TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

June 17, 2016

Texas Community Development Block Grant Program

Re: 2016 Revisions to the Texas CDBG Project Implementation Manual

Dear Stakeholders –

The Texas Department of Agriculture (TDA) has prepared a draft of the 2016 Texas CDBG Project Implementation Manual (hereinafter "2016 TxCDBG Manual").

An overview of the most important policy revisions is discussed below:

1. Based on additional guidance, TDA has determined that the requirement of negotiation of profit applies only to non-competitive contracts and to professional/administrative contracts greater than $50,000, and not to contracts procured through sealed bids. *Using this guidance, a contractor submitting a sealed bid greater than $50,000 should not be required under 2 CFR 200.323(b) to disclose, negotiate, or certify profit or a percentage thereof, as part of its bid.* (Chapter 5)

2. TDA has formally included the maximum engineering budget in the 2016 TxCDBG Manual (previously determined during the application process). If construction and/or acquisition funds are deobligated from the contract during the closeout process, administrative and engineering costs will be recalculated to ensure that final costs are within the allowable percentage (16% or 25%) of the actual construction and acquisition/relocation grant funds utilized with exceptions. (Chapter 2)

3. The previous Texas Capital Fund (TCF) "tap-in" requirements have been determined to still apply to certain limited TCF projects. For public infrastructure improvements where more than one business will clearly benefit from the improvements, the Grant Recipient may be required to report the aggregation of jobs to support a national objective. (Chapter 4 & Section D – TCF)

4. TDA has provided a new method for Grant Recipients to satisfy the requirement to promote the participation of MBE/WBE/SBE businesses by allowing the Grant Recipient to send copies of notices for bids to a newly created email at MWBE@texasagriculture.gov. (Chapter 5, Chapter 10 & Appendix D)

5. Compliance monitoring will include the newly introduced risk-based method of monitoring for TxCDBG projects, based on the recent pilot process. (Chapter 13)

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6. Section 3 Annual Report should be reported on a federal fiscal year (October 1 – September 30) basis instead of a calendar year basis. For 2016, Grant Recipients should use the updated Form A1011 and report Section 3 results for the January 1 - September 30, 2016 for 2016 reporting year. (Chapter 10 & 12)

7. TDA has expanded the housing rehabilitation activity to include nonprofit organizations as eligible owners. Grant Recipients undertaking a housing rehabilitation program may select owner-occupied homes or nonprofit-owned homes that are occupied by low- to moderate-income residents. (Section C)

8. Additional Edits to 2016 TxCDBG Project Implementation Manual

   In addition, since the publication of the final 2015 TxCDBG Manual on February 1, 2016, a few minor edits have been made to correct typos, clarify policy, and/or address raised issues. These changes, including the policy changes above, are summarized in the attached chart.

Once the 2016 TxCDBG Project Implementation Manual is adopted, effective date September 1, 2016, these new rules will apply to all current contracts.

TDA welcomes feedback on this draft document. Please send any comments to Vada Dillawn at Vada.Dillawn@TexasAgriculture.gov prior to July 31, 2016. The changes listed above and other relevant program information will be included in the 2016 TxCDBG Project Implementation Workshops, beginning in July, 2016.

Thank you for your efforts to assist rural Texas communities.

Sincerely,

Suzanne Barnard
Director for CDBG Programs

2016 TXCDBG PROJECT IMPLEMENTATION MANUAL
SUMMARY OF POLICY CHANGES AND MINOR EDITS

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Program Overview	P.1.8	Requires Grant Recipients to have a Conflict of Interest Policy	Highlights in bold that Grant Recipients are required to adopt a Conflict of Interest Policy. Added see Sample Policy in Appendix C.
2	2.2	Engineering Costs & Regulatory Approvals	Requires that all regulatory approvals required by the contract (such as TCEQ interim well approvals or TDLR inspections) are received before payment of the final 10% of the engineering budget.
2	2.3	Deobligation % - Administration and Engineering	Allows for the reevaluation of percentages of administrative costs and engineering costs based on various factors, if grant funds are deobligated.
2	2.3.2	Drawdowns	Provides that draws for funds need to be made at least one time a year or as directed by TDA.
2	2.3.3	Ineligible Costs-Advertising Costs	Describes that advertising and public relations costs are ineligible costs for the TxCDBG program and how such charges may not be charged to the TxCDBG contract or considered as match funding.
2, 4, 12		Regional Coordinators	Conforming change – the term 'Regional Coordinators' replaces the term 'Contract Specialists' throughout Manual.
3	Step 4, Step 6, Form A308	Sample Form - Request for Release of Funds (RROF)	Adds Form A308 Request for Release of Funds (RROF) and Certification form, HUD form 7015.15 to sample forms for Chapter 3; made conforming changes to Chapter.
4 & Section D	4.2.7 & D.1.7 Form D8	"Tap In"	Allows the State the option to require that a Grant Recipient report the aggregation of jobs for public infrastructure improvements where more than one business is benefitted.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
5	5.1	Minor change - Clarification regarding reimbursement	Clarifies that TDA will not reimburse any line item for profit, overhead, contingency, or other related terms that do not describe actual work completed.
5	Deleted Language - 5.1; 5.4.3	Negotiation of Profit as a Separate Element of Price	Upon further input from HUD, deletes the requirement that profit should be disclosed under sealed bid procurement. Negotiating profit as a separate element of price will only be required in contracts > $50,000 for competitive and non-competitive proposal contracts.
5	5.2.1	Administrator Certification	Provides that any person within one firm that will administer a TxCDBG grant must annually be certified by attending either a TxCDBG Implementation Manual Workshop (or webinar online with taking test.) Deleted the term 'Firm' in accordance with 4 TAC 30.80.
5, 10, and Appendix D, Step by Step	Ch. 5: 5.2.1, 5.4.2, 5.4.4; Ch. 10: I, 10.2.3; Appendix D	Notice of Bid Postings	Allows Grant Recipients to satisfy MBE/WBE/SBE requirement by sending copies of notices for bids to a newly created email at MWBE@texasagriculture.gov so that MBE's can be notified of abilities to bid.
5	5.2.1	COGS – Clearance by SAMs	Clarifies that COGS have to be cleared through SAMs.
5	5.4.5	Specify CDBG Contract/ Description of work in contracts	Requires that in all contracts, grantees, including engineering, must specifically refer to the project or provide detailed information regarding the work being funded.
Ch. 5 and Appendix B – Contract Provisions	5.4.5, Appendix B	Threshold for administrative, contractual, and legal remedies	Requires that the contracts >$50,000 (not $150,000) must address administrative, contractual, or legal remedies in violations of breach.
5	5.4.9	Recovered Materials Link	Updates recovered materials link: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#directory

CHAPTER	SECTION/FORM	TOPIC	CHANGE
5	5.5	COGS – Clearance by SAMs	Clarifies that COGS have to be cleared through SAMs.
5	A505	Change Order Form	Automates Change Order Form,
6	A610	Sample form – Admin. Settlement Purchases Above Market Value	Adds Sample Form A610 Administrative Settlement Guideform.
6	6.1	Licenses & URA	Distinguishes that licenses do not need to comply with URA requirements (i.e. railroad licenses/permits); gives factors to determine whether an interest is license/permit.
6	6.1	URA & Leasehold	Provides that the URA applies to the acquisition of property that is leased for a term of 15 years or more instead of 50 years of more.
6	6.5	Private to Private Acquisition	Clarifies that for private-private acquisition, Uniform Relocation Act (URA) does not apply. For a private-private acquisition – Environmental may apply, based on the test that if not for the CDBG funding, the acquisition would not have occurred.
7	Introduction	Test Wells	Explains that test wells may or may not be considered construction and therefore, may or may not need to comply with Davis Bacon provisions. Asks Grant Recipients to refer to US Department of Labor Field Operations handbook, Chapter 15, 15DO5 regarding test wells.
8	8.2.3	FEMA Rates	Adds that rental rates will be compared to FEMA rates and if significantly higher, the Grant Recipient may need to provide explanation. Deleted reference 'rented' equipment in chart.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
10	I., 10.2	Civil Rights Officer	Provides that both the name of person and their title need to be identified on Form A1008 designating them as the Civil Rights Officer. In publication of civil rights notices, the title - not the person's name - is all that is necessary to be published.
10	I., 10.2	Notice on Website	Requires that if posting notices on website, a screenshot should be provided.
10 & 12	Ch.10: 10.2.2 Ch.12: 12.2.1	Section 3 Reporting	Section 3 Annual Report should be reported on a federal fiscal year (October 1 – September 30) basis instead of a calendar year basis. Form A1011 for Jan 1 - Sept 30, 2016 reporting year.
10	I.,10.2, 10.2.5	Timeline for Published Notice	Consistent with the timeframe for acceptability of adopted or reaffirmed civil rights policies and procedures, newspaper notices regarding civil rights would be considered valid if published within two years prior to the TxCDBG contract start date. This means that published notices could be used for multiple TxCDBG projects with contract periods that occur consecutively. Postings in public buildings have to be conducted within the contract period.
10	10.2.7	5% LEP Safe Harbor	Clarifies the 5% Safe Harbor rule: provides that each non-English speaking group must be more than 5% of the population for LEP requirements to be triggered (instead of adding the percentages of several non-English speaking groups that together would total more than 5%).
10	10.2.7	LEP	LEP forms need to be signed by Chief Elected Officer or by the Civil Rights Officer.
12	12.2.1	Engineering Costs	Reiterates that engineering and administrative costs are to be no more than 25% or 16% of total construction costs, respectively, and that if funds are deobligated, these costs will be realigned to the same percentages, with exceptions. (See Ch. 2 above)

CHAPTER	SECTION/FORM	TOPIC	CHANGE
13	Editing throughout entire chapter Form 1302	Risk Based Monitoring	Describes the new Risk Based Monitoring system. Adds Self-monitoring Form A1302.
13	13.2.2	Non-compliance penalties	Outlines non-compliance penalties for administrative violations of various categories such as environmental, labor, acquisition, etc.
14	14.2	Expenditure vs. Draw	Delineates between the terms 'expenditure' vs. 'draw' on ACF.
Section B	Form B13	Planning Monitoring Checklist	Updates B13 Planning Fund Monitoring Checklist.
Section C	C.1	Non-profits and Rehab	Allow non-profits to partner with the Grant Recipient to receive rehab funding for rehab/renovation up to 8 units in 2 or more structures with occupants LMI > 51%.
Section C	C.4	Housing Rehab. Guidelines	Outlines the necessary guideline information needed for Housing Rehabilitation.
Section C	C.4	Loan Forgiveness	Discusses the loan forgiveness rate in the event that the Grant Recipient needs to recapture payments i.e. if owner sells the property within 5 years after the rehabilitation of the property.
Section C, Part II	Form CII 709 & CII 709i	OSSF – Forms	Reorders steps and numbering on forms.
Section D	D.1.1 & D.1.9	Documenting jobs and hourly requirements for FTE	Describes how to calculate jobs created by TCF projects and which hours to use to determine whether job can be considered part time vs. full time status.
Section D	D.1.5	Business Occupancy	Discusses Certificate of Occupancy and requests to train employees at an alternative location prior to the beginning of work.
Section D	D.1.6	Real Estate and Private Infrastructure Improvements	Allows lease terms to alternatively be for ten (10) years if award is less than $300,000; provides that no interest should be charged.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Appendix B		Access to Records	Amends Access to Records language to conform to new Uniform Guidance (2 CFR 200.336). Provides access to Contractor's records throughout the term and closeout of TDA's contract with Grant Recipient.
Appendix D – Admin.		Step-by-Step	Makes conforming/minor edits to Step-by-Step.
Appendix F – Construction Contracts		Sample Construction Contract	Deletes "additional supplemental work" in the beginning of the sample Construction Contract.
Appendix D-F	Sample Contracts	Termination for Convenience Clause	Adds termination for convenience clause to construction contract. See Appendix II to 2 CFR 200 (B) requirement that all contracts >$10K must address termination for cause and 'for convenience'. Conforms language in Appendix D & E.
Appendix D-F	Sample Contracts	Access to records	Clarifies that the Contractors must provide access to records to HUD, TDA, City/County and any of its authorized representatives. (2 CFR 200.336)
Appendix D-E	Sample Contracts	Retainage of Records	Provides that Contractors must retain records for a 3 yr. period after closeout of TDA contract with Contractor and all pending action.