



Texas Department of Agriculture
Texas Community Development Block Grant Program
PO Box 12847
Austin, TX 78711

POLICY ISSUANCE

CDBG 16-01

Effective Date: February 1, 2016

SUBJECT: Updates to the 2015 TxCDBG Project Implementation Manual

The Texas Department of Agriculture announces the following policy changes to the 2015 TxCDBG Project Implementation Manual:

- For non-competitive (sole source) procurement, the Office of Management and Budget through the Council on Financial Assistance Reform (COFAR), issued a FAQ document directing that negotiation of profit is required only for those purchases greater than \$50,000 – not for all non-competitively procured contracts as previously required by the TxCDBG Implementation Manual.
- For environmental assessments, HUD has directed that all Grant Recipients now use resources found on the HUD Exchange (<https://www.hudexchange.info/programs/environmental-review/>). Chapter 3 forms and HUD Region VI Compliance Manual previously published or referenced in Chapter 3 of the 2015 TxCDBG Project Implementation Manual have been replaced. Previous versions can no longer be accepted.
- The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) has promulgated a new rule promoting wage transparency. This regulation prohibits Federal contractors from discriminating against, in any manner, employees and job applicants who inquire about, discuss, or disclose their own compensation or the compensation of other employees or applicants, with exceptions. Such rule amends the equal opportunity clause found in 41 CFR 60-1.4(b) by adding this additional protection. For further information and implications of the new wage transparency regulation, please see <http://www.dol.gov/ofccp/>.

ACTION: The TxCDBG Project Implementation Manual is modified as follows:

- Chapter 5, 5.5, pg. 18 is modified to require the negotiation of profit in non-competitive (sole source) procurement for only those purchases greater than \$50,000.
- Chapter 3 and associated forms are modified to include new resources found on the HUD Exchange website.
- The equal opportunity clause found in Appendix B - Required Contract Provisions and in all sample contracts found in Appendices D-F have been amended to include the updated Equal Opportunity Clause.

Other Important Announcements:

1. Pursuant to HUD's memorandum dated December 17, 2015, (attached) and pursuant to 2 CFR 200.320(c)(2) (formerly 24 CFR 85.36(d)(2)(2001)), please note that during the procurement of bids through the sealed bids process, Grant Recipients must award the bid to the *"responsible bidder whose bid, conforming with all material terms and conditions for the invitation for bids, is the lowest in price."* In addition, if a bid is rejected under sealed bid method of procurement, *such reasons must be documented.* (See 2 CFR 200.320(c)(2)(v)).

- a. Examples of reasons why a Grant Recipient may reject a bidder include:
 - o Contractor did not secure the necessary bonding.
 - o Contractor is listed on the federal System for Award Management (SAM) as a debarred entity.
 - o Contractor's bid contained mathematical errors.
 - o Contractor failed a reference check (alleged to have not finished a project satisfactorily, poor quality work, etc.)
 - o Contractor did not follow instructions in the invitation for bids and, therefore, submitted a non-responsive bid.
- b. Types of documentation used to justify disqualification of the lowest bidder(s) may include:
 - o Letter from project engineer recommending disqualification.
 - o Commissioner Court's or City Council's minutes discussing the basis for disqualification.
 - o Written recommendation from the Grant Recipient's legal counsel.
 - o SAM printout.
- c. Written guidance, in compliance with both state and federal regulations on how to award contracts to bidders using the sealed bid method of procurement, can be found in the text of the recently published 2015 TxCDBG Implementation Manual, Chapter 5. (See www.TexasAgriculture.gov)

2. Spanish translations of the Sample Citizen Participation Plan (Form A1013) and Civil Rights Notices (Form A1005) are now provided with the English versions of such forms in the 2015 TxCDBG Project Implementation Manual. Upon opening these forms on the website, the English version of the document will first appear. Please continue to scroll down to access the Spanish version.

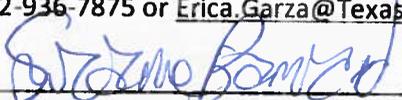
3. Additional Edits to 2015 TxCDBG Implementation Manual

In addition, since the publication of the final 2015 TxCDBG Implementation Manual on October 15, 2015, a few minor edits have been made to correct typos, clarify policy, and/or address raised issues. These changes, including the policy changes above, are summarized in the attached chart. The most updated version of the 2015 TxCDBG Implementation Manual, which includes these summarized changes, can be found on the Texas Department of Agriculture's website under the Grants and Services tab, Community Development link. (See www.TexasAgriculture.gov)

APPLICATION:

These changes will apply to all open TxCDBG contracts and are effective February 1, 2016 with the exception of the equal opportunity clause required modification. The effective date of these federal provisions dealing with equal opportunity clause revision is January 11, 2016. Therefore, for those contracts that were executed on or after January 11, 2016, Grant Recipients should amend the contract accordingly to add such clause.

Thank you for your efforts to ensure compliance with all federal, state and program requirements. If you have any questions or if we can provide any further assistance, please contact me or Assistant Director Erica Garza at 512-936-7875 or Erica.Garza@TexasAgriculture.gov.



Suzanne Barnard, State Director
Texas Community Development Block Grant Program
Texas Department of Agriculture

2015 TXCDBG IMPLEMENTATION MANUAL
SUMMARY OF POLICY CHANGES (see Policy Issuance 16-01) AND MINOR EDITS

CHAPTER	SECTION	TOPIC	CHANGE
Ch. 1	1.1.1, pg. 2	Pre-agreement costs	Corrected 3 rd paragraph, 1 st sentence under 1.1.1 to identify contract start date rather than contract <i>execution</i> date.
Ch. 2	2.2, pg. 6	Typo Correction	Removed reference to Group C documentation, which was included in error.
Ch. 3 and Forms	Throughout chapter and forms	HUD policy update – Environmental Review Compliance Guidebook	Changed Ch. 3 and Environmental Review Forms to comply with new HUD guidance and forms found on HUD Exchange. Deleted references to HUD Compliance Guidebook.
Ch. 5 and Appendix D	5.2.1 and RFP Step by Step	Makeup of the Selection Review Committee for service providers	Changed Ch. 5 and Appendix D, Admin. Services RFP Step by Step to the following to be consistent with previous policy: <i>The committee must include at least one local official, such as a member of the elected governing body.</i>
Ch. 5	5.2.1 Step 4,9	Two Step Process for Selection of Engineer/Architect/Surveyor	Added language detailing the two step process for the procurement of engineers/architects/surveyors. Discussed the rule that the Grant Recipient shall not disclose/discuss any proposed costs of a project with an engineer/architect/surveyor contractor until such contractor has been selected.
Ch. 5 and Appendix E	5.2.1 Step 7 and Sample RFQ	Negotiation of Profit for Engineers/ Architects	Clarified 5.2.1 Step 7 and Appendix E, RFQ as follows: For costs of architectural/engineering (A/E) professional services that will exceed \$50,000, negotiations, including profit as a percentage of the price of the contract, must occur after the initial selection of the engineer or architect as price cannot be used as a selection factor. (See 2 CFR 200.320(d)(5) and Texas Government Code § 2254.004) Upon the initial selection of the Respondent based on its demonstrated competence and qualifications to perform such services, the Respondent must disclose and certify the percentage of profit as a separate element of the price of the contract during its negotiations with the Grant Recipient to determine fair and reasonable compensation.
Ch. 5	5.5, pg. 18	Sole source & negotiation of profit	Updated Chapter 5 to reflect new federal policy guidance on 2 CFR 200.323, which now only requires profit to be identified if the non-competitively procured contract is greater than the small purchase threshold.
Ch. 7	Throughout chapter	Labor Standards Exemptions	Clarified throughout chapter that Davis Bacon applies to contracts greater than (but not equal to) \$2,000.
Ch. 7	7.3, pg. 11	Labor Standards Exemptions	Corrected exemption in section 7.3 for installation of purchased items from 20% to 13%.
Ch. 8	8.1, pg. 3	Force Account Form A808	Replaced the requirements for a letter requesting the use of force account with Form A808, which was omitted from the 2015 release in error.
Ch. 10	Form A1005 & A1013	Spanish Translations of Citizen Participation Plan and Sample Notices	Provided sample Spanish translations of A1005 Sample Notices and A1013 Citizen Participation Plan.

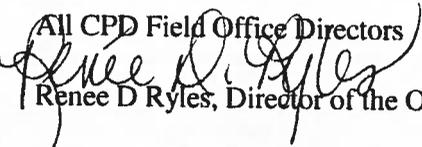
CHAPTER	SECTION	TOPIC	CHANGE
Ch. 10	Form A1017	Affidavit for Posting Notices	Revised Form A1017 regarding civil rights public postings to affirm public posting for at least 2 weeks and to affirm that best efforts will be used to continue public posting throughout term of TxCDBG contract.
Ch. 10	10.2.1	Equal Opportunity	Conformed equal opportunity clause to include additional protected bases for federally funded construction projects
Ch. 12	12.2.1 & chart	Deadline to submit Draws	Conformed manual to TDA's contract requirement that all requests for payment be submitted within sixty (60) days – not ninety (90) days - after the contract end date or approved for extended reserve. Conformed chart.
Ch. 13	Form A1301	Monitoring Checklist	Minor changes to monitoring checklist: <ul style="list-style-type: none"> • Monitoring requirements for profit – added in line for % • Non-segregated facilities • Conformed procurement checklists with new HUD regulations that require verification of SAM eligibility prior to contract <i>award</i> as opposed to contract <i>execution</i>. • Clarified items in Professional Services. • Clarified re-evaluation of environmental assessment
Appendix B & D-F	Appendix B & D-F	Equal Opportunity Clause	Revised Appendix B Required Contract Provisions and all sample contracts found in Appendices D-F to include the revised rule prohibiting Federal contractors from discriminating against, in any manner, employees and job applicants who inquire about, discuss, or disclose their own compensation or the compensation of other employees or applicants, with exceptions.
Appendix D-F	Sample Contracts	Sample Contracts	Included sample contracts for Professional Services, Engineering/Architectural, and Construction into Appendices D-F. Updated equal opportunity clause with language found in 41 CFR 60-1.4(b).
Appendix D	Step by Step	Professional Services Step by Step	Corrected the requirement to publish an RFP, and deleted the option to only post an RFP.
Appendix E	Engineer Rating Sheet	Engineer Rating Sheet	Changed language on engineer rating sheet regarding points awarded for those firms that have current TxCDBG project implementation training.
Appendix F		Certification of Disability by Contractor – Bid Packets	Deleted 504 certification requirements for contractors. Discrimination against persons with disabilities is already statutorily prohibited under Section 504 of the Rehabilitation Act of 1973.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

December 17, 2015

MEMORANDUM FOR: All CPD Field Office Directors
FROM: 
Renee D Ryles, Director of the Office of Field Management, DOF
SUBJECT: Use of Lowest Bidder on CPD Funded Projects

Please be advised that within 60 days (no later than February 9, 2015) of receiving this message, you are to issues written guidance to all CPD grantees advising them that they must use the lowest bidder, in a sealed bid process, unless they are able to provide sufficient support in compliance with 24 CFR 85.36 to remove the bidder from the procurement process.

Supporting Documentation: (pdf to be uploaded in ARCATS)

TO: All CPD Formula Grantees
FROM: CPD Director
SUBJECT: Use of Lowest Bidder on CPD Funded Projects

Please be advised that all CPD grantees must use the lowest bidder, in a sealed bid process, unless they are able to provide sufficient support in compliance with 24 CFR 85.36 to remove the bidder from the procurement process.