certified professional inspector or a qualified inspection individual associated with the housing assistance program, including initial inspections and preparation of work write-ups, work specifications and cost estimates; inspections for lead-based paint, asbestos, or termites; inspections or site evaluations for septic systems; and interim and final inspections. Such inspection costs for each home are eligible for TxCDBG funding and are part of the total allowable project cost not to exceed \$75,000 for each home, i.e., total inspection, construction and acquisition costs may not exceed \$75,000.

**National Program Objective** – Grant Recipients undertaking housing rehabilitation activities must document how they have met the National Program Objective specified in their application. The National Program Objective is not met until funds have been expended and documentation has been completed.

### **C.1.3 Ineligible Activities**

Costs generally ineligible as part of a housing rehabilitation activity include the following:

- Engineering services, which are generally not appropriate or necessary for housing rehabilitation;
- Improvements to secondary residences for a household;
- Improvements to detached structures that are not primary living quarters;
- Improvements determined to be luxury items by TDA staff;
- Replacing manufactured housing units, or mobile home units, with stick-built units - there shall be no waivers issued concerning this policy; and
- Relocation assistance – participation in the housing assistance program by the assisted homeowner is voluntary and requested by the homeowner.

### **C.1.4 Forgivable Loans**

In the TxCDBG program, housing rehabilitation activities must be carried out through five-year forgivable loans to assist housing for low- and moderate-income persons. These loans can be used to rehabilitate housing units. The Grant Recipient must provide homeowners information that clearly explains the forgivable loan process and requirements.

The forgivable loan involves a lien requiring repayment of the loan if the homeowner sells, transfers or vacates ownership of the rehabilitated home for any single period that exceeds thirty days during the five-year forgivable loan period. The Grant Recipient shall record the lien associated with the five-year forgivable loan. Under no circumstances may construction work commence prior to a fully executed loan agreement.

The loan is forgiven at a pro-rated rate of 1.67% per month. Failure to comply with terms will result in the Grant Recipient's recapture of any outstanding debt obligation.

**EXAMPLE:** If the homeowner's total debt obligation is \$50,000 and the homeowner sells the home 36 months after completion of the rehabilitation, then at that time, \$30,000 of the loan will have been forgiven and \$20,000 remain outstanding, which will be recaptured and returned to TDA when the home is sold.

## **C.1.5 Costs**

TxCDBG investment shall not exceed \$75,000 of eligible costs for each house rehabilitated. If additional funding is necessary to complete the housing rehabilitation project, the Grant Recipient may leverage funds from non-profit organizations or other sources. This funding must be committed by resolution and supported by the funding award notification and/or other documentation and approved by TDA prior to executing a construction contract under this program.

Eligible housing rehabilitation costs include but are not limited to the following:

- Labor and materials for construction
- Inspections (must be conducted only by a certified professional inspector or a qualified inspection individual):
  - Initial inspections
  - Preparation of work write-ups, work specifications, and cost estimates
  - Inspections for lead-based paint, asbestos, termites;
  - Inspections or site evaluations for septic systems
  - Interim and final inspections by the construction inspector
- Lead-based paint abatement
- Financing of forgivable loan:
  - Financing fees
  - Credit reports
  - Title binders and insurance
  - Recordation fees, transaction taxes
  - Legal and accounting fees
  - Appraisals
- Architectural or other professional services required to prepare plans, drawings or specifications directly attributable to a particular project—these costs are not usually necessary for housing rehabilitation and the need for such professional services must be requested and approved by TDA.

Eligible administrative costs for the overall CDBG project include:

- Solicitation and review of applications for assistance.
- Submission of required reports for the TDA grant, as described in Section A of this Implementation Manual.
- Compliance with other federal and TDA requirements, including civil rights regulations, single audit compliance, and competitive procurement, as described in Section A of this Implementation Manual.

**NOTE:** The CBDO may provide some or all eligible administrative services if the point of contact for the CBDO is a TxCDBG Certified Administrator.

## **C.1.6 Required Improvements**

The rehabilitation or reconstruction of any house using TxCDBG funds must:

- Include energy efficiency and conservation standards as considerations in the planned improvements;
- Install a hard-wired or battery-operated smoke detector in accordance with National Fire Protection Association standards;
- Address lead-based paint and asbestos hazards; and
- Ensure connection to water and sanitary sewer services.

## **C.1.7 Rehabilitation vs. Reconstruction**

The decision to reconstruct a house is made on a case-by-case basis and requires prior written approval from TDA. Reconstruction of a housing unit requires a written feasibility analysis, including:

- Estimated costs for meeting the HQS and TMCS standards through rehabilitating the housing unit;
- Estimated costs for reconstructing an equivalent housing unit;
- Estimated value of the completed housing unit if reconstructed;
- Initial inspection report;
- *Housing Rehabilitation Work Write-up and Cost Estimate Worksheet (Form C3)*, including sufficient detail to prepare bid and contract documents and documenting the major housing systems requiring repair or replacement;
- Notes and information pertinent to determining the construction required; and
- Photographs of the housing unit's interior and exterior.

To request approval for reconstruction of a housing unit, include all above documentation in the *Special Request* section of the TDA-GO *Grant Overview* page.

## **C.1.8 Age of Property/Lead-based Paint**

In addition to the statutes and regulations governing the CDBG program overall, CDBG housing activities at the federal level are governed by Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations under 24 CFR Part 35. Housing rehabilitation activities often involve property that, depending on its age, may contain lead-based paint. Age of the property can indicate the amount of lead-based paint likely to be present and the extent of the lead hazard control work that may be necessary. The majority of buildings built before 1978, and especially those built before 1960, contain some lead-based paint.

The older the dwelling, the higher the concentration of lead in the paint. For pre-1950 properties, it is reasonable to assume that lead-based paint is present on more than a few surfaces and that abatement of lead hazards will involve a significant amount of work.<sup>2</sup>

The homeowner and housing rehabilitation coordinator must certify on the *Status of Compliance with Lead-Based Paint Regulations (Form C2a)* whether the assisted home was known to be constructed post-1977. The Grant Recipient must also certify any other qualifying exemptions to lead-based paint requirements under 24 CFR §35.115 using *Certification of Lead-Based Paint Exemption (Form C2b)*.

No lead-based paint testing is required if the housing is certified to be built on or after January 1, 1978.

### **Calculating the Level of Rehabilitative Assistance**

The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:

- Per unit rehabilitation hard costs—regardless of source of funds; or
- Per unit federal assistance—regardless of the use of the funds.

To make this determination, it helps to understand several terms:

- **Rehabilitation Hard Costs** – The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.

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<sup>2</sup> 24 CFR Part 35, Subparts L through R, for lead-based paint requirements

- **Lead Hazard Evaluation and Reduction Costs** – Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.
- **Federal Assistance** – Federal assistance includes all federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income.

**EXAMPLE:** A family is receiving a CDBG grant of \$25,000 to rehabilitate their home. \$5,000 of the costs will be to reduce the amount of lead-based paint found in the home. The level of rehabilitative assistance required will be based on \$20,000, i.e., more than \$5,000 and up to \$25,000 per unit.

#### **Per Unit Amount of Rehabilitation Costs, Excluding Lead Hazard Reduction (LHR) Costs**

**Up to and Including \$5,000 per Unit** – When rehabilitation costs are \$5,000 or less per unit, a jurisdiction must “do no harm.” That is, the jurisdiction must conduct mild lead hazard evaluation and lead hazard reduction.

**More than \$5,000 and up to \$25,000 per Unit** – When rehabilitation costs are more than \$5,000 up to \$25,000 per unit, jurisdictions must “identify and control lead hazards.” That is, the jurisdiction must conduct a moderate level of lead hazard evaluation and lead hazard reduction.

**More than \$25,000 per Unit** – Rehabilitation costs over \$25,000 per unit must meet the following requirements:

- **The Goal is to Identify and Eliminate Lead Hazards** – A risk assessment is required to identify hazards and any identified hazards must be abated by a certified abatement professional. Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards.<sup>3</sup>
- **Lead Hazard Evaluation** – A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation or the Grant Recipient may assume that lead-based paint hazards exist.
- **Lead Hazard Reduction** – To address hazards identified:
  - Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.
  - If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.
  - Clearance is required when lead hazard reduction activities are complete.
- **Lead Hazard Options** – There are two options, as follows:
  1. The Grant Recipient is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The Grant Recipient must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
  2. The Grant Recipient is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the Grant Recipient must then conduct a risk assessment.

**NOTE:** Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.
- **Lead Hazard Notices** must be provided to owners and tenants:
  - *EPA’s Protect Your Family from Lead in Your Home* brochure, see Appendix A for link);

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<sup>3</sup> 24 CFR § 35.110

- The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted); and
- The Notice of Lead Hazard Reduction.
- **Lead Safe Housing Rule** – Compliance with the for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.

## **C 1.9 Work Writeups**

Eligible costs for Housing Unit Rehabilitation are based on the property assessment, known as a Work Writeup.

- The Grant Recipient must use a certified professional home inspector or a qualified home inspection individual to assess the work necessary to bring each unit up to building standards. The *Home Inspector Qualification Certification (Form C8)* must be completed by the Grant Recipient and kept in the local files.
  - **Certified Professional Home Inspector** – A person who has received current and comprehensive training to enable them to conduct effective inspections. Completion of the training required to be a licensed Texas Real Estate Commission (TREC) inspector would be acceptable evidence of such training.
  - **Qualified Home Inspection Individual** – An individual with professional certifications, relevant education, or minimum five years' experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical, plumbing and electrical systems found in single family housing units, as evidenced by inspection logs, certifications, training courses, or other documentation.

The Grant Recipient's inspector must prepare a work write-up and *Housing Rehabilitation Work Write-up and Cost Estimate Worksheet (Form C3)* on each house recommended for rehabilitation.

- The work writeup must including all work necessary to bring the unit up to building standards and should include enough detailed specifications for items to be competitively bid. The description of the work must include the dimensions of materials needed.
- In conducting the writeup. the homeowner must be provided relevant information for the program, including:
  - A copy of the Grant Recipient's housing rehabilitation guidelines;
  - Information explaining the five-year forgivable loan program;
  - A signed copy of *TxCDBG Housing Rehabilitation Work Write-Up and Cost Estimate Worksheet (Form C3)*; and
  - A copy of the EPA's *Protect Your Family from Lead in Your Home brochure*. All owners and occupants of units built prior to 1978 must receive the required EPA regulations on lead-based paint.

**NOTE:** The EPA makes available its *Protect Your Family from Lead in Your Home* brochure in English, Spanish, Vietnamese, Arabic, Russian, and Somali (See Appendix A for link).
- The homeowner must sign the work write-up, indicating (s)he understands and accepts the rehabilitation work that may be performed. Every item noted on the work write-up need not be resolved by the rehabilitation program. The Grant Recipient may prioritize the work and complete only high-priority repairs so long as the house complies with Section 8 and Texas Minimal Construction Standards (TMCS) building standards once the rehabilitation is complete. The work write-up should indicate which repairs are necessary to meet building codes and which are optional.
- TDA recommends requesting initial review of at least one sample work-writeup prior to procuring construction services. To request this technical assistance, submit the document(s) using the *Notes* page in the TDA-GO system.

## **C.2 On–Site Sewer Facility (OSSF) Assistance**

For projects that include the provision of first-time on-site sewage facilities or replacement of on-site sewage facilities, the installation of septic systems on private property is considered a housing rehabilitation activity and must meet the housing activity criteria under the TxCDBG Program. TxCDBG funds will only pay for the systems that are located on private property for low- to moderate-income (LMI) residents, including owner-occupied and renter-occupied units.

On the state level OSSF activities are governed by:

- **Title 30 Texas Administrative Code (TAC), Chapter 285, Subchapter A** – Contains the rules for OSSF application and permit requirements.
- **Title 30 Texas Administrative Code (TAC), Chapter 285, Subchapter D** – Contains the rules for planning, construction, and installation of an OSSF.
- **Texas Health and Safety Code Chapter 366, Subchapter D** – Refers to the state law that governs the OSSF permitting program.

### **C.2.1 Costs**

Generally, engineering costs for design will not be considered an eligible cost unless the site location and size of the lot requires engineering by TCEQ regulations.

However, each OSSF location requires a soil evaluation to determine the most appropriate system to install.

- The Grant Recipient shall use the TCEQ licensed list and notify at least three qualified site evaluators:  
**BEST PRACTICE:** Notify at least five evaluators in the area for quotes. Evaluators must be licensed by TCEQ. Search for TCEQ licensing and registration information (See Appendix A for link).
- The Grant Recipient may opt to procure and expend funds for the soil evaluation as an engineering cost (if approved), or as a construction cost, see *Chapter 2 Financial Management*.
- The Grant Recipient must follow all state and federal laws and guidelines when procuring construction services for the installation of the septic systems, see *Chapter 5 Procurement Procedures*. Installers must be licensed by TCEQ. To search TCEQ licensing and registration information, see Appendix A for link.
- Grant Recipient shall send the soil evaluations for each septic system to be installed to the list of qualified/licensed installers for quotes.

The OSSF installer must also be licensed by TCEQ. Installer must bid unit prices that specifically itemize:

- Plumbing improvements;
- Basic installation and connection; and
- Mitigation.

If bid prices vary by property location, the address must be identified for each line item.

## **C.3 First–Time (Scattered) Yard line Assistance**

For projects that include the provision of scattered first-time water or sewer yard line (also known as house-to-line connection) installation, the installation of yard lines on private property is considered a



housing rehabilitation activity and must meet the housing activity criteria under the TxCDBG Program. TxCDBG funds will only pay for first-time yard line installation on private property of low- to moderate-income (LMI) persons.

If first-time yard lines are replacing an OSSF or other sewage disposal method, the installer/contractor and Grant Recipient must certify that all sewage systems have been decommissioned as inoperable and fully mitigated in accordance with Title 30, Subchapter D, Chapter 285 of the Texas Administrative Code and any applicable local codes. Evidence of this mitigation may include a line item in the construction contract, documented as completed through pay estimates and the COCC, or a separate certification statement prepared and submitted by the Grant Recipient.

## **C.4 Steps in Housing Rehabilitation Projects**

Below are typical steps involved in a housing rehabilitation program using TxCDBG funds. The steps follow in a sequential manner although some may occur simultaneously.

### **Step 1. Housing Rehabilitation Guidelines**

- Grant Recipient develops Housing Rehabilitation Guidelines which must be provided to TDA as part of the application for grant funding. Guidelines must be approved by TDA staff before being adopted by the locality. Submittal of the guidelines with the grant application does not constitute approval by TDA. Grant Recipient must have written approval of the guidelines by TDA staff. Note: Any revisions to these guidelines also require TDA approval.
- The guidelines must include the following:
  - **Who is Eligible** – Any minimum criteria that will be used to determine eligibility for the housing unit, such as income eligibility, location within a target area, tax compliance status, ownership status, or maximum home value.
  - **How Will the Units be Selected** – Any priorities or scoring criteria that will be used to select eligible units, such as priorities for elderly or disabled residents, scoring based on income category, or order received, etc..
- What types of improvements are eligible?
  - **Housing Unit Rehab Only** – What are the terms of the assistance? Must include information on forgivable loans and potential repayment of loans, cost over runs, and homeowner responsibilities.
  - **Housing Unit Rehab Only** – What is the maximum funding per unit?
- **OSSF Only** – If renter-occupied properties are eligible, how will the owner ensure that the occupants remain LMI eligible throughout the assistance period? Owners of renter-occupied properties must also execute an agreement with the Grant Recipient not to increase rent or change rental amounts to more than the annual HOME Rental Limits published by HUD. Sample Guidelines can be found on the TDA website:
  - *Sample Housing Rehabilitation Guidelines (Form C2)*
  - *Sample OSSF Guidelines (Form CII2)*
  - *Yard line Assistance Guidelines Template (Form CII2.A)*
- Yard line projects limited to those associated with construction of a water or sewer mainline do not require separate guidelines to be submitted and approved. In this case, only yard lines connecting to the main line identified in the TxCDBG Grant Agreement will be approved for reimbursement. This type of project is not addressed in this chapter.

### **Step 2. Administrative Start-up**

- The Grant Recipient procures professional services as needed, including architectural/engineering and administration services.

- A rehabilitation inspector is designated, which may be an employee of the Grant Recipient or a procured service provider.
- The Grant Recipient completes a broad-level environmental review—the first step in a tiered review as described in *Chapter 3 Environmental Review*—and receives clearance from the TDA Environmental Specialist.

### Step 3. Homeowner Application Process

- Outreach to potential applicants. The Grant Recipient must identify the most appropriate methods of disseminating information to residents in order to ensure the grant funding is used effectively and assists the intended populations. Examples include partnerships with local non-profits serving households that may qualify for housing rehabilitation assistance, delivery of door-to-door flyers, public service announcements in local media and community meetings.
- Grant Recipients must maintain an assisted homeowner case file for each household potentially receiving assistance.
- Housing Unit Rehab – *Housing Rehabilitation Case File Review (Form C6)*.
- OSSF Assistance – *OSSF Case File Review Checklist (Form CII3)*.
- Applications are submitted by potential beneficiaries.
- The Grant Recipient verifies ownership, income-eligibility, and other qualifying factors for each application, as described in the Housing Rehabilitation Guidelines.
- **Housing Unit Rehab Only** – Income-eligibility shall be verified and noted in the local records by one or more of the following methods:
  - Providing third party verification of income from employers and other income sources;
  - Requiring pay stubs for at least three previous months of earnings prior to application;
  - Requiring income tax returns and/or other verifiable statements of annual income if possible (e.g., Social Security benefit statements, employer letters); and/or
  - Each applicant is interviewed about her/his employment and past and expected annual earnings to determine whether all required income has been reported, e.g., How long have you worked for this employer? Is the work seasonal? Are you a part-time or full-time employee?
- **OSSF and Scattered Yard line Assistance** – Income eligibility may be documented by a self-certified Income Questionnaire.
- **OSSF Only** – Homeowners qualifying for assistance must certify that they will fully comply with requirements of the Texas Commission on Environmental Quality (TCEQ) at 30 TAC § 285.36 pertaining to proper decommissioning of abandoned tanks, boreholes, cesspools, and seepage pits.

### Step 4. Housing Unit Assistance List

- The Grant Recipient develops a Housing Unit Assistance List of proposed assisted homeowners, based on its TDA approved housing rehabilitation guidelines, individual needs, if applicable, and dwelling condition, which lists the order in which houses may be rehabilitated. This list must be maintained at the locality.
- Placement on the Housing Unit Assistance List does not guarantee that work will be performed on a specific house. If the work necessary to bring the house up to code exceeds the limits of the local housing rehabilitation guidelines or the maximum TxCDBG investment of \$75,000 per unit, the Housing Unit Assistance List scoring must be re-evaluated and the house may be removed from consideration.
- If the planned rehabilitation work is not performed on one or more houses, the Grant Recipient must update the Housing Unit Assistance List.

### Step 5. Site-Specific Environmental Review

- A site-specific environmental review must be completed for each individual property that is considered for assistance, see *Chapter 3 Environmental Review*.

- Housing Unit Rehab – As part of the project environmental assessment the Grant Recipient must determine if the property proposed for rehabilitation has historical significance. If so, special rehabilitation requirements may apply. The Grant Recipient should consult with the Texas Historical Commission to ensure compliance with historic preservation requirements.

## Step 6. Property Assessments

- The Grant Recipient shall complete the Materials and Services Report (MSR) in the TDA-GO system for each service contract related to the property assessment process, see *Chapter 5 Procurement Procedures*.
- **Housing Unit Rehab Only:**
  - The assessment *Housing Rehabilitation Work Write-up and Cost Estimate Worksheet (Form C3)*.
  - The Grant Recipient performs an on-site code inspection on the home, both exterior and interior, for each application on the Housing Unit Assistance List to determine if the house can be rehabilitated within the funding limits of the program.
  - Upload the *Home Inspector Qualification Certification (Form C8)* to the MSR.
- **OSSF Assistance Only:**
  - The assessment is known as the Soil Evaluation.
  - Upload the TCEQ license information to the MSR.
- Scattered Yard line Assistance – No assessment is needed other than the engineer's plans and specifications.
- If the assessment indicates that the necessary costs to complete the project exceed the funding limits identified the housing rehabilitation guidelines, return to Step 4 or document the availability of additional leveraging funds.

## Step 7. Construction Bid

- Detailed step-by-step instructions for completing and submitting an MSR in TDA-GO may be found on the TDA website.
- Davis-Bacon and Related Acts labor standards generally do not apply to projects involving rehabilitation of single-family homes unless the work involves up to eight housing units in two or more structures from a single owner. The MSR should document the exemption from Davis-Bacon and Related Acts labor standards, as applicable.
- **Housing Unit Rehab Only** – A separate construction contract is required for each homeowner.
  - The bidders conduct on-site inspections of each house recommended for rehabilitation.
  - The Grant Recipient receives bids and awards the contract to the low bidder on each home. The homeowner and construction contractor execute the rehabilitation contract.
  - The homeowner and Grant Recipient execute the five-year forgivable loan promissory note. Under no circumstances may construction work commence prior to a fully executed loan agreement.
  - Upload a copy of the *Housing Rehabilitation Work Write-up and Cost Estimate Worksheet (Form C3)*, including the homeowner's signature acknowledging all required information, to the MSR in the TDA-GO system.
- **OSSF Assistance Only** - The Grant Recipient may procure construction services for OSSF installation in batches through sealed bidding procurement by including all households approved for assistance as of the date of the bid publication. If the total anticipated construction costs for the group of approved installations is less than or equal to \$75,000, the Grant Recipient may use the small purchase method. However, the Grant Recipient must avoid component, separate, or sequential purchases as defined by the Texas Local Government Code and described in *Chapter 5 Procurement Procedures*. After a round of small purchase installations has been procured and a construction contract awarded, the Grant Recipient may only procure a subsequent round of small purchase installations if the following conditions have been met.

- The Grant Recipient has determined that procurement through sealed bidding for all applicants for assistance at once is not practicable due to the administrative constraints and time necessary to qualify eligible homeowners/residents.
- The homeowner/resident applications for assistance were approved after the date on which the previous small purchase contract was awarded.
- The Grant Recipient approved the next group of installations after the date on which the previous small purchase contract was awarded.
- The Grant Recipient has notified TDA of these conditions and received approval to use small purchase procurement procedures for a new construction contract.
- Installer must bid unit prices that specifically itemize the following:
  1. Plumbing improvements;
  2. Basic installation and connection; and
  3. Mitigation.

If bid prices vary by property location, the address must be identified for each line item.

## Step 8. Construction

### Housing Unit Rehab only.

- A pre-construction conference is held with the Grant Recipient, homeowner, and contractor so that all parties understand the goals, thresholds, limitations, and regulations associated with the TxCDBG program.
- The homeowner is responsible for review of the day-to-day work of the construction contractor. Excellent communication is necessary to ensure that the homeowner understands the work that is, and is not, included in the rehabilitation.
- The Grant Recipient also makes periodic inspections of the work in progress.
- If the Grant Recipient prepares adequate work write-ups during the application phase of the program, few changes to the construction contract are anticipated. If the need for a change order arises due to conditions not previously observed, the Grant Recipient should complete the change process for the relevant Financial Interest Report as described in *Chapter 5*, attaching the *Housing Rehabilitation Change Order Request Approval (Form C4)*.
- If the original work writeup indicated no work was necessary for a certain housing system, change orders to add work for that system will generally not be approved unless the inspector documents why these conditions could not be observed at the time the work writeup was completed.
- A final inspection is conducted by the rehabilitation inspector with the homeowner and contractor in attendance. A final punch list is made, if necessary.
- **OSSF and Scattered Yard line Assistance** – Construction should be carried out according to standard procedures, as described in *Chapter 5 Procurement Procedures*.
- Payment for construction and other services may be requested through the TDA-GO Payment Request according to the policies described in *Chapter 2 Financial Management*.
- **Housing Unit Rehab Only** – In addition to the required invoices, the following documents signed by the homeowner must be attached to the payment request:
  - *Housing Rehabilitation Case File Checklist (Form C6)* demonstrating documentation collected to date.
  - Housing Rehabilitation – *Homeowner's Payment Request (Form C5)*.
  - Photos documenting the work completed, along with the final construction payment request for each housing unit.

## Step 9. Completion

- The Grant Recipient will finalize the Materials and Services Report in the TDA-GO system, including the Certificate of Construction Completion.

- The final wage compliance portion of the MSR is not required unless TDA has previously determined that Davis-Bacon and Related Acts labor standards apply.
- Housing Unit Rehab only:
  - If no architect was used for the rehabilitation, leave blank the space indicated for the project engineer on the COCC.
  - The homeowner's approval of the final construction Payment Request will serve as his/her acceptance of completion.
- OSSF Assistance only:
  - If no architect was used for the rehabilitation, leave blank the space indicated for the project engineer on the COCC.
  - In addition, upload *Certificate of Construction Completion for OSSF Projects (Form CII709)*.
- The program continues until all houses which qualified for assistance are completed in the project.

#### **Step 10. Loan Forgiveness (Housing Unit Rehab Only)**

- The lien filed by the Grant Recipient and imposed the house is released once the loan is forgiven or repaid—typically in five years, see *Sample Release of Lien (Form C9)*. The release of lien must be recorded with the applicable county, a copy of the recorded document must be submitted to TDA.