



Texas Department of Rural Affairs
Texas Community Development Block Grant Program
PO Box 12877
Austin, TX 78711

POLICY ISSUANCE

CDBG 11-01

Effective Date: March 24, 2011

SUBJECT: Procurement - Professional Services /Administration Services

PURPOSE: This Policy Issuance clarifies existing policy on the procurement of professional services and administration services under the CDBG program. All professional services and administration services related to CDBG projects must be procured competitively, regardless of the source of funds that will pay for the professional services contract. We are retaining the existing policy that the Competitive Negotiation procurement method applies to all professional services contracts paid in whole or in part with CDBG funds. Competitive Negotiation may also be used for administration or CDBG contract management services to satisfy the program requirement that these services must be procured competitively.

These changes to the Project Implementation Manual clarify that the process for considering cost differs between the procurement of administration services and the procurement of professional services, such as engineers, architects and surveyors. For example, in procuring administration services, under Step 3 under Section 5.1 of the Project Implementation Manual entitled "Establish Written Selection Criteria" you will notice that cost would be a scoring element. Notice; however, that cost is not a scoring element at this stage of the process if a Grant Recipient is procuring engineering, architectural or surveying services. Sections of the Project Implementation Manual have been revised to conform to this existing selection process.

Also, please note that as described under Section 5.1, in procuring architectural, engineering, or land surveying services (but not administration services), the Grant Recipient shall: (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and (2) then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the Grant Recipient shall: (1) formally end negotiations with that provider; (2) select the next most highly qualified provider; and (3) attempt to negotiate a contract with that provider at a fair and reasonable price. The Grant Recipient shall continue this process to select and negotiate with providers until a contract is entered into.

ACTION AND EFFECTIVE DATE: The revisions to the Project Implementation Manual are shown in the following attachment. The revisions are effective as of the date of this policy issuance. Prior procurements made in accordance with the preceding Project Implementation Manual language as well as those made in accordance with the requirements specified in these revisions will be considered in compliance with program rules.

Please review the changes carefully and if you have any questions or if we can provide any further assistance, please contact me at Mark.Wyatt@tdra.texas.gov or Suzanne Barnard at Suzanne.Barnard@tdra.texas.gov.


Mark Wyatt, Director

Texas Community Development Block Grant Program

CHAPTER 5

PROCUREMENT PROCEDURES

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CHAPTER 5

PROCUREMENT PROCEDURES

5.0 Introduction

This chapter summarizes the laws, rules, and regulations that apply to procurement of contracted services, goods and materials that are purchased, and equipment that is leased for use on TxCDBG projects.

Procurement is the process through which an entity obtains goods and services from vendors. The federal government has established a set of procurement rules that apply to CDBG-funded projects. These rules are in place to ensure that federal dollars are spent fairly and encourage open competition for the best level of service and price. In addition, the State of Texas has enacted a set of regulations that also apply to CDBG contracts. The procurement procedures comply with both sets of regulations.

NOTE: If there is a conflict between federal and state laws regarding procurement, the more stringent law will apply.

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

- Identify and specify standards for the goods or services the Grant Recipient wants to obtain - 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, minority-owned and female-owned businesses. Possible action include:
 - Contacting MBEs and encouraging them to provide a proposal, quote, or bid;
 - Dividing total requirements into smaller tasks or quantities that small businesses can bid on, if economically feasible;
 - Requiring prime contractors to take the same affirmative steps listed above in the procurement of their subcontractors; and
 - Using other suggestions found in **Chapter 10: Civil Rights Requirements**.
- Have a quality assurance system that helps ensure a fair price for the goods and/or services received in accordance with the standards set forth in the contract.
- Review all procurements to avoid unnecessary and duplicative purchases and to ensure costs are "reasonable".
- 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. **Cost plus percentage of cost contracts are specifically prohibited if CDBG funds are involved.**

Grant Recipients must provide adequate documentation to show that the selection process was carried out in an open, fair, uniform and thorough manner and to 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 Recipient should clearly identify during the procurement process any items included in the bid / purchase that are not included in the TxCDBG contract.

5.1 Professional Service Administration Contracts

The **Competitive Negotiation** procurement method applies to all professional service contracts paid in whole or in part with TxCDBG funds. Competitive Negotiation may also be used for administration or CDBG contract management services to meet the program requirements that these services related to CDBG projects must be procured competitively.

Competitive negotiation procurement is used when factors other than cost are an important part of selecting the vendor. Once proposals are received and rated/ranked, the Grant Recipient is free to negotiate with one or more respondents to arrive at the most advantageous terms and price. This negotiation is the main difference between this method and the Competitive Sealed Bids Method.

Regardless of the source of funds that will pay for the contracts, all Grant Recipients must adhere to the State of Texas' Professional Services Procurement Act (Texas Government Code, Chapter 2254).

~~Common professional services used for CDBG projects include:~~

The "professional services" generally used for CDBG 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
- a state certified or state licensed real estate appraiser

- ~~administration,~~
- ~~architecture/engineering work,~~
- ~~appraisal services,~~
- ~~housing rehabilitation~~
- ~~archeological surveying,~~
- ~~auditing,~~
- ~~inspection / management,~~
- ~~land surveying,~~
- ~~medical work, and~~
- ~~relocation management,~~
- ~~accounting,~~
- ~~legal counseling.~~

~~Regardless of the source of funds that will pay for the contracts, all Grant Recipients must adhere to the State of Texas' Professional Services Procurement Act (Texas Government Code, Chapter 2254).~~

~~According to this Act:~~

- ~~Professional services contracts must be selected and awarded based on demonstrated competence and qualifications for the type of professional services to be performed.~~
- ~~Proposed cost of services may be a considered prior to selecting an administrative consultant.~~
- ~~Engineering services must be selected without a cost proposal, and then negotiate a fair and reasonable price (22 Texas Administrative Code Part 6 §137.53).~~

The Grant Recipient may not select a provider of professional services or award a contract for the services on the basis of competitive bids submitted for the contract or for the services, but shall make the selection and award: (1) on the basis of demonstrated competence and qualifications to perform the services; and (2) for a fair and reasonable price.

Professional Services of an Architect, Engineer, or Land Surveyor: In procuring architectural, engineering, or land surveying services, the Grant Recipient shall: (1) first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and (2) then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the Grant Recipient shall: (1) formally end negotiations with that provider; (2) select the next most highly qualified provider; and (3) attempt to negotiate a contract with that provider at a fair and reasonable price. The Grant Recipient shall continue this process to select and negotiate with providers until a contract is entered into.

All professional services and administration services related to TxCDBG projects must be procured competitively, regardless of the source of funds that will pay for the professional services contracts.

- Professional services and administration services paid in whole or in part with TxCDBG funds must use the Step-by-Step procurement procedures described below.
- Professional services and administration services paid solely with local or matching funds should use these procedures or a similar competitive procurement process.

TxCDBG encourages Grant Recipients to procure professional services and administration services under the Pre-Agreement Stratagem described in Section 1.1.1 as applicable, in order to expedite the project.

NOTE: Professional service and administration service procurement procedures must be performed **prior** to the performance of any work by the ~~professional~~—service contractor. **If professional service / administration service procurement procedures are not performed correctly, fees for professional services / administration services must be paid with local funds.**

Costs for professional services and administration service incurred before the completion of the procurement process and execution of a professional services contract are not reimbursable by TXCDBG.

The procurement requirements described above will not apply to:

- professional services and administration services provided performed by an employee of the Grant Recipient;
- professional services as described above provided by a professional with an ongoing commitment to the Grant Recipient, such as an attorney retained to provide legal services for all local business; or
- ~~professional~~-similar services provided through an interlocal agreement, such as an agreement with a Council of Governments.

Step-by-Step Selection Procedures

STEP 1 Establish local Selection Review Committee

The Selection Review Committee establishes the criteria or evaluation factors to be used for selection and rating of competing respondents. This committee may consist of the entire local governing body, a subset of this body, or one of the aforementioned with designated staff support.

The selection committee members should have no potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings). Any person who might potentially receive benefits from CDBG-assisted activities may not participate in the decision-making process. Nepotism and conflict of interest regulations can be found in the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, and 24 CFR 570.489(h). The Grant Recipient may choose to broaden local conflict of interest policies to additional other family members and relatives.

STEP 2 Determine the Scope of Services

The scope of work for a professional services [or administration services](#) contract describes all desired tasks that a Grant Recipient expects a professional service [or administration services](#) provider to perform under a contract. The scope of work should itemize tasks needed, with timeframes and achievable goals as appropriate and is the basis for the Request for Proposals (RFP) and ~~professional~~ services contract. Sample scopes of work for both [administrative](#) management consultants and engineers can be found in the sample contract in **Appendix I**.

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. TxCDBG strongly recommends that the Grant Recipient use a scoring method for reviewing professional service/[administration](#) proposals. For example:

Experience	40 points
Work Performance	25 points
Capacity to Perform	10 points
Cost* (N/A for Engineer/Architect / Surveyor)	20 points
Affirmative Action	5 points
Total	100 points

The local governing body has final authority to approve all professional services contracts / [administration](#) and should be closely involved in the establishment of the written selection criteria.

A consultant that intends to respond to the Request for Proposals may provide information on TxCDBG procurement procedures, but may NOT participate in the development of the scoring criteria, the final selection of firms to be contacted, or the scoring of proposals.

The specific criteria to be used by the Grant Recipient should fit the needs of the desired ~~professional~~ 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. Rating sheets for [administration](#) management consultants and architects/engineers are included as **Form A501** and **Form A502, respectively**.

STEP 4 Develop the Request for Proposals (RFP) Package

The Grant Recipient must develop an RFP package to issue to potential respondents. The RFP package must contain three parts. Samples of each required document are found in Appendix I.

- 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.
- Request for Proposals (RFP). The RFP provides detailed instructions to respondents and the criteria to be used in evaluating proposals. The RFP should include the following components:
 - A statement of qualifications;
 - Proposed cost of services/fee structure (non engineering/architectural/[surveyor](#) services only);

- Experience with federal programs;
- Capacity to perform the specific proposed task;
- Affirmative action efforts; 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.

- Sample Contract. A sample professional services / [administration management services](#) contract containing the terms and conditions of the contract between the Grant Recipient and the ~~professional~~-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 5 Advertise and Distribute the RFP

In order to create competition for the work, the Grant Recipient must advertise the RFP. A sample advertisement is provided that can be altered for the appropriate ~~professional~~ service. The Grant Recipient must:

- Contact a minimum of five individuals/firms for their response by either email, fax, or return receipt mail. At least three of the firms contacted must be “local” to the Grant Recipient’s COG region, or a contiguous region, based on:
 - the location of the firm’s offices, or
 - history of contracts managed.
 The Grant Recipient may request a list of service providers on previous contracts from TxCDBG if it is not familiar with service providers in the area. The remaining two or more firms may be selected based on other criteria for effective competition if documented in the local files.
- Advertise in a locally distributed newspaper. (If no local newspaper is published in the municipality or county, the advertisement may be posted at the city hall or county courthouse.) The deadline for receipt of proposals must be at least ten days after the date of public advertisement and contact dates of the RFP.

STEP 6 Promote participation of MBEs and Section 3 Businesses

Grant Recipients should actively take steps to encourage proposals from small, minority, and female-owned businesses (MBEs), as well as Section 3 business concerns.

STEP 7 Rate Proposals and Document the Process

Once the deadline for submitting proposals has passed, the selection committee must rate the proposals using only the specific selection criteria identified in its RFP. This selection process must be thorough, uniform, and well documented through the rating sheets developed in Step 3.

Newspaper Advertisement For Management or Engineering Services

(DATE)

GRANT (MANAGEMENT)
(ENGINEERING/ARCHITECTURAL SERVICES)

PUBLICNOTICE

The City of Two Dash has recently received a Contract award from the Texas Department of Rural Affairs (TDRA) for water system improvements. Accordingly, the City is seeking to contract with a qualified (individual/management firm); (engineer/engineering firm registered to practice in the State of Texas) to (administer the contract), (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 these proposed services to the address below:

City of Two Dash
City Hall
100 Main Street
Two Dash, Texas 78000

Proposals must be received by the City no later than 10:00 am on the 15th day of May, 2009 to be considered. The City reserves the right to negotiate with any and all individuals, engineers or firms that submit proposals, as per the Texas Professional Services Procurement Act and the Uniform Grant and Contract Management Standards.

The City of Two Dash is an Affirmative Action/Equal Opportunity Employer.

STEP 8 Select the **Professional Service Provider**

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

- Reasonable - Refers to the most suitable, fit and appropriate respondent to accomplish the job in question.
- Responsible - Refers to the respondent that is able to 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.

Pursuant to Conflict of Interest regulations, an engineer would generally be prohibited from also serving as the Grant Recipient's management consultant on the TxCDBG-funded project.

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 local governing body may consider to such matters as:

- The respondent's ability and willingness to comply with all applicable laws and regulations;
- The respondent's past performance records; and
- The respondent's financial and technical resources.

Grant Recipients must request TxCDBG approval prior to awarding a professional services [or administration management](#) contract if the Scope of Services does not reflect the TxCDBG contract Performance Statement.

For all engineering services, and for management services where the proposed cost is not feasible, contract negotiations with the selected respondent occur during the last step of the selection process. The Grant Recipient may negotiate either a fixed-price or not to exceed cost-reimbursable type contract. Negotiations should be focused on the specific scope of services to be provided, terms and conditions of the contract, and the amount of compensation for each activity. Where appropriate, specific time frames for accomplishment of activities should be negotiated as terms of the contract to ensure prompt completion of the project. For example, the contract may establish a deadline for the completion and submittal of plans and specifications so that the CDBG activities will have priority over other projects.

Negotiation of price for engineering/architectural/[surveyor](#) services must take place after selection is completed; proposed cost may not be a selection criteria or consideration.

STEP 9 Award Contract

After finalizing the contract, the Grant Recipient authorizes approval to proceed with contract execution. Unsuccessful respondents should be notified in writing that their proposals were not selected for the contract.

The Grant Recipient must submit the *Financial Interest Report (Form A503)* to TxCDBG within 30 days of executing the contract.

The Grant Recipient should always have their attorneys review any contracts before signing, to ensure that all local laws and requirements specific to that municipality or county are also incorporated.

Even if a standard agreement is used (such as the American Society of Civil Engineers' or American Institute of Architects' formats), TxCDBG recommends that the contract include the following provisions:

- Names of Both Parties - Grant Recipient and firm.
- Effective Dates - Starting and ending dates.
- Scope of Services - Either directly written into the contract or provided as an attachment that is incorporated into the contract. All administrative activities to be performed by the **professional** services contract must also be listed in this section.
- Compensation - Including both the maximum amount of the contract and the method of payment. A firm, fixed-price contract, or a not to exceed cost-reimbursable type contract, must be executed.
- Authority by Which the Locality is Awarding Funds - Referencing the Texas Government Code, Chapter 2254, Subchapter A, "Professional Services," which permits and outlines state requirements for municipalities and counties regarding procurement of professional services.
- Terms and Conditions - Either written into the contract or incorporated by reference to an attachment.
- Local Program Liaison - Identification of a local public official as the consultant's primary contact.
- Amendments - Procedures for amending the scope of work and/or compensation section.
- Termination - Explaining circumstances under which the Grant Recipient or other party can cancel the contract (e.g., unsatisfactory performance).

A sample contract for engineering services can be found at:
<http://www.rurdev.usda.gov/ca/pdf%20files%20and%20documents/E-510-2002.pdf>

Checklist: Procurement for Professional Services / [Administration](#)

- Establish a committee for rating the management proposals
- Create a Rating Sheet (for scoring purposes)
- Prepare the cover letter for the RFP
- Prepare the Request for Proposal (RFP) package to include:
 - Scope of Work
 - Statement of Qualifications
 - Deadline for Submission
 - Evaluation Criteria
 - Proposed Cost of Services (excluding Engineer/[Architect](#)/[Surveyor](#) Services)
- Advertise in Newspaper and Distribute RFP – send to five firms
- Committee meets to rate proposals
- Select a management consulting firm
- Award a Contract

5.2 Construction and Materials Contracts

Construction services and materials contracts paid in whole or in part with TxCDBG funds must be procured using either the **Small Purchase** procurement method or the **Sealed Bids** procurement method.

5.2.1 Small Purchase Procurement

The Small Purchase procurement method uses relatively simple and informal procurement methods to secure equipment, non-professional / [non-administrative](#) services, supplies or other property that cost, in the aggregate, less than \$50,000 in accordance with state law.

Key concepts for Small Purchase procurement include:

- Aggregate cost – total cost of the project including TxCDBG funds and all other funding sources;
- Job – a project as defined by the engineering plans and specs;
- 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;
- Component purchases – purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

Small Purchase Procurement applies to contracts or “jobs” that cost less than \$50,000.

The Local Government Code, Sec. 262.023 (c) and Sec. 252.062 (a) 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. For example:

- A water line job should be one purchase, rather than separate purchases of pipe, fire hydrants, valves, and fittings.
- A water storage tank should be bid as one purchase, rather than separate purchases of site preparation, foundation, piping, valves, welding, etc.

Prior to beginning small purchase procedures, the Grant Recipient should get an estimate of the cost of the construction from the engineer. If the estimated cost is greater than \$50,000, small purchase procurement is not appropriate.

Step-by-Step Small Purchase Procedures

STEP 1 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** for specific information on the requirements of the Davis-Bacon Act.

Wage Rates are not required for construction contracts less than \$2,000.

STEP 2 Contact three vendors for quotes or estimates

The Grant Recipient must contact at least three firms by phone, in person, or in writing, to obtain cost estimates for the goods or services. The responses (including responses that indicate no interest or quotes provided) must be recorded on the *Small Purchase Procurement Record (Form A504)* and submitted to TxCDBG Program Staff.

STEP 3 Promote participation of MBEs and Section 3 Businesses

The Grant Recipient should actively take steps to encourage proposals from small, minority, and female-owned businesses (MBEs), as well as Section 3 business concerns.

STEP 4 Clear the Contractor

The Grant Recipient must verify the construction contractor's eligibility through the Excluded Party List System. See **Chapter 7 Davis Bacon Labor Standards** for details.

STEP 5 Award the Contract

The Grant Recipient should award the contract to the lowest appropriate bidder. TXCDBG recommends that the Grant Recipient's attorney review the construction contract prior to contract award, and certify that it meets all program, state, and federal requirements. This certification is included in the sample construction contract as **Appendix K**.

The contract may be awarded before the contractor is cleared, but may NOT be executed without obtaining EPLS clearance.

STEP 6 Execute the Contract

The Grant Recipient must submit the *Small Purchase Procurement Record (Form A504)* and *Financial Interest Report (Form A503)* to TxCDBG within 30 days of executing the contract, and submit the *Labor Standards Record (A706-rev)* prior to the first Request for Payment for construction work.

5.2.2 Formal Bidding Procurement

Procurements of equipment, non-professional services, [non-administration / contract management services](#), and construction contracts whose total cost is **more than \$50,000** must formally advertise for sealed bids and hold a public bid opening in a newspaper of general circulation.

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/conditions of the invitation for bids, is lowest and best in price (See **Appendix J** and **Appendix K** for sample bid and contract documents for material and construction contracts, respectively).

Step-by-Step Bidding Procedures

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 enough technical information for potential bidders to submit a competitive bid.

Checklist: Bid Package

<u>Document</u>	<u>Construction</u> (sample in Appendix K)	<u>Materials/Equipment</u> (sample in Appendix J)
Advertisement and Invitation for Bids	X	X
Instructions to Bidders - includes Bidder's Qualifications	X X	X
Bid Format (including all deductive or additive alternates as applicable)	X	X
Bid Bond	X	X
Performance Bond	X	
Payment Bond	X	
Standard Form Contract	X	X
General Contract Conditions - includes Grant Recipient Plan	X X	X
Wage Rate Decision (issued by TxCDBG)	X	
Federal Labor Standards Provisions (HUD 4010)	X	
Special Provisions (as applicable)	X	X
Architect's Certification of Compliance with the Architectural Barriers Act of 1968 (if applicable)	X	
Drawings and Technical Specifications - includes location of all utility lines and similar services	X X	X (if any)

TXCDBG recommends that the Grant Recipient's attorney review the construction contract prior to the bid and certify that it meets all program, state, and federal requirements. This certification is included in the sample construction contract as **Appendix K**.

If a construction contract includes both a TxCDBG project and a separate project (not included in the Performance Statement 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.

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 construction procurement. See **Chapter 7: Davis-Bacon Labor Standards** for specific information on these requirements.

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 fourteen days prior to the bid opening date;
- Ensure that the two published notices are at least 7 days apart;
- Describe work or item to be purchased or state where specifications can be obtained;
- Include time and place for receiving and opening bids (count 15 calendar days from the first advertisement date);
- 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 thirty or sixty days; and
- Identify TxCDBG contract number.

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), and if adequate time is not available, the bid opening date must be extended. This will require re-advertisement of the bid opening with the new date, time, and place.

TxCDBG recommends the Dodge Report, *Texas Contractor*, the Minority Business Development Center, and regional newspapers for advertising bids. See **Chapter 10: Civil Rights Requirements** for further information on Minority Business Centers.

STEP 4 Promote Participation of MBEs and Section 3 Business concerns.

The Grant Recipient should actively take steps to encourage proposals from small, minority, and female-owned businesses (MBEs), as well as Section 3 business concerns.

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.

The Grant Recipient or their designee (usually the 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.

- **Municipalities** are required by state law to award the contract to the lowest responsible bidder. The municipality may reject any and all bids. [Texas Local Government Code Section 252.043 (a)]
- **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. [Texas Local Government Code, Section 262.027(a)]

Overbids

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);
- Delete bid items before contract award, if all bidders agree in writing to changes.

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

Recordkeeping for the Bid Opening

Minutes of the bid opening, along with a tabulation of the bids, must be placed in the contract file. 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 not open for public inspection [Texas Local Government Code Section 252.049 (b) & 262.026(b)].

STEP 6 Clear the Contractor

The Grant Recipient must verify the construction contractor’s eligibility through the Excluded Party List System. See **Chapter 7 Davis Bacon Labor Standards** for details.

STEP 7 Award the Contract

The Grant Recipient must award the contract within the number of days indicated in the bid advertisement.

The contract may be awarded before the contractor is cleared, but may NOT be executed without obtaining EPLS clearance.

STEP 8 Execute the Contract

The Grant Recipient must submit the Bid Tabulation, Bid Schedule, and *Financial Interest Report (Form A503)* to TxCDBG within 30 days of executing the contract, and submit the *Labor Standards Record (A706 –rev)* prior to the first Request for Payment for construction work.

Documentation for Construction Procurement

<i>Requirement</i>	<i>Small Purchase</i>	<i>Formal Bids</i>
Small Purchase Procurement Record (A504)	X	
Bid package and ads and Bid opening documentation		X
Executed Contract	X	X
Financial Interest Report (A503)	X	X
Davis Bacon Documentation – Labor Standards Record (A706-rev) & Final Wage Compliance Report (A710)	X (if over \$2,000)	X
Certificate of Construction Completion (A709)	X	X

Third Party Procurement Services

A Grant Recipient may choose to purchase certain goods and services through a third party, such as the Texas Association of School Boards "Buy Board" or the Houston-Galveston Area Council "HGACBuy". All 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 a copy in the contract files of the cooperative agreement with the third party certifying the type of procurement process used.

5.2.3 Contract Provisions Required

Regardless of the type of procurement used, the Grant Recipient must execute a contract with the construction contractor or materials provider to document the work to be completed, the agreed price, and compliance with applicable state and federal requirements. The Grant Recipient will determine the type of contract used, ensuring that the type selected is appropriate for the particular procurement and for promoting the best interest of the program or project involved. Types of contract include:

- fixed price contracts;
- cost reimbursable contracts;
- purchase orders; and
- incentive contracts.

The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting will not be allowed under the CDBG program. Similarly, TxCDBG will not reimburse any line item for "profit", "overhead", "contingency", or other related terms that do not describe actual work completed.

TxCDBG discourages the use of "Lump Sum" fixed price contracts. If a Lump Sum is used to include all work for a project, NO CHANGE ORDERS will be approved by TxCDBG, as there will be no unit price determined in the contract. The Grant Recipient will be responsible for confirming and documenting the work and quantities in the TxCDBG contract Performance Statement, regardless of the description of work in the construction contract.

Contracts in excess of \$10,000 must comply with:

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).
- Provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Contracts less than \$10,000:

- do **not** have to include Equal Employment Opportunity (EEO) language; and
- do **not** have to include provisions for termination by the Locality, including the manner by which termination shall be effected and the basis for settlement.

Contracts in excess of \$50,000 must include:

- Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts for construction or repair)
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by Grant Recipients when required by Federal grant program legislation)
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by Grant Recipients in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

- Notice of awarding agency requirements and regulations pertaining to reporting.
- Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- Access by the Grant Recipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives 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.
- Retention of all required records for three years after Grant Recipients make final payments and all other pending matters are closed.
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts and subcontracts of amounts in excess of \$100,000).
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- Compliance with Section 3 policies and reporting requirements (Contracts and subcontracts of amounts in excess or \$100,000).

Contracts less than \$50,000:

- do **not** have to include administrative, contractual, or legal remedies for instances in which a contractor violates or breaches the contract terms; and
- will provide for such remedial actions as may be appropriate.

5.2.4 Bonding Information

A surety bond is a three-party instrument between a surety, the contractor and the project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. Bonds and other forms of surety must be made payable to the locality.

Bid Bond

A bid bond guarantees that the bidder, upon acceptance of the contract, will honor his bid as submitted and within the time specified. If a bidder does not honor his bid as submitted, the bid bond, which is retained by the Grant Recipient, is used to offset any additional cost from completing the construction with another contractor. A 5% bid bond is recommended for all TxCDBG contracts. A certified or cashier's check or U.S. Savings bond may be submitted in lieu of the bid bond.

Performance Bond

A performance bond guarantees that the contractor will perform the contract in accordance with its terms. A performance bond is required in the amounts below unless otherwise stated in the Invitation for Bids (IFB):

- For total awards of up to \$100,000 - no bond is required.
- For total awards in excess of \$100,000 – in the amount of the construction contract.

[Texas Government Code, Chapter 2253.021]

When applicable, a separate performance bond must be provided for each construction contract awarded and must reference the contract number(s) for which the bond is provided. Any required performance bond(s) must be filed within 30 days from the date of the Notice of Award.

The only forms of surety acceptable as a performance bond are:

- Cashier's Check
- United States Treasury Bond
- Irrevocable Letter of Credit issued by a financial institution subject to the laws of Texas
- Surety or Blanket Bond from a company chartered or authorized to do business in Texas
- Certified Check
- Certificate of Deposit

Payment Bond

A payment bond guarantees payment from the contractor to persons who furnish labor, materials, equipment and/or supplies for use in the performance of the contract. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. Any required payment bond(s) must be filed within 30 days from the date of the Notice of Award.

For contracts in excess of \$25,000, the Grant Recipient should require the contractor to execute a payment bond in the amount of the contract before beginning the work.

- If the payment bond is not furnished, the Grant Recipient is subject to the same liability that a surety would have if the surety had issued the payment bond and the Grant Recipient had required the bond to be provided. [Texas Government Code, Chapter 2253.022(f)]
- **Counties only:** For contracts of \$50,000 or less, counties may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county. [Texas Local Government Code, Chapter 262.032(c)]

5.2.5 Changes to a Construction Contract

When a change to the project is necessary during project construction, the Grant Recipient should request an adjustment to both the TxCDBG contract and the construction contract. The Change Order makes a change in quantities or tasks to the *construction contract only*. TXCDBG does not sign or execute the Change Order, but does review and approve all Change Orders on TxCDBG projects to ensure that all costs are eligible and procured according to TxCDBG requirements.

To request approval of a proposed Change Order, the Locality must submit:

- *Construction Contract Change Order Approval Request (Form A1103 – both pages)*;
- cover letter signed by the chief local elected official indicating that the Locality concurs with the proposed changes (if the Locality has not signed the *Change Order Approval Request*); and
- any necessary supporting documentation.

There are several considerations and limitations surrounding the use of change orders:

- The Locality must have sufficient grant or local funds available to meet any increased costs.
- Items that were not listed on the original bid have no unit price established by the competitive bidding process; these items are not considered to be competitively procured and generally change orders to add such items will not be allowed. Exceptions may be made for incidental items not anticipated at the time of the bid or other items on a case-by-case basis.
- Change orders may not:
 - increase the original contract price by more than twenty-five percent (25%);
 - decrease the original contract price without the consent of the contractor by more than twenty-five percent (25%) for municipalities and eighteen percent (18%) for counties.
[Texas Local Government Code Section 252.048(d) and Section 262.031(b)]

NOTE: Change orders that result in a cumulative increase of more than twenty-five percent (25%) of the original contract amount will not be approved for TxCDBG funding.

The State of Texas considers a change in the construction 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. State law allows for an exception for changes necessary to comply with a federal statute, rule, or state judicial decision enacted, adopted, or rendered after the contract was made.

TxCDBG will not reimburse the Locality or credit the Locality's match commitment for work listed on a Change Order until the Change Order has been submitted and approved. Requests for Payment for unapproved change orders will be held at TxCDBG's discretion. If the Change Order is executed without TxCDBG approval, the Grant Recipient is obligated to pay for any changes that the Office does not approve. For these reasons, TxCDBG recommends that the Locality submit the Change Order **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 or matching funds, so that TxCDBG staff has a complete record of the construction contract. Any difference in price from the *Labor Standards Form (Form A706-rev)* to the *Certificate of Construction Completion (Form A709)* must be accounted for on a Change Order.

Project changes reflected in a Change Order may also require an amendment or modification to the TxCDBG contract Performance Statement or Budget. These items should be submitted together as described in **Chapter 11 Contract Amendments**.

5.3 Non-Competitive Negotiation Procurement

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

This method is allowed under the following situations [See 24 CFR 85.36(d)(4)]:

- Single 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 Disaster Relief/Urgent Need Fund.
- TxCDBG authorizes non-competitive proposals.
- After solicitation of a number of sources, competition is determined inadequate. Grant Recipients must first submit evidence of all public advertisement(s)/solicitations before TxCDBG will consider approving noncompetitive negotiation.

Approval by TxCDBG is required prior to procurement by non-competitive negotiation. All requests for exceptions to competitive procurement requirements must be submitted in writing by the Grant Recipient.

You **must** obtain written permission from TxCDBG prior to using the Non-Competitive Procurement method.

5.4 Recordkeeping Procedures

TxCDBG recommends that the Grant Recipient have a written set of procedures that detail how procurements will be made and by whom. This purchasing function should be assigned to one individual whose responsibility it will be to make all procurements and issue all contracts. The purchasing officer should also be responsible for ensuring that purchases are made in accordance with all local, state, and federal regulations and that proper documentation is maintained to support the purchase.

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 a *Financial Interest Report (Form A503)* for all businesses and other entities contracted to provide products or services in whole or in part for a TxCDBG project. 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; and
- provides Minority Business Enterprise information for the business owner (not required for Councils of Government and other non-business entities).
- Identifies Section 3 business concerns and anticipated Section 3 employment opportunities.

All contracts for \$2,000 or more must be reported on the *Financial Interest Report (Form A503)*. If the contract price changes after the contract is reported, Form A503 does NOT need to be resubmitted.

5.4.1 Professional Services / Administration Services

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

- A copy of the Request for Proposals (RFP);
- A copy of the RFP public notice and documentation relating to the distribution of the RFPs (minimum of five sent) –
 - Email – printout of the sent email with header visible;
 - Fax – confirmation page showing the fax was successfully sent;
 - Mail – return receipt for certified mail;
- A copy of the RFP cover letter sent to each interested party;
- A copy of each respondent's reply to the Grant Recipient's RFP;
- A copy of each respondent's rating worksheet (if applicable);
- A copy of the procurement summary sheet (if applicable);
- A copy of council/commissioner court action awarding the contract; and
- A copy of the executed professional services or administration contract.

5.4.2 Construction and Material Purchases

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

- Bid Document(s) with Labor Standards Provisions included
- Contract Document(s) with Labor Standards Provisions included

- 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)
- Bid Tabulation Sheet(s) (if applicable)
- As-built Plans ----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)

5.5 Federal & State Laws Governing Procurement

The laws and regulations described in this section apply to the procurement of services, supplies or non-real property in TxCDBG-funded projects. Procurement of land or property rights is covered in **Chapter 5: Acquisition**.

5.5.1 State Laws & Regulations

Texas Local Government Code - Chapter 252 (Municipalities) and Chapter 262 (Counties)

The full text of the Chapters from the Texas Local Government Code can be found via the internet at <http://www.legis.state.tx.us/>.

Chapter 252 Municipal Grant Recipients Construction Bidding Procedures

The Office's municipal Grant Recipients are generally required to conduct competitive sealed bid procurement for any and 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 [Texas Local Government Code Section 252.041(a)].

Chapter 262 County Grant Recipients Construction Bidding Procedures

The Office's county Grant Recipients are generally required to conduct competitive sealed bid procurement for any and 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, with the first day of publication occurring before the 14th day 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 [Texas Local Government Code Section 262.025(a)].

Texas Government Code -- Chapter 2253 Public Work Performance and Payment Bonds
Covers bonding requirements.

Texas Government Code, Chapter 2254. This code as amended is also known as the Professional Service Procurement Act. This code governs the local government procurement of professional services. It prohibits the procurement of architects or engineers based on bid price and requires 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. The full text of this act can be found via the internet at <http://www.legis.state.tx.us/>.

Texas Local Government Code, Chapter 171. This code as amended 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 a vote or make a decision on any matter involving a business entity or real

property for which they have an interest in. The full text of this Chapter from the Texas Local Government Code can be found via the internet at <http://www.legis.state.tx.us/>.

The State of Texas Engineering Practice Act, Article 3271a. 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. The full text of this act can be found via the internet at http://www.tbpe.state.tx.us/downloads/law_rules607.pdf.

Procurement Standards ----- (Uniform Grant Management Standards (UGMS) - Governor's Office of Budget and Planning (June 2004)

NOTE: The *Procurement Standards* from the Governor's Office of Budget and Planning (UGMS) were incorporated into the changes in OMB Circular A-87 and revised OMB Circular A-102 to make the standards consistent with federal law.

In addition to applicable federal and state regulations, many local governments have laws and regulations regarding procurement. Each Grant Recipient should be aware of local laws that may affect its procurement policies. Remember, the rule is that the most restrictive regulation applies.

In cases where state or local law is stricter than federal regulations, the local Grant Recipient must follow the state or local laws and in cases where state or local law is more lenient than federal regulations, the local Grant Recipient must follow federal regulations.

5.5.2 Federal Laws & Regulations

HUD Conflict of Interest regulations at 24 CFR 570.489(h). This regulation sets forth prohibitions against the use of CDBG funds by employees and officials for private gain.

OMB Circular A-102, CFR 24 Part 85.36 (Grants and Cooperative Agreements with State and Local Governments). A-102 governs the use of grants, contracts and cooperative agreements. Implementation regulations can be found at 24 CFR Part 85. The full text of A-102 can be found via the Internet at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>

Management Rating Sheet

Contractor Locality _____
 Name of Respondent _____
 Evaluator's Name _____

TxCDBG Contract No. _____
 Date of Rating _____

Experience -- Rate the respondent for experience in the following areas:

Comments

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Federal Procurement Procedures	5	_____
2. Environmental Reviews	5	_____
3. Fair Housing/EEO	5	_____
4. Financial Management	5	_____
5. Uniform Act Acquisition/Relocation	5	_____
6. Project Construction Management	5	_____
7. Labor Standards Requirements	5	_____
8. Audit/Contract Close-out	5	_____
Subtotal, Experience	40	_____

Work Performance

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
1. Submits requests to TxCDBG in a timely manner	5	_____
2. Responds to TxCDBG requests in a timely manner	5	_____
3. Past TxCDBG projects completed on schedule	5	_____
4. Work product is consistently of high quality with low level of errors	5	_____
5. Past TxCDBG projects have low level of monitoring findings/concerns and offeror responds to monitoring reports in a timely manner	5	_____
6. Manages projects within budgetary constraints	5	_____
Subtotal, Performance	30	_____

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. Staffing Level / Experience of Staff	5	_____
2. Adequacy of Resources	5	_____
Subtotal, Capacity to Perform	10	_____

Proposed Cost

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
A = Lowest Proposal \$ _____		
B = Bidder's Proposal \$ _____		
A ÷ B X 20 equals Respondent's Score	20	_____

TOTAL SCORE

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</u>
<input type="checkbox"/> Experience	40	_____
<input type="checkbox"/> Work Performance	30	_____
<input type="checkbox"/> Capacity to Perform	10	_____
<input type="checkbox"/> Proposed Cost	20	_____
Total Score	100	_____

Engineer/Architect Rating Sheet

Contractor Locality _____
 Name of Respondent _____
 Evaluator's Name _____

TxCDBG Contract No. _____
 Date of Rating _____

Experience -- Rate the respondent for experience in the following areas:

Comments

<u>Factor</u>	<u>Max.Pts.</u>	<u>Score</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	15	_____
4. Extent of experience in project construction management	15	_____
Subtotal, Experience	60	_____

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	_____
Subtotal, Performance	25	_____

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	_____
Subtotal, Capacity to Perform	15	_____

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	_____
Total Score	100	_____

Small Purchase Procurement Record

Scope of Service/Item Description:

Contacts Made:

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

Based on the contacts made concerning the above-referenced scope of services/item description, I authorize _____ on _____, 20____ to begin work or to supply the item(s) for the quoted price.

Signature of Authorized Person

Date

Other changes in Sections A through E of the
Project Implementation Manual

These federal performance measure reporting requirements are incorporated into the compliance requirements of all TxCDBG Grant Recipients. Using this framework and data reported by grantees, HUD will generate national outcome statements to describe the aggregate impact that local program activities are achieving.

P.1.8 Conflicts of Interest

The CDBG regulations related to conflict of interest may be found at 24 CFR 570.489(h). These requirements apply in the procurement of supplies, equipment, construction and professional services/[administration services](#), acquisition and disposition of real property, and provision of assistance to individuals, businesses, or other private entities.

No person covered who has any CDBG function/responsibility or who is a decision maker or has inside information may obtain a financial interest or benefit from the activity. This requirement applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

The person may not have an interest in any contract or agreement related to the CDBG proceeds/program for themselves or their family/business ties during their tenure or one year after conclusion of their tenure.

TXCDBG has determined that a conflict of interest exists when the same individual or firm is hired to provide both administration and engineering services on a TxCDBG funded project. HUD has further issued an opinion that a conflict of interest prohibited by Federal Regulation exists for a Council of Government, which is providing "technical assistance" funded by the TxCDBG to a particular applicant to also furnish "grant administration" to that same applicant.

Upon written request, the State may elect to grant certain exceptions to these criteria as provided in 24 CFR 570.489(h)(4).

P.2 The TxCDBG Program

P.2.1 TxCDBG Funding Cycles

TxCDBG is comprised of several funds through which TDRA awards grants to Grant Recipients (non-entitlement cities and counties) on a competitive application basis, either annually or biennial depending on the availability of funds.

From year to year, the funds and the number and amount allocated to each fund varies, as a result of TXCDBG's public hearing process as required for the Action Plan. The TxCDBG application guides contain a detailed description of each fund, the eligible activities by Fund, and the application and award process. In general, the range of TxCDBG activities includes:

- Public facility improvements;
- Provision of access to public facilities;
- Housing assistance;
- Alleviation of unanticipated disasters;
- Alleviation of threats to public health and safety;
- Water and sewer self-help activities;
- Planning and capacity building; and
- Economic development.

TXCDBG will consider the history of complaints regarding an entity in determining whether to renew a contract for the use of block grants funds by the entity.

P.3 The Implementation Manual Structure

This manual is designed to provide information about how to implement a Small Cities Community Development Block Grant project. Each section describes each task needed to accomplish these activities. The supporting materials include samples of forms, documents, letters, and file checklists. This manual is available in hard copy and in CD-ROM format so that Grant Recipients may easily search for terms, rules, procedures, and forms. The CD-ROM format also enables Grant Recipients to print out all the forms needed to implement their activities.

There are five sections in this manual. At the end of the manual is the Appendix containing federal regulations and samples that correspond to the procedures and policies explained in the manual.

SECTION A COMMUNITY DEVELOPMENT gives an overview of program rules (eligible activities, beneficiary information, national objectives) for projects funded under the:

- Community Development / Community Development Supplemental Fund,
- STEP Fund,
- Urgent Need / Disaster Relief Fund,
- Colonia Fund
- Housing Infrastructure Fund
- Housing Rehab Fund

Chapter 1 Initial start up paperwork required for the project, day-to-day contract administration tasks, and reporting requirements

Chapter 2 Financial management procedures, guidelines on allowability of costs, and procedures related to drawing down TxCDBG funds and accounting for expenditures

Chapter 3 Federal Environmental Review requirements

Chapter 4 Special conditions in the contract that must be met before funds are drawn

Chapter 5 Procurement procedures for hiring professional service / [administration service](#) providers, material suppliers, non-construction contractors and construction contractors

Chapter 6 Federal Acquisition and Relocation requirements

Chapter 7 Davis-Bacon Labor Standards requirements for construction projects

Chapter 8 Force Account procedures and regulations

Chapter 9 STEP Fund procedures, requirements and recordkeeping

Chapter 10 Federal Equal Employment Opportunity and Fair Housing laws

Chapter 11 Contract amendment and modification procedures

Chapter 12 Contract closeout procedures

Chapter 13 Contract monitoring procedures

Chapter 14 Federal Audit requirements

SECTION B PLANNING program rules for planning activities

SECTION C HOUSING REHABILITATION program rules for housing rehabilitation activities

SECTION D ECONOMIC DEVELOPMENT program rules and special requirements for economic development activities

SECTION E SELF HELP CENTERS program rules and special requirements for Self-Help Centers

APPENDIX includes state/federal regulations governing the CDBG program, FEMA Equipment Rates, and sample bid and contract documents for professional services [/ administration services](#) contracts, material/supplier contracts, and construction contracts

Note: Section A contains information relevant to all TxCDBG contracts as well as information specific to Community Development projects. For Planning, Housing Rehabilitation, Economic Development, and Self Help center contracts, the respective sections of this manual take precedence, with Section A serving as a reference and a supplement for information not fully addressed by those sections.

All forms must be completed in the format provided on the TxCDBG Project Implementation Manual CD and/or TDRA website. Certain forms are provided in Adobe fillable format and include specific functionality intended to improve accuracy and efficiency. Other forms are provided in Word format. Grant Recipients may not reformat these documents, as this would hinder the efficient review of the request or documentation. Requests for exceptions to this policy must be made in writing prior to the use of forms in any other format.

CHAPTER 1

ADMINISTRATION & REPORTING

This chapter highlights the steps in getting started and implementing your TxCDBG contract for successful project management. Prior to implementing a project, a Locality should put systems in place that will allow it to track and report on its activities as required by its contract with TDRA.

1.1 Project Startup

1.1.1 Pre-Agreement Stratagem

The announcement of the Texas Community Development Block Grant (TxCDBG) Program award does not authorize the Grant Recipient to begin incurring costs. Normally, TxCDBG funds cannot be used to reimburse the Grant Recipient for any costs incurred before the contract start date found in Section 2 of the TxCDBG contract (for example, early completion of the environmental assessment, etc.). TXCDBG allows an exception to this rule for pre-award spending with written approval by TXCDBG; beginning in June 2009, all TxCDBG contracts will include this approval as a standard condition of the contract.

NOTE: With a pre-agreement cost stratagem in place, Grant Recipients may begin incurring costs before the contract start date that will later be paid out of TxCDBG funds; and all TxCDBG procurement requirements and special conditions that apply are satisfied.

Grant Recipients that prefer to receive written confirmation of the Pre-Agreement approval prior to the actual TxCDBG contract may request a Pre-Agreement by submitting a letter (see sample below).

Pre-Agreement Cost Notification Letter (CITY/COUNTY LETTERHEAD)

[DATE]

Mark Wyatt, Director
Texas Community Development Block Grant Program
Texas Department of Rural Affairs
P.O. Box 12877
Austin, Texas 78711

RE: Notification of Intent to Proceed with [2009 CD/CDS, DR, STEP, etc.] Project
Under the Pre-Agreement Costs Approval Stratagem

Dear Mr. Wyatt

This is to notify the Texas Department of Rural Affairs (TDRA), Texas Community Development Block Grant Program (TxCDBG) that the [City/County of _____] intends to proceed with our [2009] pending [CD/CDS, DR, STEP, etc.] funded project and incur costs per the pre-agreement costs stratagem approved by TDRA. As a condition of this pre-agreement to obligate funds, we understand and agree to the following:

1. All applicable State and Federal laws; procurement procedures for professional, [administration](#) and construction services; TxCDBG policies and procedures must be followed, including Release of Funds by TxCDBG after completion of an Environmental Assessment, Acquisition requirements, approval of plans and specifications by the Texas Commission on Environmental Quality (TCEQ), Davis-Bacon wage requirements, and other applicable contract Special Conditions.
2. TDRA's obligations under this pre-agreement costs stratagem are contingent upon the actual receipt of adequate State or Federal funds to meet TDRA's liabilities; and that TDRA will not reimburse any costs under this agreement until such time that the [2009] TxCDBG contract is fully executed with our locality.

Sincerely,
Signature of Mayor or County Judge

SAMPLE

1.2.3 Program Income Reports

Revolving Loan Fund, Micro-Enterprise Loan Fund, and Small Business Enterprise Loan Fund contracts must submit a semi-annual *Program Income Report (Form A105)*. This report documents the receipt, accrual, and disposition of all repayment revenue. The report must show at least one loan awarded every three years in order to comply with the requirements of the contract and application guidelines.

The *Program Income Report* must continue to be submitted even after the contract has been monitored and closeout reports have been submitted, unless the contract has been terminated.

The *Program Income Report* is due each year on January 20th and July 20th. The report can be found on the TDRA website and must be completed in Adobe format.

1.3 Technical Assistance

In order to facilitate the timely expenditure of funds and completion of the project, TRDA has adopted the following technical assistance strategies. These strategies are intended to be beneficial and proactive in identifying problems and solutions as early in the project as possible.

The “Project Team” participants must include the chief local elected official (or representative authorized by resolution), project administrator, and project engineer. Administrative and engineering consultants must be properly procured before being considered part of the Project Team.

1.3.1 Technical Assistance for All Contracts

No later than four months after the contract start date, the grant recipient must schedule a conference call / meeting with all members of the Project Team to discuss the project requirements and potential project issues based on the Performance Statement, such as acquisition, special permitting, etc. Required participants include: Grant Recipient, project engineer, and administrative consultant (or local staff designated to administer the project). The conference may take place at any time prior to four months after the contract start date, including during the pre-agreement period, so long as all necessary professional service [and administration](#) providers have been procured or local staff has been assigned to administrative and engineering tasks.

The Grant Recipient must notify the assigned Regional Coordinator of the date and time of the conference at least two weeks prior to the call/meeting; the Regional Coordinator may participate in the conference at his/her discretion.

Note: The Grant Recipient may request an exception to the conference requirement if the construction contract has been executed within 4 months of the contract start date AND the construction contract (base bid) substantially agrees with the TxCDBG Performance Statement.

The date of the conference must be reported on the next Quarterly Progress Report and minutes of the conference must be submitted to TDRA within 30 days of the conference. All items included in the agenda below must be discussed during the conference call; however, the Project Team may add additional agenda items as appropriate to the project.

4-Month Conference Call Agenda

- 1) Review TxCDBG contract Performance Statement (Exhibit A) and Budget (Exhibit B)
- 2) Review TxCDBG contract Project Implementation Schedule (Exhibit C) milestone dates and early progress toward these dates
- 3) Review 6-Month Threshold requirements (TxCDBG contract Section 22 paragraph D)
- 4) Review 12-Month and 24-Month Threshold requirements (TxCDBG Action Plan Section III. F. paragraphs 7 & 8)
- 5) Identify and report potential project issues or delays

Administrative Activities Checklist

<i>ACTIVITY</i>	Recipient	Consultant	Eng/Arch	Other
A. Initial Administrative Procedures				
Set up all files pertaining to TxCDBG contract activities				
Solicit for professional services / administration services and maintain all necessary and relevant documentation				
Prepare the professional services / administration services contracts for attorney review.				
Arrange and conduct the 4-Month Conference Call				
B. Environmental Review/Special Conditions Clearance Procedures				
Designate environmental review liaison and environmental certifying officer.				
Establish and maintain environmental review file.				
Prepare environmental assessment.				
Coordinate activities with federal or state agencies responsible for implementing applicable laws.				
Publish and disseminate public notice.				
Document consideration of any public comments.				
Issue environmental impact statement (if applicable).				
Request release of funds, send certification to TXCDBG.				
Clear project of CDBG contract special conditions.				
C. Financial Management				
Document local file/submit to TXCDBG the accounting system certification letter.				
Complete Direct Deposit Authorization Form.				
Establish CDBG non-interest bearing checking account.				
Submit to TXCDBG the Contractor's Depository/Authorized Signatory Designation form				
Secure surety bonding for individuals having access to project assets, accounting records or checks related to the CDBG contract.				
Establish and maintain financial records consisting of registers, journals, and ledgers.				
Maintain (city/county) CDBG accounting operations.				
a. Execute drawdown requests				
b. Review invoices received for payment and file back-up documentation				
c. Draft checks				
d. Pay invoices				
e. Enter transactions in books				
f. Reconcile bank statements				
g. Prepare financial reports				
Establish procedures to handle the use of CDBG program income, if applicable				
D. Reporting				
Prepare and maintain all required project reports				
a. Quarterly reports				
b. Compliance reports (labor compliance, etc.)				
c. Financial Interest Reports				

FILING SYSTEM GUIDE

(NOTE: Grant files should be kept at city hall or county courthouse)

APPLICATION FILE

- Contractor's Application
- Public Hearing Information
- Surveys and Tabulation/Other Beneficiary Data
- Responses to CDBG Requests for Additional Information

CONTRACT FILE

- Executive Director's Contract Award Letter
- Executed Contract
- Amendment Requests/Resolution
- Executed Amendments
- Approved Performance Statement Modification Letters
- Approved Budget Modification Letters

FINANCIAL MANAGEMENT FILE

- Designated Depository/Authorized Signatory Form
- Audit Report demonstrating financial capacity
- Direct Deposit Authorization Form (*if applicable*)
- Copy of Transaction Register/Accounting Records for CDBG funds and Local Matching funds
- Documentation of Drawdown Transactions – Purchase Vouchers, Request Summaries, and all supporting documentation (*i.e. invoices, personnel/equipment/material records, etc.*).
- Source Documentation to support the receipt and disbursement of CDBG and local matching funds (*i.e. cancelled checks, deposit slips, monthly bank statements, bank account reconciliation records, etc.*).
- Register to document local commitment of funds

ENVIRONMENTAL REVIEW FILE

- Environmental Review Record/Assessment
- Public Notices/Publisher's Affidavit
- Coordination Letters to/from other Agencies
- Public Comments
- Request for Release of Funds/Certification Form
- TXCDBG's Environmental Clearance Letter
- Documentation of Compliance with other applicable laws/authorities
- Flood Plain Maps/EO 11988 Compliance (*if applicable*)
- Texas Historical Commission Notification and Response Letters

PROCUREMENT OF PROFESSIONAL SERVICES / [ADMINISTRATION SERVICES](#)

- Rationale for the method of procurement
- Evidence of affirmative steps taken to assure participation by small/minority businesses
- Basis for the cost or price
- Requests for Proposal/Advertisements
- Requests for Proposal Package
- Written Selection Criteria
- Copies of all letters and advertisements requesting proposals/return receipts
- Proposals received
- Professional services / [Administration Services](#) contracts
- Minutes/Resolution awarding contracts

REPORTS

- Quarterly Report
- Financial Interest Reports
- Funding Source Disclosure Reports (*if applicable*)

QUARTERLY PROGRESS REPORT Instructions for Completion

Complete the Quarterly Progress Report by entering the following information into the Adobe form A104, found on the TDRA website:

Project Status

Project Status Code: Select the one phrase that most accurately reflects the current status of the project. If “Other”, explain briefly (10 words or less) the current status of the project.

Notes/Comments on Current Status: Type any appropriate notes to explain the status selected above. This field will expand to accommodate the necessary text.

Revised Implementation Schedule Approved by TxCDBG: check this box if TDRA has previously approved a revised schedule for completion.

Milestones

Enter all dates using the format “mm-dd-yyyy”. Dates entered in any other format will not correctly calculate the project’s milestone completion.

Actual Date: Enter the date each milestone was actually accomplished as described below.

Milestone	Date Accomplished
Contract Start Date	Date found in section 2 of the TxCDBG contract
All Professional Services / Administration Services Procured	Date that the administrative, engineering, and other professional services contracts were executed
4-Month Conference Call	Date of the conference call as required by section 1.3 of this Manual
Plans and Specifications Approved by Locality	Date project plans were presented to the Grant Recipient and approved
Environmental Review Submitted	Date environmental review documents were submitted to TxCDBG following the local objection period
All pre-construction Special Conditions cleared	Date all conditions in Section 22 of the TxCDBG contract were cleared to release construction funds
50% of TxCDBG funds obligated	Date that at least 50% of the TxCDBG funds are committed in executed contracts
Construction 50% complete	Date at least 50% of the construction funds have been earned
Construction 75% complete	Date at least 75% of the construction funds have been earned
Construction 90% complete	Date at least 90% of the construction funds have been earned

Revised Schedule: if TxCDBG has approved a revised Project Implementation Schedule, enter the dates for each milestone from the approved schedule.

Project Delays: if the project has experienced any delays during the reporting quarter, select the reason for the delay and provide a brief explanation. Click “Add Reasons” to select additional reasons for delay.

Check the box below the “Project Delays” to request technical assistance from TxCDBG.

Acceptable Back-Up Documentation for Drawdown Requests

Activity	Acceptable Justification
Services provided by Professional Services Contracts, such as General Administration, Engineering, and/or Architectural Services, Land Surveying Services, and also Administration Services Contracts.	Billings or invoices from professional service providers and administration service providers , which are in agreement with the payment provisions of the contract. All invoices must list specific service delivery dates. Costs must be explained in terms of specific activities or accomplishments.
Professional Services and Administration Services provided by local staff (force account) such as Engineering and Administration or Engineering.	<i>Personnel Cost Calculation Sheet (Form A801-1)</i> for each employee and <i>Administrative Time Distribution Sheet (Form A803)</i> for all hours worked. Payroll ledgers/journals without time records are not adequate.
Construction Through Bid/Contract.	Billings/invoices from construction contractor and/or progress payment schedule with signed approval by engineer. Actual quantities installed or purchased during the payment period, cumulative totals, and engineer's signature must be evident on the pay estimate. <i>The Certificate of Construction Completion (Form A709)</i> and <i>Final Wage Compliance Report (Form A710)</i> must be submitted with the final draw for each construction contract.
Construction Through Force Account Labor.	<u>Labor:</u> <i>Personnel Cost Calculation Sheet (Form A801)</i> for each employee and <i>Construction Time Distribution Sheet (Form A804)</i> for all hours worked. <u>Equipment owned by the Recipient:</u> <i>Equipment Cost Calculation Sheet (Form A802)</i> for each piece of equipment and <i>Construction Time Distribution Sheet (Form A804)</i> for all hours used. <u>Leased equipment:</u> <i>Equipment Cost Calculation Sheet (Form A802)</i> , <i>Construction Time Distribution Sheet (Form A804)</i> for all hours used, and copy of the lease agreement. Prior notification/approval of the TxCDBG is required for equipment lease. <u>Fuel costs:</u> <i>Equipment Cost Calculation Sheet (Form A802)</i> and invoices for actual costs. Charges for fuel for equipment are not allowable when FEMA rates are used.
Material/Supplies.	Billing/invoices for materials. Statements alone are not acceptable.
Audit Costs.	Grant Recipients expending \$500,000 or more in Federal financial assistance for any fiscal year ending on or after June 30, 1997 may be eligible for single audit cost reimbursement. A CPA invoice showing fiscal year ending, total audit costs (Single Audit, General Audit Compliance Testing, Internal Control Testing, or other testing as required by program), and the pro rata cost to be charged to the TxCDBG contract as specifically related to that contract for the single audit (generally based on the percentage that the TxCDBG contract funds represent of the total funds expended by the Contractor during the fiscal year). NOTE: The percentage may be exceeded if appropriate documentation shows that the cost of the single audit was higher because of compliance testing or other factors.

Once a request for reimbursement has been submitted, the Grant Recipient should allow three weeks for processing. If the funds requested have not been received within three weeks, contact the TxCDBG Regional Coordinator. TxCDBG staff may request additional information regarding requests for reimbursement, even if supporting documentation has been provided.

2.2.2 Minimum Drawdown Requests and Disbursement

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

- The drawdown exceeds 25 percent of a budgeted line item 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 contract;
- The Grant Recipient has received prior approval from TxCDBG; or
- The request is the final drawdown for one or more budget line items.

Grant Recipients must disburse funds "as soon as administratively feasible" - a maximum of 5 calendar days from the time of receipt/deposit of funds to the time of actual local disbursement. Grant

CHAPTER 8

FORCE ACCOUNT LABOR

8.0 Introduction

In some instances a Grant Recipient may perform construction work under what is generally known as “force account”. The Grant Recipient decides not to contract out the work but actually performs it “in-house” with its own employees. In essence, this is a “do-it-yourself” type of contract.

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

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

Generally, all public works projects must be designed, supervised, inspected, and accepted by a registered professional engineer, per the Texas Engineering Practice Act, which may be found at <http://www.window.state.tx.us/procurement//cml/cmlhub.html>. Compliance with this Act is also necessary for projects involving the use of force account labor (i.e., city/county work crews). The exceptions to this Act include:

- ❑ projects involving county routine road betterment (i.e., repaving, reconstruction, widening, curb and gutter); and
- ❑ projects involving water or wastewater line replacement where there is no change in capacity, route, or grade.

8.1 Definition of Force Account

Definition of Force Account: Professional services, [administration services](#), construction, rehabilitation, repair or demolition that is performed by municipal or county employees

Force account is defined as the use of a Grant Recipient’s own employees when executing an activity for a TxCDBG funded project.

Force account applies to the following employees:

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

match. These costs can include labor, materials, equipment, and professional services [administration services](#).

8.2.1 Wages

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.

NOTE: Salaries and expenses of elected officials (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.

A *Personnel Cost Calculation Sheet*, included as **Form A801**, must be completed for each employee to determine the allowable hourly rate charged on TxCDBG force account projects or to document match. The form need only be submitted once for each employee, unless the employee's wages change during the course of the project.

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. The Grant Recipient must complete a second *Personnel Cost Calculation Sheet (Form A801)* for each employee to determine an hourly rate for overtime in accordance with local employment policies and U.S. Department of Labor regulations. 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.

Personnel timesheets should clearly show the hours worked and duties performed for the TxCDBG project and all other projects.

8.2.2 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, and retirement. These benefits are reflected on the *Personnel Cost Calculation Sheet (Form A801)*.

8.2.3 Donation or Volunteer Work

Donation/volunteer work may be counted towards local match if the service is an integral and necessary part of the TxCDBG project. See **Chapter 2 Financial Management** for information on documenting donated work as matching funds.

8.2.4 Material Costs

All 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**.

8.2.5 Equipment Costs

Equipment is defined as tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Items that are identified in Table 2 of the TxCDBG application and installed as part of the TxCDBG activity, such as well pumps or SCADA systems, are considered materials and not treated as equipment under this section.

For the purposes of establishing volunteer eligibility for STEP projects, TxCDBG has adopted the U.S. Department of Housing and Urban Development (HUD) definitions for the use of volunteers on projects as outlined in 24 CFR Part 70 (**Form A907**).

The following points are established in 24 CFR Part 70:

- A volunteer, for purposes of this part, is an individual who performs service for a public or private entity for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered, on a HUD-assisted or insured project which is subject to a requirement to pay prevailing wage rates. (24 CFR Section 70.3 (a))
- Individuals shall be considered volunteers only where their services are offered freely and without pressure and coercion, direct or implied, from an employer. (24 CFR Section 70.3 (a)(1))
- An individual shall not be considered a volunteer if the individual is otherwise employed at any time in the construction or maintenance work for which the individual volunteers. (24 CFR part 70.3 (a)(2))

Since volunteer participation is fundamental to the self-help process and to maintaining the required 40% cost savings, the Grant Recipient must ensure that documentation of applicable volunteer participation and contributions are maintained throughout the contract period as described in Section 9.3 of this chapter.

9.2 STEP Procedures

9.2.1 Drawdown Procedures

STEP Grant Recipients must comply with TxCDBG Drawdown Procedures as outlined in **Chapter 2: Financial Management**, including the requirement for adequate backup documentation. Requests for reimbursement will not be processed unless adequate supporting documentation is provided.

In addition, the Grant Recipient must be current on submission of all quarterly reports, including documentation of volunteer hours and other local contributions (see Section 9.3) to ensure compliance with the self-help method before grant funds will be released. TxCDBG staff may request additional information regarding the Request for Payment, even if supporting documentation has been provided.

9.2.2 Allowable Costs

Professional Services / [Administration Services](#)

Reasonable administration and engineering services are allowable expenses for STEP projects and may be reimbursed with supporting documentation. The total costs for administration and engineering services combined shall not exceed 33% of the total TxCDBG-funded amount for construction and acquisition. For grant amounts of \$125,000 or less, the total administration and engineering combined costs shall not exceed 45% of the total TxCDBG-funded amount for construction and acquisition. Any additional associated costs for these services will be the responsibility of the Grant Recipient.

Professional services / [administration services](#) paid in whole or in part with TxCDBG funds must use the procurement procedures described in Section 5.1.

TxCDBG encourages Grant Recipients to procure professional services / [administration services](#) under the Pre-Agreement Stratagem described in Section 1.1.1 as applicable, in order to expedite the project.

11.2 Budget Changes

A Grant Recipient may transfer TxCDBG funds between budget categories in order to reflect the actual costs of the project. Grant Recipients should be sure that revised budget figures are reflected on all subsequent TxCDBG *Request for Payment Forms (Form A203)*.

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

NOTE: Requests to move TxCDBG funds from construction activities to professional services [or administration services](#) must be justified by an increase in project scope.

11.2.1 Budget Amendment

A contract budget amendment is necessary whenever a transfer of contract funds between budget categories is greater than 10% of the contract amount, or results in changes in the scope of the project funded. The changes will be made to the Budget (Exhibit B).

The following documentation should be submitted for a budget amendment:

- A letter signed by the chief local elected official describing the proposed change, explaining the reasons for transfer of funds and impact of the changes on the original scope of work;
- The *Contract Amendment Checklist (Form A1101)*;
- The *Contract Budget Change Form (Form A1102)*.

11.2.2 Budget Modification

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

- The cumulative dollar amount of transfers among budget categories is less than or equal to 10% of the total amount of the contract as specified in Section 4(C) of the contract; and
- The transfer of budgeted funds will not change the scope or objective of the project(s) funded through the TxCDBG contract.

The following documentation should be submitted for a budget modification:

- The *Contract Budget Change Form (Form A1102)* explaining the reasons for the requested modification.

11.3 Contract Period Extensions

Generally, TxCDBG contracts allow two-year period to complete the activities identified in the Performance Statement (Exhibit A). Sometimes, however, extenuating circumstances prevent the completion of contract activities within the prescribed contract period. If a Grant Recipient is reasonably assured that project costs will be incurred beyond the contract end date and that incurring these costs is beyond the control of the Grant Recipient, an amendment must be requested from the Office to extend the original contract end date. This type of amendment is known as a contract extension.

NOTE: Contract extensions granted by the Office should not be construed as a waiver of the "Applicant Threshold Requirements". The 24 and 36 month Thresholds will still be applied to open contracts that have extended the contract period.

The Grant Recipient must report final procurement information for all contracts executed under the TxCDBG contract, including professional services / [administration services](#) providers, construction contractors and sub-contractors, and suppliers, with contracts of \$2,000 or more. The contract amount report should include any change orders. Check the appropriate box to report subcontracts valued at \$2,000 or more under the prime contractor.

All contracts and subcontracts included in this report should previously have been reported on a *Financial Interest Report (Form A503)*. If the information previously reported was incomplete or if information other than the contract amount has been modified, the Grant Recipient must submit revised reports prior to submitting the PCR.

Note: Contracts and subcontracts executed prior to September 22, 2009, may have been reported on the previous manual's *Disclosure Update Report* and *Minority Business Enterprise Report*.

12.3 Acceptance of the Closeout Report

Once the PCR is submitted, TXCDBG staff will review the report for accuracy and completeness.

- Incomplete reports will not be accepted and will be returned to the Grant Recipient.
- Minor deficiencies in the information provided (if any) will be described in a letter to the Grant Recipient and must be corrected within thirty days of that letter.
- 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 the Grant Recipient.

All fields of the PCR are required!
Incomplete reports will not be accepted.

Scanned versions of the **signed** PCR may be emailed to TxCDBG; an acceptable complete PCR, including all required attachments, will be considered "received" on the date the email is received by TXCDBG.

Submit electronic copies to:

closeouts@tdra.state.tx.us

Subject line: Grant Recipient name,
Contract No., Region

TDRA Disaster Recovery Division:
drs-closeouts@tdra.state.tx.us

If submitting hardcopy PCRs, send to
Austin Headquarters

Delinquent Closeouts

Late submittal of closeouts may affect a Grant Recipient's current or future TxCDBG funding.

- Requests for Payment on all open contracts 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 90 days of the award announcement.
- Continual unsatisfactory performance and delays in submitting closeout documents may be considered evidence of a lack of administrative capacity for future TxCDBG funding.

If the Grant Recipient is unable to complete the PCR in a timely manner due to disputed construction work, litigation, participation of other funding agencies in a large scale or phased project, or other serious circumstance beyond the control of the Grant Recipient that prevents contract closeout, the Grant Recipient may request an exception to the PCR due date in writing. TXCDBG will respond to all such requests in writing. If an exception is granted:

- a new PCR due date will be established for the contract;

TxCDBG MONITORING CHECKLIST

Grant Recipient: _____ Contract No. _____

Region: _____

Elected official: _____ Address: _____

Administrator: _____

Engineer: _____

Regional Coordinator: _____ Program Monitor: _____

Contract Start Date: _____ Ending Date: _____ Extension: _____

Contract Amount: _____ Amount Drawn: _____ % Match: _____

Project _____ Description/Comments: _____

Persons Present for Review: _____

MONITORING VISIT DATE: _____ **Interim:** _____ **Close-out:** _____

Standard Checklist Sections:

- _____ Procurement of Professional Services / [Administration Services](#) Review
- _____ Financial Management Review
- _____ Environmental Review
- _____ Construction Contract Review
- _____ Labor Standards Review
- _____ Civil Rights Review
- _____ Fair Housing Review
- _____ Close-out Review

Special Sections:

- _____ Acquisition
- _____ Force Account
- _____ Housing Rehabilitation
- _____ Demolition/Clearance
- _____ Relocation
- _____ Other: _____

PROCUREMENT OF PROFESSIONAL SERVICES / [ADMINISTRATION SERVICES](#)

No Findings: _____

Summary of Findings: _____

Summary of Concerns:

Administrative or ~~Other~~ Professional Services Paid with TxCDBG Funds

Desk Review Questions: If you answered YES to either question A or B, skip to question Nos. 8 and 9.

NOTE: If the Grant Recipient is exempt from competitive procurement provisions, an acceptable method of incorporating the proper elements of the contract would be via work order for the firm, fixed-price compensation and an amendment to an existing contract for the "terms and conditions" if a new contract was not executed.

PROCUREMENT OF PROFESSIONAL SERVICES / <u>ADMINISTRATION SERVICES</u> (Administrative or Other Professional Services Paid with TxCDBG Funds)				
(Desk Review Questions (A-D))	Y	N	N/A	DOCUMENT SOURCE AND COMMENTS
A.				Date of Waiver: _____
Did the Grant Recipient receive approval for noncompetitive negotiation before contracting for professional services <u>administration services</u> ? (Applies to Disaster Relief/Urgent Need)				
B.				<input type="checkbox"/> Council of Government (COG) <input type="checkbox"/> Regional Planning Commission <input type="checkbox"/> Public Housing Authority <input type="checkbox"/> Other: _____
Did the Grant Recipient designate a nonprofit public agency administer TxCDBG contract activities?				
C.				
Did the Grant Recipient award the contracts for administrative and engineer to the same firm?				
1.				
Did the Grant Recipient establish and use written selection criteria that included <i>at a minimum</i> , a clear and accurate description of the technical requirements of the services to be procured?				
2.				Adv. ____ Letters ____ No. of respondents: _____ Name _____ of successful _____ respondent:
Did the Grant Recipient advertise the RFP'S in a locally distributed newspaper, and submit the RFP to at least 5 individuals/firms?				
3.				Date(s) of solicitation: _____ Deadline: _____
Is the deadline for receipt of proposals no earlier than 10 days after the date of public advertisement and/or mailing dates of the RFPs?				
4.				
Does the RFP provide offers detailed instructions and identify the criteria to be used in evaluating proposals?				
5.				
Did the Grant Recipient contract with first service provider/firm?				
If No , did the Grant Recipient formally end negotiations with that person/firm?				
6.				Date of meeting: _____
Is there evidence that the governing body (commissioner's court/council) authorized the approval to proceed with contract execution?				

PROCUREMENT OF PROFESSIONAL SERVICES / ADMINISTRATION SERVICES (Administrative or Other Professional Services Paid with TxCDBG Funds)					
(Desk Review Questions (A-D))		Y	N	N/A	DOCUMENT SOURCE AND COMMENTS
7.	Was there a pre-agreement request?				Dept. approval date:
8.	Does the contract document include all of the following provisions?				
	Names of both parties				
	Begin date after starting date of TxCDBG contract or pre-agreement letter on file				Contract start date:
	Scope of services				
	Firm fixed-price compensation				
	Procedure for amending contract				
	Termination clause (if > \$10,000)				
9.	Does the contract document contain reference to the following federal and state standards as terms and conditions of the contract?				
	Title VI of the Civil Rights Act of 1964				
	Section 109 of the Housing and Community Development Act of 1974				
	Section 3 of the HUD Act of 1968				
	Conflicts of Interest				
	Access to Records				

24 CFR 85 - (3) Procurement by competitive proposals... (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be honored to the maximum extent practical;
(ii) Proposals will be solicited from an adequate number of qualified sources.

Engineering/Architectural Services Paid With TxCDBG Funds

Desk Review Questions: If you answered YES to either question A or B, skip to question Nos. 9, 10 and 11.

(NOTE: If the Grant Recipient is exempt from competitive procurement provisions, an acceptable method of incorporating the proper elements of the contract would be via work order for the firm, fixed-price compensation and an amendment to an existing contract for the "terms and conditions" if a new contract was not executed.)

PROCUREMENT OF PROFESSIONAL SERVICES / <u>ADMINISTRATION SERVICES</u> (Engineering/Architectural Services Paid with TxCDBG Funds)					
(Desk Review Questions (A-B))		Y	N	N/A	DOCUMENT SOURCE AND COMMENTS
A.	Did the Grant Recipient receive approval for noncompetitive negotiation before contracting for professional services <u>administration services</u> ? (Applies to Disaster Relief/Urgent Need)				Date of Waiver: _____
B.	Did the Grant Recipient designate a nonprofit public agency to administer TxCDBG contract activities?				<input type="checkbox"/> Council of Government (COG) <input type="checkbox"/> Regional Planning Commission <input type="checkbox"/> Public Housing Authority <input type="checkbox"/> Other: _____
1.	Did the Grant Recipient establish and use written selection criteria that included, <i>at a minimum</i> , a clear and accurate description of the technical requirements of the services to be procured?				
2.	Does the written selection procedure contain only non-price criteria?				
3.	Did the Grant Recipient advertise the RFP's in a locally distributed newspaper and submit the RFP to at least 5 individuals or firms?				Adv. ____ Letters ____ No. of respondents: _____ Name _____ of successful respondent: _____
4.	Is the deadline for receipt of proposals no earlier than 10 days after the date of public advertisement and/or mailing dates of the RFPs?				Date(s) of solicitation: _____ Deadline: _____
5.	Does the RFP provide offers detailed instructions and identify the criteria to be used in evaluating proposals?				
6.	Did the Grant Recipient contract with the first service provider/firm?				If No , question 7 is applicable.
7.	Did the Grant Recipient formally end negotiations with that person/firm?				
8.	Is there evidence that the governing body (commissioner's court/council) authorized the approval to proceed with contract execution?				Date of meeting: _____

**PROCUREMENT OF PROFESSIONAL SERVICES / ADMINISTRATION SERVICES
(Engineering/Architectural Services Paid with TxCDBG Funds)**

(Desk Review Questions (A-B))		Y	N	N/A	DOCUMENT SOURCE AND COMMENTS
7.	Was there a pre-agreement request?				Dept. approval date:
8.	Is the selected engineer/architect registered to practice in the state of Texas?				
9.	Does the contract document include all of the following provisions?				
	Names of both parties				Preagreement letter date:
	Begin date on or after TxCDBG contract begin date, or pre-agreement letter on file				Contract start date:
	Scope of services				
	Firm fixed-price compensation				
	Procedure for amending contract				
	Termination clause if >\$10,000				
10.	Does the contract document contain reference to the following federal and state standards as terms and conditions of the contract?				
	Title VI of the Civil Rights Act of 1964				
	Section 109 of the Housing & Community Development Act of 1974				
	Section 3 of the HUD Act of 1968				
	Conflicts of Interest				
	Access to Records				

9. Planning costs are paid on a reimbursement for services basis only and proof of a local cash match is a prerequisite for reimbursement.

Note: Administrative costs, including the cost of audit, engineering costs, and architectural design costs not specifically allowed to a Grant Recipient, are ineligible with TXCDBG planning funds.

B.1 Recordkeeping and Reporting

Grant Recipient should follow the recommended filing system (included as **Form B2**) to meet TxCDBG monitoring requirements for planning contracts. For other required reporting, see **Section A Chapter 1: Administration and Reporting**. NOTE: It is very important that all reports applicable to the TxCDBG contract be completed and submitted in an accurate and timely manner. Failure to submit any such reports may result in non-payment of payment requests.

Grant Recipients administering planning activities must submit the *Planning Quarterly Progress Report* as shown in **Form B8**. Grant Recipients should report the planning activity that has been completed during the reporting period as indicated on the report form. Please note that this form **must be signed by the local official**.

	<u>Quarter</u>	<u>Reports for</u>	<u>Due On</u>
The <i>Planning Quarterly Progress Report (Form B8)</i> is due on a quarterly basis. This report is due on the 20th of the month following the end of each calendar quarter, such as:	1st	Jan-March	April 20
	2nd	April-June	July 20
	3rd	July-Sept	October 20
	4th	Oct-Dec	January 20

The status of each of the following activities should be reported quarterly until that activity has been performed. Do not report any activity for which no action has occurred during that quarter. When an activity is completed during the relevant quarter, report it as such and drop that activity from subsequent reports. Under the Minority Business section of the Report, show the name of the company hired during that quarter. Once a company is shown as hired during a specific quarter, they should not be reported again on the next quarterly report.

The “comment” section should describe the progress of the project. The following questions should be helpful in filling out this portion of the *Planning Quarterly Progress Report*.

Administration: What is the status of procurement activities for professional [planning](#) services? If any citizen complaints have been received concerning this project, give a brief description of (1) what they were, (2) whether they have been resolved, and (3) how they have been resolved.

Environmental Clearance: What is the status of the environmental review process?

Plans: What is the status?

Special Conditions Clearance: If any difficulties are being encountered, when do you expect clearance?

Close-Out: When will all documents necessary to close the grant be submitted?

The *Minority Business Enterprise Report* (part of the *Planning Quarterly Progress Report*) must show the businesses hired during the quarter and their minority status. To complete the *Minority Business* section of the Report, insert the name of the company, the TxCDBG dollars and local funds involved in the contract. If there is a prime contractor and several subs, please show the dollar amount for each prime and sub-contractor. The dollar amount for the prime plus the subcontractor’s contract should add up to the total construction cost.

B.2 Planning Procedures

B.2.1 Request for Payment Procedures

Any questions relating to the preparation of financial forms should be referred to the assigned TxCDBG Planning Grant Coordinator. Once a Request for Payment has been submitted, allow three weeks for processing. If the funds requested have not been received within three (3) weeks, contact the TxCDBG Planning Grant Coordinator regarding the status of the request.

Grant Recipients may not draw funds against their TxCDBG account until the contract is executed, and may not draw funds after the contract end date. Planning Fund contracts allow for no advance payments and payment is made on a reimbursement for services rendered basis. Proof of local cash match is a prerequisite to reimbursement. **NOTE: Engineering and/or architectural services, administrative services, and audit services are not eligible costs.**

TxCDBG planning grant recipients prepare a general plan to be used for funding allocation purposes; planning grants do not fund infrastructure design requiring certification by a professional engineer.

Planning contracts allow for no advance payments of TxCDBG funds, therefore, no payment can be in excess of the maximum TxCDBG budget amount for any line item. The Grant Recipient could elect to request less than the TxCDBG amount and draw the balance at contract close-out, however.

Grant Recipients can request reimbursement for eligible costs as often as is actually needed, but on a reimbursement basis only. Grant Recipients must disburse funds "as soon as administratively feasible" (i.e., a maximum of 5 calendar days from the time of receipt/deposit of funds to the time of actual local disbursement). Therefore, Grant Recipients should base their requests for payment on local cash needs to facilitate prompt disbursement and avoid monitoring findings.

All Requests for Payment must be accompanied by backup documentation that justifies payment for each budget line item from which TxCDBG funds will be drawn. If, for example, a Request for Payment includes reimbursement under the Basic Planning Activities and Water System line items, documentation must be provided for both activities. Requests for Payment will not be processed unless adequate supporting documentation is provided. TxCDBG staff may request additional information regarding Request for Payment, even if supporting documentation has been provided.

ACCEPTABLE BACK-UP DOCUMENTATION FOR PLANNING PAYMENT REQUESTS

<u>Activity</u>	<u>Acceptable Justification</u>
All planning services provided by Professional Planning Services Contracts	Billings or invoices from professional planning service providers which are in agreement with the contract. One (1) copy of the applicable planning documents. Documents must meet contract requirements and be submitted under local signature with and indication of their completeness and adequacy, as specified in this manual.

NOTE: All invoices must list specific service delivery dates and indicate match.

Planning Grant Recipients will follow the requirements shown in **Section A, Chapter 2: Financial Management**. When requesting reimbursement, the following items are required to be submitted with the applicable reports and maps completed in fulfillment of the contract's Exhibit A, Performance Statement: (The forms indicated by an * must be submitted by the Grant Recipient within the first six months of the contract.)

Note: Final planning documents **must** be submitted under local signature.

Grant Recipients may begin the procurement process once the TxCDBG contract period has begun, or once a pre-agreement is in place. Professional planning services costs incurred before the procurement process is complete, or costs incurred prior to the contract period or pre-agreement date, are not eligible for TxCDBG reimbursement.

The Competitive Negotiation method of procurement is the appropriate method for procuring professional [planning](#) services (i.e., planning consultant) when using TxCDBG funds to pay for these services. In competitive negotiation, TxCDBG requires that the Request for Proposal (RFP) be published in a local newspaper and sent to at least five (5) firms. Either a fixed-price or cost-reimbursable type contract is awarded. Retainer contracts or any semblance of a retainer contract are not allowed. The selection procedures that must be followed for this method are found in **Section A Chapter 5: Procurement Procedures**. Sample RFP documents are found in **Form B5**.

There may be cases when contract negotiations may be necessary with the responsible, reasonable, and responsive bidder during the process. Negotiations should be focused on the specific scope of services to be provided, terms and conditions of the contract, and the amount of compensation for each activity. TxCDBG suggests that Grant Recipients give professional [planning](#) service providers specific time frames for accomplishment of activities as terms of the contract to ensure prompt completion of the project. For example, the Grant Recipient may want to establish a deadline for the completion of each element of the scope of work to be accomplished. This is especially important in light of the six-month rule and the logical need to progress to the implementation stage after planning.

NOTE: Texas Community Development Block Grant Program recipients who obtain the services of a consultant have the final legal responsibility for the locally-maintained grant files, the timely submission of reports, and compliance with program guidelines.

B.2.4 Amendments and Modifications

During the course of administering a TxCDBG contract, situations may occur that require a change in the original terms of the contract.

Professional [planning](#) services contracts and subsequent amendments to those contracts must be approved by the Grant Recipient. Such amendments sometimes require formal TxCDBG contract amendment review and approval (for example, budget changes from TxCDBG funds to local funds and increases/decreases). Please refer to **Section A Chapter 11: Contract Amendments** to determine if the need exists for a contract amendment and the proposed amendment's impact on the TxCDBG contract.

Modifications

It is anticipated that no Budget Modification will be necessary for the project. TxCDBG **will not** approve a Budget Modification that is tantamount to approving an advance payment. All costs are determined by fee matrix and paid on a Reimbursement for Services basis.

The Performance Statement Modification is a means of documenting minor changes to the Performance Statement that do not significantly alter the number of beneficiaries, location or types of activities, nor the original scope of work. It documents the desired changes without formally amending the contract and is more expeditious than processing an amendment. The most common example of a modification is a change of map scale.

Contract Extensions

Generally, TxCDBG planning contracts allow a two-year period to complete the activities identified in the Performance Statement (Exhibit A) of the contract. Sometimes, however, extenuating circumstances prevent the completion of contract activities within the prescribed contract period. If a

Grant Recipient File System

PLANNING PROJECTS

The following is a suggested format for the project administration file which is to be kept by the Grant Recipient. Other supplemental files should be maintained as they are relevant to the nature of the approved project. Relevant correspondence should be filed in the appropriate file.

1. Application
2. Grant Award Letter
3. Contract (and any amendments)
4. Financial File:
 - a) Depository/Authorized Signatories Designation Form;
 - b) Accounting System Certification Letter;
 - c) Accounting Records;
 - d) Purchase Vouchers, Request for Reimbursement, and related information;
 - e) Source Documentation (bills, payrolls, canceled checks);
 - f) Bank Statements;
 - g) Audit
5. Environmental Review Exemption Letter
6. Procurement Procedure and Documentation:
 - a) A copy of the Request for Proposals (RFP);
 - b) A copy of the RFP public notice or documentation relating to the mailing of the RFPs;
 - c) A copy of the RFP cover letter sent to each interested party;
 - d) A copy of each offeror's response to the RFP;
 - e) A copy of each offeror's Worksheet, if applicable;
 - f) A copy of the Procurement Summary Sheet, if applicable;
 - g) A copy of the executed Professional [Planning](#) Services Contract;
 - h) Any other procurement related correspondence
7. ~~Engineering~~/Professional [Planning](#) Services Agreement(s)
8. Quarterly Reports and Minority Business Enterprise Reports
9. Complaint Procedures
10. Planning Documents and related materials

Planning Procurement Certification

Competitive Negotiation - This is the appropriate method of procurement for services, (i.e., planning consultant) when using TxCDBG funds to pay for these services. In competitive negotiation, the Department requires that proposals be requested through certified mail from at least five sources as well as publishing the Request for Proposal in a newspaper of regional circulation. Negotiations are then conducted with more than one of the sources submitting offers, and either a fixed-price or cost reimbursable type contract is awarded.

Be aware that when an inquiry is made by a consultant regarding an advertised RFP, the Grant Recipient must respond by mailing an RFP package to the inquirer, regardless of the number of inquiries.

Please sign and return the attached certification that your Grant Recipient understands and is performing its obligations regarding procurement of professional planning services and its Planning and Capacity Building Fund (or Colonia Planning Fund) grant award.



I, _____ ,
Print Name and Title of Authorized Signatory

Certify with respect to the expenditure of Texas Community Development Block Grant Program Planning Funds provided under contract by the Texas Community Development Block Grant Program that the

Print Name of Grant Recipient

understands its obligation to procure professional planning services according to Texas Community Development Block Grant Program regulations within six (6) months of the contract's start date, and that it will accomplish procurement of professional planning services according to the method prescribed in the Planning and Capacity Building Fund/Colonia Planning Fund and Texas Community Development Block Grant Program Project Implementation Manual.

Signature of Authorized Contract Signatory

Print Name and Title *Date*

NOTE:

Place a photocopy of this completed form in your Planning Fund grant file and return the original form to:

Joe Midura, Planning Grants Coordinator
Texas Community Development Block Grant Program
Texas Department of Rural Affairs
P. O. Box 12877
Austin, Texas 78711-3941

Sample Request for Proposals for Planning Services

The City/County of _____ is seeking to enter into a professional planning services contract with a competent planning consulting firm to assist the city in the overall development of a planning process and planning reports of its recent contract received from the Texas Department of Rural Affairs (TDRA) for a (TYPE OF PROJECT) _____ project. The following outlines the request for proposals.

I. **Scope of Work** - The contract will encompass all project related services to the City/County of _____, including, but not limited to, the completion of the attached contract for Planning and Capacity Building Funds (or Colonia Planning Funds, if applicable) of the Texas Community Development Block Grant Program between the city/county of _____, and the Texas Department of Rural Affairs.

PLEASE SPECIFY THE ACTUAL SERVICES TO BE PERFORMED IN THIS SPACE.

II. **Statement of Qualifications** - The city (county) is seeking to contract with a competent planning and/or engineering firm that has experience in the following areas:
 a) Experience with the federal Community Development Block Grant program, through either the HUD Entitlement/Small Cities or Texas Community Development Block Grant Program.
 b) SUMMARIZE YOUR CITY'S/COUNTY'S PERFORMANCE STATEMENT HERE.

As such, please provide within your proposal a list of past client local governments, as well as resumes of all planners and/or engineers who will or may be assigned to this project if your firm received the planning services contract award.

III. **Proposed Cost of Services** -. Considering the attached contract between the City (County) of _____ and the Texas Department of Rural Affairs, please specify the proposed cost to city/county, and estimated time of completion. These include a proposed cost by Scope of Work category of what you or your firm feels is appropriate for each area of the Scope of Work. Please note that the City/County of _____ will not use lowest/best bid as the sole basis for entering into this contract.

IV. **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	30
Capacity to Perform	10
Affirmative Action	5
Total	100

V. **Deadline for submission** is _____, 20____

Minority Business Enterprise Report (MBE)

Contract No. _____

Grant Recipient Name: _____

Minority Business Status

Contractor/Subcontractor Name List all contracts ---- <i>awarded during this quarter only</i>	Contract Amount			COLUMN CODES:					
	TxCDBG Dollars	Other Dollars	Total Dollars	A	B	C	D	E	F

COLUMN A	COLUMN B	COLUMN C	COLUMN D
Code Type of Trade	Code Specific Type of Service(s) Provided	Code Business Race/Ethnicity (based on 51% or more ownership)	H = Hispanic NH = Not Hispanic
1. Construction	1 Construction/Rehabilitation	1 White	COLUMN E
2. Professional	2 Materials/Equipment/ Supplies	2 Black/African American	Gender
<u>Planning</u> Services	3 Architectural	3 Asian	M = Male
3. Other	4 Engineering	4 American Indian/Alaskan Native	F = Female
	5 Management/Administration	5 Native Hawaiian/Other Pacific Islander	COLUMN F
	6 Legal	6 Black/African American & White	Prime/Sub
	7 Appraisal	7 Asian & White	P = Prime
	8 Audit	8 American Indian/Alaskan Native & White	S = Sub
	9 Other	9 American Indian/Alaskan Native & Black/African American	
		10 Other Multi-Racial	

Comments:

Signature of Local Official _____

Typed Name & Title of Local Official _____

CLOSE-OUT REVIEW					
		Y	N	N/A	DOCUMENT SOURCE AND COMMENTS
14.	Was a letter of transmittal from local authorized official that indicates local review of the planning documents in the file.				
PROCUREMENT OF PROFESSIONAL <u>Planning</u> SERVICES (Administrative or Other Professional <u>Planning</u> Services Paid with TxCDBG Funds)					
15.	Did the Grant Recipient establish and use written selection criteria that included <i>at a minimum</i> , a clear and accurate description of the technical requirements of the services to be procured?				
16.	Did the Grant Recipient advertise the RFP'S in a locally distributed newspaper, and submit the RFP to at least 5 individuals/firms?				Adv. ____ Letters____ No. of respondents: _____ Name of successful respondent: _____
17.	Does the contract document include all of the following provisions?				
	Names of both parties				Pre-agreement letter date:
	Begin date after starting date of TxCDBG contract or pre-agreement letter on file				Contract start date:
	Scope of services				
	Firm fixed-price compensation				
	Procedure for amending contract				
	Termination clause (if > \$10,000)				
18.	Does the contract document contain reference to the following federal and state standards as terms and conditions of the contract?				
	Title VI of the Civil Rights Act of 1964				
	Section 109 of the Housing and Community Development Act of 1974				
	Section 3 of the HUD Act of 1968				
	Conflicts of Interest				
	Access to Records				
19.	Is there evidence that the governing body Authorized the approval to proceed with contract execution?				
FINANCIAL MANAGEMENT REVIEW					
20.	Has the Grant Recipient submitted an Updated Disclosure report(s)?				

Owner-Occupied Rehabilitation: The rehabilitation of housing units that are not inhabited by persons with disabilities, but are owned by low- or moderate-income persons.

Reconstruction: The substantial reconstruction of owner-occupied 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.

Limited New Construction: The construction of new housing units that include accessibility features for persons with disabilities. Construction of new housing can only be provided through an eligible subrecipient such as a neighborhood-based nonprofit organization or a nonprofit organization serving the development needs of the community.

Delivery Costs: Soft costs associated with the delivery of the housing assistance including the preparation of work write-ups, required architectural or [other](#) professional services that are directly attributable to a particular housing unit, interim and final inspections, and inspections for lead-based paint, asbestos, termites, and existing septic systems.

Administrative Costs: Administrative costs associated with the housing assistance program, in amounts designated by the contract.

National Objective

Grant Recipients undertaking housing rehabilitation activities must document how they have met the National Objective specified in their application. The National Objective is not met until funds have been expended and documentation has been completed.

Housing Rehabilitation Mobile Home Reconstruction Policy

The Housing and Community Development Act of 1974, as amended, does not define “reconstruction.” However, for CDBG purposes, “reconstruction” is generally defined as the building of a structure on the same site in essentially the same manner, e.g., substandard manufactured housing replaced by new or standard manufactured housing.

The Texas Community Development Block Grant Program (TxCDBG) has allowed for the substantial reconstruction of a home when that home (unit) is dilapidated beyond rehabilitation. In this case, the existing structure is demolished and a new home is constructed on the same site. The substantially reconstructed home may be either a site constructed unit or a modular home. The definition of a modular home is not the same as a manufactured home. A modular home is treated the same as a site-built home. Mobile home was a term commonly used prior to 1976 when Congress adopted legislation using the term “manufactured home.”

Participants in the TxCDBG Program have followed the HOME Program Guidelines that have allowed reconstruction for mobile homes. However, the HOME Community Planning and Development (CPD) Notice that allowed for the reconstruction of mobile homes expired on March 11, 2004. The CDBG rules and regulations are separate and independent of the HOME Program rules and regulations, and therefore, should not be regarded in the same manner.

HUD has determined that replacing manufactured homes/mobile homes with stick-built housing is considered to be new construction. New construction is an eligible activity only if it is performed by a Section 105(a)(15) entity; otherwise, new construction is an ineligible activity. Replacing manufactured housing units (mobile home units) with stick-built units is a homebuyer activity and is an ineligible activity in the CDBG Housing Rehabilitation Program.

TxCDBG considers the reconstruction (building of a stick-built home or brick home) for a mobile home, to be an ineligible activity for housing rehabilitation. There shall be no waivers issued concerning this policy.

C.2 Steps in Housing Rehabilitation

Below are typical steps involved in a housing rehabilitation program using CDBG funds. The steps follow in a sequential manner although some may occur simultaneously:

1. Administrative Start-up

- The Grant Recipient procures professional services as needed, including ~~administration,~~ engineering, and architecture ~~services, and administration services.~~ A Rehabilitation Coordinator is designated, which may be an employee of the Grant Recipient or a professional administrator.
- The Grant Recipient completes an area-wide environmental review and receives clearance from the Environmental Specialist.

2. Housing Rehabilitation Guidelines

- The Grant Recipient develops local Housing Rehabilitation Guidelines and submits them to TxCDBG for comment and approval. (Sample Guidelines are found in **Form C2**.)
- The Grant Recipient adopts the Guidelines by final vote.
- The Grant Recipient holds a public meeting to explain the Guidelines and operation of the program.

3. Homeowner Application Process

- Applications are taken from homeowners.
- The Grant Recipient verifies ownership and income-eligibility for each application.
- The Grant Recipient performs an on-site code inspection on the home, both exterior and interior, for each eligible application to determine if the house can be rehabilitated within the funding limits of the program.

TxCDBG will reimburse housing rehabilitation hard costs up to \$25,000 per house. If the cost of rehabilitation exceeds \$25,000, the Grant Recipient must:

- a) request written approval from TxCDBG to exceed the program limits;
- b) request written approval from TxCDBG to reconstruct the house; or
- c) remove the house from consideration.

No reconstruction costs will be reimbursed by TxCDBG without prior written approval.

4. Priority List

- The Grant Recipient develops a Priority List, based on individual need and dwelling condition, which lists the order in which houses may be rehabilitated. Generally, houses requiring rehabilitation only should be placed higher on the Priority List than those that would require reconstruction.
- The Grant Recipient submits the Priority List to TxCDBG with a description of the work to be performed on each house recommended for rehabilitation with grant funds.
- If the planned rehabilitation work is not performed on one or more houses, the Grant Recipient updates the Priority List and provides TxCDBG with a description of the new house(s) recommended for rehabilitation.
- The Grant Recipient completes and submits to TxCDBG an *Environmental Site Specific Statutory Checklist (Form C7)* for each house recommended for rehabilitation.

Note: Placement on the Priority 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 if the house must be reconstructed in order to meet building codes, the Priority List scoring must be reevaluated and the house may be removed from consideration.

C.4.2 Soft Costs

Soft costs are costs related to and identified with a specific housing unit (project) other than construction costs. Eligible project-related soft costs include:

- preparation of work write-ups, work specifications, and cost estimates;
- architectural, engineering or other professional services required to prepare plans, drawings or specifications directly attributable to a particular project;
- inspections for lead-based paint, asbestos, termites; inspections for septic systems; and
- interim and final inspections by the construction inspector.

Soft costs will be restricted to a percentage of the construction hard costs per housing unit. The related soft costs maximum will be no more than 6% of the hard costs for a specific rehabilitation project, and no more than 3% of the hard costs for a substantial reconstruction project;

SOFT COSTS (not included when calculating hard costs)
<ul style="list-style-type: none">• Financing fees• Credit reports• Title binders and insurance• Recordation fees, transaction taxes• Legal and accounting fees• Appraisals• Architectural and engineering fees, including specifications and job progress inspections• Project costs incurred by the Grant Recipients that are not directly related to a specific unit• Administrative Costs• Relocation Costs• Environmental Reviews• Acquisition of the Property• Lead Hazard Evaluation and Reduction Costs

Supportive documentation for rehabilitation soft costs that are unit specific, e.g., itemized invoices and inspection reports, must be submitted with drawdown requests. Soft costs for identical specification manuals for the same floor plan of a housing unit will not be a reimbursable cost. TxCDBG will not accept requests for waiver or amendment of the soft cost policy.

C.4.3 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.4.4 Change Orders

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 submit the *Housing Rehabilitation Change Order Approval Request (Form C4)* and the original work write-up prepared for the house. All changes in the construction contract price or scope of work will be reviewed and compared to the work write-up. If the change order contains significant changes to the scope of work, the Grant Recipient must provide justification for the changes and continued rehabilitation.

If the repairs necessary to bring the dwelling conditions up to code compliance will exceed \$25,000, the Grant Recipient may request a performance statement amendment to exceed the program limits or to reconstruct the house rather than rehabilitate it. **A change from rehabilitation to reconstruction always requires a Performance Statement Amendment; the amendment must be approved by TxCDBG before the reconstruction make take place.**

Texas Capital Fund Administrative Activities Checklist

D2

ACTIVITY	LOCALITY	CONSULTANT	ENGR/ARCH	OTHER
A. Initial Administrative Procedures				
1. Set up all files pertaining to TxCDBG/TCF contract activities				
2. Solicit for professional services / administration services and maintain all necessary and relevant documentation				
3. Prepare the professional services / administration services contracts for attorney review.				
B. Environmental Review/Special Conditions Clearance Procedures				
1. Designate environmental review liaison and environmental certifying officer.				
2. Establish and maintain environmental review file.				
3. Prepare environmental assessment.				
4. Coordinate activities with other federal or state agencies responsible for implementing applicable laws.				
5. Publish and disseminate public notice.				
6. Document consideration of any public comments.				
7. Issue environmental impact statement (if applicable).				
8. Request release of funds and send certifications to the Department.				
9. Clear project of TxCDBG/TCF contract special conditions.				
C. Financial Management				
1. Document local file/submit to the Department the accounting system certification letter.				
2. Complete Direct Deposit Authorization Form (if applicable).				
3. Establish TxCDBG/TCF non-interest bearing checking account.				
4. Submit to the Department the Contractor's Depository/Authorized Signatory Designation form (if applicable)				
5. Secure surety bonding for individuals having access to project assets, accounting records or checks related to the TxCDBG/TCF contract.				
6. Establish and maintain financial records consisting of registers, journals, and ledgers.				
7. Maintain (city/county) TxCDBG/TCF accounting operations.				
a. Execute drawdown requests				
b. Review invoices received for payment and file back-up documentation				
c. Draft checks				
d. Pay invoices				
e. Enter transactions in books				
f. Reconcile bank statements				
g. Prepare financial reports				
8. Establish procedures to handle the use of TxCDBG/TCF program income, if applicable.				

**Texas Capital Fund
Quarterly Progress/Minority Business Report**

Contract No. _____ Locality Name: _____
 Quarter Reporting Jan-Mar 20__ Apr-Jun 20__ Jul-Sep 20__ Oct-Dec 20__
 (Check One Box):

Financial Status

<u>Activity</u>	<u>TXCDBG Funds</u>			<u>Other Funds</u>
	<u>Current Budget</u>	<u>Drawn To-Date</u>	<u>Balance</u>	<u>Expenditures To-Date</u>
Total				

Program Income: _____ First Payment Due: _____ How Due: _____ Total Received: _____

Project Status

Activity During This Quarter: Include an update on the construction status of the project.

Minority Business Status

Contractor/Subcontractor Name List all contracts ---- <i>awarded during this quarter only</i>	Contract Amount			COLUMN CODES:					
	TXCDBG Dollars	Other Dollars	Total Dollars	A	B	C	D	E	F

COLUMN A	COLUMN B	COLUMN C	COLUMN D
Code <u>Type of Trade</u>	Code <u>Specific Type of Service(s) Provided</u>	Code <u>Business Race/Ethnicity</u> (based on 51% or more ownership)	H = Hispanic NH = Not Hispanic
1 Construction	1 Construction/Rehabilitation	1 White	COLUMN E <u>Gender</u>
2 Professional / <u>Administration</u> Services	2 Materials/Equipment/ Supplies	2 Black/African American	
3 Other	3 Architectural	3 Asian	M = Male F = Female
	4 Engineering	4 American Indian/Alaskan Native	COLUMN F <u>Prime/Sub</u>
	5 Management/Administration	5 Native Hawaiian/Other Pacific Islander	
	6 Legal	6 Black/African American & White	P = Prime S = Sub
	7 Appraisal	7 Asian & White	
	8 Audit	8 American Indian/Alaskan Native & White	
	9 Other	9 American Indian/Alaskan Native & Black/African American	
		10 Other Multi-Racial	

