CHAPTER 8
FORCE ACCOUNT LABOR

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CHAPTER 8
FORCE ACCOUNT LABOR

8.0 Introduction

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

Force account work is not subject to Davis-Bacon Act (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 (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) as described in **Chapter 7 Labor Standards**.

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

8.1 Definition of Force Account

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

Definition of Employee: Determining whether a worker is an employee vs. an independent contractor depends on many factors including the nature and degree of control by the principal/payer. (See IRS 20 Point Checklist for Independent Contractors).

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

Force account applies to the following 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 provide evidence that it adhered to its hiring and employment policies for temporary employees;
- Employees of a county who are carrying out public facilities improvements for a Grant Recipient through an intergovernmental agreement as prescribed by the Texas Government Code, Interlocal Cooperation Contract, Chapter 791; or
- Employees of a public utility district or utility company on a case-by-case basis.

When using local staff, the local governing body must assure the following:

- The Grant Recipient has written personnel and employment policies that include specifically prohibited discriminatory practices;

- Conflict of Interest provisions are in place and enforced;
- EEO guidelines are followed in advertising for new employees; and
- All provisions are in compliance with Fair Labor Standards.

Since the Grant Recipient is using its own employees, it is not required to pay the minimum prevailing wage of that region as prescribed by the Department of Labor (DOL). However, the Grant Recipient must continue to pay the employees their regular wages. [HUD Handbook 1344.1]

Request to Change from Contract Construction Work to Force Account

If a Grant Recipient did not include force account in its TxCDBG application for funding but circumstances arise that could best be handled by force account, the Grant Recipient must receive approval to change construction methods from TDA by submitting ***Request to Use Force Account Labor***, **Form A808,** with the following information:

1) Description of the construction activities to be completed by force account;
2) Justification for doing the work by force account;
3) Details of Grant Recipient's experience with projects of like or similar nature;
4) Information on workload as it may affect capacity to do the work within time frame or work schedule;
5) A complete estimated cost schedule (breakdown) showing:
   a) The number of work hours and cost per hour for each category of labor, and
   b) A list of non-salary costs such as materials, supplies, equipment owned by the Grant Recipient, equipment that must be rented, etc;
6) Certification that personnel that will perform the work are employees of the Grant Recipient, a city/county, a public utility district, or a utility company - if temporary workers are hired, certification that the employer's policies for temporary employees will be followed; and
7) List of names and qualifications of personnel performing specialized work, such as inspection, testing, electrical work, etc. as applicable.
8) Sample payroll records or other personnel cost records, if formats other than the TxCDBG forms included in this manual will be used.

Advantages of Force Account

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

Disadvantages of Force Account

- No warranty for work performed by the Grant Recipient;
- Construction may be slower and not meet contract time frame;
- Extensive record keeping is required;
- Skilled local workers and appropriate equipment may be insufficient;
- Additional documentation is required for each drawdown;
- Delayed payments due to required documentation review;
- Procurement requirements for necessary materials; and
- Ongoing inspections may not be readily available to ensure quality construction.

8.2 Allowable Force Account Costs

The Office of Management and Budget (OMB) regulations, found at 2 CFR Part 200, Subpart E, establish cost standards for federally funded or federally assisted projects. Only actual expenditures incurred by the Grant Recipient as a result of the TxCDBG project are considered allowable costs.

This applies whether these costs are being reimbursed with TxCDBG funds or used as match. These costs can include labor, materials, equipment, and professional services.

The Grant Recipient must provide personnel and equipment support/cost calculation documents prior to the authorizing use of Force Account.

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. Only time worked on the project may be claimed for grant reimbursement or matching funds.

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.

A new optional *Personnel and Equipment Worksheets* **Form A800** is also provided as an alternative method of documentation. It combines the function of **Forms A801, A802, and A804** documenting personnel and equipment costs, also timesheet hours worked and equipment usage time.

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.

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.

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 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.**

If the Grant Recipient uses materials already on hand, rather than purchasing materials specifically for the project, reimbursement will be based on the actual cost of the material at the time of purchase. Competitive procurement requirements still apply to materials on hand.

If there is inventory of unused supplies greater than $5,000 upon termination or completion of the project and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them and must compensate the Federal government for its share. (2 CFR 200.314)

8.2.4 Equipment Costs

Grant Recipients may be compensated for the use of equipment on TxCDBG projects, including construction equipment. An *Equipment Cost Calculation Sheet* **(Form A802)** must be submitted for each piece of equipment for which the Grant Recipient requests grant reimbursement or matching costs.

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

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

FEMA Equipment Rates

TDA will generally allow Grant Recipients to use FEMA equipment rates for documenting compensation for the use of equipment currently owned by the Grant Recipient.

Rates on the FEMA Schedule of Equipment Rates:

- Are for equipment in good mechanical condition, complete with all required attachments;
- Include all eligible costs of ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, OSHA equipment and other costs incident to operation [Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121] – fuel and maintenance costs are not eligible for separate reimbursement;
- Do not include the labor costs of the equipment operator – labor costs should be claimed separately;
- Are based on hours of use, except that vehicles used to transport people (work crew, engineer, or other city personnel authorized to document progress for drawdown requests) must be based on mileage using the FEMA rate per mile. If the Grant Recipient requests reimbursement for a passenger vehicle based on a FEMA hourly rate rather than the rate per mile, documentation must be provided that the vehicle was used for eligible purposes other than transporting people; and
- The current rates can be found at https://www.fema.gov/schedule-equipment-rates and are also referenced in **Appendix A** of the TxCDBG Implementation Manual.

Rental Cost Reimbursement

TDA will pay for the time that rented equipment is in use on the TxCDBG project using an hourly rate (Actual rental cost divided by a 40 hour work week) plus fuel costs.

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

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

	FEMA Rates	Rental Cost Reimbursement
Equipment	Owned or Lease to Purchase	Rented
Basis for Reimbursement	Hours of use & FEMA rates	Hours of use & weekly rental cost
Maximum Reimbursement	Actual number of hours worked, times FEMA rate	Actual rental cost, plus fuel
Separate Fuel & Maintenance Costs	NOT Eligible	Eligible
Separate Labor (Operator) Costs	Eligible	Eligible

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

8.2.5 Other Force Account Costs

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

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

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

8.3 Force Account Recordkeeping

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

- Employee personnel policies that delineate paid leave, overtime, equal employment, travel, and terms of employment policies, compliance with the Fair Labor Standards Act, and Section 504 (For more information on employment policies and Section 504, see Chapter 10). If temporary workers are hired to complete the project, the employee personnel policies must address temporary employees.

- A *Personnel Cost Calculation Sheet* **(Form A801** or **Form A800)** to determine the hourly cost for each employee. The form must be approved and signed by the employee's supervisor or other personnel authorized by the Grant Recipient.

- Time sheets documenting the workers and work performed.

  TDA recommends using one of the following:
  - *Administrative Personnel Time Sheet* **(Form A803)**;
  - *Construction Personnel Time Sheet* **(Form A804)**;
  - *Multiple TxCDBG Contracts Personnel Time Sheet* **(Form A806); or**
  - *Alternate Force Account Time Sheet* **(Form A800),** if spreadsheet format is preferred.

  If an alternate timesheet (Form A800) is provided, the documentation must meet all requirements of 2 CFR 200.430(i)(1)(i-viii), ***Standards for Documentation of Personnel Expenses*.** The Grant Recipient must submit an example of the alternate documentation when requesting approval to use alternative force account reporting methods, in order to ensure that costs will be documented in an eligible manner.

  The **alternate forms** must document:
  - actual hours worked by the employee on the project, **and** the time spent on other work;
  - duties performed for the grant project; and
  - approval and signature of the employee's supervisor or other personnel authorized by the Grant Recipient.

- All TxCDBG timesheets should correspond to the Grant Recipient's regular employee time sheets to the extent that no one should be charged to the project if they are not in attendance. The Grant Recipient may be required to supplement certified timesheets with the corresponding Grant Recipient's payroll records.

- An *Equipment Cost Calculation Sheet* **(Form A802** or **Form A800)** to determine the hourly cost for each piece of equipment. The form must be approved and signed by personnel authorized by the Grant Recipient. **Form A800** may be accepted in lieu of **Form A802**.

- A *Construction Personnel Time Sheet* **(Form A804)** documenting the use of the equipment and operator. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost as described in this chapter. Leased equipment must be supported by a copy of the lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA rate for the equipment. **Form A800** may be accepted in lieu of **Form A804**.

- Invoices and canceled checks for all construction materials and other supplies.

Documentation required for each Request for Payment
All requests for payment that include force account costs must include:
- A map of the project area that clearly identifies the areas where work has been completed, the areas where work is included in the current request for payment, and the areas where work will be performed in the future; and
- Adequate back-up documentation (invoices, time sheets) to support the requested amount.

Upon completion of the construction, a *Certificate of Construction Completion for Force Account* **(Form A807)** must be submitted to TDA.