PROGRAM OVERVIEW

TABLE OF CONTENTS

Page

PROGRAM OVERVIEW ii

P.1 CDBG Basics iii

P.1.1 National Program Objectives (NPO) iii

P.1.2 Beneficiaries iii

P.1.3 Eligible Activities iv

P.1.4 Ineligible Activities iv

P.1.5 Constitutional Prohibition v

P.1.6 CDBG Expenditure Parameters v

P.1.7 Performance Measures v

P.1.8 Conflicts of Interest vi

P.2 The TxCDBG Program vii

P.2.1 TxCDBG Funding Cycles vii

P.2.2 Readiness to Proceed vii

P.2.3 Recordkeeping/Administration viii

P.2.4 Complaint Procedures ix

P.3 The Implementation Manual Structure ix

PROGRAM OVERVIEW

The Community Development Block Grant (CDBG) Program is authorized under Title I of the Housing and Community Development Act of 1974, as amended. The U.S. Department of Housing and Urban Development (HUD) is the administering agency for the CDBG program.

There are two main components of the Program:

- The Entitlement Program, which provides direct assistance to larger cities and urban counties; and
- The Non-entitlement program, also known as the State CDBG Program, which provides funds to states, which then provide assistance to local governments in non-entitlement areas (i.e., cities with a population less than 50,000 and counties with a population less than 200,000).

Federal Regulations for the non-entitlement program are found at 24 CFR Part 570 Subpart I.

This Implementation Manual focuses on the basic requirements for the State CDBG Non-entitlement Program. In the State of Texas, this program is known as the Texas Community Development Block Grant (TxCDBG) Program. The Texas Department of Agriculture – Office of Rural Affairs (TDA) is the administering agency for the TxCDBG Program.

TxCDBG is the largest non-entitlement CDBG Program in the nation, with a fiscal year 2015 allocation of almost $60 Million. The TxCDBG serves approximately 1,000 eligible non-entitlement cities and 244 non-entitlement counties in Texas, and provides services to over 390,000 beneficiaries each year.

All TxCDBG programs are administered by TDA, except the Colonia Self-Help Centers Fund which is administered by the Texas Department of Housing and Community Affairs, Office of Colonia Initiatives (TDHCA-OCI). (Please see the most recent TxCDBG Action Plan for a list of fund categories).

The demographics and rural characteristics of Texas have shaped a program that focuses on providing basic human needs and sanitary infrastructure to smaller rural communities. Funding awards are based upon a needs assessment done by the State, as required by the 2015-2019 State of Texas Consolidated Plan. More information about the State of Texas Consolidated Plan and the needs assessment can be accessed on the websites for TDA and TDHCA

A key principle of the CDBG regulations is offering maximum feasible deference to state programs within the parameters established by the CDBG statute. For this reason, the TxCDBG Program may differ from other State-administered CDBG Programs, prioritizing activities based on the needs of the low-income population in the State of Texas. It is the responsibility of each recipient of CDBG funds to understand both the Federal and state requirements and to adhere to them. It is therefore important to thoroughly read this manual and the attached regulations prior to implementing your program.

P.1 CDBG Basics

P.1.1 National Program Objectives (NPO)

Grant Recipients undertaking public facilities activities must document how they have met the CDBG NPO specified in their application. The NPO is not met until funds have been expended and documentation has been completed.

Every grant or loan must meet one of three "national objectives."

1) Principally benefit low and moderate income (LMI) persons.
2) Eliminate or prevent slums and blight.
3) Address imminent health and safety problems.

A low and moderate-income person means a member of a family whose total combined family income is equal to or less than the Section 8 lower income limit as established by HUD. Family means all persons living in the same household who are related by birth, marriage, or adoption.

Public facilities activities generally qualify under the low to moderate income area benefit NPO. In some instances the activity may qualify under limited clientele criteria or job creation and retention. Public facilities and improvements that aid in the prevention or elimination of slums or blight in a designated slum/blight area may qualify under the slum/blight area basis, or, if the improvement corrects a CDBG-defined urgent situation, the urgent need NPO may be met. An urgent need could include an activity designed to address disaster relief.

In addition to the NPO requirements, there are a number of other regulations that apply. Principal among these are:

- Environmental review;
- Davis-Bacon wage rates;
- Civil rights legislation; and
- Procurement (required for grants and some loans).

P.1.2 Beneficiaries

For projects qualified for funding under the LMI benefit national objective of the Housing and Community Development Act, documentation must be maintained to verify that at **least 51%** of the beneficiaries are low and moderate income persons. This requirement pertains to all benefits associated with the CDBG program, whether they are city-wide or area-wide.

An area-wide project benefit is an activity in which residents claimed as beneficiaries in the target area must be served by the activity. Some examples of area benefit are:

- Water/sewer line replacement;
- Street reconstruction; or
- Utility work benefiting a water supply corporation service area.

A city-wide benefit is an activity that will benefit the entire community. Some examples of city-wide benefits are:

- Water/sewer plant improvements;
- Water storage tank; or
- Water wells.

The Grant Recipient must keep a record of the number of people who are receiving either area-wide or city-wide benefits from the CDBG project. TDA requires applicants to document and report the beneficiaries of each funded activity regardless of the national program objective met by the activity. Therefore, applicants must document the beneficiaries for each activity included in a TxCDBG application under each of the TxCDBG fund categories. (See the TxCDBG guidance provided in the **TxCDBG Application Guide.**)

P.1.3 Eligible Activities

The acquisition, construction, reconstruction, rehabilitation or installation of a public facility is an eligible activity.

Public facilities include water facilities, sewer facilities, solid waste disposal facilities, other publicly owned utilities, public systems, fire protection equipment, and community or senior citizens centers. Street improvements and drainage/flood control improvements are also eligible public facilities activities. For a more detailed list see the TxCDBG application guide.

The CDBG program provides a great amount of flexibility in the activities eligible for funding, but TxCDBG prioritizes the range of activities based on the needs identified in its annual Action Plan. A full list of eligible activities can be found at 24 CFR 570.482. The TxCDBG Annual Action Plan can be found on the TDA website at www.texasagriculture.gov or can be obtained by contacting TDA.

P.1.4 Ineligible Activities

In general, any activity not authorized under the CDBG statute and/or regulations is ineligible to be assisted with CDBG funds. In addition, the statute at 24 CFR 570.207 stipulates that the following activities may not be assisted with CDBG funds:

- Buildings for the general conduct of government, except to create accessibility for the disabled population (e.g., city hall);
- General government expenses;
- Political activities;
- Purchase of equipment or furnishings for a property except under certain conditions, including authorization as a special economic development activity or activities carried out by a special nonprofit;
- New housing construction except under certain conditions or when carried out by a special nonprofit;
- Income payments, except under certain conditions (Income payments are defined in the regulations as direct payments to subsidize rent and/or utilities.); and
- Operating and maintenance expenses of public facilities, improvements and services.
  Example: Various methods used to identify specific sections of wastewater line that require maintenance to reduce or eliminate the amount of inflow or infiltration routed to the treatment facilities, such as smoke testing, televising (TV'ing), and line cleaning (vacuuming, jetting, etc.), are considered maintenance tools. The process of identifying target areas for wastewater line replacement must be completed prior to the submission of an application in order for the scope of the project to be fully identified and to expedite construction completion. Similar methods may also be used as a part of construction and inspection of the new lines. Grant Recipients may request written approval of methods listed above, including engineer's report certifying the purpose of the proposed method, for:

- Pre-construction testing on a specific reach of line (manhole to manhole); and/or
- Inspection of newly constructed lines to verify proper installation.

P.1.5 Constitutional Prohibition

Faith-based organizations are eligible for CDBG funding but may not use direct CDBG funding to support inherently religious activities and must serve all eligible beneficiaries without regard to religion.

P.1.6 CDBG Expenditure Parameters

There are four basic parameters that HUD places on the State's CDBG program:

1. TDA must ensure that at least seventy percent (70%) of CDBG funds received over a one, two or three year period, at the discretion of TDA with HUD's concurrence, are used to benefit low and moderate income persons.
2. TDA and its funded Grant Recipients must not obligate more than twenty percent (20%) of the aggregate amount of the annual grant plus the previous years' program income for planning and administration costs;
3. TDA cannot obligate more than fifteen percent (15%) of its annual CDBG funds plus the current year's program income for public services; and
4. Special types of economic development activities must meet a specific public benefit standard.

TDA ensures compliance with these requirements through its project review, funding, and monitoring process.

P.1.7 Performance Measures

The funding available through the major Federal community development formula block grant programs administered by HUD's Office of Community Planning and Development (CPD) are a vital resource in addressing the nation's housing and community development needs. Without the means at the local level to gather information and report on the impacts that these programs are having on communities (the "program outcomes"), HUD and other key stakeholders are unable to show results from the investment of resources provided to help address these needs. The focus on demonstrating performance and results is present at all levels of government and in the private sector.

Performance measurement is a program tool that can help housing and community development practitioners collect data, track progress, and report on program results in a way that speaks to the impact a program has had on a community and the lives of its residents. The key features of the system include:

- Common performance measures that apply to all HUD programs.
- Outcome measures are driven by local intent.
- Indicators that use data commonly collected by grantees.
- Data collected from all grantees will enable HUD to roll up results to a national level.

All CDBG grantees identify and report:

- at least one of three Objectives (**Creating Suitable Living Environments; Providing Decent Housing; Creating Economic Opportunities**) for each activity; and
- one of three Outcomes (**Availability; Affordability; Sustainability**).

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 regulations related to conflict of interest and nepotism may be found at the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, 24 CFR 570.489(h), and 2 CFR 200.318(c). These requirements apply in the procurement of supplies, equipment, construction and professional and administration services, acquisition and disposition of real property, and provision of assistance to individuals, businesses, or other private entities.

Grant Recipients of a TxCDBG contract must avoid, neutralize or mitigate actual or potential conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair the performance of the TxCDBG contract or impact the integrity of the procurement process.

No person who has any CDBG function/responsibility, or who is in a position to participate in a decision-making process or gain inside information, may obtain a financial interest or benefit from the CDBG activity. This requirement applies to any person who is an employee, agent, consultant, officer, or elected 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. In addition, TDA will evaluate persons in similar roles for benefitting organizations, such as utilities providing service through the project or businesses creating jobs as a result of the project, in determining a conflict of interest. The person may not have an interest in any contract or agreement related to the CDBG proceeds/program for themselves or their family/business ties during their tenure or one year after conclusion of their tenure.

Any person or entity including any benefitting business, utility provider, or other third party entity that is receiving assistance, directly or indirectly, under a TxCDBG contract or award, or that is required to complete some or all work under the TxCDBG contract in order to meet a National Program Objective, that might potentially receive benefits from TxCDBG awards may not participate in the selection, award, or administration of a contract supported by CDBG funding.

Therefore, the Grant Recipient must maintain written standards of conduct covering conflict of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts. (See Sample in Appendix C.) The Grant Recipient may choose to broaden local conflict of interest policies to additional family members and relatives.

A conflict of interest would arise when an employee, officer, consultant, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has an interest or financial interest in or a tangible personal benefit from an entity or individual considered for a contract.

Some determinations of conflicts of interest:

- TDA 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.

- TDA has determined that a conflict of interest exists when the same individual or firm has an interest in both a benefitting business identified in the contract Performance Statement of the TxCDBG contract (Exhibit A) and any consultant or construction contracts required to complete the project.
- HUD has further issued an opinion that a conflict of interest prohibited by Federal Regulation exists for a Council of Government (COG) which is providing administrative support to the regional review committee and is also an application preparer/administrator.

Upon written request, the State may elect to grant certain exceptions to these criteria as provided in 24 CFR 570.489(h)(4). The request must address all elements identified in the regulation.

Exception to Conflicts of Interest: TDA may grant an exception, upon written request from the Grant Recipient, to the conflict of interest provisions on a case-by-case basis if TDA determines that such exception will serve to further the purpose of the TxCDBG project and the effective and efficient administration of the project. (See TxCDBG Application Guide for required documentation.)

P.2 The TxCDBG Program

P.2.1 TxCDBG Funding Cycles

The TxCDBG Program is comprised of several funds through which TDA awards grants to Grant Recipients (nonentitlement cities and counties) on a competitive application basis, either annually or biennially depending on the availability of funds.

From year to year, the funds and the amount allocated to each fund vary, as a result of the 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;
- 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.

P.2.2 Readiness to Proceed

The TxCDBG project must be ready to proceed at contract execution. The Grant Recipient provided in its application information that:

- Identified the source of matching funds and provided evidence that the Grant Recipient applied for the non-local matching funds, and for local matching funds, evidence that local matching funds would be available.
- Included written evidence of a ratified, legally binding agreement, contingent upon award, between the Grant Recipient and the utility that will operate the project for the

continual operation of the utility system as proposed in the application. For utility projects that required the Grant Recipient or service provider to obtain a Certificate of Convenience and Necessity for the target area proposed in the application, provided written evidence that the Texas Commission on Environmental Quality had received the Recipient's or service provider's application.

- Where applicable, provided a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed and comply with the Texas Local Government Code annual audit requirements.

P.2.3 Recordkeeping/Administration

The Grant Recipient is ultimately responsible for the project. If using a consultant or development district to administer the project, coordination is very important. It should be determined who will manage each task on the project. The Grant Recipient must be able to fully document compliance with all applicable regulations of the CDBG program. The records should provide a historical account of the CDBG project for examination and review by local staff, TDA, HUD, state and federal auditors, other state agencies, and any other interested persons. **The Grant Recipient must maintain one complete set of files at the city or county offices.**

The record retention period for CDBG contracts is based in part on the State of Texas' CDBG grant from HUD. Each TxCDBG contract is awarded from a much larger State Grant. The annual State Grant used to fund most TxCDBG contracts is known as the Program Year; other special funding, such as the Disaster Recovery Supplemental funds, are awarded through separate State Grants.

Example: Program Year 2014 is a $61.5 million grant awarded to the State of Texas in July 2014 that has been used to fund nearly 210 contracts to date throughout rural Texas.

Once all contracts awarded under the State Grant have been completed and closed by TxCDBG, TDA will request that HUD close the State Grant. The record retention period for all TxCDBG contracts included in the State Grant begins on this date (if all other requirements have been satisfied as described below). TDA will provide information on its website listing all contracts funded through the newly closed State Grant, along with the date the State Grant was closed. TxCDBG funds hundreds of contracts through each State Grant; therefore, closeout of the State Grant may be completed a number of years after the closeout of an individual contract between the Grant Recipient and the State.

The record retention period for Grant Recipients' contracts does NOT begin when the contract between the Grant Recipients and the State is closed.

All local records relating to a CDBG contract must be maintained for three years after close-out in HUD's grant to the State of Texas. Contracts included in closed grant years will be posted to the TDA website. If a Grant Recipient is notified by TDA in writing, or if other applicable laws and regulations as described in 24 CFR 570.490 apply to a project, the record retention period may be extended. If any litigation, public information request, claim, or audit is started before the expiration of the record retention period, the records must be kept until the action has been resolved.

All TxCDBG contract records must be available for review by HUD until the retention period is satisfied.

P.2.4 Complaint Procedures

TDA has adopted a public complaints process to investigate and resolve issues arising from its operations. The Grant Recipients should adopt a similar or equivalent provision that provides for a local complaint system.

A recipient or resident who has a comment or complaint about the quality of services funded by a TxCDBG grant may submit such comment or complaint in writing to TDA's Administrator of the Office of Rural Affairs.

- TDA will transmit a copy of the comment or complaint to the entity that is the subject of the comment or complaint.
- The entity will complete its investigation of the comment or complaint and submit its findings in writing to TDA within fifteen business days or notify TDA of the date the investigation can be completed.
- TDA's Administrator of the Office of Rural Affairs or a designee will provide a copy of the complaint file to each person who is subject to the complaint.
- TDA will notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint at least quarterly and until disposition of the complaint unless the notice would jeopardize an undercover investigation.

TDA may consider the history of complaints regarding an entity in determining whether to award a future contract for the use of CDBG 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 on the TDA website in PDF and Word format so that Grant Recipients may easily search for terms, rules, procedures, and forms needed to implement their activities.

There are six sections in this manual pertaining to various types of funding available. At the end of the manual is an Appendix containing links to the federal regulations and reference materials that correspond to the procedures and policies explained in the manual.

Note that Forms use the corresponding Section letter and the first two numbers correspond to the chapter in which the form is discussed in detail. For instance, **Form A1101** is the Contract Amendment/Modification Request Form and is associated with Section A Community Development, Chapter 11 Contract amendment and modification procedures.

SECTION A - COMMUNITY DEVELOPMENT gives an overview of program rules (eligible activities, beneficiary information, national objectives) for projects funded through the TxCDBG Program, excluding Colonia Self-Help Centers.

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 Federal Davis-Bacon Labor Standards requirements for construction projects.

Chapter 8 Force Account Labor procedures and regulations.

Chapter 9 [reserved]

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.

Note: Section A contains information relevant to all TxCDBG contracts as well as information specific to Community Development projects. For Planning, 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.

SECTION B – PLANNING program rules for planning activities

SECTION C – HOUSING REHABILITATION program rules for housing rehabilitation activities

SECTION C– Part II – OSSF program rules on first-time on-site sewer facilities

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

SECTION F – STEP FUND program rules and special requirements for STEP fund projects

APPENDIX includes links to state/federal regulations governing the CDBG program, including the FEMA Equipment Rates, and sample bid and contract documents for professional services / administration services contracts, material/supplier contracts, and construction contracts.

All forms must be completed in the format provided in the TxCDBG Project Implementation Manual and/or TDA 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.