CHAPTER 11
CONTRACT AMENDMENTS

TABLE OF CONTENTS

Page

11.0 Introduction 2

11.1 Performance Statement Changes 2

11.1.1 Performance Statement Modification 3

11.1.2 Performance Statement Amendment requiring Citizen Participation 4

11.2 Budget Changes 5

11.2.1 Budget Modification 5

11.2.2 Budget Amendment 5

11.3 Contract Period Extensions 6

CHAPTER 11
CONTRACT AMENDMENTS

11.0 Introduction

During the course of administering a TxCDBG contract, situations may occur that require a change in the original terms of the contract. These changes are referred to as contract modifications or amendments. The type and scope of change as it relates to the scope, location, or beneficiaries of the project determine whether a simple modification is acceptable or whether a more extensive amendment is necessary. All changes must be related to the project.

11.1 Performance Statement Changes

Contracts are awarded based on the information presented in the original application. TDA will review any change to the Performance Statement (Exhibit A of the TxCDBG contract which specifies the scope of the work to be performed) that is requested to ensure that federal, state, and programmatic requirements continue to be satisfied.

Limits on Performance Statement change requests

Grant Recipients were selected for funding based on their proposed project and are expected to carry it out as proposed. Any requested changes in the scope of work will be reviewed to determine if the revised project is supported by the original application. A change in the construction method used to complete a project may be approved if the resulting benefit to the community is the same need identified in the application.

TDA will not approve requests to add a different or new project or activity that was not included in the application, including a new project proposed because the original project has been determined unsuccessful or not feasible.

However, TDA may consider approval of a new project if the Grant Recipient is unable to complete the original project due to either: 1) a natural disaster event, documented by presidential or governor's declaration, or 2) a decision by a federal or state agency which prevents the contractor from completing the original project.

The revised project will also be re-evaluated according to the scoring criteria used at the time the original application was submitted. If the proposed amendment alters the original application score to the degree that the project would not have been recommended for funding based on that criteria, the amendment request will not be approved. Major reductions in the scope of the proposed work can result in grant reduction or termination.

Documentation for Performance Statement change requests

The following items are **required for all Performance Statement changes**:

- *Contract Change Request Form* **(Form A1101);**
- Revised Performance Statement, using "track changes" or similar format to indicate all added, deleted, or changed text (submit electronic copy in Word Format, no balloons);
- Re-evaluation of environmental findings; and

- Revised project maps showing the locations of the original and amended project activities if any change in the project location or target area is proposed.

Note: TDA staff can provide an electronic copy of the current Performance Statement to use as a starting point for tracking changes to the Performance Statement.

Form A1101 requires the Grant Recipient to re-evaluate the environmental review and any prior Finding of No Significant Impact (FONSI) for the project to determine whether any previous clearance still applies to the revised project. It is critical that Grant Recipients complete this re-evaluation. Supplemental information or a new environmental clearance may be necessary in order for the revised project to be an eligible TxCDBG project.

The Grant Recipient should evaluate the Performance Statement once a bid has been accepted, and submit an amendment or modification as appropriate to accurately reflect the project that will be awarded. A copy of the bid tabulation or project plan sheets should be submitted with this request.

Once work has been added to the Performance Statement, the work may be completed by various methods, including:

- Bid alternate item;
- Change Order;
- Bid the additional work separately; or
- Force account labor, material, and/or equipment**.** Grant recipients are reminded that extensive documentation is required in order to use force account resources.

Note: While changing from force account labor to bid/contract labor ordinarily does not trigger a Performance Statement Amendment, the Grant Recipient must request and receive prevailing wage rates before advertising for bids. The reverse change --from bid/contract to force account labor-- must be submitted to TDA in writing for review and approval as required in **Chapter 8: Force Account**.

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

There are two levels of Performance Statement changes:

- Performance Statement Modification– changes the scale of the original project, including changes that increase beneficiaries in the same target area or decrease beneficiaries up to 25%. Also documents minor changes or corrections to the project description.

- Performance Statement Amendment requiring Citizen Participation – changes the scale of the project beyond the original target area, decreases the persons benefiting from the project (greater than 25%).

11.1.1 Performance Statement Modification

Increases in project scale and minor adjustments to the contract Performance Statement to reflect the amount of work actually completed can be made as a Performance Statement Modification. The box below provides guidance for determining whether a change may be completed as a Modification or requires a Contract Amendment.

Each request for a Performance Statement Modification will be reviewed by TDA to ensure that the proposed changes do not require an amendment, do not change the scope of the project, and continue to meet a National Program Objective. If an amendment is required, the Grant Recipient will

be notified immediately so that the appropriate action may be taken and documentation submitted as soon as possible.

Is this a Modification?	
Will the project as requested serve the same number of beneficiaries as the current Performance Statement? ☐ no change in beneficiaries, regardless of quantities; ☐ increase in beneficiaries, but no new target area; or ☐ decrease in beneficiaries of less than or equal to 25% (based on number of persons or households).	☐Yes ☐ No
Are the activities' categories the same as the current Performance Statement?	☐Yes ☐ No
Does the project still solve the same problem identified in the current Performance Statement?	☐Yes ☐ No
If the answer to all three questions is "Yes", the requested change may be submitted as a Modification. However, TDA reserves the right to require a full amendment at its discretion. *If the answer to any question is "No," please submit the requested change as a Contract Amendment or contact your Contract Specialist for further guidance.*	

11.1.2 Performance Statement Amendment requiring Citizen Participation

Substantial changes to the Performance Statement require full contract amendments and will only be considered after the citizens of the Grant Recipient have had an opportunity to comment on the proposed changes.

Citizen Participation is required for amendments that propose changes that do not meet the qualifications for a Performance Statement modification.

In addition to the documents required for Performance Statement change requests, (see pg. 1-2), the following items are also required for a contract amendment:

- Confirmation that the project will meet Exhibit C milestones (Exhibit C, Project Implementation Schedule to the TxCDBG contract) by the required dates OR a revised Exhibit C proposing a new timeline for completion;
- A resolution from the local governing body (i.e., city council or commissioner's court) that indicates support for the proposed changes; and
- Public notice of the public hearing held regarding the amendment. TDA will accept either a copy of the notice or the full newspaper page on which the notice occurred. The publication text, title, date of publication, name of the newspaper, and page number must be clear and readable, and may not be cut and pasted together. If the copy is illegible or other required information cannot be verified, the original tear sheet or copy with supporting affidavit will be required.

Reminder: Publish notice in a newspaper at least 72 hours (3 days) before the public hearing and hold meeting in a convenient location, near residents in the target area when possible, as well as at a convenient time (at or after 5:00 p.m. on a weekday or on a Saturday or Sunday).

11.2 Budget Changes

A Grant Recipient may request to transfer TxCDBG funds between budget categories in order to reflect the actual costs of the project. Upon approval, **Grant Recipients should confirm that revised budget figures are reflected on all subsequent TxCDBG *Request for Payment Form* (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 Budget change request.

Limits on Budget change requests
Requests to move TxCDBG funds from construction and/or acquisition activities to Engineering or General Administration activities must be submitted to TxCDBG prior to the date of the final inspection documented on the Certificate of Construction Completion (COCC).The request must include a description of the additional tasks required for these activities.

TDA will not approve a budget change to allow the General Administration activity grant funds to exceed 16% of construction and acquisition/relocation grant funds. If a proposed budget change causes the Engineering activity grant funds to exceed 25% of construction and acquisition/relocation grant funds, additional justification must be submitted for TDA approval and may not be approved. Any administrative or engineering costs greater than the amount available through the activity budget line items are the responsibility of the Grant Recipient, but may be included as matching funds unless otherwise disallowed.

Documentation for Budget change requests
The following documentation is **required for all Budget changes**:

- *Contract Change Request Form* **(Form A1101)**; and
- Revised Contract Budget (Exhibit B), using "track changes" or similar format to indicate all added, deleted, or changed text (submit electronic copy in Word Format, no balloons);

11.2.1 Budget Modification

A Grant Recipient may request to 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 20% of the total amount of the contract as specified in Exhibit B of the TxCDBG contract;
- The transfer of budgeted funds will not change the scope or objective of the project(s) funded through the TxCDBG contract; and
- If funds are to be transferred into professional services, the total dollar amount in the line item does not exceed the following:
    - General Administration – 16%.
    - Engineering (all line items) – 25%.

11.2.2 Budget Amendment

A contract budget amendment is necessary whenever a transfer of contract funds between budget categories is greater than 20% 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 to the TxCDBG contract).

A Budget Amendment is also required for budget changes resulting in an engineering budget that exceeds 25% of the total grant construction and acquisition budgeted funds.

11.3 Contract Period Extensions

TxCDBG contracts allow a specific time period to complete the activities identified in the Performance Statement (Exhibit A to the TxCDBG contract). Rarely, extreme extenuating circumstances beyond the control of the grant recipient may 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 for a contract extension must be requested from TDA to extend the original contract end date. When considering a contract extension amendment, TDA will only consider circumstances clearly beyond the control of the Grant Recipient

Contract extensions always require a Contract Amendment.
To avoid interruptions to the contract or possible exclusion of reimbursement for project costs, Grant Recipients should submit a request for a contract extension as soon as a delay is foreseen. Contract extension requests should be submitted approximately **sixty (60) days but no later than 30 days prior to the expiration date** of the contract and include a revised implementation schedule showing when major milestones will be completed for each activity.

A request for contract extension received **less than 30 calendar days** prior to the expiration date **will only be considered** if:

1. The project was reasonably expected to be completed within the contract period; **AND**

2. Either a natural disaster event, documented by presidential or governor's declaration, or a decision by a federal or state agency occurred in the 60 days prior to the contract expiration date which prevented the chief elected official from certifying the project's completion. Normal weather conditions are not considered extenuating circumstances.

Contract extensions are appropriate only when construction cannot be completed and/or the beneficiaries will not receive the service or benefit from the use of the new or improved facilities within the contract period. NOTE: Contract extensions granted by TDA shall not be construed as a waiver of the "Administrative Threshold Requirements" per Chapter 1 (See Section 1.1.4.). The 24 Month Applicant Threshold will still be applied to open contracts that have extended the contract period.

The following documentation shall be submitted for a contract extension:

- A revised timeline showing how the Grant Recipient plans to complete the project within the proposed period – the timeline should reflect milestones described in Exhibit C of the TxCDBG contract as well as any other key dates specific to the project; and
- *Contract Change Request Form* **(Form A1101).**

Required Documentation for Amendments and Modifications

Requests to amend/modify the Performance Statement (PS), Budget, and/or Contract Period may be submitted together, along with a request for Change Order, and may be processed together.	P.S. Modification	P.S. Amendment w/ Citizen Participation	Budget Modification	Budget Amendment	Contract Extension
Contract Change Request Form **(Form A1101)**	X	X	X	X	X
Markup of requested Contract Exhibit (PS or Budget)	X	X	X	X	
Resolution of support from local governing body		X			