TEXAS DEPARTMENT OF AGRICULTURE
COMMISSIONER SID MILLER

September 1, 2016

Texas Community Development Block Grant Program

Re: 2016 Revisions to the Texas CDBG Project Implementation Manual

Dear Stakeholders –

On behalf of the Texas Department of Agriculture (TDA), thank you for your input and comments regarding the draft of the 2016 Texas CDBG Project Implementation Manual (hereinafter "2016 TxCDBG Implementation Manual").

The final version of the 2016 TxCDBG Manual is now posted on TDA's website on the Community Development Block Grant (TxCDBG) Program for Rural Texas webpage. Changes promulgated on June 17, 2016 are still highlighted in blue; any subsequent edits are highlighted in green.

Included in the final issuance of the 2016 TxCDBG Manual is Appendices D-F. In light of TDA's recent recommendation that Administration and Engineering/Architect/Surveying professionals who might assist with the TxCDBG applications be procured before the funding of awards to prevent any conflict of interest, Step by Steps and additional samples for both Administration(Appendix D) and Engineering/Architecture/Surveying (Appendix E) have been prepared. In addition, conforming changes were made to each sample packet. Finally, required contract provisions (retention of records, access to records, and termination for convenience) were added to Sample Contracts as needed.

Because Appendices D-F are just being released, you may provide commentary regarding these amended sample documents as well as any other proposed changes made since June 17, 2016. Please send your comments to Vada Dillawn at vada.dillawn@texasagriculture.gov by September 15, 2016.

In addition, please note the following:

1. Permanent Signage – Chapter 4 – The rules regarding Permanent Signage have been amended. Permanent Signage is now required for public buildings, park areas, or other structures open to the public, in addition to commercial facilities funded through the TCF Real Estate program. Permanent signage is no longer required for all infrastructure improvements located above ground and enclosed by a fence.

2. Procurement of Administration and Engineering/Architecture/Surveying– Chapter 5, Competitive Proposals, 5.2 – The differences between procuring for administration

P.O. BOX 12847
AUSTIN, TEXAS 78711
TEXASAGRICULTURE.GOV
(512) 463-7476
FAX: (888) 223-8861

services and other professional services as opposed to engineering, architecture, and surveying services have been delineated and clarified.

3. Additional Edits to 2016 TxCDBG Project Implementation Manual

   In addition, since the publication of the proposed 2016 TxCDBG Implementation Manual on June 17, 2016, 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.

As of today, September 1, 2016, these new rules will apply to all current contracts.

Again, thank you for your input and for all that you do for rural Texas.

Sincerely,

Suzanne Barnard

Suzanne Barnard
Director for CDBG Programs

2016 TXCDBG PROJECT IMPLEMENTATION MANUAL
SUMMARY OF POLICY CHANGES AND MINOR EDITS

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Program Overview	P.1.8	Requires Grant Recipients to have a Conflict of Interest Policy	Highlights in bold that Grant Recipients are required to adopt a Conflict of Interest Policy. Added see Sample Policy in Appendix C.
2	2.2	Engineering Costs & Regulatory Approvals	Requires that all regulatory approvals required by the contract (such as TCEQ interim well approvals or TDLR inspections) are received before payment of the final 10% of the engineering budget.
2	2.3	Deobligation % - Administration and Engineering	Allows for the reevaluation of percentages of administrative costs and engineering costs based on various factors, if grant funds are deobligated.
2	2.3.2	Drawdowns	Provides that draws for funds need to be made at least one time a year or as directed by TDA.
2	2.3.3	Ineligible Costs-Advertising Costs	Describes that advertising and public relations costs are ineligible costs for the TxCDBG program and how such charges may not be charged to the TxCDBG contract or considered as match funding.
2	2.3.3	**Ineligible Costs-Application Prep Costs**	**Provides the fees charged for the pre-paration of TxCDBG application are not eligible.**
2, 4, 12		Regional Coordinators	Conforming change – the term 'Regional Coordinators' replaces the term 'Contract Specialists' throughout Manual.
3	Step 4, Step 6, Form A308	Sample Form - Request for Release of Funds (RROF)	Adds Form A308 Request for Release of Funds (RROF) and Certification form, HUD form 7015.15 to sample forms for Chapter 3; made conforming changes to Chapter.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
4 & Section D	4.2.7 & D.1.7 Form D8	"Tap In"	Allows the State the option to require that a Grant Recipient report the aggregation of jobs for public infrastructure improvements where more than one business is benefitted.
4	4.2.3	Building, Parking Lot and Sidewalk Projects	Requires that in addition to building/renovation being in compliance with TDLR requirements before submitting a PCR, parking lots and sidewalks must also be in compliance. Provides that Communities must ensure projects are in compliance with ADA.
4	4.2.6	Permanent Signage	Requires permanent signage for buildings, park areas, and other structures open to the public and commercial facilities funded through TCF Real Estate program. (Permanent signage no longer required for lift stations and other non-public buildings.)
5	5.1	Minor change - Clarification regarding reimbursement	Clarifies that TDA will not reimburse any line item for profit, overhead, contingency, or other related terms that do not describe actual work completed.
5	Deleted Language - 5.1; 5.4.3	Negotiation of Profit as a Separate Element of Price	Upon further input from HUD, deletes the requirement that profit should be disclosed under sealed bid procurement. Negotiating profit as a separate element of price will only be required in contracts > $50,000 for competitive and non-competitive proposal contracts.
5	Editing throughout 5.2	Procurement of Administration and Professional Services	Reordered language and outlined procurement procedure for administration, including other professional services, and for engineering/architecture/surveying services.
5	5.2.1	Administrator Certification	Provides that any person within one firm that will administer a TxCDBG grant must annually be certified by attending either a TxCDBG Implementation Manual Workshop (or webinar online with taking test.) Deleted the term 'Firm' in accordance with 4 TAC 30.80.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
5, 10, and Appendix D, Step by Step	Ch. 5: 5.2.1, 5.4.2, 5.4.4; Ch. 10: I, 10.2.3; Appendix D	Notice of Bid Postings	Allows Grant Recipients to satisfy MBE/WBE/SBE requirement by sending copies of notices for bids to a newly created email at MWBE@texasagriculture.gov so that MBE's can be notified of abilities to bid.
5	5.2.1	COGS – Clearance by SAMs	Clarifies that COGS have to be cleared through SAMs.
5	5.4.5	Specify CDBG Contract/ Description of work in contracts	Requires that in all contracts, grantees, including engineering, must specifically refer to the project or provide detailed information regarding the work being funded.
Ch. 5 and Appendix B – Contract Provisions	5.4.5, Appendix B	Threshold for administrative, contractual, and legal remedies	Requires that the contracts >$50,000 (not $150,000) must address administrative, contractual, or legal remedies in violations of breach.
5	5.4.9	Recovered Materials Link	Updates recovered materials link: https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program#directory
5	5.5	COGS – Clearance by SAMs	Clarifies that COGS have to be cleared through SAMs.
5	A505	Change Order Form	Automates Change Order Form,
6	A610	Sample form – Admin. Settlement Purchases Above Market Value	Adds Sample Form A610 Administrative Settlement Guideform.
6	6.1	Licenses & URA	Distinguishes that licenses do not need to comply with URA requirements (i.e. railroad licenses/permits); gives factors to determine whether an interest is license/permit.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
6	6.1	URA & Leasehold	Provides that the URA applies to the acquisition of property that is leased for a term of 15 years or more instead of 50 years of more.
6	6.5	Private to Private Acquisition	Clarifies that for private-private acquisition, Uniform Relocation Act (URA) does not apply. For a private-private acquisition – Environmental may apply, based on the test that if not for the CDBG funding, the acquisition would not have occurred.
7	Introduction	Test Wells	Explains that test wells may or may not be considered construction and therefore, may or may not need to comply with Davis Bacon provisions. Asks Grant Recipients to refer to US Department of Labor Field Operations handbook, Chapter 15, 15DO5 regarding test wells.
8	8.2.3	FEMA Rates	Adds that rental rates will be compared to FEMA rates and if significantly higher, the Grant Recipient may need to provide explanation. Deleted reference 'rented' equipment in chart.
10	**I – Step 4; 10.2.7**	**LEP and Key Documents**	**Removes RLF as a key document needed to be translated if LEP triggered.**
10	I., 10.2	Civil Rights Officer	Provides that both the name of person and their title need to be identified on Form A1008 designating them as the Civil Rights Officer. In publication of civil rights notices, the title - not the person's name - is all that is necessary to be published.
10	I., 10.2	Notice on Website	Requires that if posting notices on website, a screenshot should be provided.
10 & 12	Ch.10: 10.2.2 Ch.12: 12.2.1	Section 3 Reporting	Section 3 Annual Report should be reported on a federal fiscal year (October 1 – September 30) basis instead of a calendar year basis. Form A1011 for Jan 1 - Sept 30, 2016 reporting year.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
10	I.,10.2, 10.2.5	Timeline for Published Notice	Consistent with the timeframe for acceptability of adopted or reaffirmed civil rights policies and procedures, newspaper notices regarding civil rights 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. Postings in public buildings have to be conducted within the contract period.
10	10.2.7	5% LEP Safe Harbor	Clarifies the 5% Safe Harbor rule: provides that each non-English speaking group must be more than 5% of the population for LEP requirements to be triggered (instead of adding the percentages of several non-English speaking groups that together would total more than 5%).
10	10.2.7	LEP	LEP forms need to be signed by Chief Elected Officer or by the Civil Rights Officer.
12	12.2.1	Engineering Costs	Reiterates that engineering and administrative costs are to be no more than 25% or 16% of total construction costs, respectively, and that if funds are deobligated, these costs will be realigned to the same percentages, with exceptions. (See Ch. 2 above)
12	**12.0**	**Closeout**	**Outlines the purpose of the PCR: to certify that the National Objective is being met and that beneficiaries are being served.**
12	**12.2.1**	**Closeout Report Part I. General Reports**	**Inserts civil and equal rights requirements found on the PCR.**
12 & Section D	**Form A1200 & D1200**	**Pilot procedure – Project Approvals from Regulatory Agencies**	**For projects seeking other regulatory approval, provides a space to note the date that documentation for was submitted to the regulatory agency.**

CHAPTER	SECTION/FORM	TOPIC	CHANGE
13	Editing throughout entire chapter Form 1302	Risk Based Monitoring	Describes the new Risk Based Monitoring system. Adds Self-monitoring Form A1302.
13	13.1.1	Self-Monitoring Review	Amends language regarding follow-up by staff after receiving certified results. Proposed timeframe was based on pilot procedure.
13	13.2.2	Non-compliance penalties	Outlines non-compliance penalties for administrative violations of various categories such as environmental, labor, acquisition, etc.
14	14.2	Expenditure vs. Draw	Delineates between the terms 'expenditure' vs. 'draw' on ACF.
Section B	Form B13	Planning Monitoring Checklist	Updates B13 Planning Fund Monitoring Checklist.
Section C	C.1	Non-profits and Rehab	Allow non-profits to partner with the Grant Recipient to receive rehab funding for rehab/renovation up to 8 units in 2 or more structures with occupants LMI > 51%.
Section C	C.4	Housing Rehab. Guidelines	Outlines the necessary guideline information needed for Housing Rehabilitation.
Section C	C.4	Loan Forgiveness	Discusses the loan forgiveness rate in the event that the Grant Recipient needs to recapture payments i.e. if owner sells the property within 5 years after the rehabilitation of the property.
Section C, Part II	Form CII 709 & CII 709i	OSSF – Forms	Reorders steps and numbering on forms.
Section D	D.1.1	LMI National Jobs Objective	Provides that if more jobs are created than the anticipated obligated number of jobs, at least 51% must be held by LMI Persons.
Section D	D.1.1 & D.1.9	Documenting jobs and hourly requirements for FTE	Describes how to calculate jobs created by TCF projects and which hours to use to determine whether job can be considered part time vs. full time status.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Section D	D.1.5	Business Occupancy	Discusses Certificate of Occupancy and requests to train employees at an alternative location prior to the beginning of work.
Section D	D.1.6	Real Estate and Private Infrastructure Improvements	Allows lease terms to alternatively be for ten (10) years if award is less than $300,000; provides that no interest should be charged.
Appendix B		Access to Records	Amends Access to Records language to conform to new Uniform Guidance (2 CFR 200.336). Provides access to Contractor's records throughout the term and closeout of TDA's contract with Grant Recipient.
Appendix B		Option Contract Language	Includes contract language for administrative (and other professional services) and engineering/architecture/ surveying contracts that are procured before TxCDBG funding is awarded.
Appendix D – Admin.		Step-by-Step	Tailors Step-by-Step for Administration and Other Professional Services (excluding Engineering/Architecture/Surveying).
Appendix D – Admin.		Sample Newspaper Advertisement	Clarifies instruction for advertisement.
Appendix D – Admin.		Sample RFP	Make conforming change regarding professional service providers.
Appendix E – Engineering		Step-by-Step	Adds Step-by-Step for Engineering/ Architecture/Surveying.
Appendix F - Construction		Instructions to Bidders, 6. & 15.	For 6. Bid Modification - Clarifies how bidders are to modify their bid. For 15. Execution of Agreement/ Performance – Makes conforming change per Tx. Local Govt. Code.

CHAPTER	SECTION/FORM	TOPIC	CHANGE
Appendix F– Construction		Sample Construction Contract	Deletes "additional supplemental work" in the beginning of the sample Construction Contract.
Appendix F – Construction		Contractor's Certification of Recovered Material	Provides new link for listing of recovered materials.
Appendix D-E		Samples – Cover Letter & Advertisements	Provides different samples for pre-award and post-award procurement of Admin. and Engineering/Architecture/Surveying
Appendix D-E	Sample Contracts	Retainage of Records	Provides that Contractors must retain records for a 3 yr. period after closeout of TDA contract with Contractor and all pending action.
Appendix D-F	Sample Contracts	Termination for Convenience Clause	Adds termination for convenience clause to construction contract. See Appendix II to 2 CFR 200 (B) requirement that all contracts >$10K must address termination for cause and 'for convenience'. Conforms language in Appendix D & E.
Appendix D-F	Sample Contracts	Access to records	Clarifies that the Contractors must provide access to records to HUD, TDA, City/County and any of its authorized representatives. (2 CFR 200.336)