

# 2014

## Texas Capital Fund

# **Downtown Revitalization Program**

## Guidelines



Texas Department of Agriculture  
1700 N. Congress  
P.O. Box 12847  
Austin, Texas 78711-2847

## OVERVIEW OF THE TEXAS CAPITAL FUND Downtown Revitalization Program

The goal of the Texas Capital Fund (TCF) Downtown Revitalization Program is to aid in the elimination of area slum/blight for Texas communities. These communities must also be designated as non-entitlement cities, generally having a population of less than 50,000. DRP can provide funding for renovation and/or construction of sidewalks, lighting, drainage and other infrastructure improvements in the city's downtown area.

The TCF Downtown Revitalization Program was created to improve the Texas economy. The program funds are a part of the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) program. The CDBG program is known as the Texas Community Development Block Grant Program (TxCDBG) and is administered by the Texas Department of Agriculture (TDA). The TxCDBG is the largest state CDBG program in the nation. Of the cities eligible for TCF funds, approximately 75% have a population of less than 3,000 and approximately 40% have a population of less than 1,000.

This document serves as a reference guide for the Texas Capital Fund Downtown Revitalization Program Application. HUD federal regulations governing the program are found at 24 CFR Part 570. Texas State rules governing the program are found in the Texas Administrative Code, Title 4, Part 1, Chapter 30, Subchapter A, Rule 30.6. All documentation submitted in the application and subsequent contract are subject to the Open Records Request Act. Any additional information requests may be addressed to the following:

Texas Capital Fund  
Texas Dept. of Agriculture  
P.O. Box 12847  
Austin, Texas 78711-2847  
or  
1700 N. Congress  
Stephen F. Austin Building  
2nd Floor/Room 220  
Austin, Texas 78701  
Fax (888) 216-9867  
website: [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov)

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**TDD/IT (800) 735-2988**

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# SECTION 1

## General Program Information

**Appeals** - An applicant for funding under the Texas Capital Fund (TCF) Downtown Revitalization Program (DRP) may appeal the disposition of its application in accordance with the following guidelines:

1. The appeal may only be based on one or more of the following grounds:
  - A. **Misplacement of an application.** All or a portion of an application is lost, misfiled, or otherwise misplaced by staff, resulting in unequal consideration of the applicant's proposal.
  - B. **Scoring error.** In rating the application, the score on any selection criteria is incorrectly evaluated by program staff.
  - C. **Other procedural error.** The application is not processed by program staff in accordance with the application and selection procedures set forth in the rules.
2. The appeal must be submitted in writing to TDA no later than ten (10) days following the date of the notification letter. TDA will evaluate the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the Commissioner of the Texas Department of Agriculture. The Commissioner will then consider the appeal within thirty (30) days and make the final decision.
3. The applicant will be notified of the decision made by the Commissioner within ten (10) days after the final determination by the Commissioner.
4. Appeals not submitted in accordance with these guidelines will be dismissed and may not be re-filed.

**Applicants** - Eligible applicants must be an incorporated municipality and must not be eligible for the Main Street Improvements Grants Program of TCF. The applying city generally is less than 50,000 in population and cannot be designated as eligible or entitled to receive Community Development funding from Housing and Urban Development (HUD). These cities are referred to as non-entitlement communities. To determine eligibility of a particular city, contact the Department. The city is responsible for the administration and success of the project throughout the term of the contract.

**Applicant Performance Threshold Requirements** - A city must meet **all** of the following requirements in order for its application to be considered:

1. Address the objective of eliminating slum or blight conditions in the downtown area of the community by the following objectives. The assistance must be for public infrastructure improvements, which will aid in the elimination of a slum or blighted area. This is further defined as follows:
  - (A) **Spot Slum/Blight Objective.** To show how this objective will be met, the applicant must pass a resolution, which supports a determination of the specific spot/area as slum or blighted.
    - (1) Document that the project qualifies as slum or blighted on a spot basis under local law; and
    - (2) Describe the specific condition of blight or physical decay that is to be treated.
  - (B) **Slum/Blight Area Objective.** To show how this objective will be met, the applicant must pass a resolution, which supports the establishment of the area as slum or blighted. The documentation that is required to show that this objective will be met includes a designation of the boundaries of the area, a description of the conditions that qualify it as slum or blighted, and the way in which the assisted activity addresses one or more of the conditions that qualified the area as slum or blighted.

The project or an area within a municipality may be considered as a slum or blighted area, if the area is detrimental to the public health, safety, morals, and welfare of the municipality because the area:

- (1) Has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons; or
- (2) Is prone to high population densities and overcrowding due to inadequate provision for open space; or
- (3) Is composed of open land that, because of its location within municipal limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or
- (4) Has conditions that exist due to any of the causes enumerated in Paragraph (1) or any combination of those causes that:
  - (a) Endanger life or property by fire or other causes; or
  - (b) Are conducive to the ill health of the residents, disease transmission, abnormally high rates of infant mortality, abnormally high rates of juvenile delinquency and crime, or disorderly development because

of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

2. Demonstrate the ability to manage and administer the proposed project, including delivery of all the proposed benefits outlined in the application.
3. Demonstrate the financial management capacity to operate and maintain any improvements made in conjunction with the proposed project.
4. Levy a local property tax or local sales tax option.
5. Demonstrate satisfactory performance on prior and existing TxCDBG contracts and resolve all outstanding compliance and audit findings related to previous TxCDBG awards.
6. Applicants may not have an existing TCF contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted.
7. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than thirty (30) days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract no less than thirty (30) days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TxCDBG Implementation Manual).
8. TCF program funds may not be used in any county that is **designated** by Texas Water Development Board as an Economically Distressed Area, unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to Section 12.343 of the Water Code or agrees to adopt and/or enforce the Model Subdivision Rules.

An incorporated city that is located in any EDAP designated county that has not adopted, or is not enforcing the Model Subdivision Rules, may submit an application for TCF funds. However, that incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TCF funds for the proposed project.

For more information, contact the Texas Water Development Board (TWDB) at 512/463-0991, or visit the Assistance Section of the TWDB website at [www.twdb.state.tx.us](http://www.twdb.state.tx.us)

**Application Dates** - The Texas Capital Fund Downtown Revitalization Program is available annually, on a competitive basis, to eligible applicants statewide. The application deadline for the 2014 program year is **Thursday, July 10th**. Applications will not be accepted after 5:00 p.m. on the deadline day. Applications shall be submitted to the offices of TDA at the address listed on page 2 of these *Guidelines*.

**Application Process** - After the application deadline, the scores are verified, analysis is performed, and a recommendation is made that the application be approved or declined by TDA. The application and award procedures consist of the following steps:

1. Each applicant must submit a complete application to the Office of Rural Affairs. No changes to the application will be allowed after the application deadline date, unless they are a result of Department recommendations.
2. After the application deadline the application scores are reviewed for validity and ranked in descending order.
3. Applications within the funding range are reviewed for eligibility and completeness in descending order based on the scoring. The applicant will be notified of any deficiencies and given ten (10) business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature may be declined. Material deficiencies are items such as missing financial commitments, etc. In the event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.
4. Each complete application is assessed for:
  - A. The strength of commitments from all other public and/or private investments identified in the application;
  - B. Whether the use of TCF funds is appropriate to carry out the project proposed in the application;
  - C. Whether efforts have been made to maximize other financial resources; and

- D. The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.
5. A project report is prepared with recommendations for approval or denial. Negotiation of some elements of the application that would be in the TCF contract, if it is awarded, may be initiated. A recommendation to the Commissioner is then made.
6. The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.
7. A contract will be drafted and reviewed prior to being mailed to award recipients. Upon receipt, the award recipient has thirty (30) days to review and execute the copy. Once returned to TDA, the contract will be fully executed by the Commissioner, or the commissioner's designee, and a single copy is returned to contractor.
8. The TCF contract must be based on the information provided to the Department that resulted in the award.
9. No matching funds or reimbursable expenses may be expended or incurred prior to the execution of the contract.

**Application Time Lines** - Generally the total time frame from receipt of application to approval will be 60-90 days. Contracts are generally mailed out within 2–3 weeks after approval. **Note:** Any extensions or delays due to deficiency responses and negotiations will extend the time line.

**Assurances** - The applicant assures and certifies that it will comply with the regulations, policies, guidelines and requirements, including Office of Management and Budget Circulars Nos. A-87 and A-102, as they relate to the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant gives assurance and certifies with respect to the award that:

1. The applicant possesses legal authority to apply for the award and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein; and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. The applicant will comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards, and Executive Order 11990, relating to protection of wetlands.
3. The applicant will have sufficient funds available to meet the non-federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
4. The applicant will obtain approval by the appropriate federal/State agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate federal/State agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction award program(s) have been met.
5. The applicant will provide and maintain competent and adequate architectural/engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the federal award agency may require.
6. The applicant will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable federal, State and local agencies for the maintenance and operation of such facilities.
7. The applicant will give the awarding agency, and the Comptroller General of the United States, the Texas State Auditor, or any of their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the award.
8. The applicant will require the facility to be designed to comply with the Uniform Accessibility Standards (UFAS), and the Architectural Barriers Act (42 USC 4151-4157). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the construction contractor(s).

9. The applicant will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving agency that funds have been approved and that the project will be performed to completion with reasonable diligence.
10. The applicant will not dispose of or encumber its title or other interests in the site and facilities during the period of federal interest or while the government holds bond, whichever is the longer.
11. The applicant will comply with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 200d et seq.) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. The applicant will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. The applicant will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. § 4601 et seq.) which provides for fair and equitable treatment of persons displaced as a result of federal and federally-assisted programs.
14. The applicant will comply with all requirements imposed by the federal awarding agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
15. The applicant will comply with the provisions of the Hatch Act, as amended (5 U.S.C. § 1501 et seq.), which limit the political activity of employees.
16. The applicant will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as amended (29 U.S.C. § 201 et seq.) as they apply to hospital and educational institution employees of State and local governments.
17. The applicant will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal awarding agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
18. The applicant will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 et seq.) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.
19. The applicant will assist the federal awarding agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. § 470 et seq.), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966, as amended (16 U.S.C. § 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the federal awarding agency of the existence of any such properties, and by (b) complying with all requirements established by the federal awarding agency to avoid or mitigate adverse effects upon such properties.
20. A. The applicant will comply with Texas Government Code, Ch. 573, by ensuring that no officer, employee, or member of the applicant's governing body or of the applicant's contractor shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of

the governing body or to any other officer or employee authorized to employ or supervise such person. This prohibition shall not prohibit the employment of a person who shall have been continuously employed for a period of two years prior to the election or appointment of the officer, employee, or governing body member related to such person in the prohibited degree.

- B. The applicant will insure that all information collected, assembled or maintained by the applicant relative to this project shall be available to the public during normal business hours in compliance with Texas Government Code, Ch. 552, unless otherwise expressly provided by law.
- C. The applicant will comply with Texas Government Code, Ch. 551, which requires all regular, special, or called meetings of governmental bodies to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

21. The applicant and/or business shall provide the Texas Department of Licensing and Regulation (TDLR) plans and specifications for construction of, improvements to, or the renovation of buildings and/or other real estate improvements prior to funding construction activities.

**Awards** - This represents the minimum and maximum amount that may be requested/awarded for a project. These amounts apply to any project funded under the Texas Capital Fund Downtown Revitalization Program.

Minimum \$50,000

Maximum \$150,000

The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final agreement between the Department and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

**Conflict Of Interest** - Under the federal conflict of interest provisions at 24 CFR 570.489 (h), that are included in the regulations governing state administration of Community Development Block Grant (CDBG) funds (24 CFR 570, Subpart I), no persons who exercise or have exercised any function or responsibilities, with respect to TCF activities, or who are in a position to participate in a decision making process, or gain inside information regarding TCF activities, may obtain a financial interest or benefit from the activity, or have interest in any contract, subcontract, or agreement, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure, or for one year thereafter.

These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients that are receiving CDBG funds.

Under these provisions, a conflict of interest would exist if an employee, elected official, or their family members receive benefit from an activity. For example, if a member of a mayor's family was selected to receive TCF assistance or would benefit from or receive a TCF award, abstention from voting does not clear the conflict of interest. Another example where a conflict of interest would exist (business ties) is a situation where a consultant, who is employed by an engineering firm, has been selected by a city to provide administration services for the TCF contract and the city is considering the selection of an engineer from that same firm to provide engineering services for the TCF contract.

**Contractor** - An applicant, city government unit (locality) that receives an award from Department.

**Contracts** - If an applicant is approved for funding they may need to enter various contracts to complete the project. These contracts are intended to ensure a complete understanding of the planned development, the expected improvements, the sources and uses of all funds committed to the project, the reporting requirements of the applicant to the Department, and all other obligations of the applicant and Department. Some of these contracts are identified below.

- Contract with the Department - This details the duties and responsibilities of both the applicant and the Department. Currently, these contracts are for a maximum term of two (2) years. Applicants should contact Department for a sample "boilerplate" contract, which will include many (but not all) contract conditions.
- Other contracts - These will include contracts for engineering and administration services, construction activities and others as necessary to carry out the project.

**Dates** - Various dates are used and referred to in these guidelines and the contract an applicant enters into when their application is approved. Below are definitions of these dates.

- Application due date - This is the last day that applications may be submitted. See **Application Dates (page 5)**.
- Award date - This is the day the contract between the contractor and TDA has been executed by all parties. For the purpose of this document, Award Date and Contract Execution Date are interchangeable.
- Contract commencement/start date - This is the beginning date of the two (2) year contract period. It is also the same date as the *award date*.
- Contract end/expiration date - This is the date by which the project activities should be completed.
- Closeout date - After all project activities have been satisfactorily completed, a contract closeout letter will be issued. Closeout is effective the date identified in the letter.

**Department** - Texas Department of Agriculture (TDA).

**Downtown Revitalization Area**– Typically, a central business district will meet 2 or more of the following:

1. The city's historic area of commerce;
2. May be the area around the courthouse or city square;
3. Commercial area for the community;
4. Buildings of historical significance, but not primarily residential;
5. Must be areas included in or contiguous to the economic center of the community; or
6. The retail area for the community that does not include single-family dwellings.

**Liability** - Title I of the Housing and Community Development Act of 1974 (42 USC 5.301 et seq.) requires all CDBG funds to be expended in such a way to satisfy one of three national objectives specified in the statute. Texas Capital Funds provided under the Downtown Revitalization Program are required to comply with the aiding in the elimination of slum/blight. This requirement is fulfilled by funding projects for the express purpose of eliminating area slum/blight or spot slum/blight. The state has certified to HUD that expenditure of economic development funds will satisfy this objective and has also executed a grant agreement with HUD containing this requirement. Title I also provides that the state may only contract with units of general local government. The Department, therefore, has no choice but to hold the local government recipient of economic development funds accountable to the same extent that HUD holds the state accountable.

**Number of Applications** - The number of TCF applications, which a city may submit (and have funded, if feasible) is determined by factors affecting the city, as follows:

- The program income choice selected on a previous approved application.
- Contractual compliance on existing contracts.
- Applicants may not have an existing TCF contract with an award date in excess of forty-eight (48) months prior to the application deadline date, regardless of extensions granted.
- If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than thirty (30) days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than thirty (30) days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TXCDBG Implementation Manual).
- The applicant must satisfactorily close-out an existing and open TCF Downtown Revitalization contract before the applicant can submit another TCF Downtown Revitalization application.

See **Program Income (page 19)** and **Applicant Performance Threshold Requirements (page 4)**, for further guidance.

**Project Length** - Projects must be completed and all requirements of the TCF contract must have been met within two (2) years from the execution date of the TCF contract.

**Project Site** - This includes the location of the proposed infrastructure improvements, within the designated downtown area. This is further defined in the contract Performance Statement. **All proposed infrastructure improvements to be funded by the TCF Program must be located on public property and should be within the designated downtown area.**

**Section 106 Compliance** - Each applicant is required to provide verification of compliance with Section 106 as described. The regulation requires the applicant to consult with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the federal grantor agency of the existence of any such properties. In addition, the applicant must comply with all requirements established by the federal grantor agency to avoid or mitigate adverse effects upon such properties. For application purposes, a copy of the letter submitted for determination of historic district eligibility to the History Division's National

Register Program at the Texas Historical Commission (THC) and their response letter (if available) shall be included. If a grant award is received and eligibility or existence of a National Historic District is determined, the project construction plans must be submitted to the Architecture Division at the THC in order to be in compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.). Please contact THC for more information.

Additional information about the National Historic Preservation Act and the Section 106 process may be obtained from the following web sites:

Advisory Council on Historic Preservation web site: <http://www.achp.gov/>

Advisory Council on Historic Preservation, National Historic Preservation Act/Section 106 guidance: <http://www.achp.gov/work106.html>

"Protecting Historic Properties, A Citizen's Guide to Section 106 Review": <http://www.achp.gov/pubs-citizensguide.html>

Section 106 reviewer contacts from Archeology and History Programs can be found at: <http://www.thc.state.tx.us/contactus/cot106reviewers.shtml> Architecture reviewers by region are listed at the bottom of this page, as well.

**TxDOT Compliance** – Each applicant will be required to indicate whether the proposed infrastructure improvements will be located within a Texas Department of Transportation (TTxDOT) controlled highway, road, or right of way. If yes, the applicant will be required to provide documentation to the Department, which indicates that the applicant has notified and/or consulted with TxDOT of their proposed improvements prior to the TCF contract execution date.

**Use of Funds** - TCF monies are only available for public infrastructure improvements. For all proposed uses, requested funds may not exceed the minimum necessary to meet the needs of the downtown area. Excess/speculative improvements, extra connections or excessive looping will not be funded.

For activities that will be funded with a combination of TCF and match monies, the match monies must be expended prior to drawing TCF monies. If a city experiences cost overruns or elects to do oversizing, the city's funds will be required to be used prior to drawing TCF monies. Also, if project costs come in under budget or the city elects to reduce the project scope, the committed match monies must still be expended prior to drawing TCF monies.

TCF monies are to reimburse a city for eligible expenditures they have made or incurred, rather than advance payments. These reimbursements will be only for work/materials actually completed/delivered. Cities are responsible to pay construction contractors according to the terms of their agreements. TCF monies are available to reimburse cities for construction draws when they are in compliance with the terms of their TCF contract. Failure to comply with the terms of the TCF contract does not relieve the city of its liability to pay contractors. See **Match Requirement (page 16)** for more information.

1. **Eligible Uses** - Funds may be provided for the following:
  - Sidewalks, lighting, public parking lots.
  - Activities required to eliminate architectural barriers for the disabled.
  - Water lines, storage and pumping facilities, and related items
  - Sewer lines, lift stations, and related items
  - Road construction/renovation, to include curb and gutter and related drainage.
  - Natural gas lines and related items.
  - Electric power lines and transformers.
  - Award administration.
2. **Ineligible Uses** - The applicant may not use funds for the following:
  - Grant or otherwise transfer TCF monies to a business.
  - Speculation, investment or excess improvements over the minimum improvements needed for the Downtown area.
  - Building rehabilitation, building construction, machinery, equipment, and working capital.
  - Landscaping.
  - Refinancing or to repay the applicant, a local related economic development entity, a benefiting business or its owners and related parties for expenditures.
  - Architectural and/or Engineering services.

- Demolition of a historic building.

# SECTION 2

## Application Preparation Information

The *Application* contains a checklist which itemizes what documentation must be included in the application and the order in which it must be presented.

**Administration** - A portion of an award may be used for administrative expenses incurred by applicants in order to meet contractual obligations. **TCF funds requested for Administration Services are inclusive of the TCF award.** See the *Budget Justification* below for details and dollar limits.

**Budget Justifications** - This information should justify **all** proposed project costs, including that portion proposed to be paid by the TCF. Projects must include detailed information of **all** dollar amounts listed on the *Sources and Uses of Funds* form. **Note: Amounts must be rounded to nearest one hundred dollar (\$100) increment.** Funds must be delineated by source and use. This must include all major parts of the project, such as land acquisition, construction/rehabilitation, machinery/equipment, working capital, infrastructure improvements, and administration. Source information must include which entity is paying/providing funding for these activities. All budget justifications must be dated within six months of the submission of the application. Provide the following documentation to substantiate all project costs as outlined on the *Sources and Uses of Funds* form which will be incurred/expended upon receipt of a TCF contract award. No changes to activities and/or budget line items listed in the application will be allowed before a contract is executed.

1. If the project includes matching funds for **engineering or architectural services**, provide:
  - a. Description of services and related costs (ie. archeological studies).
  - b. Name of the individual or firm who prepared the justification and the date of preparation (must be prepared, signed and sealed by a Texas-registered public engineer and/or architect).

**NOTE:** TCF monies may not be used to pay for engineering/architectural services. Engineering must meet the requirements of the Texas Engineering Practice Act. Cities will be required to identify the party responsible for ensuring that the projects are completed according to plans and specifications and for approving construction invoices. See *Engineering/Architectural* below for more information.
2. If the project includes funds for **public infrastructure**, provide:
  - a. Quantity and size of improvements (for example, total linear feet, diameter, capacity).
  - b. Types of material (surface type, pipe material, etc.) and costs.
  - c. Labor costs and a statement indicating whether Davis-Bacon wage rates will apply to the project.

**NOTE:** Labor costs may activate the Davis-Bacon Act. Contact Department for additional information on the Davis-Bacon Act.
  - d. Statement indicating that the proposed improvements are the minimum necessary to support the Downtown area. The TCF program will only consider funding the minimum improvements needed by the Downtown area (ie. over-sizing a water line to accommodate future development is not eligible).
  - e. Name of the individual or firm who prepared the justification and the date of preparation (must be prepared, signed and sealed by a Texas-registered public engineer).
  - f. Locations (subdivisions, street names, etc.). The locations description should match the locations shown on the Project Map.

Example - The proposed project includes the demolition of old sidewalk and construction of approximately 2,000 linear feet (xxx sq. yd.) of new sidewalk. To include curb cuts, ADA compliant ramps. Construction will take place in the following locations:

| <u>Location</u> | <u>From</u>  | <u>To</u>     | <u>Distance</u> |
|-----------------|--------------|---------------|-----------------|
| 1st Street      | Adams Avenue | Basin Street  | 500 l.f.        |
| 2nd Street      | Adams Avenue | Basin Street  | 500 l.f.        |
| 3rd Street      | Basin Street | Austin Avenue | 500 l.f.        |
| King Avenue     | 1st Street   | 4th Street    | 500 l.f.        |

**NOTE:** Sidewalk construction plans and specifications must be submitted to the Texas Department of Licensing and Regulation for review, as required by the Texas Architectural Barriers Act. See **ADA/Architectural Barriers Act (page 18)** for more information.

3. If the project includes matching funds for **building construction** and/or **rehabilitation**, provide:
  - a. Plans and specifications, including size of building, construction materials;
  - b. Itemized material costs;

- c. Labor costs;
- d. Architectural/engineering costs (pre-engineered metal buildings require an engineer's oversight); and
- e. Name of the individual or firm who prepared the justification and the date of preparation (3rd party preparer generally required).

**Note:** All projects involving any building or sidewalk construction activities, regardless of source of funding, must ensure that building plans and specifications be submitted to the Texas Department of Licensing and Regulation for review, as required by the Texas Architectural Barriers Act. See the **ADA/Architectural Barriers Act (page 18)** for more information.

4. If an application for funding is approved, the applicant is responsible for **administering** the award. This normally includes the following general areas: record keeping; environmental, including archeological studies; special conditions; TCF quarterly reports; slum and blight documentation; close out; and audit, but does not include application preparation costs. Detailed information about award administration is contained in the implementation manual or may be obtained from Department. See the **Administration Draw-Down Requirements (page 18)** for more information.

Applicants may request up to \$15,000 of an approved award be allocated for administration. Award amounts are inclusive of administration funds. Please describe how these requirements will be met; how much is being requested to cover these costs.

Procurement of administrative services (funded by TCF) must be accomplished in accordance with certain State laws and OMB Circular No. A102. In projects where no funds have been requested for administration, the applicant is required to provide an administrative plan and budget showing how the required award administration will be completed.

**Citizen Complaint Procedures** - The applicant must have adopted written citizen complaint procedures that provide for a timely written response to complaints and grievances. The applicant complaint procedures must be similar to those that the Department outlines at Title 4, Part 1, Chapter 30, Subchapter A, Section 30.1 of the Texas Administrative Code. Citizens must be made aware of the location and hours at which times they may obtain a copy of the applicant written procedures, and addresses and phone numbers for submitting complaints. See samples 1 and 2 on pages 21-24 in the *Project Detail and Business Documentation Application* packet.

**Citizen Participation** - A contract with an applicant under the TCF may be awarded only if the applicant certifies that it is following a detailed citizen participation plan that provides for and encourages citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas, and areas in which the funds provided under the contract are used in accordance with the following Citizen Participation Plan adopted by the TxCDBG. Each applicant certifies, by signing the application that it has complied and will comply with the requirements of this Citizen Participation Plan. TCF applicants are required to carry out citizen participation in accordance with the following Citizen Participation Plan adopted for the TCF.

Each applicant must maintain a citizen participation file which includes a copy of this plan, the applicant's complaint procedures; any technical assistance provided by the applicant, public notices, and minutes, and attendance lists for public hearings/meetings.

The applicant must comply with the following citizen participation requirements for the preparation and submission of an application to the TCF:

1. At a minimum, the applicant must hold one public hearing/meeting prior to the development and submission of the application.
2. The locality must retain documentation of the hearing/meeting notice(s), attendance lists, minutes of the hearing(s), and any other records concerning the proposed use of funds for a period of one year or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Chapter 552, Government Code.
3. The public hearing/meeting must meet the following TCF notification requirements and include a discussion with citizens covering the following topics:
  - The development of housing and community development needs.
  - The amount of funding available.
  - All eligible activities under the TCF.
  - The applicant's use of past TCF contract funds, if applicable.

- The estimated amount of funds proposed for activities that will meet the national objective of benefit to low and moderate income persons.
  - The plans of the locality to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TCF funds, if applicable.
  - Citizens, with particular emphasis on persons of low to moderate income who are residents of slums or blighted areas, shall be encouraged to submit their views and proposals regarding community development and housing needs.
  - Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local Public Housing Authority, the local Health and Human Services office, and the local Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location and topics to be covered at the public hearing.
  - Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing/meeting.
  - The public hearing/meeting notice must include the location and hours when the application will be available for public review.
3. While more than one application for different TxCDBG fund categories may be discussed at the public hearing /meeting -- that is, if the applicant is considering both a Community Development Fund and a Planning and Capacity Building Fund or a Texas Capital Fund application -- a hearing/meeting held for the previous program year's submittal of the same application (under either fund) is not acceptable for meeting the requirements for any subsequent competition.
5. At least five (5) days prior to submission of an application, or applications for TCF assistance, the applicant **must** publish another public notice in a local newspaper that includes the following information:
- The TxCDBG fund categories for which application(s) will be submitted.
  - The amount of TxCDBG funds requested in each application.
  - A short description of the proposed project activities in each application.
  - The locations of the project activities included in each application.
  - The location and hours when the application will be available for public review.
- Note:** This 2<sup>nd</sup> notice must be published no less than one (1) day after the notice for the public hearing/meeting, described in paragraph 3 above, is published.

**Public Hearing/Meeting Provisions:** For each public hearing/meeting scheduled and conducted by a TCF applicant, the following public hearing/meeting provisions shall be observed:

1. Public notice of all hearings/meetings must be published at least 72 hours prior to the scheduled hearing/meeting. The public notice must be published in a local newspaper and/or the predominant daily newspaper local residents subscribe to. Each public notice MUST include the DATE, TIME, LOCATION and TOPICS to be considered at the public hearing/meeting. A published newspaper article may also be used to meet this requirement so long as it meets all content and timing requirements. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.
2. Each public hearing/meeting shall be held at a time and location convenient to potential or actual beneficiaries and will include accommodation for persons with disabilities. Persons with special needs must be able to attend the hearings/meetings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing/meeting. The public hearing/meeting held prior to submission of an application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.
3. When a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing/meeting, an interpreter must be present to accommodate the needs of the non-English speaking residents.

The applicant must comply with the following citizen participation requirements in the event that the applicant/recipient receives an award from the TCF Program:

1. The locality must hold a public hearing/meeting concerning any substantial change, as determined by the TxCDBG, proposed to be made in the use of TCF funds from one eligible activity to another.
2. Upon completion of the TCF activities, the locality shall hold a public hearing /meeting and review its program performance including the actual use of TCF funds.
3. The locality must retain documentation of the hearing/meeting notice(s), attendance lists, minutes of the hearing/meeting(s), and any other records concerning the actual use of funds for a period of three years after the project is closed out. Such records must be made available to the public in accordance with Chapter 552, Government Code.

**Engineering/Architectural** - These are costs related to the oversight/review activities for construction of buildings and/or infrastructure improvements, especially related to activities proposed to be paid by the TCF. Engineer/architect services may not be paid by TCF funds. The Contractor is liable for all costs. An engineer/architect is responsible for and must sign off on all draws for construction items.

**False Information** - In those instances where it is determined that an applicant or its agent provided false information for the purpose of improving its scoring or increasing its chance for approval. Additionally, a person commits an offense if he:

1. Knowingly makes a false entry in, or false alteration of, a government record;
2. Makes, presents, or uses any item, record or document with knowledge of its falsity and with intent that it be taken as a genuine governmental record; or
3. Intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record. A governmental record is defined as anything belonging to, received by, or kept by government for information or that government is required by law to be kept by others for information of government. An offense under Section 3 is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the third degree.

If false information is discovered during the review process, the application will be deemed ineligible. If an award is made and funds received, the following will apply:

1. May be liable for full and immediate repayment of TCF funds released if the false information resulted in the project being funded.
2. The locality will be ineligible to apply for TCF funding for a period of two program years or until any issue of restitution is resolved, whichever is longer.

**Financial Commitment Letters** - A letter of commitment from each funding source outlined on the *Sources and Uses of Funds* form must be included in the application and should follow the format of the sample letters in Application.

**NOTE: Matching funds from other state or federal sources are ineligible for this application.**

1. A commitment letter (from all other private financing entities) must be included in the application indicating the commitment amount, the proposed use of the funds, the estimated date of availability, the rate and term, the expiration date of the commitment and the security of the loan.

**NOTE:** Applicant must ensure that appropriate documentation has been provided in the application verifying the signature capacity/authorization on such commitment letters.

If other eligible sources of funding are injected into the project, the commitment letter must also be accompanied by a *Verification of Deposit* (See form in Application packet).

2. The applicant must provide a resolution from the city council authorizing the match expenditure. The resolution must include the commitment amount and the proposed use of the funds.

**NOTE:** The threshold for an application requires the city to provide a minimum cash match of 10% of the TCF request amount. Additional points will be received as described in **Match Requirement (page 16)**.

**Labor Requirements for Construction Activities** - Any kind of construction related activities that are being funded in whole or in part with TCF funds must comply with the Davis-Bacon Act (labor standards). This requires that the federal prevailing wage rate be paid to construction workers. This requirement applies to all primary and secondary contractors. The primary exception would be for the use of force account labor by the unit of local government (city or county). There is no such exemption under federal guidelines for private force account labor. The applicability and extent of Davis-Bacon Act requirements in regard to a particular project will be determined on a case-by-case basis by Department. **Note:** Subcontractors of utilities are not exempt from Davis-Bacon requirements.

**Maps** - A minimum of three (3) project maps must be included with the application. Each map must identify the location of buildings, private and public infrastructure, that are part of this project. **All maps must be original, with a key or legend, color coded and drawn to scale. Failure to comply will delay the processing of the application.**

1. The *vicinity map* must show the general location of the project in relation to major landmarks such as freeways,

rivers, and major streets.

2. The designated *downtown area map* must identify the specified boundaries of the downtown area, defined as the principal commercial area or street(s), and all businesses located within the downtown area. **Note:** Proposed project activities must be located within these designated boundaries.
3. The *project site map* must be a magnification of the project site delineating:
  - Identifying buildings and landmarks adjacent to improvements;
  - Location and size of both existing and proposed infrastructure (road, water, sidewalks, sewer, etc.) improvements;
  - Name of adjacent streets and identification of the nearest intersection; and
  - Identification of proposed improvements (**legend or key is required**) to clearly identify the proposed project.

**Match Requirement** - At a minimum, TCF monies must be matched with a minimum of 10% of the requested grant amount in the form of cash from the city. Additional match contributions may earn additional points in the scoring process. Additional match may come from other eligible sources. Program income held at the local level must be used prior to contract funds, but may not be counted as match contributions. A firm financial commitment and a *Verification of Deposit*, if applicable, for all matching funds from other eligible sources will be required upon submission of the application. Funds and costs, outlined on the *Sources and Uses of Funds* form, **may not be spent or incurred prior to a contract execution date from the TCF program.**

**NOTE:** Matching funds from other state or federal sources are ineligible for this application, and at any time during the term of a TCF contract.

For activities that will be funded with a combination of TCF and match monies, the match monies must be expended prior to drawing TCF monies. Also, if a community experiences cost overruns or elects to do oversizing, the communities funds will be required to be used prior to drawing TCF monies. See **Use of Funds (page 10)**.

All force account or in-kind services may be applied only towards match in excess of the minimum required 10% cash contribution.

**Pictures** – The city shall provide no more than twenty-five (25) electronic/digital pictures, on a disk, of the proposed project area. The pictures should be numbered and a narrative must be included. The pictures should show the entire project area, including the slum/blight condition, which is to be eliminated and the narrative should be explicit.

**SCORING CRITERIA** - The following is an outline of the selection criteria used by the Department for the selection of projects under the Texas Capital Fund. There will be a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. Scoring criteria follows:

1. In the event of a tie score and insufficient funds to approve all applications, the following **tie breaker criteria** will be used.

1<sup>st</sup> The tying applications are ranked from lowest to highest based on applicant's most recently available American Community Survey 5-yr Estimates poverty rate. Thus, preference is given to the applicant with the higher poverty rate. This information may be obtained from the Census Department's American Fact Finder website: <http://factfinder2.census.gov/main.html>. A copy of this documentation must be included with the score sheet in the application.

2<sup>nd</sup> If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available three (3) month county unemployment rate. Thus, preference is then given to the applicant with the higher unemployment rate. This information may be obtained by contacting the Texas Workforce Commission, Labor Market Information at 1-866-938-4444 or e-mail at [lmi@twc.state.tx.us](mailto:lmi@twc.state.tx.us), or website: <http://www.tracer2.com/cgi/dataanalysis/AreaSelection.asp?tableName=Labforce>. A copy of this documentation must be included with the score sheet in the application.

2. **Scoring** - Maximum 90 points

(A) Poverty (maximum 10 points). Awarded if the applicant's annual rate is higher than the annual state rate using the most recent available American Community Survey – 5 year Estimate, as follows: score 5 points if their rate meets or exceeds the state average and score 10 points if this rate is 15% over the state average. This information may be obtained from the Census Department's American Fact Finder website. A copy of this documentation must be included with the score sheet in the application.

(B) Economic Development Consideration (maximum 5 points). Awarded if the city has passed the economic development sales tax (Type A/B {4A/4B} or both).

(C) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in

the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(D) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using most recent decennial census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the most recent decennial census data. This information may be obtained from the Census Department's American Fact Finder website.

(E) Per Capita Income (maximum 10 points). Awarded to cities that have a per capita income below \$25,809, using the most recent American Community Survey 5-yr Estimates. This information may be obtained from the Census Department's American Fact Finder website.

(F) Leverage/Match (maximum 10 points). A minimum 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and/or in-kind.

(G) Occupied Structures (5 points). Award 5 points to applicants if 50% or more of the structures within the project area are occupied by businesses. This specifically includes buildings within a one (1)-block radius of the proposed project improvements.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ a minimum of 95% minorities.

(I) Broad-based Public Support (maximum 10 points).

- (i) Award 5 points for providing a letter from at least one of the following organizations: The County Historic Preservation Commission, the local design review board, the Economic Development Corporation or the Chamber of Commerce supporting the project and describing how the project enhances the community's historic assets and historic preservation goals.
- (ii) Score 5 points for providing letters from 50% or more of the businesses and/or property owners impacted by the proposed project, within the downtown business district. This specifically includes businesses and /or property owners within one (1) block of the proposed improvements.

(J) Sidewalks and ADA Compliance (10 points). Five points awarded if a minimum of 50% of the requested funds will be used for sidewalk and/or ADA compliance activities; and 10 points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities

**Verification of Deposit** - All financial commitments, as outlined on the *Sources and Uses of Funds* form, will be verified. A sample form is provided in the application. The cash may be re-verified at the time the application is recommended for approval.

# SECTION 3

## Awarded Application Information

**ADA/Architectural Barriers Act** - State law requires that all projects involving any building, parking lot and/or sidewalk construction activities, regardless of source of funding, must ensure that plans and specifications will be in compliance with the requirements concerning the elimination of architectural barriers encountered by persons with disabilities, as specified in Title 16, Part 4, Chapter 68 of the Texas Administrative Code and the rules promulgated thereunder and be submitted to the Texas Department of Licensing and Regulation (TDLR) for review, as required by the Texas Architectural Barriers Act. The plans and specifications shall be sent to the Texas Department of Licensing and Regulations, Architectural Barriers Division, P.O. Box 12157, Austin, Texas 78711.

Additionally, all communities must ensure that all their project activities are in compliance with all provisions of the Americans With Disabilities Act (ADA).

**Administration Draw-down Requirements** - Below are contract administrative services draw-down thresholds. These thresholds are commensurate with the progress of the project and associated with administrative duties.

1. No more than a 35% draw-down of the TCF administration line-item funds prior to start of construction. This date will be indicated on the *Start of Construction Notice*. Eligible line items would include environmental clearance activities, record keeping, procurement activities, acquisition, some special conditions, and quarterly reports. In projects with limited or no construction activity and acquisition is the primary activity, no more than a 35% draw-down of the TCF Administration line-item funds will be allowed prior to the acquisition activity. The date will be indicated on the Report on Real Property Acquisition Activities form.
2. No more than an 80% draw-down of the TCF administration line-item funds prior to the receipt of all required close-out documentation.
3. No more than a 90% draw-down prior to programmatic closure, less any reserved funds and final programmatic closure as noted on the *Certificate of Expenditures*.
4. The final 10% draw-down (100% total, less any reserved funds) may be requested upon programmatic closure and will be available following receipt of the programmatic close-out letter issued by the Department.
5. Funds reserved for audit purposes will be released upon completion and submission of an acceptable audit.

All support documentation invoices submitted for TCF administrative services must include milestones, percent complete, total earned, previously billed, and currently due.

**Contract Threshold Requirements:** The cities, also referred to as Contractor, that have approved applications shall meet the following requirements:

1. Six Month Rule - Minimum documentation required for compliance shall consist of the following contract items: completion of Section 20, Environmental Clearance Requirements and certain items in Section 22, Special Conditions. Any contractor that has not completed these project activities within the first six (6) months of the contract period may have contract funds deobligated and its contract terminated. Failure to comply with the six-month rule will also cause contract funding to cease.
2. Twelve Month Rule - At a minimum, this must include receipt of the *Notice of Start of Construction* and a copy of contractor's resolution awarding the construction contract(s) or for acquisition only projects, the Contractor shall submit a copy of the executed closing statement or recorded deed. Any contractor that has not completed these project activities within the first twelve (12) months of the contract period may have contract funds deobligated and its contract terminated. Failure to comply with the twelve-month rule will also cause contract funding to cease.
3. Contractor shall submit to Department the TCF contract requirements of the Special Conditions in Sec 22.A., prior to release of contract funds.
4. Contractor shall satisfy the Sec 22.B. Special Conditions prior to release of contract funds, excluding funds budgeted for administration.

5. Contractor shall satisfy the Sec 22.C. Special Conditions as required, but no later than thirty (30) days prior to contract expiration.

**Draws and Retainage -**

1. The minimum draw amount that may be submitted to TDA is \$2,500.
2. No more than 90% of the funds for each construction contract will be paid prior to receipt of the Certificate of Construction Completion and Final Wage Compliance for that contract.
3. The Department will maintain an escrow retainage, of the contract funds budgeted for construction and rehabilitation, in the amount of five percent (5%) of each construction and/or rehabilitation subcontract entered into by the Contractor. Before the retainage fees for construction contracts are released, the Department must receive a complete and executed Certificate of Construction Completion form and Final Wage Compliance Report.

**Environmental Review** - ALL approved TCF projects require environmental clearance before TCF funds, as outlined on the *Sources and Uses of Funds* form, may be spent or incurred (with the qualified exception of general administrative). Applicant is at risk for any funds expended or incurred prior to receiving an award or an environmental clearance. The environmental review must include a review of private as well as public sector improvements. Environmental submittals will not be cleared prior to Department receipt of the fully executed TCF contract. Contact Department for additional environmental review information.

**Minority Participation** - Department encourages minority participation and will assist cities to identify potential minority contractors and subcontractors through Texas Building and Procurement Commission's Minority Certification Program. Applicants must provide information regarding their local minority population and their minority employees.

**Program Income** - Gross income received by a state, a unit of general local government, or a subrecipient of a unit of general local government that was generated from the use of CDBG/TCF funds. When program income is generated by an activity that is only partially funded with TCF funds, the income shall be prorated to reflect the percentage of TCF funds used. Program income includes, but is not limited to, the following:

- Payments of principal and interest on loans, lease payments, and late fees;
- Proceeds from the sale of loans/leases;
- Gross income from the use, sale, or rental of real or personal property acquired by the applicant or a subrecipient;
- Gross income from the use, sale, or rental of real property owned by the applicant or subrecipient that was constructed or improved;
- Gross income from the use of infrastructure improvements constructed or improved with CDBG funds;
- Funds collected through special assessments, impact fees or other additional fees from benefiting businesses, if the special assessments or fees are used to recover all or part of the CDBG portion of public improvements;
- Proceeds from the disposition of equipment; and
- Interest earned on funds held in a Revolving Loan Fund account.

For program income generated through Texas Capital Fund projects communities that elect to participate in the recapture of program income for use at the local level through a designated Revolving Loan Fund (RLF) will be limited to receiving one Texas Capital Fund contract award per program year. If a locality elects not to participate in the recapture of program income, the locality may apply for as many Texas Capital Fund awards as it has eligible projects. This determination must be made at the time of the original award and cannot be changed with subsequent awards.

A locality, electing to retain program income at the local level, must have a Revolving Loan Fund Plan (RLFP) approved in writing by the TxCDBG, prior to committing and expending any program income. The RLFP shall be approved and must be used for economic development in accordance with Title I of the United States Housing and Community Development Act of 1974, as amended. The RLFP must be submitted for approval no later than six (6) months from the commencement date of the contract. Program income generated by the award prior to the TxCDBG approval of an RLFP must be returned to the State.

Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date and thereafter one award must be made every three years. Every award from the RLF must be used to fund the same type of activity, from which such income is derived. The Department will determine when an activity will be considered to be continued. If the locality has not committed any RLF funds during the three-year period, all program income currently retained in the local RLF and any future program income received must be returned to the State for use in the statewide RLF.

Localities electing to retain program income through an approved RLF are required to monitor and report to the

State program income account balances reflecting amounts received and disbursed and the status of outstanding loans or leases. Such report should also include information regarding RLF loans, leases, and commitments made.

If the locality elects not to participate in program income recapture, fails to meet all requirements of this section or requirements identified in Section 6 of its TxCDBG contract or an RLFP is not submitted for approval within the first six (6) months from the commencement date of the contract, then all program income must be returned to the state. Program income returned to the state will be placed in a statewide RLF for the purpose of providing funds for eligible economic development activities.

At the contractor's discretion, property taxes may be assessed on real estate improvements funded through the real estate program and will not be considered as program income.

**Reports** - Once an application is approved the city is responsible for project administration, including quarterly reports, as identified in the TXCDBG Implementation Manual, to the Department.

**Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970 (Uniform Act)** -These policies must be followed any time real estate acquisition is involved (acquiring real estate with TCF or **any** other funds) in a project assisted with TCF monies. This may include real estate already acquired (generally within the previous 12 months) in anticipation of a proposed project. Therefore, all projects which will involve/include any real property acquisition or displacement (residents or businesses) should contact Department prior to initiating acquisition negotiations and/or prior to submitting a TCF application.

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