CHAPTER 10
CIVIL RIGHTS REQUIREMENTS

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CHAPTER 10
CIVIL RIGHTS REQUIREMENTS

All grantees of Texas Community Development Block Grant (TxCDBG) funds are required to demonstrate compliance with all State and Federal requirements to ensure equal opportunity and access to all benefits derived from the TxCDBG Program.

These State and Federal requirements include:

- Taking steps to ensure that equal opportunities are afforded to all persons and that no person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age, and/or disability.
- Taking steps to provide opportunities, to the greatest extent feasible, to low and very low income (Section 3) residents and businesses in employment, training, and contracting for construction contracts.
- Taking affirmative steps to assure minority, small business, and female-owned businesses are informed of grant funded contracts.
- Prohibiting the use of Excessive Force against individuals engaged in non-violent Civil Rights demonstrations.
- Prohibiting discrimination on the basis of disability.
- Taking steps to Affirmatively Further Fair Housing (AFFH).
- Taking steps to assure meaningful access for persons with “Limited English Proficiency” (LEP).

To assist with compliance of these regulations, this chapter is divided into two parts:

I. SYNOPSIS of Civil Rights – provides a detailed outline of the civil rights responsibilities of the Grant Recipient and of any parties to a TxCDBG contract at start-up and throughout the duration of the TxCDBG project. For more detail, read Chapter 10 in its entirety.

II. APPLICABLE REQUIREMENTS – discusses Civil Rights responsibilities of the Grant Recipient and of any parties to a TxCDBG contract in detail with references to Federal and State rules and regulations.

Please read this chapter in its entirety in order to fully understand the requirements, background and source for such requirements.

I. Synopsis

PART A. CIVIL RIGHTS REQUIREMENTS AT PROJECT START-UP (before TDA approval of first draw)

Step 1 – Set up Civil Rights & Citizen Participation File

Set up file for documentation collection regarding civil rights: Equal Employment Opportunity; Section 3 Economic Opportunity; Protection against Excessive Force; Section 504 Anti-discrimination policy for disabled individuals; Affirmatively Furthering Fair Housing; Limited English Proficiency; Outreach to utilize small (SBE), minority (MBE), and women-owned businesses (WBE); and Citizen Participation.

Step 2 – Designate a Civil Rights Officer (CRO)

- CRO serves as the Grant Recipient's Section 504 Coordinator, Equal Opportunity Officer, and Fair Housing Officer.
- Best Practice: *CRO should be a local staff member.*
- Submit *Designation Form for Civil Rights Officer* (CRO) **(Form A1008)** to TDA; include both name and title of designated officer.

Step 3 – Adopt policies and grievance procedures regarding Citizen Participation

- Prepare citizen participation plan that encourages citizen participation at all stages of the community development project. (must satisfy the requirements of 24 CFR 570.486)
- Develop grievance procedures for citizens to submit complaints and grievances that include a timely written response to complaints, within 15 days where practicable. Provide citizens with the address, phone number and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances. (24 CFR 570.486) (See *Sample Resolution Regarding Civil Rights* **Form A1014** and *Sample Citizen Participation Plan* **Form A1013**)

Step 4 – Adopt Policies and Pass Resolution/Proclamation/Ordinances regarding Civil Rights

Grant Recipients should prepare and adopt written policies, plans, and/or resolutions/proclamations/ordinances regarding the following:

- **Non-discrimination/Equal Opportunity (EO)** – Review existing local employment policies and include the EO policy in your local government policy manual/handbook. Ensure job postings and applications state that Grant Recipient or contractor is an Equal Opportunity Employer (See *Equal Opportunity Guidelines for Construction Contractors* **Form A1001**). Include an equal opportunity provision in all construction contracts greater than $10,000. (See 41 CFR 60-1.4(b))

- **Section 3 Economic Opportunity (Section 3)** – Adopt policy/plan based on the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (see *Sample Section 3 Policy* **Form A1002**) and make available to the public. For funding greater than $200,000, Sec. 3 goals apply (30% new hires, 10% construction, 3% non-construction). For contractors/subcontractors, if contract greater than $100,000, Sec. 3 applies. (See *Sample Resolution Regarding Civil Rights* **Form A1014** and *Sample Section 3 Policy* **Form A1002**) Pass Resolution on Section 3.

- **Excessive force** – Adopt a policy limiting the use of excessive force during non-violent civil rights demonstration (see Sample *Resolution Regarding Civil Rights* **Form A1014** and *Sample Excessive Force Policy* **Form A1003**). Pass Resolution prohibiting Excessive Force.

- **Section 504 of the Rehabilitation Act of 1973 (Section 504)** – If Grant Recipient employs 15 or more people, adopt a policy against discrimination on the basis of disability and adopt written grievance procedures concerning Section 504. (See 24 CFR 8.53) Establish procedures for providing auxiliary aids to allow individuals with disabilities to obtain information concerning the existence and location of CDBG accessible services, activities and facilities. (See Sample Resolution Regarding Civil Rights **Form A1014** and *Sample Section 504 Policy Against Discrimination based on Handicap and Grievance Procedures* **Form A1004**). Pass Resolution on Section 504.

- **Affirmatively Furthering Fair Housing (AFFH)** – Best Practice: Adopt a policy, ordinance, or resolution based on the requirements of the Fair Housing Act to affirmatively further fair housing choice for all seven protected classes (race, color, religion, sex, disability, familial status, and national origin). Include in the policy a plan for activities that will affirmatively further fair housing in the community (AFFH activities are required by the TxCDBG contract). If a resolution is passed, plan at least one more activity during the contract term which publicizes the effort to affirmatively further fair housing, such as a fair housing booth or a through a public service announcement. See also Step 10. (See *Sample Resolution Regarding Civil Rights* **Form A1014** and *Sample Fair Housing Policy* **Form A1015**; *also see Sample Fair Housing Proclamation* **Form A1007**)

- **Limited English Proficiency (LEP) Standards** – Establish plan for determining if there is a need for LEP services and, if applicable, how appropriate language assistance will be given. Use American FactFinder which is found at http://factfinder.census.gov to determine need for LEP. Determine whether the size of the language group is more than 5% or if it has more than 1,000 individuals. If yes, key documents such as Citizen Participation notices and/or other notices need to be translated. (See *Limited English Proficiency Sample Plan* **Form A1010**)

All required resolutions, ordinances, and policies regarding civil rights, equal opportunity, and citizen participation contained within this chapter must be in effect throughout the contract period. Prior to the release of funds for any TxCDBG contract, Grant Recipients are required to submit a copy of the policies to TDA, adopted or reaffirmed no more than two years prior to the contract start date, to ensure that such policies are current.

Best practice: Upon the award of any TxCDBG contract, adopt or reaffirm by resolution all required civil rights, equal opportunity, and citizen participation policies. Discuss these policies during a city council or commissioner's court meeting to ensure that both local leadership and residents understand the policies.

Step 5 – Take Affirmative Steps

Towards Assisting Small Business Enterprise (SBE), Minority Business Enterprises (MBE), and Women-Owned Businesses (WBE) - Take affirmative steps to ensure that small, minority, and women owned businesses are included on all lists for contractors/service providers. Solicit these businesses when issuing RFPs and RFQs and soliciting construction bids. If appropriate and reasonable, divide project activities into small tasks to allow participation. Utilize Minority Business Development Centers, SBA, and other state programs. Provide bonding assistance.

Grant Recipients should email a copy of the solicitation advertisement to MWBE@texasagriculture.gov so that SBE/MBE/WBE's can also be notified by TDA of such opportunities. (See also Ch. 5).

Step 6 – Publish Citizen Participation and Civil Rights Notices

The Grant Recipient must give notice of and publish the following:

- **Citizen Participation and Notice of Complaints Procedures** – besides hearing requirements, publish notice that makes citizens aware of the location and hours in which they may obtain a copy of the grievance procedures and the address, phone numbers, and times for citizens to file complaints and grievances. (See *Sample Citizen Participation Plan* **Form A1013**);

- **Section 504** – for Grant Recipients that employ 15 or more people, identify Grant Recipient's appointed Civil Rights Officer (CRO) by title and state, where appropriate, "that the Grant Recipient does not discriminate in admissions or access to, or treatment or employment in, its federally assisted programs and activities". (See 24 CFR 8.54) (*Sample Notices* **Form A1005**); and

- **Affirmatively Furthering Fair Housing (AFFH)** – publish a notice of a passed Ordinance, Resolution, Proclamation or public service announcement. (*Sample Resolution* **Form A1014** and *Sample Fair Housing Policy* **Form A1015**; also *Sample Fair Housing Month Proclamation* **Form A1007**).

Notice may be given one of three ways:

1. Publish in a newspaper of general circulation (full-page advertisement/tear sheet/ publisher's affidavit);

2. Post in public places (**courthouse/city hall and in the location of target area supported by affidavit during the term of the contract** (Sample *Affidavit of Posting* **Form A1017**)); or

3. **Post on Grant Recipient's website during the term of the contract along with posting at courthouse/city hall with affidavit.**

A Grant Recipient that posts notices in a public place must acknowledge by affidavit the date and place that the notice was posted. Grant Recipient must have evidence of this publication (tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit) or affidavit (if public posting) (**Form 1017**) available for TDA monitoring review. **Grant recipient with website posting should also provide screen shots of the posting.**

Step 7 – Place in Bid Packets for Contractors

- **Equal Opportunity (EO)**– Insert EO certifications & EO Guidelines for Contractors (See *Equal Opportunity Guidelines for Construction Contractors* **Form A1001**) into Bid Packets
- **Section 3** – Provide adopted Section 3 policy in bid packets. Require bidders to certify that a Contractor's Section 3 Plan will be submitted if they are awarded the contract (See *Section 3 Policy* sample **Form A1002**; **Appendix F** for a sample contractor's plan) A copy of the contractor's executed Section 3 plan must be available for monitoring review.

Step 8 – Include in Construction Contracts between Grant Recipient and Contractor

- **Section 3 Clause** found in 24 CFR 135.38 (A-G). (See Chapter 5 for contract language)
- **Equal Opportunity Clause** found in 2 CFR Part 200 Appendix II (C) for construction contracts greater than $10,000 (See Chapter 5 for contract language)

PART B. CIVIL RIGHTS REQUIREMENTS AFTER PROJECT START-UP

Step 9 – Continue Complying with Civil Rights Responsibilities

- Be diligent and consistent in implementing the project's civil rights responsibilities and be ready to explain to local citizens the purpose and importance of the civil rights laws and requirements.
- During the course of the contract, take action to ensure that no one is discriminated against in receiving services and benefits from the TxCDBG project.

Step 10 – Take action to Affirmatively Further Fair Housing - Plan at least one activity within the contract term to Affirmatively Further Fair Housing. (See *Fair Housing Month Proclamation* Sample **Form A1007** and list of activities provided in this chapter). This activity must be completed prior to receiving TxCDBG funds.

Step 11 – Further Action and Reporting Requirements

CITIZEN PARTICIPATION

- **Written Citizen Participation and Grievance procedure(s)**
- **Complaints, if any, and actions taken**

EQUAL OPPORTUNITY

- **Detail of Beneficiaries**: Beneficiaries data by race, ethnicity and gender for each TxCDBG contract (use American FactFinder for census information or survey)

- **Any and all handbooks, policies and procedures manuals**, **and resolutions or ordinances** regarding equal opportunity, as well as a review of any past cases alleging discrimination against the Grant Recipient
- **Provide any advertisement for employment, if available.** Advertisements should contain the language "equal employment opportunity employer" (or similar);

SECTION 3

- **Written Section 3 Plan for Grant Recipient** and all other parties under contract including engineering firms, administration consultant, and construction contractors **(**Sample *Section 3 Policy*, **Form A1002).** For Section 3, in addition to competitive bidding provisions, take action for ensuring employment and economic opportunities "to the greatest extent feasible" for low and very low income residents and businesses. Notify Section 3 businesses and residents in writing of employment and business opportunities. Document actions and results.
- **If qualified Section 3** contractor/subcontractor must provide Grant Recipient with details of contract including number of new hires, training opportunities, and identification of Section 3 business **(***Prime Contractor – Section 3*, **Form A1012)**
- **Contractor Certification of Compliance with Section 3** or equivalent (found in Grant Recipient's and contractor's contract agreement)
- ***Financial Interest Report* (Form A503)** – indicates each company's status as a Section 3 business concern
- ***Section 3 Annual Report* (Form A1011) –** annual report that indicates Section 3 compliance for the federal fiscal year. Submit a **Form A1011** *Section 3 Annual Report* with the 3rd Quarterly Progress Report, and with the Project Completion Report at completion of project.

RESOLUTIONS

- **All Resolution(s)/Proclamations/Ordinances passed regarding civil rights or citizen participation,** including, but not limited to, Section 3, Excessive Force, Section 504, and/or AFFH.

SECTION 504

- ***Section 504 Self-Evaluation* (Form A1006) review.**
- **If Grant Recipient has more than 15 employees**, written grievance procedures regarding Section 504 (**Form 1004**, *Sample Section 504 Policy Against Discrimination based on Handicap and Grievance Procedures*).
- **If Grant Recipient has more than 15 employees,** post grievance procedures (**Form 1004**): in newspaper advertisement (Sample *Notices* **Form A1005**)(tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit); in public places (courthouse/city hall and location of target area supported by affidavit (Sample *Affidavit for Posting*, **Form A1017**)); or, in courthouse/city hall supported by affidavit (Sample *Affidavit for Posting*, **Form A1017**) and on Grant Recipient's website during the term of the contract.

FAIR HOUSING

- **All Affirmatively Furthering Fair Housing (AFFH) records** showing evidence of activities to affirmatively further fair housing (*Sample Fair Housing Policy* **Form A1015**; also *Sample Fair Housing Month Proclamation* **Form A1007**).

MBE AND SECTION 3 STATUS

- **Copies of *Financial Interest Reports* (Form A503)** with MBE and Section 3 information.

LIMITED ENGLISH PROFICIENCY

- All records related to LEP including LEP plan and, if necessary, translations of vital documents (**Form A1010** *Limited English Proficiency Sample Plan*).

II APPLICABLE REQUIREMENTS

The following discussion details the civil rights requirements for Grant Recipients and parties to TxCDBG contracts previously outlined in Part I. SYNOPSIS above.

10.1 Citizen Participation Requirements

Citizen Participation Requirements

An important requirement of the TxCDBG Program is that Grant Recipients must provide for and encourage citizen participation – especially by low and moderately low income persons who live in blighted or slum areas or areas served by the TxCDBG grant. (See Section 104(a) (2) of the Housing and Community Development Act and 24 CFR 570.486). In order to participate in CDBG funding, Grant Recipients must comply with the requirements set forth in 24 CFR 570.486.

Besides public hearing requirements, Grant Recipients must adopt a Citizen Participation Plan. As part of this plan, procedures must include methods for encouraging citizen participation and should provide citizens the address, phone number, and times for submitting complaints. The written complaint procedures shall also provide for a timely written response to complaints and grievances, within 15 working days where practicable.

After the execution of the TxCDBG contract, if any substantial change is requested to a CDBG-funded project, the Grant Recipient must provide citizens with reasonable advance notice of and opportunity to comment on the proposed change.

For a detailed discussion of Citizen Participation Requirements, see TxCDBG Application Guide.

10.2 Civil Rights Procedures

TDA has established policies in order to ensure that Grant Recipients comply with federal equal opportunity and housing regulations referenced earlier. TDA also requires some additional procedures related to encouraging small and minority business participation in CDBG funded contracts. Every resolution must be associated with a TxCDBG contract. All policies and/or resolutions must be adopted or reaffirmed for every contract.

Civil Rights Officer (CRO)

The Grant Recipient must designate a Civil Rights Officer (CRO). The CRO will be responsible for ensuring all requirements in this chapter are met and all documentation related to compliance with this chapter's requirements is submitted to TDA. Grant Recipient must submit *Designation Form for Civil Rights Officer* (**Form A1008**), which provides the name and title of the person designated, to TDA before any grant payments are made.

Best Practice: *Grant Recipients are the ultimate responsible entity for the enforcement of the Civil Rights Requirements. Therefore, the CRO should be a local staff member.*

Preparation of Plans and Policies regarding Civil Rights

A critical element of civil rights compliance is the preparation of plans and strategies for inclusion of all persons, followed by documentation that the Grant Recipient completed the actions described in the plans. The sections below describe the following required plans and/or policies:

- Equal Opportunity/Non-discrimination
- Section 3 Economic Opportunity policy (Section 3)
- Excessive force clause
- Participation by Minority, Small Business, and Women-owned Businesses
- Section 504 of the Rehabilitation Act of 1974 (Section 504)
- Affirmatively Furthering Fair Housing (AFFH)
- Limited English Proficiency (LEP) Standards

Publication of Civil Rights Notices

With respect to Citizen Participation, Section 504, and AFFH, the Grant Recipient must publish notices in a newspaper of general circulation or by public posting (supported by *Affidavit of Publication* Sample **Form A1017**) regarding the rights and responsibilities associated with federal grant funding received. Newspaper notices 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.

For public postings, the Grant Recipient must publicize in one of three ways either: in newspaper advertisement (Sample *Notices* **Form A1005**) (tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit); at both the city hall/courthouse and at least one location within the target area**,** supported by affidavit**;** or 3.) in courthouse/city hall, supported by affidavit and on Grant Recipient's website during the term of the contract. Grant recipient with website posting should also provide screen shots of the posting.

10.2.1 Equal Opportunity (EO) and Non-Discrimination Provisions

Grant Recipients must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the local CDBG activity on the basis of race, color, religion, sex, national origin, age, or disability. (See Section 109 of Title I of the Housing and Community Development Act (24 CFR 6); the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)) For federally assisted construction projects greater than $10,000, contractors may not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. (See 41 CFR 60-1.4(b) and Executive Order 13672 (expanded protected groups to include sexual orientation and gender identity))

- Review existing local employment policies and include the EO policy in your local government policy manual/handbook
- Include equal opportunity employer notification in employment advertisements
- Include applicable equal opportunity provisions and certifications in the bid packets, contracts, and subcontracts. These are included in the Sample Bid Package found in **Chapter 5: Procurement.** Include the EO clause found in 2 CFR 200 Appendix II in all contracts and for construction contracts > $10,000 (See also 41 CFR 60-1.4(b)).

- A list of guidelines for construction contractors (including subcontractors) regarding equal opportunity is included as Sample *Equal Opportunity Guidelines for Construction Contractors* **Form A1001**, which should be included in bid packets for TxCDBG contracts. These guidelines should be discussed with the construction contractor during the preconstruction conference.

10.2.2 Section 3 Requirements

In accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, Grant Recipients using TxCDBG funding for housing construction or public construction are required, to the greatest extent feasible, to provide training and employment opportunities to lower income residents and contract opportunities to businesses in the project area. (See 24 CFR Part 135)

To verify whether a resident or business qualifies as a Section 3 entity, the Grant Recipient may require the resident or business to complete and sign a Section 3 Resident Certification Form or a Section 3 Business Certification Form.

Although Grant Recipients must comply with the State of Texas statutory requirements on competitive bidding ("lowest and best bid"), the following steps must be taken regarding Section 3 compliance:

1. Prepare and make available to the public a written Section 3 Policy (see Sample **Form A1002**);
2. Take affirmative steps to follow its Section 3 Policy and document those efforts; and
3. Include its Section 3 Policy in any packets for contracts on TxCDBG projects. Notify all bidders that adherence to the Section 3 Policy and reporting efforts to comply will be required for contracts and sub-contracts in excess of $100,000.

Grant Recipient Section 3 Responsibilities

If ***new*** employment, training, or contracting opportunities are created during the expenditure of TxCDBG funding, the TxCDBG Grant Recipient (and their contractors or subcontractors, as applicable) must take the following actions "to the greatest extent feasible" in addition to compliance with State of Texas competitive bidding requirements and other related requirements:

1) Notify Section 3 Residents and Businesses in writing about training and employment opportunities generated by the TxCDBG-funded project. Prepare, make available to the public, and follow a Section 3 Policy (see **Form A1002** for a sample *Section 3 Policy* plan);
2) Notify Section 3 Businesses in writing about the availability of contracting opportunities generated by the TxCDBG-funded project. Prepare, make available to the public, and follow a Section 3 Policy (see **Form A1002** for a sample plan);
3) Notify potential contractors completing work on Section 3 covered projects of their responsibilities in writing. Include Section 3 Policy in construction related bid packets and require bidders to certify as part of the bid response that a Contractor's Section 3 policy will be submitted if they are awarded the contract (see **Appendix F** for a sample contractor's plan);

4) Incorporate the Section 3 clause (see 24 CFR 135.38 and TxCDBG contract, and required contract provisions) into all solicitations and contracts greater than $100,000, as well as all subcontracts of those contracts;
5) Facilitate the training and employment of Section 3 Residents and the awarding of contracts to Section 3 Businesses;
6) Obtain Section 3 compliance reports from contractors and subcontractors as required (**Form A1012** *Prime Contractor – Section 3*; see Contractor's Responsibilities below);
7) Refrain from entering into contracts with contractors that are in violation with the Section 3 regulations (if the Grant Recipient has been notified of such violations);
8) Document actions taken to comply with Section 3; and
9) Report Section 3 information as described below.

If ***no new*** employment, training, or contracting opportunities are created during the expenditure of TxCDBG funding, the Grant Recipient must still adopt and implement a Section 3 Policy and report Section 3 information as described below to confirm that Section 3 has not been triggered.

Contractor Section 3 Responsibilities
For contracts that exceed $100,000, contractors and subcontractors whose contracts greater than $100,000 must also comply with Section 3 goals and reporting requirements.

- The contractor must report all new employment, contracting, and training opportunities directly related to the TxCDBG-funded project to the Grant Recipient using **Form A1012** *Sample Section 3 Policy* or similar format.
- If a subcontract exceeds $100,000, the subcontractor must report to the prime contractor all new employment, contracting, or training opportunities directly related to the TxCDBG project; the prime must include the subcontractor's information in its report to the Grant Recipient.

Section 3 Reporting
The Grant Recipient must report Section 3 compliance in two ways:

- The *Financial Interest Report* (**Form A503**) - indicates each company's status as a Section 3 Business Concern and identifies contracts greater than $100,000 subject to Section 3 requirements.
- The *Section 3 Annual Report* (**Form A1011**) - indicates Section 3 compliance for the federal fiscal year. Contracting and employment opportunities reported on **Form A1011** include:
  - Opportunities created by the Grant Recipient and all contractors or subcontractors with contracts that exceed $100,000; and
  - Persons hired and contracts executed during the federal fiscal year (October 1-September 30) **only** (NOT cumulative); opportunities reported for one year may **not** be repeated for the following year's report).

Form A1011 must be submitted as an attachment to:

- The *Quarterly Progress Report* for the **3rd** quarter of each year the contract is open (no later than October 20th); and
- The *Project Completion Report*.

HUD Section 3 Goals
The following goals apply to TxCDBG contracts (See 24 CFR 135.30 and 24 CFR 570.487(d)):

a) 30% of the total number of new hires directly related to the TxCDBG-funded project should be Section 3 residents;
b) 10% of the total dollar amount of all construction contracts directly related to the TxCDBG-funded project should be awarded to Section 3 businesses; and
c) 3% of the total dollar amount of all non-construction contracts directly related to the TxCDBG-funded project should be awarded to Section 3 businesses.

The Grant Recipient will be considered in compliance with Section 3 requirements, absent evidence to the contrary, if:

- The Grant Recipient reports on the *Section 3 Annual Report* that it has met the minimum numerical goals above, or
- The Grant Recipient provides evidence that an appropriate Section 3 Policy was adopted and implemented, regardless of the actual percentage of employment, training, and contracting opportunities secured by Section 3 Residents or Businesses as reported on the *Section 3 Annual Report*. **If the numerical goals were not met, this evidence must include an explanation of the reasons the goals were not met.**

10.2.3 Participation by Small, Minority, and Women-Owned Businesses

Grant Recipients are encouraged to affirmatively take action to utilize small (SBE), minority (MBE) and women-owned businesses (WBE) whenever possible. Although Grant Recipients are not directly responsible for meeting a specific minority business participation goal, TDA reports to HUD on the levels of MBE and WBE hiring under all TxCDBG contracts. (See 2 CFR 200.321)

The following suggestions can be used to increase participation of small, minority and women owned-businesses.

- Grant Recipients should email a copy of the solicitation advertisement to MWBE@texasagriculture.gov so that SBE/MBE/WBE's can also be notified by TDA of such opportunities. (See also Ch. 5)

- Place qualified small, minority, and women owned firms on solicitation lists. The Texas Comptroller of Public Accounts provides the Historically Underutilized Business (HUB) Directory that includes small businesses that are minority and women-owned. The directory and other information on HUB certification are available on the Texas Comptroller's website.

- Utilize the Minority Business Development Centers (MBDCs) located throughout Texas. The Minority Business Development Agency of the U.S. Department of Commerce funds MBDCs. This network can assist in achieving local and state minority business goals by providing relevant information, management assistance, technical assistance, program outreach and brokerage services to minority firms. A listing of MBDCs can be found on the internet at: http://www.mbda.gov.

- Solicit bids/services from small, minority and women-owned businesses whenever they are potential sources.

- Divide project activities into smaller tasks or services to allow participation by these types of businesses, if economically feasible. Discuss with TxCDBG staff to avoid violation of program rules with respect to small purchase procurement and awards to best, most responsible bid.

- Provide direct bonding assistance to minority business enterprises in order to promote their participation in the CDBG funded projects.

  Note: Payment of bond premiums on behalf of such firms is an allowable expenditure that can be paid for with CDBG funds only out of the general administration budget category.

- Provide small, minority and women-owned businesses with information regarding the Small Business Administration (SBA) Surety Bond Guarantee Program. This program opens the bonding system to new, small, or financially marginal disadvantaged construction contractors who are not able to obtain bonding through their own efforts, or find it too costly in the standard market. Information on the program and local contact information can be found on the SBA website.

Throughout the contract period, all Grant Recipients are required to submit data on their rates of contracting with Section 3, small, women, and minority owned businesses**.** MBE and Section 3 information is reported on the *Financial Interest Report* **(Form A503)**.

The *Project Completion Report* **(Form A1200)** requires all contracts previously reported to be listed cumulatively with their final contract amounts.

10.2.4 Excessive Force Policy

In accordance with Section 104(1) of the Housing and Community Development Act, as amended, Grant Recipients receiving TxCDBG funding must adopt an excessive force policy that prohibits the use of excessive force against non-violent civil rights demonstrations. (See also State's Certification Requirements at 24 CFR 91.325(b)(6))

When Grant Recipients sign their contracts they certify that they will pass and enforce the following policies:

- A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and/or
- A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction. (See *Sample Excessive Force Policy* **Form A1003**).

10.2.5 Section 504 Requirements

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs on the basis of disability. Section 504 imposes requirements to ensure that qualified individuals with disabilities have access to programs and activities that receive federal funds. Grant Recipients must adhere to the following procedures. (See also 24 CFR 8.4(a) implementing Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794)).

Adoption of Grievance Procedures and Notice Requirements
Any Grant Recipient that employs 15 or more employees must adopt grievance procedures that incorporate due process standards and allow for quick and prompt resolution of complaints alleging any action prohibited by Section 504. (See 24 CFR 8.53) Grievance procedures are not required to cover either applicants for employment or applicants for housing. See **Form A1004** for sample grievance procedures *Section 504 Policy Against Discrimination based on Handicap and Grievance Procedure*.

Notices
Any Grant Recipient that employs fifteen or more employees must notify all participants, applicants and employees, including those with impaired vision or hearing, and unions, or professional organizations holding collective bargaining or professional agreements with the Grant Recipient that it does not discriminate on the basis of handicap in violation of Section 504. The notice must identify the individual designated to coordinate its Section 504 compliance and must state, where appropriate, that the Grant Recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs.

Grant Recipients are required to either publish this notice in a newspaper of general circulation in their community and have evidence of this publication available for monitoring review (tear sheet/full-page advertisement/photo copy with publisher's identification and date/publisher's affidavit) **or publicly post this notice in the courthouse/city hall and the target area (supported by affidavit – See** Sample *Affidavit of Posting* **Form A1017); or publicly post this notice in the courthouse/city hall, supported by affidavit, and Grant Recipient's website**. Newspaper notices 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.

For public postings, the Grant Recipient must send a signed affidavit stating the date(s) of the posting(s). (See 24 CFR 8.54)

The notification process must ensure that all individuals, including those with visual and hearing impairments, are aware of the non-discrimination pledge.

Any recruitment or informational material published by the Grant Recipient must contain a statement regarding the Grant Recipient's pledge not to discriminate on the basis of disability in violation of 24 CFR Part 8.

Self-Evaluation
During the contract period, all Grant Recipients who are required to comply with Section 504 must complete a self-evaluation of their Section 504 compliance and keep it on file for monitoring purposes. Grant Recipients that have completed a self-evaluation for a previous TxCDBG contract may use their previous self-evaluation forms on file to meet this requirement if all information remains accurate. During the self-evaluation process, the Grant Recipient must consult with individuals with disabilities or organizations representing them. The self-evaluation should include an examination of policies and practices relative to the 504 regulations. Any policies and practices that do not meet the 504 requirements must be modified, and corrective action taken to remedy any discrimination found. (See 24 CFR 8.51) A sample *Section 504 Self-Evaluation Form* is included as **Form A1006**.

Communication
Grant Recipients should furnish appropriate auxiliary aids where necessary to allow an individual with disabilities an equal opportunity to participate in all CDBG program activities. Grant Recipients should implement procedures that allow individuals with disabilities to obtain information concerning the existence and location of accessible services, activities and facilities. Such procedures must ensure, to the maximum extent possible, that individuals with disabilities receive the benefits and services of the program or activity receiving CDBG assistance. Examples of auxiliary aids include telecommunication devices for the deaf (TDD), Text Telephone (TTY), the Texas Relay System (where a TDD is not feasible), audio visual presentations, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials, interpreters, large-lettered notices, and posting notices at a level readable by individuals in wheelchairs.

Using the Texas Relay System

For telephone communications between hearing persons and TDD/TTY users, call these numbers for 24-hour service:

If you have a TDD/TTY: 7-1-1 or 1-800-735-2989

Voice to Relay 1-800-735-2988
ASCII Computer User 1-800-735-2991

Accessible Facilities
For all publicly-funded construction, renovation, or modification to buildings or facilities (as defined in Texas Administrative Code Title 16, Part 4, §68.10) in which construction is expected to cost $50,000 or more, Grant Recipients are required to submit plans and specifications to the Texas Department of Licensing and Regulation (TDLR) for review and approval. (Texas Government Code, Chapter 469, Section 469.101) TDLR is responsible for ensuring that all plans and specifications meet accessibility requirements in accordance with the Elimination of Architectural Barriers provisions of Chapter 469 of the Texas Government Code. The TDLR clearance requirement is included in the Special Conditions of all TxCDBG contracts that include Public Facilities.

Employment
Grant Recipients should not use any practices that unreasonably limit employment opportunities for individuals with disabilities. Grant Recipients must also reasonably accommodate the known needs of employees and applicants with special needs. Examples include retrofitting workstations to accommodate wheelchairs, and providing special computers for hearing and sight challenged workers.

10.2.6 Affirmatively Furthering Fair Housing

Section 808(e) (5) of the Fair Housing Act 42 USC 3608(e) (5)) requires that HUD programs and activities be administered in a manner affirmatively to further the policies of the Fair Housing Act. In furtherance of this policy, Grant Recipients who receive TxCDBG funding must conduct at least one activity during the contract period to affirmatively further fair housing.

Best practice: pass an ordinance/resolution/proclamation and conduct one fair housing activity.

All Grant Recipients are required to complete at least one fair housing activity in addition to a resolution/proclamation, during the contract term.

The Fair Housing Act provides for the protection of the following federally-protected classes:

- Race and color;
- Religion;
- Sex;
- Disability;
- National origin; and
- Familial status.

Suggested Ideas for Meeting the Fair Housing Activities Requirement

- Conduct a community-wide housing analysis to determine impediments to fair housing and implement actions to eliminate these impediments.
- If the Grant Recipient is a city, pass a fair housing ordinance. It is important that the ordinance include a penalty clause. Also, publicize the existence of such an ordinance (e.g., newspaper advertisement, or fliers enclosed in utility bills). Grant Recipients should consult with their county/city attorney or contact the applicable trade association (Texas Municipal League) for a sample fair housing ordinance.
- If the Grant Recipient is a county, adopt written fair housing policies and procedures that are equivalent to a fair housing ordinance and publicize the existence of the policies/procedures (e.g., newspaper advertisement). Grant Recipients should consult with their county/city attorney or contact the applicable trade association (Texas Association of Counties) for a sample fair housing policy.
- Sponsor or fund fair housing counseling/referral services for owners and renters.
- Have a written local complaint and monitoring process and notify the public of its existence through newspaper advertisements, or through notices in utility statements.
- Promote housing opportunities outside historically minority and/or low and moderate-income neighborhoods.
- Designate April or any other month as "Fair Housing Month" by Proclamation or Resolution along with another sponsoring activity. (Another fair housing activity must take place if this activity is chosen. See Note below.) See **Form A1007** for a S*ample Fair Housing Proclamation*.
- Utilize local businesses and banking institutions to promote fair housing by displaying fair housing posters.
- Announce the Grant Recipient's support of fair housing by means of newspaper advertisements, marquis displays, or public service announcements. See **Form A1009** for a *Sample Fair Housing Public Service Announcement*.
- Conduct free training workshops on fair housing laws to homebuyers, rental property owners, and tenant organizations.
- Sponsor a poster contest or essay writing contest at local schools to educate and promote fair housing.
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, fair housing choice.
- Find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Fair Housing Act.

NOTE: National Fair Housing Month is April of each year. However, Grant Recipients may designate any month as Fair Housing Month at the local level. Designating April as "Fair Housing Month" by proclamation must be accompanied by sponsoring another activity such

as the ones listed above to support fair housing. A *Sample Fair Housing Proclamation* is provided as **Form A1007**.

Fair Housing Activities Resource
HUD's Fair Housing Website at http://www.hud.gov/groups/fairhousing.cfm contains a wealth of information and tools for Grant Recipients to use in conducting fair housing activities.
Resources on the website include:

- A fair housing planning guide;
- Fair Housing Brochures and logos;
- Fair Housing Best Practices;
- Contact information for fair housing advocacy organizations; and
- Accessibility guidelines for housing units.

TDA recognizes that in order to conduct a fair housing activity the Grant Recipient will incur costs. The Grant Recipient may elect to pay for fair housing activities and count the expenses toward the local match requirement, or submit a reimbursement request for eligible and reasonable costs to be paid by the TxCDBG grant under the General Administration line item.

Filing a Complaint Regarding Fair Housing in the State of Texas

The Texas Workforce Commission (TWC) is the entity responsible for enforcing the Fair Housing Act in the State of Texas. Complaints can also be made directly to HUD. Citizens have one year after an alleged violation to file a complaint. Complaints can be filed by email, fax, phone call, hand delivery or mail:

Texas Workforce Commission
Civil Rights Division
1117 Trinity Street, Room 144-T
Austin, Texas 78701
(888) 452-4778 or (512) 463-2642
TTY: 512-371-7473
Fax: 512-463-2643
HousingComplaints@twc.state.tx.us

Download the TWC Complaint Form (www.twc.state.tx.us).

10.2.7 Limited English Proficiency (LEP) Standards

Each Grant Recipient must take reasonable steps to provide meaningful access to federally funded programs (grants) for all persons with Limited English Proficiency (LEP). Grant recipients must establish a plan for determining if there is a need for LEP services within the community and, if applicable, how appropriate language assistance will be given. LEP persons are individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.

Program activities which should be made accessible to LEP persons include:

- Public Notices and hearings regarding applications for grant funding, amendments to project activities, and completion of grant-funded projects;
- Publications regarding environmental reviews, civil rights, and other program requirements;
- Other program documents as needed.

To determine the local need for LEP services, Grant Recipients may use the American FactFinder which is found at http://factfinder.census.gov. Type in city/county; then on left side of screen, choose 'Origins and Language'; then 'Selected Social Characteristics' ; then scroll to 'Language Spoken at Home'; and use the subcategory 'Speaks English less than very well'. Determine whether the size of any language group is more than 5% or if the language group has more than 1,000 individuals. If yes, vital documents as may need to be translated. Vital documents are those documents that ensure that an eligible LEP person can meaningfully have access to the CDBG project. Thus, vital documents may include Citizen Participation notices (e.g., complaint procedures, hearings notices), civil rights notices, and any other published notice that may allow an eligible person with limited English proficiency to participate in discussing proposed CDBG activities.

Language groups should not be aggregated together. If the FactFinder indicates that less than 5% of the community population speaks English less than very well, the Grant Recipient must use its knowledge of the project beneficiaries to determine whether language assistance may still be needed.

The U.S. Department of Justice has provided a "safe harbor" for Limited English Proficiency ("LEP") enforcement. A safe harbor is guidance that identifies actions that will be considered strong evidence of compliance.

The table below sets forth safe harbors for written translations.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries *and* more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries *and* 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

Use **Form A1010** *Limited English Proficiency Sample Plan* to document plan and compliance with LEP requirements. The LEP Plan should be signed by the Chief Elected Official or by the Civil Rights Officer (CRO).

10.3 Monitoring of Discrimination

In the event that there has been a determination of discrimination against a Grant Recipient, the Grant Recipient must develop a plan that identifies the effects of past discrimination and specifies actions to overcome the identified effects. A determination of discrimination can be a result of:

- A compliance review conducted by HUD or by TDA.
- A discrimination complaint investigation carried out by the HUD Regional Fair Housing and Equal Opportunity Office (FHEO); or
- An employment discrimination complaint investigation conducted by the Equal Employment Opportunity Commission.

TDA encourages the Grant Recipient to take affirmative action to address self-identified instances of possible discrimination that is indicative of past discrimination. For example, if Grant Recipient employment is not representative of the general population of the jurisdiction, Grant Recipients are encouraged to design a program to affirmatively increase employment, training, and promotion opportunities for members of the affected groups.

NOTE: Complaints of employment discrimination should be referred to:
Texas Workforce Commission, Civil Rights Division http://www.texasworkforce.org/
Equal Employment Opportunity Commission http://www.EEOC.gov/