
TxCDBG announcement: updated guidance related to construction contracting and related issues

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on behalf of
Texas Community Development Block Grant program <cdbg@lists.state.tx.us>
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BABA

HUD recently provided additional guidance for implementing the Build America Buy America Act for projects funded through the Community Development Block Grant Program.

Highlights of this updated guidance include:

- Detailed definitions and clarifications on how to categorize materials – specifically, the categorization of materials as iron/steel, construction materials, manufactured products, or other products is based on the product at the point it is delivered to the construction site; and
- New options for documenting compliance for each material.

No changes are required to the TxCDBG Project Implementation Manual or grant agreements, and we have incorporated this guidance into the following:

- A401 BABA Checklist & Best Practices
- A402 BABA Contractor Certification (new optional form)

TDA will continue to monitor federal guidance regarding BABA implementation and will extend any available flexibilities at the earliest opportunity.

Grant Recipients that have previously submitted Form A400, documenting the project materials and anticipated BABA Compliance status, may review this form in light of the updated guidance. For example, a project that includes pre-cast concrete products should re-evaluate to ensure these products are labeled as manufactured products rather than not applicable (due to the cement) or iron/steel (due to rebar incorporated into the item). If revisions are needed, please notify your Grant Specialist via email and include the revised A400 on your next Payment Request for construction costs.

EEO

TDA is watching closely as a number of executive orders are being issued that may impact TxCDBG projects. According to a Department of Labor announcement:

“On January 21, 2025, the White House and President Donald Trump issued an Executive Order: [“Ending Illegal Discrimination and Restoring Merit-Based Opportunity”](#), which revoked Executive Order 11246. For 90 days from the date of this order, Federal contractors *may* continue to comply with the regulatory scheme in effect on January 20, 2025.”

This announcement directly impacts the Equal Employment Opportunity clause required for contracts greater than \$10,000. Until the DOL issues new regulations, the EEO language remains a requirement contract clause. TDA has updated the Appendices to the TxCDBG Project Implementation Manual to add the following – grant recipients must continue to include the Equal Employment Opportunity clause in all relevant contracts, and should include this qualifier in the same:

Equal Opportunity Clause. [Note: Executive Orders 11246 and 13672 have been rescinded by Executive Order 14173 issued January 21, 2025]

TDA will provide a Policy Issuance or other guidance once new regulations are implemented.

DBRA/CWHSSA Liquidated Damages

TDA has been in contact with HUD regarding recent projects involving liquidated damages assessed for violations of labor standards requirements under the federal Contract Work Hours and Safety Standards Act (CSWSSA). Labor Standards Officers that identify such violations are advised to immediately contact Labors@TexasAgriculture.gov. The LSO should also notify the contractor to correct any wage underpayments and avoid future violations; however, no liquidated damages should be assessed or collected from the contractor until specific instructions are provided by TDA.

Note: TDA has updated Form A708 Sample DOL Payroll Form to include the most up to date format.